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SPICe Briefing

Disabled Persons' Parking Badges (Scotland) Bill

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The Disabled Persons' Parking Badges (Scotland) Bill ("the Bill") was introduced in the Parliament by Dennis Robertson MSP on 17 December 2013. The Bill is primarily aimed at improving the ability of local authorities to tackle misuse of the Blue Badge and in doing so to protect the rights of badge holders and strengthen the existing framework of the scheme.



The Scottish Parliament
Pàrlamaid na h-Alba

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EXECUTIVE SUMMARY

The Blue Badge scheme is for drivers or passengers with severe mobility problems. The scheme provides a range of on-street parking concessions enabling Blue Badge holders to park closer to where they need to go. Depending on the local authority, parking enforcement, including Blue Badge enforcement, is either the responsibility of the local authority or the police.

The Disabled Persons' Parking Badges (Scotland) Bill ("the Bill") is a Member's Bill supported by the Scottish Government. It aims to tackle the misuse of the Blue Badge scheme, thereby improving the quality of life for disabled people by freeing up parking spaces for legitimate Blue Badge users. Badge misuse may take a range of forms. For example, allowing a friend or family member to use the badge when the disabled person it belongs to is not in the car, tampering with a badge or using a badge that is out of date.

The draft proposal for the Bill was lodged on 18 December 2012 by Dennis Robertson MSP and the draft Bill consultation closed on 28 March 2013. The final proposal was lodged on 20 June 2013 and received support from a total of 41 Members: 33 Scottish National Party, 7 Scottish Labour and 1 Independent.

The proposals provide additional powers to local authorities and the police to enforce the Blue Badge scheme in Scotland. It will strengthen current enforcement powers, including the ability to cancel or confiscate a badge in certain circumstances and will provide for security features of the Blue Badge format to be approved administratively by Scottish Ministers rather than by regulation. The Bill will also allow regulations to be made to ensure that people refused a blue badge on eligibility grounds are entitled to seek a review of the decision from the local authority.

The Financial Memorandum suggests that the Bill's proposals will have no cost implications for the Scottish Government. Local authorities will incur additional costs for enforcement officers if they choose to appoint enforcement staff. The Memorandum also estimates the potential costs of reviews and suggests that costs to other bodies are unlikely to be significant and should be easily absorbed by the agencies involved.

The Local Government and Regeneration Committee has been appointed as lead committee on the Bill.

INTRODUCTION

The Disabled Persons' Parking Badges (Scotland) Bill ("the Bill") is a Member's Bill, introduced by Dennis Robertson MSP on the 19 December 2013 and supported by the Scottish Government. This paper sets out the provisions of the Bill as well as exploring the Bill's background and provides a brief overview of the Blue Badge Scheme.

The aim of the Bill is to strengthen the Blue Badge Scheme enforcement powers, including cancellation and retention of badges in certain circumstances; to provide for elements of the format of a blue badge to be approved administratively and to allow people refused a blue badge on eligibility grounds to seek a review of the decision.

In its role as lead committee the Local Government and Regeneration Committee launched a call for evidence from 23 January - 12 March 2014.

BACKGROUND TO THE BLUE BADGE SCHEME

The [Blue Badge Scheme](#) (Transport Scotland 2012) provides parking concessions for people with severely restricted mobility who have difficulty using public transport. In Scotland, blue badge holders may:

- park on single or double yellow lines for as long as necessary, unless there are restrictions on loading or unloading – indicated by yellow kerb dashes and/or signs on plates
- At on-street parking bays, whether metered or not, free and for as long as necessary
- At on-street disabled persons parking bays, free and (unless signs indicate otherwise) for as long as necessary.

The Blue Badge Scheme does not apply to off-street car parking, for example in privately operated car parks at supermarkets or airports. Off-street car park operators are required to provide parking for disabled people. However, it is up to the car park owner to decide whether blue badge holders can park for free.

The Blue Badge Scheme operates throughout the UK. In Scotland it is managed by local authorities who deal with applications and issue badges. Transport Scotland is responsible for the legislation which sets out the framework for the Scheme and provides support to local authorities to help them deliver it.

Blue Badges are also recognised across the European Union, although the benefits provided vary from country to country.

RECENT AMENDMENT REGULATIONS

In 2010, the Scottish Government undertook a [consultation on Blue Badge reform](#) (Scottish Government 2010) with the aim of ensuring that the Scheme remained fit for purpose and to ensure continuing eligibility for a blue badge amongst those in need whilst reducing misuse of the Scheme. A [summary of the consultation analysis](#) (Scottish Government 2010a) was published in December that year. Following that consultation, a number of changes were made to the Scheme as part of the [Disabled Persons \(Badges for Motor Vehicles\) \(Scotland\) Amendment Regulations 2011](#) and the [Disabled Persons \(Badges for Motor Vehicles\) \(Scotland\) Amendment \(No. 2\) Regulations 2011](#) which include:

- amendments to eligibility criteria which now require an applicant to be “unable to walk” or “virtually unable to walk.”
- improved badge design with production and distribution from a central point to prevent fraud
- the introduction of IMAs (independent mobility assessments) replacing the previous practice of assessment by an applicant’s own GP, providing more consistency of practice
- the introduction of BBIS (Blue Badge Improvement Service) and the central database of all new badges issued across the UK from 1 January 2012, with key information on badge holders
- changes to the previous conviction rule to allow local authorities to act more quickly when dealing with misuse of the badge to enforce the Scheme more
- automatic eligibility for Severely Disabled Service Personnel and War Veterans meeting specific criteria.

Please see Annexe A for further detail on previous legislation on disabled parking.

BLUE BADGE ELIGIBILITY CRITERIA

You automatically qualify for a blue badge if you are over two years old and meet one of the following criteria:

- you receive the Higher Rate of the Mobility Component of the Disability Living Allowance; or
- you receive Personal Independence Payment and have been assessed as having
 - (i) severely limited ability (within the meaning of regulation 6(3)(b) of the Social Security (Personal Independence Payment) Regulations 2013 in respect of activity 1 in Part 3 of Schedule 1 to those Regulations; or
 - (ii) limited ability (within the meaning of regulation 6(3)(a) in respect of activity 2 in that part.
- you are registered blind; or
- you receive a War Pensioners’ Mobility Supplement; or
- you receive an award under the Armed Forces Compensation Scheme (AFCS) under tariffs 1 to 8 and have been certified as having a permanent and substantial difficulty which causes inability to walk or very considerable difficulty in walking.

You may also qualify for a badge if you are more than two years old and meet one of the criteria below. This eligibility will usually be determined separately through local authority assessment.

- you have a permanent and substantial disability which means you are unable to walk, or virtually unable to walk; or
- you are unable to walk, or virtually unable to walk because of a temporary but substantial disability which is likely to last for a period of at least 12 months but less than 3 years, or
- if you drive a motor vehicle regularly, have a severe disability in both upper limbs, and are unable to operate, or have considerable difficulty in operating, all or some types of parking meter’.

Children under 3 years old may also qualify for a badge if they are required to be accompanied by bulky medical equipment or require close access to a motor vehicle so that they can be treated quickly.

IMPACT OF WELFARE REFORM AND THE MOVE FROM DISABILITY LIVING ALLOWANCE TO PERSONAL INDEPENDENCE PAYMENTS

UK Government Welfare Reforms mean that Disability Living Allowance (DLA) will gradually be replaced by Personal Independence Payment (PIP) for those of working age.

Blue badge eligibility is not addressed by the Bill. However, [concerns have been raised](#) (Scottish Parliament 2013) that changes to the new eligibility criteria mean that some people will no longer qualify for PIP, or only qualify at a level which doesn't automatically passport to a blue badge.

To ensure that passporting arrangements can continue for those who moved from Higher Rate Mobility Component of Disability Living Allowance (HRMCDLA) to Personal Independence Payments (PIP) and new recipients of PIP, the Scottish Government introduced [The Welfare Reform \(Consequential Amendments\) \(Scotland\) Regulations 2013](#) which came into force on 8 April 2013. The regulations matched wherever possible the criteria used for HRMCDLA with PIP.

Passporting arrangements to the Blue Badge Scheme apply to those people who receive the Mobility Component of PIP if:

awarded at 12 points (enhanced rate) for "planning and following journeys", which includes those who cannot follow the route of a familiar journey without another person, assistance dog, or orientation aid.

or

awarded at 8 points (standard rate) or more for "moving around".

The Regulations also include transitional arrangements to allow those who are in receipt of HRMCDLA and subsequently are not awarded PIP, or PIP at the level of award required for passporting, to retain their blue badge until its expiry date.

It should be noted that those persons who no longer qualify for a badge through the PIP passporting arrangements can apply directly to the local authority to be considered for a badge under the local authority further assessment criteria.

PARKING AND BLUE BADGE ENFORCEMENT

Parking enforcement, including blue badge enforcement, is either the responsibility of the local authority or the police, as explained below:

Local Authority: Twelve of the 32 Scottish local authorities operate decriminalised on-street parking enforcement, with a further two going through the application process. This means that, under the provisions of the Road Traffic Act 1991 (c. 40) the local authority has assumed control of the enforcement of parking and blue badge offences within their areas from the police.

In these areas enforcement is carried out by parking attendants employed by the local authority, or a contractor appointed to undertake this task by the authority.

Police: Outside of the decriminalised parking enforcement areas parking and Blue Badge offences are still enforced by the police, although the enforcement has normally been carried out by traffic wardens employed by the police. Police Scotland withdrew from undertaking its dedicated traffic warden service across Scotland on 3 February 2014.

Police officers, police traffic wardens and parking attendants (in areas where parking enforcement has been decriminalised) all have the power to inspect a blue badge displayed in a

vehicle. It is an offence not to produce a badge when requested to do so by an authorised person. However, only police officers have the power to retain a badge that may not be valid or is being used by someone other than the holder. The UK Department for Transport (2013) highlights concerns about this power being limited to police officers in a [Circular](#) (Department for Transport 2013) which explains new Blue Badge enforcement provisions that extend to England and Wales only, stating:

“It is often impractical for local authorities to engage a police presence to assist in Blue Badge enforcement. Consequently, whilst many authorities will issue parking tickets to vehicles for parking infringements involving the misuse of a Blue Badge, they will often stop short of inspecting the badge and taking it away from the user in cases where the badge is not valid, or where a valid badge is being used by someone other than the holder.”

WHAT CONSTITUTES BLUE BADGE MISUSE?

Misuse of a badge is an offence and can lead to a fine of up to £1,000. According to [Transport Scotland](#) (2012) common forms of possibly unintended misuse of the badge include allowing family members or carers to use the badge when the disabled person is not with them. This is an offence, even when doing something on the disabled person's behalf or allowing a non-disabled people to take benefit from the badge while the disabled person is sitting in the car. Other more obvious examples include displaying a badge photograph side up so that the details on the front cannot be read; copying or tampering with the badge; or using the badge if it has expired or if the disabled person is no longer eligible. More information is available in the leaflet '[The Blue Badge Scheme in Scotland: Rights and responsibilities of Blue Badge holders](#)' produced by Transport Scotland (2012). Reports by the [Audit Commission](#) have also identified how in some areas blue badges are forged or stolen and subsequently sold on the black market.

In summer 2012, Transport Scotland commissioned quantitative and qualitative research amongst Blue Badge holders, entitled [The Use and Value of the Blue Badge Scheme](#) (ODS Consulting for Transport Scotland October 2012). It found that over three-quarters (76%) of the telephone respondents had experienced misuse of the Blue Badge Scheme. The main problem being people parking in disabled spaces without displaying a blue badge.

BLUE BADGE IMPROVEMENT SCHEME (BBIS)

On 1 January 2012, the Blue Badge Improvement Scheme (BBIS) was launched, providing a database for use by local authorities in England, Scotland and Wales and holding key information on badge holders. The BBIS is designed to help assist in the prevention of fraud and to enable more effective monitoring of cancelled, lost or stolen badges.

BILL CONSULTATION

The draft proposal on the Bill was lodged on 18 December 2012 and the consultation closed on 28 March 2013 [Consultation on the proposed Disabled Persons' Parking Badges \(Scotland\) Bill](#). The final proposal was lodged on 20 June 2013 and received support from of 41 MSPs: 33 Scottish National Party, 7 Scottish Labour and 1 Independent.

Dennis Robertson MSP's draft proposal was for a bill to:

“strengthen the Blue Badge scheme enforcement powers, including powers to cancel and confiscate badges in certain circumstances, and to provide an appeals process for applicants when their Blue Badge application is refused on eligibility grounds.”

The proposal was accompanied by a consultation document making the case for amending the law in Scotland. The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Members' Bill. Further information about the procedure can be found in the Parliament's Standing Orders ([see Rule 9.14](#)) and in the [Guidance on Public Bills](#), both of which are available on the Parliament's website.

The consultation was published on the Parliament's website. It posed 11 questions, most of which invited a “yes” or “no” answer supported by explanatory comments. Copies or links to it were sent to a wide range of stakeholders including local authorities, the police and voluntary sector organisations. 81 responses were received, 43 from individuals and 38 from organisations.

The [summary of the analysis of consultation responses](#) (Robertson D 2013) stated the following

- Respondents welcomed the consultation and the opportunity to be involved. There was also widespread support for the general aim of the Bill to provide better enforcement of the Blue Badge Scheme
- A number of themes emerged, primarily around the extent of perceived misuse or abuse of the Blue Badge Scheme and the need for better enforcement, as well as protecting the needs of legitimate blue badge holders.
- The need for thorough training, and clear guidelines, for anyone empowered to confiscate a blue badge that they suspect is fraudulent or being misused was a consistent theme. In particular, there were comments that care should be taken to ensure sensitivity to legitimate blue badge holders whose disabilities may not be obviously and consistently evident.
- A further recurring theme was around the need to educate and inform the public, including blue badge holders, about any changes to the Scheme or enforcement measures. Respondents suggested that this would help reduce misuse or abuse by creating awareness of more serious enforcement

Following the consultation, the [final proposal](#) was for a Bill to:

“strengthen the Blue Badge Scheme enforcement powers, including cancellation and retention of badges in certain circumstances; to provide for elements of the format of a Blue Badge to be approved administratively and to allow people refused a Blue Badge on eligibility grounds to seek a review of the decision. “

BILL PROVISIONS

The Disabled Persons' Parking Badges (Scotland) Bill Explanatory Notes and other accompanying documents provide a detailed description of the Bill's contents. A short summary of the key provisions of the Bill are set out below:

FORM OF BADGE

Section 1 of the Bill would give Scottish Ministers the power to specify some, or all, of the requirements about the form of a blue badge, such as design or security features, through administrative means. Currently, Ministers must specify the form of a blue badge through regulations, which means that full details of the format of a Blue Badge, including security measures, are publicly available.

POWER TO CANCEL BADGE

Section 2 of the Bill would give local authorities the power to cancel a Blue Badge held by someone other than the person it was issued to.

POWER TO CONFISCATE BADGE

Section 3 of the Bill would allow police officers, traffic wardens and authorised local authority officers, including parking attendants, to confiscate a Blue Badge that they have asked to inspect and which:

- appears to be a forgery
- has been cancelled
- should have been returned to the local authority
- is being misused

The Equality Impact Assessment that accompanies the Bill states that:

“Badges will only be confiscated where they are forgeries, are being misused by a third party with intent to deceive or the badge holder is using a badge that is invalid because it is damaged, expired or cancelled and does not meet the requirements of the regulations. Valid badges confiscated from third parties will be sent back to the original badge holder in all cases. Regulations will prescribe timescales for return of badges. The Police and local authorities will decide on a case by case basis and the evidence available whether further action is required or a report to the Procurator Fiscal is appropriate.”

OFFENCE OF USING CANCELLED BADGE

Section 4 of the Bill would make it an offence to drive a vehicle whilst displaying a blue badge, which has been cancelled or should have been returned to the local authority. The Bill would also make it an offence to display a blue badge in a parked vehicle, where that Badge has been cancelled or should have been returned to the local authority. Both offences are summary offences and can be punished with a fine of up to level three on the standard scale, currently £1000.

ENFORCEMENT OFFICERS

Section 5 of the Bill would create a new type of enforcement officer, in addition to police officers, traffic wardens and parking attendants who are currently authorised to undertake blue badge enforcement activities. Enforcement officers would be local authority employees specifically authorised to undertake blue badge enforcement duties. An enforcement officer would not have to wear a uniform. To ensure that only properly authorised enforcement officers could examine (and confiscate) blue badges, the Bill states that it would not be an offence to refuse to show a blue badge to someone claiming to be an enforcement officer, unless that person could produce a valid identity document proving that they were authorised to undertake such work.

REVIEW OF LOCAL AUTHORITY DECISIONS

Section 6 of the Bill would allow Scottish Ministers to make regulations to establish a review process, allowing applicants for a blue badge who have been deemed to be ineligible the right to ask for a review of that decision. The details of this review process would be set out in these regulations, which would be subject to the negative procedure.

FINANCIAL IMPLICATIONS OF THE BILL

The Financial Memorandum accompanying the Bill indicates that its proposals will have no cost implications for the Scottish Government. The Memorandum estimates that local authorities that choose to appoint people other than parking attendants as enforcement officers will incur costs in the region of £26,000 per annum. Authorities could choose to share enforcement officers, as a way of saving money.

Local authorities may also incur additional costs in operating a review system for Blue Badge decisions. Twenty authorities already operate a review system. After a review of the financial information available, Dennis Robertson MSP [wrote to the convener of the Local Government and Regeneration Committee](#) regarding an update to the Financial Memorandum (Scottish Parliament 2014). The update estimates that each review costs in the region of £19.25 and that if there are 400 reviews per annum this would give an additional cost of up to £7,700.

The Financial Memorandum estimates that if there are 25 prosecutions for Blue Badge misuse each year, the potential cost to the Scottish Court Service will be up to £8,350 per annum, the Crown Office £8,375 and the Scottish Legal Aid Board £8,225.

Finance Committee Call for Evidence

The Finance Committee issued a call for evidence on the Financial Memorandum on 29 January 2014 giving a deadline for responses of 28 February 2014. A total of [twelve responses were received](#) (Scottish Parliament 2014a). The Finance Committee [wrote to the Convener of the Local Government and Regeneration Committee](#) (Scottish Parliament 2014b) on 12 March 2014 to inform the Committee of the responses to the consultation. The main points raised were regarding the issue of local authority reviews.

EQUALITY IMPACT ASSESSMENT (EQIA)

The [Equality Impact Assessment](#) to the Bill (Scottish Government 2013) stated that the effects of the Bill will be broadly positive for disabled people with no negative implications identified for other equality groups. Evidence from the Framing Exercise, Blue Badge research and responses to the Member's consultation showed that badge holders valued their badges and were concerned about the perceived widespread abuse of the Scheme.

Although there was general support for the strengthening of enforcement practice, the EQIA stated that badge holders and disability groups hold strong views that responsible badge holders should not be disadvantaged by the proposals.

In implementing the legislation, the Scottish Government recognised in the EQIA that it would be necessary to mitigate the impact of the proposals on the equality groups by:

- raising general public awareness about the Blue Badge Scheme and the impact abuse of the Scheme has on disabled people
- reminding badge holders about their rights and responsibilities
- communicating clearly and in accessible formats, given the wide range of disability groups impacted
- ensuring that the local authorities which choose to use the powers make enforcement officers aware of the new legal powers and disability equality issues
- providing clear administration and enforcement processes in supporting guidance
- monitoring and quality assuring the changes to ensure that any specific equality group has not been adversely or indirectly affected by the proposals

ANNEXE A - PREVIOUS KEY LEGISLATION

Date	Legislation	What it did
In force December 1971	Chronically Sick and Disabled Persons Act 1970	<p>Introduced the disabled person's badge scheme in 1971 under section 21.</p> <p>Made provision for:</p> <ul style="list-style-type: none"> • Badges to be provided to disabled people either as drivers or passengers • Badges to be issued to organisations that care for disabled people • Offences in terms of abuse or misuse of a badge, with the offender liable to a fine of £1000 • Local authorities to maintain a Blue Badge register • Blue Badges to remain the property of an issuing authority <p>To be set out in regulations:</p> <ul style="list-style-type: none"> • Cases where authorities can refuse to issue badges • The fee an authority can charge for the issue or re-issue of the badge • Appeal procedure for those refused a badge or required to return a badge because it has been misused. • Enabling the use of badges from Northern Ireland or any member state other than the UK, in the UK.
In force 1 April 2000	The Disabled Persons (Badges for Motor Vehicles) Scotland Regulations 2000/59	<p>Replaced the previous Disabled Persons (Badges for Motor Vehicles) Regulations 1982 and set out:</p> <ul style="list-style-type: none"> • Eligibility for a badge included – <ul style="list-style-type: none"> ○ Receives higher rate mobility component of disability living allowance ○ Uses a motability vehicle ○ Is registered blind ○ War pensioners' mobility supplement ○ Severe disability in both upper limbs ○ Permanent and substantial disability causing inability to walk or considerable difficulty walking • Organisational badges • Set the fee a local authority may charge for the issue of a badge at a

		<p>maximum of £2.</p> <ul style="list-style-type: none"> • A badge lasts 3 years <p>Grounds for refusal of a badge including:</p> <ul style="list-style-type: none"> • Misuse of a badge which has led to 3 relevant convictions • Fraudulently using a badge • A badge holder allowing someone else to use the badge <p>When to return the badge to the issuing authority, including:</p> <ul style="list-style-type: none"> • When the badge expires • When the badge holder dies <p>Allows for appeal to Scottish Ministers following badge refusal due to previous misuse of a badge.</p> <p>Sets out the badge design, and how the badge should be displayed. This ensured that the design was in accordance with the standardised Community model established by the European Union under 98/376/EC, allowing reciprocal recognition of disabled parking badges across the EU.</p>
In force 1 July 2000	The Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2000/170	Amended the definition of a badge to include those issued in England and Wales, as if issued by a Scottish local authority.
In force 8 November 2002	The Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2002/451	Amended the definition of a badge to include those issued in Northern Ireland, as if issued by a Scottish local authority.
In force 1 April 2007	The Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2007/162	<p>Made some technical amendments, but also:</p> <p>Changes to eligibility including:</p> <ul style="list-style-type: none"> • Children under 2 years old who have a medical condition which requires them to be accompanied by bulky medical equipment, and/or a condition which requires them to be near a car so that they can be treated quickly in the car or driven to a hospital • Changed the term 'has a severe disability in both upper limbs' to 'has a severe <i>congenital</i> disability in both arms' • Added being temporarily unable to walk or having considerable difficulty

		<p>walking, which is likely to last at least 12 months</p> <p>Change to the fee – increased the maximum fee that a local authority may <i>charge</i> to £20</p> <p>Introduced time periods of issue of badges - maximum of 3 years</p> <p>The badge itself was amended and introduced a hologram.</p>
In force 1 January 2012	The Disabled Persons (Badges for Motor Vehicles)(Scotland) Amendment Regulations 2011	<p>These Regulations amend the definition of “disabled person” by deleting reference to the age limit of 2 years old and amend the category of disabled person provided in regulation 4(1) (b) of the 2000 Regulations to a person under the age of 3 years old.</p> <p>They also delete the word “congenital”, substitute a new term regarding “being unable to walk or virtually unable to walk” and add a new description of “bulky medical equipment” in regulation 4 of the 2000 Regulations.</p> <p>These Regulations also amend the details that will be included on replacement badges and amend the address in relation to sending a notice of appeal to the Scottish Ministers where the badge has been refused or withdrawn because it has been misused.</p>
In force September 2012	The Disabled Persons (Badges for Motor Vehicles)(Scotland) Amendment (No. 2) Regulations 2011	<p>The amendment instrument extends the eligibility criteria to severely disabled service personnel and war veterans who have a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking; provides that a local authority should carry out an independent mobility assessment when an applicant’s eligibility is in doubt, amends the grounds on which a local authority may refuse to issue, or may withdraw, a Blue Badge; amends details relating to appeals to Scottish Ministers for the withdrawal or refusal to issue a badge due to a relevant conviction; and prescribes the new form of a badge.</p>
October 2013 – England and Wales	Disabled Persons' Parking Badges Act 2013	<p>Provisions in the Bill extend sections of this Act to Scotland. See Bill explanatory notes for further detail.</p>

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