

STATUTORY INSTRUMENTS

2017 No. 752

The Payment Services Regulations 2017

VALID FROM 13/10/2017

PART 11

General

VALID FROM 13/01/2018

Contracting out of statutory requirements

Prohibition on contracting out of statutory requirement

137.—(1) A payment service provider may not agree with a payment service user that it will not comply with any provision of these Regulations unless—

- (a) such agreement is permitted by these Regulations, or
- (b) such agreement provides for terms which are more favourable to the payment service user than the relevant provisions of these Regulations.

(2) A contractual term is void if and to the extent that—

- (a) the term is agreed in contravention of paragraph (1), or
- (b) the term relates to a transaction alleged to have been unauthorised or defectively executed, and purports to—
 - (i) impose liability to provide compensation on a different person from the person identified in these Regulations, or
 - (ii) allocate the burden of proof to a different person from the person identified in these Regulations.

Criminal Offences

VALID FROM 13/01/2018

Prohibition on provision of payment services by persons other than payment service providers

138.—(1) A person may not provide a payment service in the United Kingdom, or purport to do so, unless the person is—

Status: Point in time view as at 13/08/2017. This version of this part contains provisions that are not valid for this point in time.

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- (a) an authorised payment institution;
 - (b) a small payment institution;
 - (c) a registered account information service provider;
 - (d) an EEA authorised payment institution or an EEA registered account information service provider exercising its passport rights;
 - (e) a credit institution authorised in the United Kingdom or exercising an EEA right in accordance with Part 2 of Schedule 3 to the 2000 Act (exercise of passport rights by EEA firms);
 - (f) an electronic money institution which for the purposes of the Electronic Money Regulations 2011^{M1} is—
 - (i) registered in the United Kingdom as an authorised electronic money institution or a small electronic money institution; or
 - (ii) an EEA authorised electronic money institution exercising passport rights in the United Kingdom;
 - (g) the Post Office Limited;
 - (h) the Bank of England, the European Central Bank or a national central bank of an EEA State other than the United Kingdom,
 - (i) a government department or a local authority; or
 - (j) exempt under regulation 3 (exemption for certain bodies).
- (2) A person who contravenes paragraph (1) is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

Marginal Citations

M1 S.I. 2011/99.

VALID FROM 13/01/2018

False claims to be a payment service provider or exempt

139.—(1) A person who does not fall within any of sub-paragraphs (a) to (f) of regulation 138(1) may not—

- (a) describe themselves (in whatever terms) as a person falling within any of those sub-paragraphs; or
- (b) behave, or otherwise hold themselves out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that they are such a person.

(2) A person who contravenes paragraph (1) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine, which in Scotland or Northern Ireland may not exceed level 5 on the standard scale, or both.

VALID FROM 13/01/2018

Defences

140. In proceedings for an offence under regulation 138 or 139 it is a defence for the accused to show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

VALID FROM 13/01/2018

Contravention of regulations 57 and 58

141.—(1) A person (not being a payment service provider) who contravenes regulation 57(2) or 58(2) (information on charges and exchange rates) is guilty of an offence and liable on summary conviction to a fine, which in Scotland or Northern Ireland may not exceed level 5 on the standard scale.

(2) No offence is committed if the person took all reasonable steps and exercised all due diligence to ensure that the requirement imposed on the person by regulation 57(2) or 58(2), as the case may be, would be complied with.

Misleading the FCA or the Payment Systems Regulator

142.—(1) A person may not, in purported compliance with any requirement imposed by or under these Regulations, knowingly or recklessly give information which is false or misleading in a material particular to—

- (a) the FCA; or
- (b) the Payment Systems Regulator.

(2) A person may not—

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the FCA in connection with its functions under these Regulations.

(3) A person may not—

- (a) provide any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provide to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the Payment Systems Regulator in connection with its functions under these Regulations.

(4) A person who contravenes paragraph (1), (2) or (3) is guilty of an offence and is liable—

- (a) on summary conviction, to a fine, which in Scotland or Northern Ireland may not exceed the statutory maximum;
- (b) on conviction on indictment, to a fine.

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Restriction on penalties

143. A person who is convicted of an offence under these Regulations is not liable to a penalty under regulation 111 or 127 (financial penalties) in respect of the same contravention of a requirement imposed by or under these Regulations.

Liability of officers of bodies corporate etc

144.—(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect of such officer,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

“officer”—

- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and
 - (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity; and
- “partner” includes a person purporting to act as a partner.

Prosecution of offences

145.—(1) Proceedings for an offence under these Regulations may be instituted only—

- (a) in respect of an offence under regulation 138 (prohibition on provision of payment services by persons other than payment service providers), 139 (false claims to be a payment service provider or exempt), 141 (contravention of regulations 57 and 58), or 142(4) in so far as it relates to regulation 142(1)(a) or (2) (misleading the FCA), by the FCA;
- (b) in respect of an offence under regulation 142(4) in so far as it relates to regulation 142(1)(b) or (3) (misleading the Payment Systems Regulator), by the Payment Systems Regulator; or

- (c) by or with the consent of the Director of Public Prosecutions.
- (2) Paragraph (1) does not apply to proceedings in Scotland.

Proceedings against unincorporated bodies

146.—(1) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(4) In proceedings for an offence brought against the partnership or association—

- (a) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation)^{M2} and section 46 of and Schedule 3 to the Magistrates' Courts Act 1980 (corporations)^{M3} apply as they do in relation to a body corporate;
- (b) section 70 of the Criminal Procedure (Scotland) Act 1995 (proceedings against organisations)^{M4} applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 (procedure on charge)^{M5} and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (corporations)^{M6} apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under these Regulations may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where they are for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

Marginal Citations

- M2** 1925 c. 86. Section 33 was amended by Schedule 6 to the [Magistrates' Court Act 1952 \(c. 55\)](#), [paragraph 19](#) of Schedule 8 to the [Courts Act 1971 \(c. 23\)](#) and paragraph 71 of Schedule 8 to the [Courts Act 2003 \(c. 39\)](#).
- M3** 1980 c. 43. Schedule 3 was amended by sections 25 and 101 of, and Schedule 13 to, the [Criminal Justice Act 1991 \(c. 53\)](#), and by paragraph 51 of Schedule 3 and Part 4 of Schedule 37 to the [Criminal Justice Act 2003 \(c. 44\)](#).
- M4** 1995 c.46. Section 70 was amended by section 10(6) of the [Criminal Procedure \(Scotland\) Act 2004 \(asp 5\)](#), [section 28](#) of the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), [section 66](#) of the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [section 6\(4\)](#) of the [Partnerships \(Prosecution\) \(Scotland\) Act 2013 \(c. 21\)](#) and section 83(a) of the [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), and by S.I. 2001/1149.
- M5** 1945 c. 15 (N.I. 1). Section 18 was amended by the [Magistrates Court Act \(Northern Ireland\) 1964 \(c. 21 \(N.I.\)\)](#), [paragraph 1](#) of Schedule 12 to the [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#) and by S.I. 1972/538 (N.I. 1).
- M6** S.I. 1981/1675 (N.I. 26).

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Miscellaneous

Duty to co-operate and exchange of information

147.—(1) The FCA, the Commissioners and the Payment Systems Regulator must take such steps as they consider appropriate to co-operate with each other and—

- (a) the competent authorities designated under Article 22(1), or referred to in Article 100(1), of the payment services directive, of EEA States other than the United Kingdom;
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom;
- (c) any other relevant competent authorities designated under EU law or the law of the United Kingdom or any other EEA State which is applicable to payment service providers; and
- (d) the European Banking Authority,

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant EU or national legislation.

(2) Subject to the requirements of the Data Protection Act 1998^{M7}, section 348 of the 2000 Act (restrictions on disclosure of confidential information by FCA etc.)^{M8} (as applied with modifications by paragraph 8 of Schedule 6 to these Regulations), regulation 105 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017^{M9} (disclosure by the Commissioners) and any other applicable restrictions on the disclosure of information, the FCA, the Commissioners and the Payment Systems Regulator may provide information to each other and—

- (a) the bodies mentioned in paragraph (1)(a), (c) and (d);
- (b) the European Central Bank, the Bank of England and the national central banks of EEA States other than the United Kingdom when acting in their capacity as monetary and oversight authorities;
- (c) where relevant, other public authorities responsible for the oversight of payment and settlement systems;

for the purposes of the exercise by those bodies of their functions under the payment services directive and other relevant EU or national legislation.

(3) Part 9 of the Enterprise Act 2002^{M10} (information) does not prohibit disclosure of information under paragraph (2) but a person to whom that Part applies must have regard to the considerations mentioned in section 244 of that Act (specified information: considerations relevant to disclosure) before making any such disclosure.

(4) If the European Banking Authority is assisting the FCA, or a competent authority in another EEA State, in relation to a disagreement between those authorities pursuant to Article 19 of Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC^{M11}, the FCA must defer any decision in relation to the subject of the disagreement until the disagreement is resolved under that Article.

Marginal Citations

M7 1998 c. 29.

- M8** 2000 c. 8. Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010, paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 and paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016, and by [S.I. 2016/1239](#).
- M9** [S.I. 2017/692](#).
- M10** 2002 c. 40.
- M11** OJ L 331, 15.12.2010, p.12.

VALID FROM 13/01/2018

Actions for breach of requirements

148.—(1) A contravention—

- (a) which is to be taken to have occurred by virtue of regulation 21 (authorised payment institutions, small payment institutions and registered account information service providers acting without permission);
- (b) of a requirement imposed by regulation 23 (safeguarding requirements); or
- (c) of a requirement imposed by or under Part 6 (information requirements for payment services) or 7 (rights and obligations in relation to the provision of payment services),

is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A person acting in a fiduciary or representative capacity may bring an action under paragraph (1) on behalf of a private person if any remedy—

- (a) will be exclusively for the benefit of the private person; and
- (b) cannot be obtained by way of an action brought otherwise than at the suit of the fiduciary or representative.

(3) In this regulation “private person” means—

- (a) any individual, except where the individual suffers the loss in question in the course of providing payment services; and
- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind;

but does not include a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

(4) Where there has been a contravention of a requirement under regulation 76(5)(b) (payment service provider's liability for unauthorised payment transactions), 77(6) (payer or payee's liability for unauthorised payment transactions), 93(4) (non-execution or defective or late execution of payment transactions initiated through a payment initiation service) or 95 (right of recourse) for a payment service provider to compensate another payment service provider, the payment service provider to which compensation is required to be paid is to be treated for the purposes of this regulation as if it were a private person.

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Transitional and saving provisions

VALID FROM 13/01/2018

Saving of Payment Services Regulations 2009

149. Notwithstanding the revocation of the Payment Services Regulations 2009 by regulation 157 (revocations), those Regulations continue to apply in relation to services provided before 13th January 2018.

Transitional and saving provisions: authorised payment institutions

150.—(1) Where a person provides payment services before 13th January 2018 pursuant to an authorisation under the Payment Services Regulations 2009, or the national law in another EEA State transposing the first payment services directive, that person may continue to provide the services provided before that date until the end of 12th July 2018 without authorisation or registration under these Regulations or (in the case of an EEA authorised payment institution) the national law transposing the payment services directive.

(2) Where a person falls within paragraph (1) pursuant to an authorisation under the Payment Services Regulations 2009, until the end of 12th July 2018 or, if earlier, the date on which the person is authorised or registered under these Regulations—

- (a) any requirement imposed under regulation 7 of the Payment Services Regulations 2009 (imposition of variations) applies in relation to services provided pursuant to this paragraph;
- (b) regulations 10 (cancellation of authorisation), 11 (request for cancellation of authorisation) and 12 (variation of authorisation on FCA's own initiative) of these Regulations apply in relation to the person as if references to authorisation were references to entitlement to provide payment services pursuant to this paragraph; and
- (c) the person may not apply for a variation under regulation 8 of these Regulations (variation etc. at request of authorised payment institution) before it complies with paragraph (3) of this regulation.

(3) Where a person falling within paragraph (1) has its head office and its registered office (if any) in the United Kingdom and intends to provide payment services on or after 13th July 2018 other than pursuant to regulation 152, the person must before 13th April 2018—

- (a) provide to the FCA all information specified in Schedule 2 that the person has not previously provided to the FCA; or
- (b) notify the FCA that it has previously provided all such information to the FCA.

(4) Where a person provides information or a notification in accordance with paragraph (3), the FCA must treat the information or notification as an application for authorisation made in accordance with regulation 5.

(5) In this regulation “first payment services directive” means Directive [2007/64/EC](#) of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market amending Directives [97/7/EC](#), [2002/65/EC](#), [2005/60/EC](#) and [2006/48/EC](#) and repealing Directive [97/5/EC](#)^{M12}.

Marginal Citations

M12 OJ L 319 5.12.2007, p.1. The Directive is repealed with effect from 13 January 2018 by Directive 2015/2366/EU.

VALID FROM 13/01/2018

Transitional and saving provisions: small payment institutions

151.—(1) Where a person provides payment services before 13th January 2018 pursuant to a registration as a small payment institution under the Payment Services Regulations 2009—

- (a) that person may continue to provide the services provided before that date until the end of 12th January 2019 without authorisation or registration under these Regulations;
- (b) any requirement imposed under regulation 7 of the Payment Services Regulations 2009 (imposition of variations) (as applied by regulation 14 of those Regulations) applies in relation to services provided pursuant to this paragraph;
- (c) regulations 10 (cancellation of registration), 11 (request for cancellation of authorisation) and 12 (variation of authorisation on FCA's own initiative) of these Regulations, as applied by regulation 15 (supplementary provisions in relation to small payment institutions), apply in relation to the person as if references to registration were references to entitlement to provide payment services pursuant to this paragraph; and
- (d) the person may not apply for a variation under regulation 8 of these Regulations (variation etc. at request of authorised payment institution) (as applied by regulation 15) before it complies with paragraph (2) of this regulation.

(2) If a person falling within paragraph (1) intends to provide payment services on or after 13th January 2019 the person must apply for authorisation or registration under these Regulations before 13th October 2018.

(3) The FCA must exercise its powers under regulation 13(1) and (3) in order to require a person making an application under paragraph (2) to provide to the FCA any relevant information not previously provided by the applicant.

VALID FROM 13/01/2018

Transitional provisions: payments through network operators

152.—(1) Paragraphs (2) and (3) apply where, before 13th January 2018, a person provides payment services of the type described in paragraph 1(g) of Schedule 1 to the Payment Services Regulations 2009 which are also of the type described in paragraph 1(c) of Schedule 1 to these Regulations pursuant to an authorisation under the Payment Services Regulations 2009.

(2) For the purposes of those services, the person is to be treated as an authorised payment institution and the person's entitlement to provide those services is to be treated as an authorisation granted under these Regulations.

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(3) Paragraph (2) does not apply on or after 13th January 2020 unless the person has provided evidence to the FCA that it holds such own funds as are required under these Regulations before that date.

(4) Paragraphs (5) and (6) apply where, before 13th January 2018, a person provides payment services of the type described in paragraph 1(g) of Schedule 1 to the Payment Services Regulations 2009 which are also of the type described in paragraph 1(c) of Schedule 1 to these Regulations, pursuant to an authorisation under national legislation in another EEA State transposing the first payment services directive.

(5) For the purposes of those services, the person is to be treated as an EEA authorised payment institution and the person's entitlement to provide those services is to be treated as an authorisation granted under such national legislation.

(6) Paragraph (5) does not apply on or after 13th January 2020 unless the person has provided evidence to its home state competent authority that it holds such own funds as are required under the payment services directive before that date.

(7) In this regulation “first payment services directive” has the meaning given in regulation 150(5).

VALID FROM 13/01/2018

Transitional and saving provisions: general

153.—(1) The FCA must include in the register a person entitled to provide payment services by regulation 150, 151 or 152 or by this regulation.

(2) Where a person is entitled to provide payment services by regulation 150, 151 or 152 or by authorisation or registration granted pursuant to an application made under regulation 151(2) or treated as having been made under regulation 150(4)—

- (a) any notification that person has given under regulation 21 (outsourcing) of the Payment Services Regulations 2009 is to be treated as a notification given under regulation 25 of these Regulations (outsourcing);
- (b) any registration of an EEA branch of that person under regulation 24 of the Payment Services Regulations 2009 (registration of EEA branch) is to be treated as registration of an EEA branch under regulation 28 these Regulations (decision following notice of intention);
- (c) any notification that the person has given under regulation 23 (notice of intention) of the Payment Services Regulations 2009 is to be treated as a notification under regulation 27 of these Regulations (notice of intention);
- (d) any registration of an agent under regulation 29 (use of agents) of those Regulations is to be treated as registration of an agent under regulation 34 of these Regulations (use of agents).

(3) Where a person has made an application or request to the FCA under the Payment Services Regulations 2009 before 13th January 2018, and the FCA has not determined the application or request before that date, the application or request is to be treated as if it had been made under these Regulations on that date.

VALID FROM 13/01/2018

Transitional provisions: account information services and payment initiation services

154.—(1) Paragraph (2) applies to a person that—

- (a) provided account information services or payment initiation services before 12th January 2016;
- (b) continues to provide such services immediately before 13th January 2018; and
- (c) but for paragraph (2), would require a new authorisation or registration, or a variation of an authorisation, in order to continue to provide such services on and after 13th January 2018;

(2) During the period described in paragraph (3)—

- (a) the person may continue to provide the services without a new authorisation or registration, or a variation of an authorisation, in respect of the services, and
- (b) services provided as permitted by sub-paragraph (a) are to be treated for the purposes of these Regulations and the Electronic Money Regulations 2011 as if they were not account information services or payment initiation services.

(3) The period starts on 13th January 2018 and ends at the end of—

- (a) the last day of the period of 18 months starting on the date on which the regulatory technical standards adopted under Article 98 of the payment services directive come into force; or
- (b) if earlier, the date on which—
 - (i) the FCA notifies the person of its decision in relation to an application for authorisation or registration, or for variation of an authorisation, in respect of the services, or
 - (ii) the person gives the FCA notice of the withdrawal of such application.

(4) Until an account servicing payment service provider complies with the regulatory technical standards adopted under Article 98 of the payment services directive in respect of an account, the account servicing payment service provider must not abuse its non-compliance to block or obstruct the use of payment initiation services or account information services in respect of that account.

VALID FROM 13/01/2018

Gibraltar

Application to Gibraltar

155. Schedule 7, which contains provisions concerning the application of these Regulations to Gibraltar, has effect.

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Amendments to legislation

Amendments to primary and secondary legislation

156. Schedule 8, which contains amendments to primary and secondary legislation, has effect.

VALID FROM 13/01/2018

Revocations

157. An instrument appearing in the first column of the table in Schedule 9 is revoked to the extent set out in the corresponding entry in the second column of the table.

VALID FROM 13/01/2018

Review

Review

- 158.**—(1) The Treasury must from time to time—
- (a) carry out a review of the regulatory provision contained in these Regulations; and
 - (b) publish the report setting out the conclusions of the review.
- (2) The first report under this regulation must be published on or before 13th January 2023.
- (3) Subsequent reports must be published at intervals not exceeding five years.
- (4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 ^{M13} requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the payment services directive is implemented in other countries which are subject to its obligations.
- (5) Section 30(4) of that Act requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
 - (b) assess the extent to which those objectives are achieved;
 - (c) assess whether those objectives remain appropriate; and
 - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way that imposes less onerous regulatory provision.
- (6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Marginal Citations

M13 2015 c.26. Section 30(3) was amended by section 19 of the [Enterprise Act 2016 \(c. 12\)](#).

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