



Employment Tribunals Act 1996

1996 CHAPTER 17

PART I

[^{F1}EMPLOYMENT TRIBUNALS]

Membership etc.

VALID FROM 01/12/2007

[^{F1}3A Meaning of “Employment Judge”

A person who is a member of a panel of chairmen of employment tribunals which is appointed in accordance with regulations under section 1(1) may be referred to as an Employment Judge.]

Textual Amendments

F1 S. 3A inserted (1.12.2007) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 36](#); [S.I. 2007/2709](#), [art. 4](#)

4 Composition of a tribunal.

- (1) Subject to the following provisions of this section [^{F2}and to section 7(3A)], proceedings before an [^{F3}employment tribunal] shall be heard by—
- the person who, in accordance with regulations made under section 1(1), is the chairman, and
 - two other members, or (with the consent of the parties) one other member, selected as the other members (or member) in accordance with regulations so made.

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- (2) Subject to subsection (5), the proceedings specified in subsection (3) shall be heard by the person mentioned in subsection (1)(a) alone.
- (3) The proceedings referred to in subsection (2) are—
- (a) proceedings [^{F4}on a complaint under section 68A [^{F5}, 87] or 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 or] on an application under section 161, 165 or 166 of [^{F6}that Act],
 - (b) proceedings on a complaint under section 126 of the ^{M1}Pension Schemes Act 1993,
 - (c) proceedings [^{F7}on a reference under section 11, 163 or 170 of the Employment Rights Act 1996,] on a complaint under section 23 [^{F8}, 34] or 188 of [^{F9}that Act, on a complaint under section 70(1) of that Act relating to section 64 of that Act,] or on an application under section 128, 131 or 132 of that [^{F10}Act or for an appointment under section 206(4) of that] Act,
 - ^{F11}(ca) proceedings on a complaint under [^{F12}regulation 15(10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006] ,]
 - ^{F13}(cc) proceedings on a complaint under section 11 of the National Minimum Wage Act 1998,
 - ^{F13}(cd) proceedings on a complaint under section 19 or 22 of the National Minimum Wage Act 1998,]
 - (d) proceedings in respect of which an [^{F3}employment tribunal] has jurisdiction by virtue of section 3 of this Act,
 - (e) proceedings in which the parties have given their written consent to the proceedings being heard in accordance with subsection (2) (whether or not they have subsequently withdrawn it),
 - ^{F14}(f) and
 - (g) proceedings in which the person (or, where more than one, each of the persons) against whom the proceedings are brought does not, or has ceased to, contest the case.
- (4) The Secretary of State may by order amend the provisions of subsection (3).
- (5) Proceedings specified in subsection (3) shall be heard in accordance with subsection (1) if a person who, in accordance with regulations made under section 1(1), may be the chairman of an [^{F15}employment tribunal], having regard to—
- (a) whether there is a likelihood of a dispute arising on the facts which makes it desirable for the proceedings to be heard in accordance with subsection (1),
 - (b) whether there is a likelihood of an issue of law arising which would make it desirable for the proceedings to be heard in accordance with subsection (2),
 - (c) any views of any of the parties as to whether or not the proceedings ought to be heard in accordance with either of those subsections, and
 - (d) whether there are other proceedings which might be heard concurrently but which are not proceedings specified in subsection (3),
- decides at any stage of the proceedings that the proceedings are to be heard in accordance with subsection (1).
- (6) Where (in accordance with the following provisions of this Part) the Secretary of State makes [^{F3}employment tribunal] procedure regulations, the regulations may provide that [^{F16}any act which is required or authorised by the regulations to be done by an employment tribunal and is of a description specified by the regulations for the

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purposes of this subsection may] be done by the person mentioned in subsection (1)(a) alone.

[^{F17}(6A) Subsection (6) in particular enables employment tribunal procedure regulations to provide that—

- (a) the determination of proceedings in accordance with regulations under section 7(3A), (3B) or (3C)(a),
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under subsection (1) of section 9 (including the exercise of powers in connection with such reviews in accordance with regulations under paragraph (b) of that subsection), or
- (c) the hearing and determination of a preliminary issue in accordance with regulations under section 9(4) (where it involves hearing witnesses other than the parties or their representatives as well as where, in accordance with regulations under section 7(3C)(b), it does not),

may be done by the person mentioned in subsection (1)(a) alone.]

[^{F18}(6B) Employment tribunal procedure regulations may (subject to subsection (6C)) also provide that any act which—

- (a) by virtue of subsection (6) may be done by the person mentioned in subsection (1)(a) alone, and
- (b) is of a description specified by the regulations for the purposes of this subsection,

may be done by a person appointed as a legal officer in accordance with regulations under section 1(1); and any act so done shall be treated as done by an employment tribunal.

(6C) But regulations under subsection (6B) may not specify—

- (a) the determination of any proceedings, other than proceedings in which the parties have agreed the terms of the determination or in which the person bringing the proceedings has given notice of the withdrawal of the case, or
- (b) the carrying-out of pre-hearing reviews in accordance with regulations under section 9(1).]

(7)

Textual Amendments

- F2** Words in s. 4(1) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 12(1)(2)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F3** Words in s. 4(1)(3)(d)(5)(6) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F4** Words in s. 4(3)(a) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(2)(a); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F5** Words in s. 4(3)(a) inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 12(1)(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F6** Words in s. 4(3)(a) substituted (1.8.1998) by 1998 c. 8, s. 3(1)(2)(b); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F7** Words in s. 4(3)(c) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(a); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F8** Words in s. 4(3)(c) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(b); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))

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- F9** Words in s. 4(3)(c) substituted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(c); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F10** Words in s. 4(3)(c) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(3)(d); S.I. 1998/1658, art. 2(1), Sch. 1 (with art. 3(1))
- F11** S. 4(3)(ca) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(4); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F12** Words in s. 4(3)(ca) substituted (6.4.2006 with application as mentioned in reg. 21(1) of the amending S.I.) by **The Transfer of Undertakings (Protection of Employment) Regulations 2006** (S.I. 2006/246), reg. 20, **Sch. 2 para. 8**
- F13** S. 4(3)(cc)(cd) inserted after paragraph (ca) (1.4.1999) by 1998 c. 39, s. 27(1) (with s. 36); S.I. 1998/2574, art. 2(2), **Sch. 2**
- F14** S. 4(3)(f) (apart from word “and”) repealed (1.8.1998) by 1998 c. 8, ss. 3(5), 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F15** Words in s. 4(1)(3)(d)(5)(6) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F16** Words in s. 4(6) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 12(1)(4)**; S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(1))
- F17** S. 4(6A) inserted (1.8.1998) by 1998 c. 8, s. 3(1)(6); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F18** S. 4(6B)(6C) inserted (1.8.1998) by 1998 c. 8, s. 5; S.I. 1998/1658, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

- C1** S. 4(1) applied (1.10.2004) by S.I. 2004/1861, Sch. 6 rule 4(2) (as added by **The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2004** (S.I. 2004/2351), reg. 2(11))
S. 4(1) applied (1.10.2004) by S.I. 2004/1861, Sch. 6 rule 7(2) (as added by **The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2004** (S.I. 2004/2351), reg. 2(11))
- C2** S. 4(1)(a) modified (18.4.2001) by S.I. 2001/1170, reg. 7(2)
S. 4(1)(a) modified (18.4.2001) by S.I. 2001/1171, reg. 7(2)
- C3** S. 4(1)(b) modified (18.4.2001) by S.I. 2001/1170, reg. 7(3)
S. 4(1)(b) modified (18.4.2001) by S.I. 2001/1171, reg. 7(3)
- C4** S. 4(5) modified (18.4.2001) by S.I. 2001/1170, reg. 7(4)
S. 4(5) modified (18.4.2001) by S.I. 2001/1171, reg. 7(4)

Marginal Citations

- M1** 1993 c. 48.

5 Remuneration, fees and allowances.

- (1) The Secretary of State may pay to—
- (a) the [^{F19}President of the Employment Tribunals (England and Wales)],
 - (b) the [^{F19}President of the Employment Tribunals (Scotland)], ^{F20} . . .
 - (c) any person who is a member on a full-time basis of a panel of chairmen of tribunals which is appointed in accordance with regulations made under section 1(1), [^{F21}and]
 - [^{F21}(d) any person who is a legal officer appointed in accordance with such regulations,]
- such remuneration as he may with the consent of the Treasury determine.
- (2) The Secretary of State may pay to—
- (a) members of [^{F19}employment tribunals],

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- (b) any assessors appointed for the purposes of proceedings before [^{F19}employment tribunals], and
- (c) any persons required for the purposes of section 2A(1)(b) of the ^{M2}Equal Pay Act 1970 to prepare reports,

such fees and allowances as he may with the consent of the Treasury determine.

- (3) The Secretary of State may pay to any other persons such allowances as he may with the consent of the Treasury determine for the purposes of, or in connection with, their attendance at [^{F19}employment tribunals].

Textual Amendments

F19 Words in s. 5(1)(a)(b)(2)(a)(b)(3) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(b)(d)(e) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

F20 Word in s. 5(1)(b) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**

F21 S. 5(1)(d) and word “and” immediately preceding inserted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 13**; S.I. 1998/1658, art. 2(1), **Sch. 1**

Marginal Citations

M2 1970 c. 41.

VALID FROM 03/11/2008

[^{F22}5A Training etc.

The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training, guidance and welfare of members of panels of members of employment tribunals (in their capacities as members of such panels, whether or not panels of [^{F23}Employment Judges]).

Textual Amendments

F22 Ss. 5A-5D inserted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 48(1), 148, **Sch. 8 para. 40**; S.I. 2008/2696, art. 5(c)(i) (with art. 3)

F23 Words in s. 5A substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14 para. 13(1)**; S.I. 2013/2200, art. 3(g)

VALID FROM 03/11/2008

5B Members of employment tribunals: removal from office

- (1) Any power by which the President of the Employment Tribunals (England and Wales) may be removed from that office may be exercised only with the concurrence of the Lord Chief Justice of England and Wales.

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- (2) Any power by which the President of the Employment Tribunals (Scotland) may be removed from that office may be exercised only with the concurrence of the Lord President of the Court of Session.
- (3) Any power by which a member of a panel may be removed from membership of the panel—
 - (a) may, if the person exercises functions wholly or mainly in Scotland, be exercised only with the concurrence of the Lord President of the Court of Session;
 - (b) may, if paragraph (a) does not apply, be exercised only with the concurrence of the Lord Chief Justice of England and Wales.
- (4) In subsection (3) “panel” means—
 - (a) a panel of [^{F24} Employment Judges], or
 - (b) any other panel of members of employment tribunals,
 which is appointed in accordance with regulations made under section 1(1).
- (5) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.
- (6) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise his functions under this section.

Textual Amendments

F22 Ss. 5A-5D inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 40](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)

F24 Words in s. 5B(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 13\(1\)](#); S.I. 2013/2200, art. 3(g)

VALID FROM 03/11/2008

5C Oaths

- (1) Subsection (2) applies to a person (“the appointee”)—
 - (a) who is appointed—
 - (i) as President of the Employment Tribunals (England and Wales),
 - (ii) as President of the Employment Tribunals (Scotland), or
 - (iii) as a member of a panel (as defined in section 5B(4)), and
 - (b) who has not previously taken the required oaths after accepting another office.
- (2) The appointee must take the required oaths before—
 - (a) the Senior President of Tribunals, or
 - (b) an eligible person who is nominated by the Senior President of Tribunals for the purpose of taking the oaths from the appointee.

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- (3) If the appointee is a President or panel member appointed before the coming into force of this section, the requirement in subsection (2) applies in relation to the appointee from the coming into force of this section.
- (4) A person is eligible for the purposes of subsection (2)(b) if one or more of the following paragraphs applies to him—
 - (a) he holds high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005);
 - (b) he holds judicial office (as defined in section 109(4) of that Act);
 - (c) he holds (in Scotland) the office of sheriff.
- (5) In this section “the required oaths” means—
 - (a) the oath of allegiance, and
 - (b) the judicial oath,as set out in the Promissory Oaths Act 1868.

Textual Amendments

F22 Ss. 5A-5D inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 40](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)

VALID FROM 03/11/2008

5D Judicial assistance

- (1) Subsection (2) applies where regulations under section 1(1) make provision for a relevant tribunal judge, or a relevant judge, to be able by virtue of his office to act as a member of a panel of members of employment tribunals.
- (2) The provision has effect only if—
 - (a) the persons in relation to whom the provision operates have to be persons nominated for the purposes of the provision by the Senior President of Tribunals,
 - (b) its operation in relation to a panel established for England and Wales in any particular case requires the consent of the President of Employment Tribunals (England and Wales),
 - (c) its operation in relation to a panel established for Scotland in any particular case requires the consent of the President of Employment Tribunals (Scotland),
 - (d) its operation as respects a particular relevant judge requires—
 - (i) the consent of the relevant judge, and
 - (ii) the appropriate consent (see subsection (3)) [^{F25} except where the relevant judge is the Lord Chief Justice of England and Wales], and
 - (e) it operates as respects a relevant tribunal judge or a relevant judge only for the purpose of enabling him to act as a member of a panel of [^{F26} Employment Judges] .
- (3) In subsection (2)(d)(ii) “the appropriate consent” means—

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- (a) the consent of the Lord Chief Justice of England and Wales where the relevant judge is—
- (i) [^{F27} the Master of the Rolls or] an ordinary judge of the Court of Appeal in England and Wales,
 [within subsection (4)(b)(ia),]
 - ^{F28}(ia)
 - (ii) a puisne judge of the High Court in England and Wales,
 - (iii) a circuit judge,
 - (iv) a district judge in England and Wales, ^{F29}...
 - (v) a District Judge (Magistrates' Courts); [^{F30}, or
 - (vi) within subsection (4)(b)(x) to (xvi);]
- (b) the consent of the Lord President of the Court of Session where the relevant judge is—
- (i) a judge of the Court of Session, or
 - (ii) a sheriff;
- (c) the consent of the Lord Chief Justice of Northern Ireland where the relevant judge is—
- (i) a Lord Justice of Appeal in Northern Ireland,
 - (ii) a puisne judge of the High Court in Northern Ireland,
 - (iii) a county court judge in Northern Ireland, or
 - (iv) a district judge in Northern Ireland.
- (4) In this section—
- (a) “relevant tribunal judge” means—
- (i) a person who is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007,
 [is the President of the Queen's Bench Division or Family Division,
 - ^{F31}(ia) or the Chancellor, of the High Court in England and Wales,]
 - (ii) a transferred-in judge of the First-tier Tribunal,
 - (iii) a person who is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to that Act,
 - (iv) a transferred-in judge of the Upper Tribunal,
 - (v) a deputy judge of the Upper Tribunal, ^{F32}...
 - (vi) a person who is the Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, and does not fall within any of sub-paragraphs (i) to (v); [^{F33}, or
 - (vii) is the Senior President of Tribunals;]
- (b) “relevant judge” means a person who—
- (i) is [^{F34} the Lord Chief Justice of England and Wales, the Master of the Rolls or] an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court),
 - (ii) is a Lord Justice of Appeal in Northern Ireland,
 - (iii) is a judge of the Court of Session,
 - (iv) is a puisne judge of the High Court in England and Wales or Northern Ireland,
 - (v) is a circuit judge,

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- (vi) is a sheriff in Scotland,
- (vii) is a county court judge in Northern Ireland,
- (viii) is a district judge in England and Wales or Northern Ireland, ^{F35} ...
- (ix) is a District Judge (Magistrates' Courts).
- [is a deputy judge of the High Court in England and Wales, ^{F36}(x)
- (xi) is a Recorder,
- (xii) is a Deputy District Judge (Magistrates' Courts),
- (xiii) is a deputy district judge appointed under section 8 of the County Courts Act 1984 or section 102 of the Senior Courts Act 1981,
- (xiv) holds an office listed in the first column of the table in section 89(3C) of the Senior Courts Act 1981 (senior High Court Masters etc),
- (xv) holds an office listed in column 1 of Part 2 of Schedule 2 to that Act (High Court Masters etc), or
- (xvi) is the Judge Advocate General or a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General).]

(5) References in subsection (4)(b)(iii) to (ix) to office-holders do not include deputies or temporary office-holders.]

Textual Amendments

- F22** Ss. 5A-5D inserted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 48(1), 148, [Sch. 8 para. 40](#); S.I. 2008/2696, art. 5(c)(i) (with art. 3)
- F25** Words in s. 5D(2)(d)(ii) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(2\)](#); S.I. 2013/2200, art. 3(g)
- F26** Words in s. 5D(2)(e) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 13\(1\)](#); S.I. 2013/2200, art. 3(g)
- F27** Words in s. 5D(3)(a)(i) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(3\)\(a\)](#); S.I. 2013/2200, art. 3(g)
- F28** S. 5D(3)(a)(ia) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(3\)\(b\)](#); S.I. 2013/2200, art. 3(g)
- F29** Word in s. 5D(3)(a) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(3\)\(c\)](#); S.I. 2013/2200, art. 3(g)
- F30** S. 5D(3)(a)(vi) and word inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(3\)\(e\)](#); S.I. 2013/2200, art. 3(g)
- F31** S. 5D(4)(b)(ia) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(6\)](#); S.I. 2013/2200, art. 3(g)
- F32** Word in s. 5D(4)(a)(v) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(4\)](#); S.I. 2013/2200, art. 3(g)
- F33** S. 5D(4)(a)(vii) and word inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(4\)](#); S.I. 2013/2200, art. 3(g)
- F34** Words in s. 5D(4)(b)(i) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(5\)](#); S.I. 2013/2200, art. 3(g)
- F35** Word in s. 5D(4)(b)(viii) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(7\)](#); S.I. 2013/2200, art. 3(g)
- F36** S. 5D(4)(b)(x)-(xvi) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 14 para. 12\(7\)](#); S.I. 2013/2200, art. 3(g)

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