



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART II

ADVICE AND ASSISTANCE

Modifications etc. (not altering text)

- C1** Pt. II (ss. 6-12) applied (1.1.1998) by S.I. 1997/3070, **regs. 3, 4, 5**
- C2** Pt. II applied (24.3.2003) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (S.S.I. 2003/179), **regs. 3-5**

6 Definitions.

(1) In this Act—

“advice and assistance” means any of the following—

- (a) oral or written advice provided to a person by a solicitor (or, [^{F1}where appropriate], by counsel)—
- (i) on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking the advice;
 - (ii) as to any steps which that person might appropriately take (whether by way of settling any claim, instituting, conducting or defending proceedings, making an agreement or other transaction, making a will or other instrument, obtaining further legal or other advice and assistance, or otherwise) having regard to the application of Scots law to those circumstances;
- (aa) [^{F2}oral or written advice provided by an adviser—
- (i) on the application of Scots law to any specified categories of circumstances which have arisen in relation to the person seeking advice;
 - (ii) as to any steps which that person might appropriately take having regard to the application of Scots law to those circumstances;]

Status: Point in time view as at 13/12/2010.

Changes to legislation: Legal Aid (Scotland) Act 1986, Part II is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) assistance provided to a person by a solicitor (or, [^{F1}where appropriate], by counsel) in taking any steps mentioned in paragraph (a)(ii) above, by taking such steps on his behalf or by assisting him in so taking them; and
- (c) [^{F3}assistance provided to a person by an adviser in taking any steps mentioned in paragraph (aa)(ii) above, by taking such steps on his behalf or by assisting him in so taking them;]

“assistance by way of representation” means [^{F4}, subject to section 12B(3) of this Act,] advice and assistance provided to a person by taking on his behalf any step in instituting, conducting or defending any proceedings—

- (a) before a court or tribunal; or
- (b) in connection with a statutory inquiry,

whether by representing him in those proceedings or by otherwise taking any step on his behalf (as distinct from assisting him in taking such a step on his own behalf).

(2) In this Part of this Act—

[^{F5}“adviser” means a person who is approved by a registered organisation for the purposes of providing advice and assistance on behalf of the organisation and who is the person by whom advice and assistance is provided;]

“client” means a person who seeks or receives advice and assistance in accordance with this Part of this Act;

“statutory inquiry” has the meaning assigned to it by [^{F6}section 16(1) of the ^{M1} Tribunals and Inquiries Act 1992];

“the solicitor” means the solicitor by whom any advice and assistance is provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it;

“tribunal” includes an arbiter or oversman, however appointed,

[^{F7}and references to a court, tribunal or statutory inquiry include references to any court, tribunal or statutory inquiry which is established by law for purposes which are or include those of determining persons’ civil rights and obligations and to any person who or group of persons or body or procedure which (however described) is appointed or established by law for such purposes.]

Textual Amendments

- F1** Words in s. 6(1) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 para. 36(2); S.I. 1991/2151, art. 3, **Sch.**
- F2** S. 6(1) definition of “advice and assistance”: para (aa) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 67(3)(a)(i)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**
- F3** S. 6(1) definition of “advice and assistance”: para (c) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 67(3)(a)(ii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**
- F4** S. 6(1) definition of “assistance by way of representation”: words inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 67(3)(a)(iii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**
- F5** S. 6(2): definition of “adviser” inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 67(3)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**
- F6** Words in s. 6(2) substituted (01.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), ss. 18(1), 19(2), **Sch. 3 para. 20**.
- F7** Words in s. 6(2) added (6.7.2001) by [2001 asp 7](#), **ss. 6(1)**, 15(3)

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Modifications etc. (not altering text)

C3 Pt. II (ss. 6–12) applied by S.I. 1988/2290, reg. 3

Marginal Citations

M1 1992 c. 53.

7 Application of Part II.

- (1) Subject to subsections (2) to (4) below, and to any exceptions and conditions prescribed by regulations made under this section or under section 9 of this Act, this Part of this Act applies to any advice and assistance.
- (2) This Part of this Act does not apply to advice and assistance provided to a person in connection with proceedings before a court or tribunal at a time when he is receiving legal aid in connection with those proceedings.
- (3) Subject to subsection (4) below and to section 9 of this Act, this Part of this Act does not apply to assistance by way of representation.
- (4) Except where subsection (2) above applies, this Part of this Act does apply, in the case of civil proceedings before a court or tribunal, to any step which consists only of negotiating on behalf of a person with a view to the settlement of a claim to which the proceedings relate.

Modifications etc. (not altering text)

C4 Pt. II (ss. 6–12) applied by S.I. 1988/2290, reg. 3

8 Availability of advice & assistance.

Subject to [^{F8}any provision made in regulations under section 8A(1) and] section 11(2) of this Act, advice and assistance to which this Part applies shall be available in Scotland for any client if—

- (a) his disposable income does not exceed [^{F9}£238] a week; or
- (b) he is (directly or indirectly) in receipt of [^{F10}income support [^{F11}, an income-based jobseeker's allowance (payable under the Jobseekers Act 1995) or an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance)],],

and his disposable capital does not exceed [^{F12}£1,664].

Textual Amendments

F8 Words in s. 8 inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), ss. 2(2), 9

F9 Words in s. 8(a) substituted (12.4.2010 with application as mentioned in reg. 3(1) of the amending S.S.I.) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 (S.S.I. 2010/139), reg. 4(2) (with reg. 8)

F10 Words in s. 8(b) substituted (8.4.2003) by Tax Credits Act 2002 (c. 21), ss. 47, 61, Sch. 3 para. 11; S.I. 2003/962, art. 2(4)(d)

F11 Words in s. 8(b) substituted (27.10.2008) by Welfare Reform Act 2007 (c. 5), ss. 28(1), 70(2), Sch. 3 para. 4(3); S.I. 2008/787, art. 2(4)(f)

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F12 Words in s. 8 substituted (12.4.2010 with application as mentioned in reg. 3(1) of the amending S.S.I.) by [The Advice and Assistance and Civil Legal Aid \(Financial Conditions and Contributions\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/139\)](#), [reg. 4\(3\)](#) (with reg. 8)

Modifications etc. (not altering text)

C5 Pt. II (ss. 6–12) applied by [S.I. 1988/2290](#), [reg. 3](#)

C6 S. 8 modified (7.10.1996) by [S.I. 1996/2447](#), [reg. 5\(1\)\(a\)](#)

[^{F13}8A Criminal advice and assistance: automatic availability in certain circumstances

- (1) The Scottish Ministers may by regulations provide that, in such circumstances as may be prescribed in the regulations, advice and assistance in relation to criminal matters is to be available for any relevant client without reference to the financial limits in section 8.
- (2) In subsection (1), “relevant client” means a client who is a person to whom section 15A of the Criminal Procedure (Scotland) Act 1995 (right of suspects to have access to a solicitor) applies.]

Textual Amendments

F13 S. 8A inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), [ss. 2\(3\)](#), 9

9 Regulations may apply Part II to representation.

- (1) Regulations made under this section may provide for this Part of this Act to apply to assistance by way of representation; and regulations so made may make different provision for different cases or classes of case.
- (2) Such regulations may—
 - (a) describe the proceedings (or stages of proceedings) in relation to which this Part of this Act shall so apply by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person requiring the assistance is concerned, or in any other way;
 - (b) specify, in relation to any proceedings so described, the assistance by way of representation which may be provided;
 - (c) prescribe the criteria to be applied in determining whether assistance by way of representation should be provided;
 - (d) require that the approval of the Board or of such other appropriate authority as may be prescribed shall be obtained, in certain classes of case, as a pre-condition of the provision of assistance by way of representation; and
 - ^{F14}(dd) provide that assistance by way of representation shall be available in relation to such proceedings as may be prescribed, without reference to the financial limits under section 8 of this Act;
 - (de) provide that section 11(2) of this Act shall not apply as respects assistance by way of representation received in relation to such proceedings as may be prescribed;]
 - (e) modify the financial limits under sections 8 and 10(2) of this Act in their application to assistance by way of representation by substituting for the sums specified therein such other sums as may be prescribed, and such modification

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of the financial limit under the said section 10(2) may substitute different sums in relation to different proceedings or stages of proceedings.

- (3) Such regulations may also make provision, for the purposes of paragraph (d) of subsection (2) above, as to—
- (a) the procedure to be followed in applying for approval and the criteria for determining whether approval should be given;
 - (b) the conditions which should or may be imposed; and
 - (c) the circumstances in which approval may be withdrawn and the effect of its withdrawal.

Textual Amendments

F14 S. 9(2)(dd)(de) inserted (27.9.1999) by 1999 c. 22, ss. 32, 108(3)(a) (with Sch. 14 para. 7(2))

Modifications etc. (not altering text)

C7 Pt. II (ss. 6–12) applied by S.I. 1988/2290, reg. 3

10 Financial limit.

- (1) Where at any time (whether before or after advice and assistance has begun to be provided to a client) it appears to the solicitor [^{F15}or, as the case may be, adviser] that the cost of giving it is likely to exceed the limit applicable under this section—
- (a) the solicitor [^{F16}or adviser] shall determine to what extent that advice and assistance can be provided without exceeding that limit; and
 - (b) shall not give it (or, as the case may be, not instruct counsel to provide it) so as to exceed that limit except [^{F17}, subject to subsection (4),] with the approval of the Board.
- (2) The limit applicable under this section is [^{F18}£60].
- (3) For the purposes of this section, the cost of providing advice and assistance shall be taken to consist of such of the following as are applicable in the circumstances—
- (a) any outlays (including the fees and outlays of counsel) which may be incurred by the solicitor or his firm or incorporated practice in, or in connection with, the providing of the advice and assistance;
 - [^{F19}(aa) any outlays which may be incurred by the registered organisation (which approved the adviser) in, or in connection with, the providing of the advice and assistance;]
 - (b) any fees (not being charges for outlays) which, apart from section 11 of this Act, would be properly chargeable by the solicitor or his firm or incorporated practice in respect of the advice and assistance; and
 - [^{F20}(ba) any fees (not being charges for outlays) which, apart from section 11 of this Act, would be properly chargeable by the registered organisation (which approved the adviser) in respect of the advice and assistance;]
 - (c) in the case of advice and assistance given by a solicitor employed by the Board, any fees (not being charges for outlays) which, if the solicitor had been employed by a firm of solicitors or by an incorporated practice, would, apart from section 11 of this Act, have been properly chargeable by that firm or practice in respect of the advice and assistance.

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- [^{F21}(4) In the circumstances set out in subsection (5), no application may be made for the Board's approval for the cost of giving the advice and assistance—
- (a) to exceed the limit applicable under this section; or
 - (b) to that limit having been exceeded.
- (5) The circumstances are that the matter with which the advice and assistance is concerned is not—
- (a) specified as a distinct matter for the purposes of advice and assistance by virtue of regulations made under this Act; or
 - (b) being treated as if it were a distinct matter by virtue of such regulations.]

Textual Amendments

- F15** Words in s. 10(1) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 67\(4\)\(a\)\(i\)](#), [82\(2\)](#) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)
- F16** Words in s. 10(1)(a) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 67\(4\)\(a\)\(ii\)](#), [82\(2\)](#) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)
- F17** Words in s. 10(1)(b) inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 69\(2\)\(a\)](#), [82\(2\)](#) (with s. 77); S.S.I. 2007/57, [art. 2\(a\)](#)
- F18** Sum in s. 10(2) substituted (1.8.1988) by S.I. 1988/1389, [reg. 2](#), and different sums substituted for different cases: (17.12.1988) by S.I. 1988/2288, [reg. 2](#); (10.1.1994) by S.I. 1993/3187, [regs. 3, 4](#) (as amended (1.5.2007) by S.I. 2007/248, [reg. 4](#))
- F19** S. 10(3)(aa) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 67\(4\)\(b\)\(i\)](#), [82\(2\)](#) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)
- F20** S. 10(3)(ba) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 67\(4\)\(b\)\(ii\)](#), [82\(2\)](#) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)
- F21** S. 10(4)(5) inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 69\(4\)](#), [82\(2\)](#) (with s. 77); S.S.I. 2007/57, [art. 2\(a\)](#)

Modifications etc. (not altering text)

- C8** Pt. II (ss. 6–12) applied by S.I. 1988/2290, [reg. 3](#)

11 Clients' contributions.

- (1) A client shall not be required to pay any fees or outlays in respect of advice and assistance received by him in pursuance of this Part of this Act except in accordance with subsection (2) [^{F22}, (2A)] [^{F23} or (3)] below.
- (2) Where—
- (a) a client's disposable income exceeds [^{F24}£102] a week; and
 - (b) he is not (directly or indirectly) in receipt of [^{F25}income support or [^{F26}, an income-based jobseeker's allowance (payable under the Jobseekers Act 1995) or an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).]

he shall be liable to pay, in respect of the advice and assistance, fees or outlays up to, but not in aggregate exceeding, such amount as may be prescribed by regulations made under this section, and such regulations may prescribe different maximum payments for different amounts of disposable income and for different cases or classes of case.

- [^{F27}(2A) A client to whom paragraphs (a) and (b) of subsection (2) above apply and to whom criminal legal assistance or advice or assistance which is not criminal legal assistance

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has been provided by a solicitor employed by the Board under sections 26 and 27 of this Act shall pay to the Board such contribution in that respect as the Board may, subject to subsection (3A) below, determine.]

[^{F28}(3) Where a client to whom paragraphs (a) and (b) of subsection (2) above apply receives criminal legal assistance from a solicitor employed by the Board by virtue of section 28A of this Act, he shall pay to the Board such contribution in respect of that assistance as the Board may, subject to subsection (4) below, determine.

(3A) The amount determined by the Board under subsection (2A) above shall not exceed the amount which would be charged by a solicitor who is not employed by the Board under sections 26 and 27 of this Act.]

(4) The amount determined by the Board under subsection (3) above shall not exceed the amount which could have been charged in respect of the assistance in question by a solicitor.

Textual Amendments

F22 Words in s. 11(1) inserted (6.7.2001) by 2001 asp 7, **ss. 9(2)(a)**, 15(3)

F23 Words in s. 11(1) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(3)(a)**; S.I. 1997/2323, **art. 6(2)**

F24 Words in s. 11(2)(a) substituted (12.4.2010 with application as mentioned in reg. 3(1) of the amending S.S.I.) by **The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010** (S.S.I. 2010/139), **reg. 4(4)** (with reg. 8)

F25 Words in s. 11(2)(b) substituted (8.4.2003) by **Tax Credits Act 2002** (c. 21), ss. 47, 61, **Sch. 3 para. 12**; S.I. 2003/962, **art. 2(4)(d)**

F26 Words in s. 11(2)(b) substituted (27.10.2008) by **Welfare Reform Act 2007** (c. 5), ss. 28(1), 70(2), **Sch. 3 para. 4(3)**; S.I. 2008/787, **art. 2(4)(f)**

F27 S. 11(2A)(3A) inserted (6.7.2001) by 2001 asp 7, **ss. 9(2)(b)**, 15(3)

F28 S. 11(3)(4) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(3)(b)**; S.I. 1997/2323, **art. 6(2)**

Modifications etc. (not altering text)

C9 Pt. II (ss. 6-12) applied by S.I. 1988/2290, **reg. 3**

C10 S. 11 modified (7.10.1996) by S.I. 1996/2447, **reg. 5(1)(b)**

C11 S. 11(2) excluded (24.3.2003) by **The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003** (S.S.I. 2003/1789), **reg. 9**

12 Payment of fees or outlays otherwise than through clients' contributions.

(1) ^{F29}.....

(2) This section applies to any fees or outlays properly chargeable (in accordance with section 33 of this Act), in respect of advice and assistance given to a client in pursuance of this Part of this Act [^{F30}; but does not apply to the salary payable to a solicitor employed by the Board [^{F31}under sections 26 and 27 of this Act or to the salary payable to a solicitor employed by the Board]] by virtue of section 28A of this Act.

(3) Except in so far as regulations made under this section otherwise provide, fees or outlays to which this section applies shall be paid to the solicitor [^{F32}or, as the case may be, the registered organisation,] as follows—

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- (a) first, out of any [^{F33}amount] payable by the client in accordance with section 11(2) of this Act;
- (b) secondly, in priority to all other debts, out of any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the client by any other person in respect of the matter in connection with which the advice and assistance is provided;
- (c) thirdly, in priority to all other debts, out of any property (of whatever nature and wherever situated) which is recovered or preserved for the client in connection with that matter, including his rights under any settlement arrived at in connection with that matter in order to avoid or bring to an end any proceedings;
- (d) fourthly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor [^{F34}or the registered organisation].

Textual Amendments

- F29** S. 12(1) repealed (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. 81, 82(2), [Sch. 5 para. 2\(2\)](#) (with s. 77); S.S.I. 2008/311, [art. 2\(i\)](#)
- F30** Words in s. 12(2) inserted (1.10.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 12\(4\)\(a\)](#); S.I. 1997/2323, [art. 6\(2\)](#)
- F31** Words in s. 12(2) inserted (6.7.2001) by 2001 asp 7, [ss. 9\(3\)](#), 15(3)
- F32** Words in s. 12(3) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 67\(5\)\(a\)](#), 82(2) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)
- F33** Word in s. 12(3)(a) substituted (1.10.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 12\(4\)\(b\)](#); S.I. 1997/2323, [art. 6\(2\)](#)
- F34** Words in s. 12(3)(d) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 67\(5\)\(b\)](#), 82(2) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)

Modifications etc. (not altering text)

- C12** Pt. II (ss. 6–12) applied by S.I. 1988/2290, [reg. 3](#)
- C13** S. 12(3) modified (7.10.1996) by S.I. 1996/2447, [reg. 5\(1\)\(c\)](#)
- C14** S. 12(3)(c) restricted by S.I. 1987/382, [reg. 15\(1\)](#)
 S. 12(3)(c) excluded (7.10.1996) by S.I. 1996/2447, [reg. 16\(2\)](#)
 S. 12(3)(c): power to exclude conferred (7.10.1996) by S.I. 1996/2447, [reg. 16\(3\)](#)

^{F35}Register of advice organisations

Textual Amendments

- F35** Ss. 12A, 12B and cross-heading inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 67\(6\)](#), 82(2) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)

12A Register of advice organisations

- (1) The Board shall establish and maintain a register of advice organisations (“the register of advice organisations”) of organisations approved by the Board as registered organisations in relation to the provision of advice and assistance by persons approved by such organisations as advisers.
- (2) A person who—

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- (a) is a solicitor;
- (b) is an advocate;
- (c) is a conveyancing practitioner or an executry practitioner, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);
- (d) has acquired any right to conduct litigation or right of audience by virtue of section 27 of that Act,

may not be an adviser.

- (3) Schedule 1A makes further provision about advisers and registered organisations, the register of advice organisations, code of practice for advisers etc.

12B Advice and assistance

- (1) The Scottish Ministers may by regulations specify categories of circumstances for the purposes of paragraph (aa) of the definition of “advice and assistance” in section 6(1) of this Act.
- (2) The power under subsection (1) may specify different categories for different purposes.
- (3) In this Act—
 - (a) “advice and assistance” as defined in section 6(1)(c) is limited to the extent to which it is competent for the adviser to perform any steps on behalf of the person or by assisting him in so taking them;
 - (b) “assistance by way of representation” as defined in section 6(1) includes advice and assistance provided by an adviser but only to the extent to which it is competent for the adviser to perform such steps referred to in that definition.]

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