



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice Bill: Human Trafficking
Clauses

20 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Tom Elliott
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Jim Wells

Witnesses:

Mr Ian Kerr	Department of Justice
Ms Debbie Pritchard	Department of Justice
Mr Simon Rogers	Department of Justice

The Chairperson: I welcome Simon Rogers, deputy director of the protection and organised crime division; Debbie Pritchard, the head of the human trafficking branch; and Ian Kerr, the Criminal Justice Bill manager. You are very welcome to the meeting. This session will be recorded by Hansard. Mr Rogers, I hand over to you.

Mr Simon Rogers (Department of Justice): OK. Thank you, Chair. I will focus on clauses 5 and 6 of the Criminal Justice Bill and the related schedule 4. Changes are required to the current legislation to ensure that Northern Ireland complies with the criminal aspects of the EU directive on human trafficking, which must be implemented by 6 April 2013. Article 2 of the directive sets out the types of trafficking acts that must be made punishable in national law. These are set out to include sexual exploitation, forced labour exploitation and exploitation by the removal of organs. Article 10 of the directive requires the United Kingdom to enforce the offences under the directive within United Kingdom territory and against their nationals outside the United Kingdom. That is a mandatory obligation under article 10(1). Article 10(2) provides that member states may extend extraterritorial jurisdiction against companies and persons habitually resident in their territory. That is a discretionary provision.

In looking at that aspect of the directive, we have identified a couple of areas that are not covered by current legislation. We are seeking to cover those by the creation of the two new offences set out in clauses 5 and 6. Clause 5 adds section 58(A) to the Sexual Offences Act 2003 and creates an offence where a person is trafficked anywhere outside the United Kingdom for sexual exploitation by British citizens, habitual residents of Northern Ireland and bodies incorporated under the law of a part of the United Kingdom. The offence will deal with the abuse of trafficked victims at all stages of their

journey or ongoing travel. At present, sections 57 to 59 of the Act only establish criminal offences for trafficking persons into, within and out of the United Kingdom. In respect of labour or other exploitation, clause 6 amends the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and creates a similar offence to allow for the prosecution of a person who has trafficked someone anywhere outside the United Kingdom. In addition, clause 6 amends legislation so that an offence is committed where a United Kingdom resident who has not previously been trafficked into the United Kingdom is trafficked for labour or other exploitation wholly within the United Kingdom. That is already an offence for sexual exploitation. The maximum sentence for someone found guilty of committing any of the offences that I have mentioned will be 14 years' imprisonment. Schedule 4 contains a number of consequential amendments and repeals.

The Committee may wish to note that we are not mirroring the changes made to human trafficking legislation in England and Wales. Sections 109 and 110 of the Protection of Freedoms Act 2012 implement the mandatory changes required to comply with article 10(1) of the directive. The provisions before us today will make those changes for Northern Ireland but will also implement the discretionary changes set out in the article by extending to habitual residents and legal persons.

Comments were made at Second Stage of the Bill that the Department should not take a minimalist approach to the directive, and that is certainly not our intention. Indeed, we are clear that the Minister, as chair of the Organised Crime Task Force, expects all partners to tackle human rights issues energetically on a range of fronts. We are seeking to comply with the letter and spirit of the directive.

In our analysis of the directive, the comments received on it, Lord Morrow's Bill and the various reports we have received, we have not identified any other changes that we believe we need to make to primary legislation. However, there are other steps that we will take outside of primary legislation, for example, on NGO consultation and guidance. In other words, the clauses are not the sum total of all the work that we are doing in respect of the directive but will simply bring in the criminal aspects.

Some concerns were expressed about the deficiency of the provisions. If the Committee found it helpful, we would be happy to address those, both as regards their extent and the penalties, although the researcher has touched on some of those this afternoon. You have also sent us the responses the Committee received to its call for evidence on the Bill. We will work our way through those and respond to the Committee in time for it to consider those responses before we come back to you on 8 November. By that stage, you will also have our analysis of Northern Ireland's compliance with the directive at large and the Minister's response to Lord Morrow on his Bill. That covers the clauses and our wider work.

The Chairperson: OK. Your response to Lord Morrow's Bill and your detailed response to how you will deal with the issues raised with the Committee will be important and will, obviously, feed into our deliberations.

I have a couple of questions. First, summary conviction for either offence has been reduced to a term not exceeding six months or a fine not exceeding the statutory maximum. I think that the original proposal in the consultation was for a term of imprisonment not exceeding 12 months. Why the change?

Mr Simon Rogers: Regrettably, that was an error in the consultation document. We had two different references, and the document should have said six months, which is the standard provision in Northern Ireland. We transposed language from the consultation in England and Wales, where there is a different level. I am afraid that that was an error.

The Chairperson: Under those clauses, is it possible that, in Northern Ireland, someone who is found guilty of a trafficking offence may not receive a prison sentence and may only receive a fine? Is there that potential?

Mr Simon Rogers: Yes. There is that potential for any offence, including human trafficking offences. Obviously, new sentencing guidelines for human trafficking offences have been set down by Judge Burgess, the Recorder of Belfast, in the case of *R v Pis*, which was the first case of its type here. Counsel asked the Lord Chief Justice to set out guidelines in his sentencing guidelines, so any human trafficking case that is being considered in the courts now should take account of that precedent. Indeed, the last case that went through did indeed take account of it. Is it possible that a fine would be given? That would be down to judicial discretion.

The Chairperson: In taking that forward in legislation, has the Department given any thought to having a mandatory minimum custodial sentence?

Mr Simon Rogers: We do not think that that would be appropriate. As with all sentencing matters, the judiciary obviously jealously guards its discretion on what sentence it might impose. Only in a rare instance would one have a mandatory minimum sentence. Our approach is to give the judiciary the discretion to sentence appropriately and to seek sentencing guidance or guidelines up to the maximum, which would then guide the individual sentencing judge on what the appropriate sentence should be.

The Chairperson: I appreciate that that might be your position. However, it may not be the position of some around the table that the judiciary should be given that discretion. As the Attorney General points out, ultimately, politicians are the guardians of the rule of law. We will not debate that one at this particular point in the meeting.

Mr Wells: Simon, I do not know whether you attended the briefing that we had in the Long Gallery just before recess at which the PSNI gave evidence about the victims of that ghastly activity. One account that always sticks with me is that of the young girl whom they were able to identify by the scratchings of her fingernails as she tried dreadfully hard to get out of her cell — that is the only word for it. That woman was being forced to have sex with at least 20 different men a day. It is very hard to remain dispassionate when you are dealing with that ghastly, horrible activity. I am just wondering about the fact that someone could do all that and not face a mandatory prison sentence. That would strike most people as being absolutely appalling. I am trying to remain as cool as I can about this, but that briefing that I heard that night will remain with me for the rest of my life. It lasted three hours, and it was three very long hours, I can tell you.

Are we in a position in which we have to deliver the European directive's minimum sentence or can we go above the levels of its conditions and punishments? Is it wrong of the Committee and the Assembly to have an overall aim in life of making this part of Europe the part where it is most difficult to carry out that vile trade? Is that wrong? Do we have to keep in tandem with everywhere else because of the directive?

Mr Simon Rogers: No, obviously, we do not have to do that, but the sentencing framework that is already in place goes beyond what the directive seeks. The maximum sentence set by the directive is 10 years and our maximum sentence is 14 years, so we are already ahead of the directive.

As an official who works in this area, I can tell you that I understand the point that you are making about the human nature of this. I have also seen that briefing on more than one occasion, and I have read various books by victims of trafficking. It is a harrowing subject. That is in the back of our minds as we work on this almost on a daily basis. Therefore, I readily accept the point that you make that this is an appalling crime, but it is not the case that we are doing the minimum. In the sentencing area in particular, we are already ahead of what the directive, which is meant to set the standard, is asking for.

Mr Wells: We are going above the minimum standards in the directive.

Mr Simon Rogers: Yes.

Mr Wells: I am a Member of the British-Irish Parliamentary Assembly, and we are doing an inquiry into trafficking with all the jurisdictions in the British Isles. The most shocking statistic that came out of our first hearing in Cardiff was that the vast majority of those who are trafficked come into the United Kingdom legally. They are not smuggled in. They are brought in with work visas for things such as hairdressing, catering, cooking, etc. Once they get in, they are immediately hijacked at the airport and locked in brothels. That is where the vast majority of women end up. The men end up in gangs working in agriculture. Surely one of the quickest ways of solving that problem is to stop that obvious loophole. From certain countries in the world, thousands of people are being trafficked into Britain totally legally, with all their documents intact, and those documents are removed from them as soon as they set foot outside the airport. The same countries come up time and time again. Places such as Vietnam, Moldova and Romania come up time and again when we talk about trafficking, yet no one ever thinks, "Hang on, do we need 1,000 more hairdressers from Vietnam. Is there an issue here?" I have nothing against the Vietnamese, but does that not start bells ringing? Is there anything in the legislation that can control that aspect of it? We are providing an open goal for potential traffickers by allowing that situation to continue.

Mr Simon Rogers: Nothing can stop someone from coming into the United Kingdom legally, but I can assure you that analysis is done of the country of origin of the people rescued from human trafficking. There is an interagency approach, which I hope you will see in a minute when we move on to the next session, and the UK strategy on human trafficking sets out that we do not sit in Northern Ireland and wait to see what happens. Embassies are alive to the countries where victims come from, and they work with those countries to try to avoid circumstances in which someone feels that they have been forced from their country or encouraged to come somewhere else. Each embassy now has the issue of human trafficking built into its business plan. So, there is a reach beyond us sitting in Northern Ireland thinking about where the next victim is or police going into brothels or dealing with labour exploitation. It is not a question of waiting for the victims to turn up. However, we have to balance that against the right of people to come in legally and move around the EU taking up legitimate employment. You are right that a lot of people come in legally but then end up being exploited in the different ways that you have described.

Mr Wells: The other issue is that a lot of folk are trafficked into the Irish Republic and end up in Northern Ireland and other parts of the United Kingdom. Is there any liaison with the authorities in the Republic? There is no sense in us tightening up our legislation if there is still a route in via the Republic, and, of course, you can drive across the border anywhere; there is no issue there. What sort of liaison is going on with the authorities down south?

Mr Simon Rogers: Detective Superintendent Phil Marshall might be able to cover that in a moment, but I can tell you that, for example, our immigration and human trafficking subgroup, which sits under the Organised Crime Task Force, has the gardaí on it. At those meetings, they will talk about operational issues. So, there is an exchange at that level. There have also been joint cross-border operations between the PSNI and the gardaí targeting crime gangs, etc, that are suspected of being involved in this sort of work.

Mr Wells: Where it is relevant to this section is whether the Irish Republic is bringing in equivalent legislation to implement the directive in tandem with what we are doing. Is it behind or ahead of us?

Ms Debbie Pritchard (Department of Justice): I will need to check and come back to the Committee on exactly where the Irish Republic is on that. We have been engaging with officials on specific aspects, but, generally, it would be best if we were to check and come back to the Committee.

Mr Dickson: Thank you for the presentation and the helpful explanation. I want to come back to the maximum six months' imprisonment for summary conviction. You explained to us that it was originally 12 months but that was a read-across from the UK legislation, where it is 12 months. Why are we not having 12 months in Northern Ireland? Why have we reverted to six? I differ from Mr Wells about the mandatory sentence. I think that it is appropriate and important that the judiciary have that discretion, but we need to provide it with the base tools, which include the extent of the sentencing facilities available to it. It seems to me that if it is 12 months in the rest of the United Kingdom and only six months in Northern Ireland, if you think you are going to get caught, Northern Ireland is the place where you are going to get in and out of prison quicker than anywhere in the rest of the United Kingdom. That seems to me to be rather unfair and just illogical. Is there an explanation as to why it cannot be 12 months?

Ms Pritchard: The explanation is that, first of all, as I have said, in relation to the consultation document, we apologise, but it was an error that —

Mr Dickson: I understand that, but you have actually —

Ms Pritchard: In relation to the difference in procedures in sentencing between here and in England and Wales, there is a general criminal law procedure difference in how the two court systems operate. When dealing with summary offences here, a Northern Ireland district judge has power, under the Magistrates' Court (Northern Ireland) Order 1981, to impose a fine of up to a maximum of £5,000 or six months in prison, or both. The 1981 Order allows it where an indictable offence can be heard in the Magistrates' Court and the sentence exceeds six months — for example, if it were 12 months or up to that. The defendant may opt for trial in the higher court, and where the defendant does not opt to go to the higher court, the district judge can then impose a sentence of up to 12 months.

Mr Dickson: Is that the same situation in the United Kingdom?

Ms Pritchard: The courts there operate in a different way, and the lower court there can impose 12 months.

Mr Dickson: I simply do not understand why we cannot change the law in this respect to allow the lower court to have that authority in this particular offence to bring us into line with the rest of the United Kingdom. It seems a very simple process to me. I think that you are using rules and regulations rather than actually using an appropriate sentence.

Mr Simon Rogers: That would, of course, apply only to cases prosecuted in the Magistrates' Court. Obviously the Crown Court would not be so hampered.

Mr Dickson: I understand that.

Mr Simon Rogers: Secondly, the six-month ceiling, if I can call it that, applies to any offence in Northern Ireland. It is not specific to human trafficking. Therefore, we would be completely rewriting the manual for the justice system.

Mr Dickson: No, it would just be putting in an exception in respect of human trafficking. You would not be rewriting the entire manual for everything else, although there may be some value in doing that, but that is a different story. All I am suggesting is that you make an exception with regard to the lower courts' sentencing guidelines to allow them to impose up to 12 months in respect of human trafficking.

The Chairperson: A point raised by some of the respondents is that, with the system here, it is pretty complicated to secure convictions around this type of legislation. Is that something that the Department is thinking about — that it would be better to have a single piece of legislation around all of that?

Mr Simon Rogers: No, we are not. Our view is that this is the first time that it has come up as an issue. It is certainly not an issue that has been raised with us by any of the law enforcement agencies in the use of legislation. It has come up in the context of England and Wales, where the provisions around sexual exploitation were placed in one section, but that one section breaks down into subsections, whereas we have separate offences, in sequence, in the Sexual Offences Act. Likewise, with labour exploitation, they have put all the offences in one section. Under section 4, we will then have that, so we are not in a dissimilar position on section 4, the irony being that theirs are in subsections.

We do not see it as a burning issue that the legislation is not in one place. In an ideal world, it would be, and we accept that, but we think that there are a lot of other things that we should tackle before we should be unduly concerned about that, particularly given that no one from the law enforcement field has raised it with us. Certainly, if the Public Prosecution Service (PPS) was saying that it could not manage prosecutions because it did not understand the legislation, it would be a top priority for us to resolve that, but that is not the message that we are getting.

The Chairperson: Mr Dickson, do you want to come back in?

Mr Dickson: Very briefly, Chair. I think this raises an interesting issue for us. Perhaps some research could be done from the Committee's perspective. I would like to know the extent of benefit to criminals of having the lower sentencing regime available in the Magistrates' Court in comparison with someone committing the same offence in the rest of the United Kingdom, whether it is sexual exploitation or any other offence. It seems to me that you can get away with a lower sentence in Northern Ireland. I do not know whether 12 months applies in the United Kingdom to other offences, over and above sexual exploitation, but I think that we have hit an interesting point here. I do not see why criminals should benefit from Northern Ireland having a lower tariff regime, or whatever the appropriate term is.

Mr Wells: I agree with Mr Dickson. I also think that it is sending out a signal. Do we take this issue really seriously? Yes, we do.

The other issue I would like to ask about is, given the serious nature of these offences, how could these cases ever end up being heard in a Magistrate's Court, which has a lower tariff? I would have thought it would go straight to a much higher court, given the fact that, even at its lowest level, this is modern-day slavery. There is no other term for it. It is an awful blemish on Northern Ireland that we

tolerate this at all, or even that we have it. Perhaps the only good thing about the Troubles, if there was anything, was that it excluded this type of activity, because now it is rampant. We need to send a very clear message that we will not tolerate this on this part of the island or in the United Kingdom. We will not have it. Let others worry about what barriers they put up to it. Northern Ireland has to become known as the most difficult part of the British Isles in which to continue this ghastly activity.

Mr McCartney: The Chair made the point about the need for a single piece of legislation. You said that it was not really a burning issue, nor had the PPS raised it, but why would we not consider it if it is the right thing to do? You can understand a lawyer piecing together a way through complicated legislation, but if the opportunity presents itself to make this very clear and precise, why would we not take that opportunity?

Mr Simon Rogers: I do not think that those operating in the field regard it as being imprecise or unclear. Obviously, the task of translating the different provisions into a single piece of legislation is an area of work that, for me, would not be as high a priority as getting guidance out for front line victims, engaging with NGOs or making changes to the sentencing framework as required. I think I said that, in an ideal world, yes, it would be done, but it is not uncommon to legislation across Northern Ireland or the United Kingdom for everything not to be in a neat parcel. Amendments will be made, and then there will be amendments on top of amendments. As an official trying to work my way through legislation, I can see the difficulties, but, at the same time, this is not an area in which we are being pressed to put everything into one statute.

Mr McCartney: You could maybe say that there is a need to do it in the short term, but, in the long term, would there be any sense of making it less cumbersome for anybody operating it, never mind whether they are good at it?

Mr Simon Rogers: It would be ideal to have it done, yes.

Mr McCartney: Will the legislation include this in the range of offences for which an appeal can be heard if the sentence is considered unduly lenient? Will this fit into that category?

Mr Simon Rogers: Yes; both the sexual exploitation and the labour aspects. On the sexual exploitation side, it is provided for in the legislation. On the labour exploitation side, that will be done through subordinate legislation, because that is how we were advised it has to be done. We will be coming to this Committee in due course to seek approval to do that.

Mr A Maginness: I am seeking clarification on the previous remarks about sentencing. Mr Rogers, are you saying that none of these offences could be taken to the Crown Court?

Mr Simon Rogers: No.

Mr A Maginness: You are not. So, any offence that is taken to the Magistrate's Court or the district court, or whatever you want to call it, the maximum sentence there would be six months. If it is taken to the Crown Court —

Mr Simon Rogers: Fourteen years.

Mr A Maginness: Fourteen years. What determines whether an offence is taken to the Magistrates' Court or the Crown Court? Is it the gravity of the offence or the multiplicity of the offences?

Mr Simon Rogers: Yes. That is really for the Public Prosecution Service to determine, not the Department. Indeed, it would not welcome my involving myself in that. But, yes, that is exactly what it is.

Mr A Maginness: In this jurisdiction, a case involving some outrageous criminality in relation to trafficking would not be confined simply to the Magistrates' Court?

Mr Simon Rogers: No.

The Chairperson: If a UK citizen commits an offence abroad, how do you determine where they are tried? Will it be the case that a Northern Ireland citizen will be tried in Northern Ireland and a Scottish

citizen will be tried in Scotland? Could someone say, "Even though the offence was committed outside the UK, it would be better if the offender was sentenced in Northern Ireland, because they will face a stiffer sentencing framework than in the rest of the UK"? How will you determine exactly who will be tried where when an offence is committed outside the UK?

Mr Simon Rogers: By an individual who is outside the UK?

The Chairperson: Yes.

Mr Simon Rogers: In that situation, as with any other offence, the offence is committed in that country. The provisions in the directive relate to offenders operating within the United Kingdom, if I can put it that way. You may be living in the United Kingdom and trafficking someone from Mexico to Brazil, or you may be living in the United Kingdom and trafficking someone from London to Belfast, or vice versa. If you commit the offence in Spain, however, you are subject to Spanish law. Like us, the Spanish Government have to comply with the directive. We do not make provision for that because it is not our jurisdiction.

Ms McCorley: Go raibh maith agat. Can you tell me what you see as the main difference between the Human Trafficking Bill and what is in Lord Morrow's Bill? Do you feel that his Bill was helpful in drafting the legislation?

Mr Simon Rogers: The original version of Lord Morrow's Bill that we received — I am not 100% certain whether it went out to other consultees, but I do not think that it did — included provisions to do, in effect, exactly what clauses 5 and 6 do. Those provisions have been taken out of the latest version that he has produced. I am hoping that he has done that on the basis that he thinks the provisions in clauses 5 and 6 adequately cover that area.

It is evident from Lord Morrow's Bill that he wants to see legislation brought forward to deal with other areas within and outwith the directive. I think I mentioned earlier that we are looking at that Bill. The Minister has undertaken to write to Lord Morrow and has a meeting scheduled with him in early October. The end date for Lord Morrow's consultation is 18 October. As I said today, and as we have stated in writing to the Committee, we will send to the Committee a copy of the response to Lord Morrow so that you can see what we say to him.

Mr Elliott: I just want to make a quick point. Thanks for the presentation. This may not be for these officials but the Public Prosecution Service, if it is the agency directing this. There is a huge difference between a sentence of six months and 14 years. I would have thought that we would need some idea of where the line is to be drawn between who goes to which court. I think that that is quite significant in deciding whether to accept six months at this level.

Mr Simon Rogers: The Public Prosecution Service published a document that went out for consultation from 8 June until 3 September. The document is on what it calls a policy for prosecuting cases of human trafficking, and I think it is instructive. I can certainly give the Committee Clerk a copy of that if you do not have it. It sets out the role of the Public Prosecution Service when dealing with decisions, victims and witnesses. It goes through the whole array of issues for the Public Prosecution Service in the context of human trafficking and sets out the tests for the prosecution, such as evidential tests and the public interest test. I hope that that will give you the answer.

Mr Anderson: Thank you for the presentation. I want to go back to what you, Chair, started at the beginning with a reference to the possibility of receiving only a fine and not a custodial sentence. When you think of the example that my colleague Jim gave of that young girl being locked away in what he termed a cell, I find it difficult to understand that we may be introducing something here that will allow the perpetrators of such vile acts to get away with simply a fine. I think Mr Rogers said that the Department was not taking a minimalist approach to this. How can you convince me or the Committee that it is anything but minimalist, when you consider that that could happen — that someone could walk away with a fine or something like that and not even a minimum sentence? I certainly think that you have some convincing to do, especially to me, that that is anything other than a softly, softly approach.

Mr Simon Rogers: The fine is an option for virtually all sentencing disposals, including manslaughter, etc, as it is in this case. Two cases on human trafficking have been prosecuted to conclusion in Northern Ireland. Both were in the Crown Court, and neither has had a fine; they both had custodial

outcomes. The case that I mentioned earlier by Judge Burgess of the Crown against Pis sets out the starting points for sentencing. If x circumstances apply, we would normally expect a judge to sentence in the following way — x years. If the following aggravating factors are present, then it would be y years. It might be useful if I give the Committee Clerk access to that judgement for the benefit of members. The fundamental point for us is that we have put in a high tariff of 14 years against the directive's call for 10, and the judge has the discretion within that to sentence up to 14 years.

Mr Anderson: Why not a minimum sentence? The judge can decide up to 14 years, is that what you are telling me?

Mr Simon Rogers: Yes. The reason for that is that the Government are loath to set minimum tariffs across the front of sentencing, and I am sure that the judiciary would be even less happy if the Government were to do so. That is not the approach taken. The current approach is that we set a maximum tariff and the courts sentence within that. In this instance, there is the sentencing guideline base that sets out what the tariff should be for different types of case, up to the maximum.

Mr Anderson: I am not really convinced about going up to a maximum, quite honestly, Mr Rogers. It is anything from a small sentence to 14 years. It will be interesting to see how that is worked out or how it happens in cases. For this type of offence, I think that a minimum sentence certainly should be considered, partly because, as my colleague said, we all know about the particular case of young women being locked away in cells and what they had to put up with. It deserves that.

The Chairperson: I know that the judiciary may be loath to have a minimum sentence. That is fine; that can be its position. However, it should not dictate what the Department does. Politicians dictate the policy on this issue, not the judges. I appreciate its input, but I do not like an official relaying what the judiciary may think or may not think on this issue. It can articulate that for itself. If we decide contrary to that, it will be us who decide, and the Department will implement that decision, not because of what the judiciary may or may not want. Twice you have indicated what the judiciary will want, and that is fine, and I appreciate what it thinks, do not get me wrong. However, I do not want people coming forward speaking on behalf of the judiciary. It can do that for itself. I will leave it at that.

Simon, you are going to stay on for the next session. Thank you very much for the presentation. If members can agree, there were a couple of questions that we did not cover. We covered most of them, but those that we did not cover we will put in writing to the Department to deal with.