EXPLANATORY MEMORANDUM TO

The Criminal Justice Act 1988 (Reviews of Sentencing) Order (Northern Ireland) 2013

2013 No. 249

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 35(4) of the Criminal Justice Act 1988 ("the 1988 Act") and is subject to negative resolution procedure.

2. Purpose

2.1. The Statutory Rule will ensure that sentences imposed in the Crown Court for (i) the commission of offences relating to the fraudulent evasion of duty on fuel and tobacco under Section 170 of the Customs and Excise Management Act 1979 (ii) attempting to commit such offences, and (iii) encouraging or assisting the commission of such offences, can be referred to the Court of Appeal by the Director of Public Prosecutions for Northern Ireland ("the DPP") if the sentence passed appears to him to be unduly lenient.

3. Background

3.1. Part 4 of the 1988 Act provided the Attorney General with a power to refer cases to the Court of Appeal where it appeared to the Attorney that the sentences passed by the Crown Court were unduly lenient. The power, which was extended to Northern Ireland by the 1988 Act - and which has subsequently been devolved, in Northern Ireland, to the DPP - can be exercised in respect of all cases which can be tried only on indictment, and to certain other cases which can be tried either on indictment or summarily.

3.2. This second group, the 'either way' offences, are brought within the scope of Part 4 of the 1988 Act by Orders made under section 35(4) of the 1988 Act. This Order extends the range of offences in respect of which that power may be exercised by the DPP in Northern Ireland to include offences tried in the Crown Court for excise evasion in relation to fuel and tobacco.

4. Consultation

4.1. The Department of Justice conducted a public consultation exercise on a proposal to extend the unduly lenient sentencing provisions to include excise evasion on fuel and tobacco. The consultation document can be viewed at: http://www.dojni.gov.uk/index/public-consultations/archive-consultations/unduly-lenient-sentencing-for-excise-fraud.pdf

4.2. The exercise was launched by the Minister of Justice, David Ford MLA, on 15 May 2013 and closed on 30 August 2013. The paper set out a number of options:

- **Option I** - Do nothing – allow the new sentencing guidelines to be tested and periodically assess whether the problem has been addressed.

- **Option II** - Add hydrocarbon fuels fraud only to the schedule – the sentencing of this offence is the main area of contention and is also the source of the majority of excise evasion prosecutions in Northern Ireland.
- **Option III** - Add hydrocarbon fuels and tobacco fraud to the schedule to give flexibility for the DPP to act in both areas (this was the Department's preferred approach).

4.3. Twenty six responses were received with strong support for the Department's preferred approach, Option III, to add hydrocarbon fuels and tobacco fraud to the schedule of offences capable of being referred to the Court of Appeal by the DPP.

4.4. The responses received, and the Department's comments on them, are set out in a 'Summary of Responses and Way Forward' document that was published on the Department of Justice website. The document can be viewed at: http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-unduly-lenient-sentencing-re-excise-evasion-summary-of-responses.pdf

5. Equality Impact

5.1. There are no issues of equality to be considered

6. Regulatory Impact

6.1. There are no issues to be considered.

7. Financial Implications

7.1. There are no significant financial implications.

8. Section 24 of the Northern Ireland Act 1998

8.1. There are no s.24 considerations.

9. EU Implications

9.1. There are no EU implications

10. Parity or Replicatory Measure

10.1. There is no equivalent legislation in England and Wales as the situation differs between the two jurisdictions. The incidence of fuel and tobacco excise evasion offences is much more prevalent in Northern Ireland due to the existence of a land border with another jurisdiction and examination of sentencing history for offences committed in Northern Ireland shows a significantly lower proportion of custodial sentences imposed here.

11. Additional Information

11.1. Not applicable