

**2007 No. 772 (S. 1)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**LOCAL GOVERNMENT, SCOTLAND**

**TAXES**

**The Planning etc. (Scotland) Act 2006 (Business Improvement  
Districts Levy) Order 2007**

<i>Made</i> - - - -	<i>8th March 2007</i>
<i>Laid before Parliament</i>	<i>9th March 2007</i>
<i>Coming into force</i> - -	<i>30th March 2007</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2) and (7) of the Scotland Act 1998(a):

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Planning etc. (Scotland) Act 2006 (Business Improvement Districts Levy) Order 2007 and shall come into force 21 days after the day on which it is laid before Parliament.

(2) This Order extends to Scotland only.

**Interpretation**

2.—(1) In this Order—

“the 2006 Act” means the Planning etc. (Scotland) Act 2006(b);

“BID levy” has the meaning given by article 5(2);

“billing body” has the meaning given by article 7(1) and (2);

“chargeable periods” has the meaning given by article 4(1);

“commencement date” means the day, pursuant to section 44 of the 2006 Act, the BID arrangements are to come into force;

“eligible ratepayer” means a person who is, in respect of particular BID proposals, an eligible person under section 39(4) of the 2006 Act, who is also entitled to vote in accordance with section 39(3) of the 2006 Act;

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(a) 1998 c.46.

(b) 2006, asp 17.

“eligible other person” means a person who is, in respect of particular BID proposals, an eligible person under section 39(5) of the 2006 Act, who is also entitled to vote in accordance with section 39(3) of the 2006 Act; and

“joint arrangements” means BID arrangements made, by virtue of regulations made under section 34 of the 2006 Act, by two or more local authorities with respect to a business improvement district comprising all or part of the area of each of the authorities.

(2) Subject to paragraphs (3) and (4) other expressions used in this Order have the same meaning as they have in the 2006 Act.

(3) Any reference to “BID proposals” includes proposals in relation to the renewal or alteration of BID arrangements under section 45 of the 2006 Act or by virtue of regulations made under that section.

(4) Any reference to “BID arrangements” includes BID arrangements as renewed or altered under section 45 of the 2006 Act or by virtue of regulations made under that section.

### **Purpose of a BID levy**

3. A BID levy is to be applied for the purpose of the projects specified in BID arrangements in respect of which the levy was paid and for no other purpose.

### **Imposition and amount of BID levy**

4.—(1) A BID levy is to be imposed only for periods falling within the period in which the BID arrangements are in force and any references in this Order to “chargeable periods” are to those periods.

(2) The length of any chargeable period, and the day on which it begins, shall be specified in the BID proposals.

(3) The calculation of BID levy for any chargeable period shall be specified in the BID proposals and the amount of the BID levy for such chargeable period is to be calculated in such manner as provided for in the BID arrangements.

(4) BID levy provided for in BID proposals may be different for different classes of—

- (a) eligible ratepayer, or eligible ratepayer and eligible other person (as the case may be);
- (b) geographical area within the business improvement district; or
- (c) relevant property within the business improvement district,

or any combination of these different classes.

(5) The provision in BID proposals for calculation of BID levy for any chargeable period shall include a statement of whether any of the costs incurred in developing the BID proposals, holding of the ballot or implementing the BID arrangements are to be recovered through BID levy.

### **Liability and accounting for BID levy**

5.—(1) BID proposals must specify the description of either—

- (a) eligible ratepayers; or
- (b) eligible ratepayers and eligible other persons,

in the business improvement district who are to be liable for BID levy for a chargeable period.

(2) A person is to pay a levy for a chargeable period if they fall within that description at any time within the period and references in this Order to “BID levy” are to that levy.

(3) Subject to article 6, the amount of a person’s liability for BID levy for any chargeable period is to be determined in accordance with the BID arrangements.

(4) Any amount of BID levy for which a person is liable is to be paid—

- (a) to the billing body appointed in accordance with article 7(1) or, as the case may be, 9; or

(b) where no such body has been appointed, to the local authority which made the arrangements.

(5) Where payment of BID levy is made to a billing body, other than the local authority, that body shall pay such levy to that authority subject only to the deduction of reasonable expenses in relation to the administration and collection of the levy.

#### **Apportionment of liability between persons**

**6.—**(1) This article applies in respect of BID arrangements where the persons liable for BID levy include both eligible ratepayers and eligible other persons.

(2) BID proposals shall specify the apportionment of BID levy in respect of relevant properties as between descriptions of eligible persons specified in accordance with article 5(1) and such apportionment shall be the same for each relevant property in the business improvement district but may be different from the apportionment applied in respect of a different business improvement district.

(3) Unless and until the Scottish Ministers issue a notice in accordance with paragraph (4), apportionment of BID levy shall be as provided for in the BID arrangements.

(4) In respect of all relevant properties within a business improvement district or proposed district, the Scottish Ministers may issue, to the local authority within whose area that district is situated, a notice in writing which apportions the liability for BID levy between the eligible ratepayer and the eligible other person upon a percentage basis (adding up to 100 per cent).

(5) Such apportionment will be the same for each relevant property within a business improvement district, but may be different in respect of different BID arrangements.

(6) Such apportionment shall take effect from the date of the notice of apportionment or such later date as may be specified in the notice.

(7) The Scottish Ministers may vary or revoke a notice issued in accordance with paragraph (4), by issuing to the local authority within whose area the district or proposed district is situated, a further notice in writing to that effect.

(8) The Scottish Ministers shall take such steps as they consider expedient to inform other persons, including the persons who have drawn up BID proposals, of the effect of any notice issued in accordance with paragraph (4) or (7).

(9) The billing body shall give effect to a notice issued in terms of paragraph (4) or (7).

#### **Administration of BID levy etc.**

**7.—**(1) The local authority in whose area the business improvement district is situated may appoint a person for the purposes of the administration, collection, and recovery of BID levy and any references in this Order to “billing body” are to that person.

(2) Where the local authority does not appoint such a person it shall carry out the functions mentioned in paragraph (1) and any reference in this Order to the billing body shall be construed as a reference to the local authority.

(3) The billing body shall, by the commencement date, provide for the administration, collection and recovery of BID levy.

(4) The Schedule shall have effect in relation to the administration, collection and recovery of BID levy.

#### **BID Revenue Account**

**8.** Amounts paid to a local authority by way of BID levy must be credited to the BID Revenue Account.

### **Joint arrangements**

**9.**—(1) This article applies to joint arrangements.

(2) The local authorities concerned in the joint arrangements shall appoint a single billing body in respect of the business improvement district.

(3) Such a billing body appointed by the local authorities under paragraph (2) may be one of those authorities, another authority or some other person.

(4) For the purposes of articles 5(4)(b) and (5) and 8, and paragraphs 8 to 10 of the Schedule, reference to the local authority shall be read as a reference to the local authority which shall, for the purpose of the joint arrangement, keep the BID Revenue Account.

### **Crown application**

**10.** The provisions of this Order apply to the Crown as they apply to other persons, but paragraphs 9 and 10 of the Schedule do not apply to the Crown.

*DAVID CAIRNS*  
Parliamentary Under Secretary of State,  
Scotland Office,  
Department for Constitutional Affairs

Dover House,  
London  
8th March 2007

## ADMINISTRATION, COLLECTION AND RECOVERY OF BID LEVY

### Interpretation

1.—(1) In this Schedule “relevant period” in relation to a notice means the chargeable period to which the notice relates.

(2) Any notice required or authorised to be given to or served on any person by a billing body, or any information required by paragraph 3(2) to be supplied to any person when a demand notice (within the meaning of this Schedule) is served—

- (a) may be so given, served or supplied by sending the notice or information to that person by electronic communication to such address as may be notified by that person for that purpose; or
- (b) shall be treated as given, served or supplied to that person where—
  - (i) the billing body and that person have agreed for that purpose that any documents containing the notice or information may be accessed by that person on a website;
  - (ii) the document is a document to which that agreement applies;
  - (iii) the billing body has published the document on a website; and
  - (iv) that person is notified, in a manner for the time being agreed for those purposes between that person and the billing body, of the publication of the document on a website and how that person may locate and access the document.

(3) For the purpose of any legal proceedings, a notice given in accordance with sub-paragraph (2) shall, unless the contrary is proved, be treated as served on the second business day after—

- (a) it was sent; or
- (b) notification of its publication was given in accordance with sub-paragraph (2)(b)(iv).

(4) A person who has notified an address for the purpose of sub-paragraph (2)(a) shall, by notice in writing to the billing body, advise the billing body of any change in that address; and the change shall take effect on the third business day after the date on which the notice is received by the billing body.

(5) A person who has notified an address for the purpose of sub-paragraph (2)(a) may, by notice in writing to the billing body, withdraw that notification; and the withdrawal shall take effect on the third business day after the date on which the notice is received by the billing body.

(6) A person who has entered into an agreement with the billing body under sub-paragraph (2)(b)(i) may, by notice in writing to the billing body, inform that body that the person no longer wishes to be a party to the agreement; and where such notice is given, the agreement shall be treated as revoked on the third business day after the date on which the notice is received by the billing body.

### Service of demand notices

2.—(1) For each chargeable period a billing body shall, in accordance with paragraphs 3 to 6, serve a notice in writing on every person who is liable for BID levy in relation to the BID arrangements for the period.

(2) Different demand notices shall be served for different chargeable periods.

(3) A demand notice shall be served with respect to the amount or amounts payable for every relevant property and in respect of which a person or persons are liable for BID levy.

(4) A demand notice served under sub-paragraph (3) may relate to the amount payable in respect of more than one relevant property, and the amounts due under such a notice, and the times at which they fall due, shall be determined as if separate notices were served in respect of each relevant property.

(5) Where a person has given notice in writing to a billing body of the name and address of that person's nominated agent for receipt of demand notices (and not subsequently withdrawn such notification), demand notices may be validly served upon the person liable for BID levy by serving notices upon the agent in place of that person.

(6) Subject to sub-paragraph (7), a demand notice shall be served on or as soon as practicable after—

- (a) except in a case falling within paragraph (b), the first day of the relevant period; or
- (b) if the person only falls within the description of person to be liable to BID levy specified in the BID arrangements (as regards the relevant property concerned) after the day mentioned in paragraph (a), the first day after the day on which that person falls within that description.

(7) A demand notice may be served before the beginning of the relevant period on a person who, on the day it is issued, the billing body considers will fall within the description of person to be liable to BID levy specified in the BID arrangements as regards the relevant property to which it relates; and if it is so served, any reference in this Schedule to a person who is liable for BID levy shall, in relation to that notice, be construed as a reference to that person.

### **Content of demand notices**

3.—(1) A demand notice shall contain—

- (a) the address and description of each relevant property to which the notice relates;
- (b) a statement of how BID levy is calculated for each relevant property to which the notice relates and of the amount of BID levy payable;
- (c) a statement of the days on which, for the purposes of calculating the payments required to be made under the notice, the billing body understands that the person who is liable for BID levy, in respect of the relevant property, fell within the description of persons who are to be liable for BID levy for the chargeable period in question; and
- (d) the date or dates on which payment of BID levy is due to be made.

(2) A billing body may, when it serves a demand notice, supply to the person upon whom the notice is served the following information—

- (a) the total amounts of BID levy received, and expected to be received, in the previous financial year;
- (b) the amount spent on the BID arrangements in the previous year;
- (c) a description of the matters on which that amount was spent; and
- (d) a description of the matters on which it is intended to spend the revenue from BID levy in the current financial year.

### **Invalid notices**

4.—(1) Where a demand notice does not comply with paragraph 3(1), it is invalid.

(2) Notwithstanding sub-paragraph (1), where—

- (a) a demand notice is invalid because it does not comply with paragraph 3(1);
- (b) the failure so to comply was due to a mistake; and
- (c) the amounts required to be paid under the notice were demanded in accordance with paragraph 3(1),

the requirement to pay those amounts shall apply as if the notice were valid.

(3) Where a requirement to pay an amount under an invalid notice subsists by virtue of sub-paragraph (2), the billing body shall as soon as practicable after the mistake is discovered issue to the person who is liable to pay BID levy an amended notice under paragraph 3(1) complying with the requirements of that paragraph.

#### **Payments under demand notices**

5.—(1) If a demand notice is served before or during the relevant period and, on the day on which the notice is served, it appears to the billing body that the person falls within the description as mentioned in paragraph 2(7) as regards the relevant property to which the notice relates, the notice shall require payment of an amount equal to the billing body's estimate of the amount payable for the period.

(2) In making an estimate under sub-paragraph (1), the billing body shall assume, as respects a period which falls after the issue of the notice, that the person will continue to fall within the description as mentioned in paragraph 2(7).

(3) If a demand notice is served during the relevant period but sub-paragraph (1) does not apply, the notice shall require payment of the amount payable for the period up to the day on which the person last fell within the description as mentioned in paragraph 2(7), as regards the relevant property concerned.

(4) If, after a notice is served to which sub-paragraph (3) applies, the person again falls within the description of person as mentioned in paragraph 2(7) in the relevant period, as regards the relevant property concerned, a further notice shall be served on that person requiring payment of the amount payable in relation to the relevant property for the period beginning with the day on which the person again falls within the description.

(5) Where a further notice is issued under sub-paragraph (4), paragraphs 2(6) and (7), 5, 6 and 7 shall apply to the further notice with respect to the period referred to in sub-paragraph (4) as if it were a demand notice, and the person had not previously fallen within the description of person to be liable to BID levy specified in the BID arrangements.

(6) If a demand notice is served after the end of the relevant period, it shall require payment of the amount payable for the period.

#### **Payments under demand notices: further provision**

6.—(1) Unless an agreement under sub-paragraph (3) in relation to the relevant period has been reached before the demand notice is served, a notice to which paragraph 5(1), (3) or (5) applies shall require the amount payable or the estimate of the amount payable to be paid on expiry of such period (being not less than 14 days) after the day of service of the notice as is specified in the notice.

(2) If an agreement under sub-paragraph (3) in relation to the relevant period has been reached before the demand notice is served, a notice to which paragraph 5(1), (3) or (5) applies shall require the amount payable or the estimate of the amount payable to be paid in accordance with that agreement.

(3) A billing body and a person who is liable for BID levy may agree that the amount payable or the estimate of the amount payable under a notice to which paragraph 5(1), (3) or (5) applies should be paid in such manner as is provided by the agreement.

(4) Notwithstanding anything in the preceding provisions of this paragraph, such an agreement may be entered into either before or after the demand notice concerned is served, and may make provision for the cessation or adjustment of payments, and for the making of fresh estimates, in the event of the estimate mentioned in paragraph 5(1) turning out to be wrong; and if it is entered into after the demand notice has been served, it may make provision dealing with the treatment for the purposes of the agreement of any sums paid before it was entered into.

(5) No payment in respect of the amount payable by a person who is liable for BID levy in relation to a relevant property for any chargeable period need be made unless a notice served under this Schedule requires it.

- (6) In calculating and collecting an amount of BID levy which is payable—
- (a) any fractional part of a pence of 0.49 or less shall be rounded down to the nearest whole number;
  - (b) any fractional part of a pence of 0.51 or greater shall be rounded up to the nearest whole number;
  - (c) any fractional part of a pence of 0.5 shall be rounded up or down to the nearest whole even number.

**Demand notices: final adjustment**

7.—(1) This paragraph applies where—

- (a) a notice has been served by a billing body under this Schedule requiring payment to be made by a person who is liable for BID levy in respect of the amount payable in relation to relevant property for a chargeable period or part of a chargeable period;
- (b) the payment required to be made is found to be in excess of or less than the amount payable in relation to the relevant property for the period or the part thereof; and
- (c) provision for adjusting the amounts required under the notice and (as appropriate) for the making of additional payments, or the repaying or crediting of any amount overpaid, is not made by any other provision of this Schedule or of any agreement entered into under paragraph 6(3).

(2) The billing body shall as soon as practicable after the expiry of the period or the part of a period serve a further notice on the person who is liable for BID levy stating the amount payable for the period or part in relation to the relevant property, and adjusting (by reference to that amount) the amounts required to be paid under the notice referred to in sub-paragraph (1)(a).

(3) If the amount stated in the further notice is greater than the amount required to be paid under the notice referred to in sub-paragraph (1)(a), then the amount of the difference for which such other provision as mentioned in sub-paragraph (1)(c) is not made shall be due from the person who is liable to pay BID levy, to the billing body on the expiry of such period (being not less than 14 days) after the day of service of the notice as is specified in it.

(4) If there has been an overpayment in respect of any liability for BID levy under this Schedule, the amount overpaid for which such other provision as is mentioned in sub-paragraph (1)(c) is not made—

- (a) shall be repaid if the person who made the overpayment so requires; or
- (b) in any other case shall (as the billing body determines) either be repaid or be credited against any subsequent liability of the person in respect of BID levy.

(5) In respect of any such amount overpaid as mentioned in paragraph (4), interest shall be payable by the billing body to the person who made the overpayment, in respect of the period from the date of overpayment to the date of repayment, at the rate (if any) as is prescribed for overpayments from time to time of non-domestic rates in Scotland by regulations made under section 9A(2) of the Local Government (Scotland) Act 1975(a).

**Appeals against BID levy**

8.—(1) In respect of each BID levy imposed in respect of a business improvement district in the area of a local authority, that local authority shall fix a date on or before which any person may lodge, with the officer of the authority designated for the purpose, an appeal against BID levy claimed from that person on the ground that BID levy is being improperly charged, and another date on or before which any appeal shall be heard by the local authority or a committee thereof.

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(a) 1975, c.30.

(2) A demand notice shall contain a notice of the date by which appeals may be lodged and state the name or designation and the address of the officer with whom appeals may be lodged, and if the date for the hearing of appeals is not notified in the demand notice, notice in writing thereof shall be given on behalf of the authority to the persons appealing.

(3) Every local authority may if they think fit make rules with respect to the lodging and hearing of appeals under this paragraph and such rules must not be inconsistent with the provisions of this Order.

(4) In relation to joint arrangements, a person lodging an appeal in terms of this paragraph shall lodge the appeal with one of the local authorities making the joint arrangements, and in that circumstance, the local authority with which the appeal is lodged shall arrange and hear the appeal in accordance with the requirements in sub-paragraphs (1) and (2).

### **Recovery of BID levy**

9.—(1) Subject to sub-paragraphs (4) and (5), where the local authority is the billing body, arrears of BID levy may be recovered by a local authority by diligence—

- (a) authorised by a summary warrant granted under sub-paragraph (2); or
- (b) in pursuance of a decree granted in an action for payment.

(2) Subject to sub-paragraph (4), the sheriff, on an application by the local authority accompanied by a certificate by the local authority—

- (a) stating that none of the persons specified in the application has paid BID levy due by that person;
- (b) stating that the authority has given written notice to each such person requiring that person to make payment of the amount due within such period (being not less than 14 days) after the day of issue of the notice as is specified in it;
- (c) stating that the said period has expired without payment of the said amount; and
- (d) specifying the amount due and unpaid by each such person,

shall grant a summary warrant in a form equivalent to that prescribed by Act of Sederunt for non-domestic rates in Scotland, authorising the recovery by any of the diligences mentioned in sub-paragraph (3) of the amount remaining due and unpaid, along with a surcharge of 10 per cent (or, where a different percentage has been prescribed under section 247(2) of the Local Government (Scotland) Act 1947(a) in respect of non-domestic rates in Scotland, that percentage) of that amount.

(3) The diligences referred to in sub-paragraph (2) above are—

- (a) an attachment;
- (b) an earnings arrestment; and
- (c) an arrestment and action of furthcoming or sale.

(4) It shall not be competent for the sheriff to grant a summary warrant under sub-paragraph (2) in respect of a BID levy amount due by a debtor if an action has already been commenced for the recovery of that amount; and, without prejudice to sub-paragraph (5), on the commencing of an action for the recovery of such amount, any existing summary warrant in so far as it relates to the recovery of that amount shall cease to have effect.

(5) It shall not be competent to commence an action for the recovery of a BID levy amount if, in pursuance of a summary warrant, any of the diligences mentioned in sub-paragraph (3) for the recovery of that BID levy amount has been executed.

(6) In any proceedings for the recovery of a BID levy amount, whether by summary warrant or otherwise, no person shall be entitled to found upon failure of the local authority, billing body or any other authority to comply with any provision in this Schedule relating to the date by which something shall be done, not being a provision in this paragraph or a provision regulating the diligence.

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(a) 1947, c 43.

(7) Where a billing body is not a local authority, arrears of BID levy may be recovered by the billing body by diligence in pursuance of a decree granted in an action for payment.

**Sheriff officer's fees and outlays**

**10.**—(1) Subject to sub-paragraph (2) below and without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002(a) (expenses of attachment), the sheriff officer's fees, together with the outlays necessarily incurred by that officer, in connection with the execution of a summary warrant shall be chargeable against the person liable for BID levy.

(2) No fee shall be chargeable by the sheriff officer against the person liable for BID levy for collecting, and accounting to the local authority or billing body for, sums paid to the officer by the person liable for BID levy in respect of the amount owing.

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(a) 2002, asp 17.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provisions that are consequential on the Planning etc. (Scotland) Act 2006 (“the 2006 Act”). The Order extends to Scotland only. Sections 33 to 49 of the 2006 Act provide for business improvement district arrangements (“BID arrangements”), which local authorities are enabled to make with respect to an area comprising all or part of the local authority area. BID arrangements require to be approved by a ballot. The purpose of this Order is to provide for a levy (“BID levy”) that is imposed in the business improvement district.

Article 3 provides for the purpose of a BID levy, which is to be used for the purpose of the projects specified in BID arrangements.

Article 4 provides that a BID levy is imposed for chargeable periods, and that the length of any such period, and the day it begins, is to be set out in the BID proposals (which become arrangements when approved by ballot). It also provides that the calculation of BID levy for such periods is to be specified in the BID proposals and the BID levy for any chargeable period is calculated as provided for in the BID arrangements. The BID levy may be different for the different classes specified.

Article 5 provides that BID proposals must state the description of those who are liable for BID levy and that a person falling within that description is liable for the levy. It is further provided that the amount of each person’s liability for BID levy is determined in accordance with BID arrangements. The article sets out that the levy shall be paid to the local authority which made the arrangements unless a billing body is appointed in accordance with this Order in which case payment is made to them and they are liable to pay sums on to the local authority.

Article 6 applies to BID arrangements involving eligible ratepayers and eligible other persons. Eligible ratepayers and eligible other persons are defined in article 2 and are the two categories of person who may be entitled to vote in accordance with section 39 of the 2006 Act. The article provides the Scottish Ministers may issue a written notice to the local authority apportioning the liability for BID levy in respect of properties within the district, between the eligible ratepayer and eligible other person on a percentage basis. As the article provides, unless and until this is done, such apportionment is as provided for in the BID arrangements and the BID proposals shall specify the apportionment. There are further provisions in relation to the date of effect of a notice, varying a notice and informing of the effect of a notice. It is also stated that a billing body shall give effect to a notice.

Article 7 provides that the local authority may appoint a billing body to administer, collect and recover BID levy in accordance with this Order and where it does not the local authority is to carry out those functions.

Article 8 states that amounts of BID levy paid to the local authority or the billing body must be credited to the BID Revenue Account that is held by the local authority. Section 37 of the 2006 Act has further provision for this Revenue Account.

Article 9 applies where two or more local authorities are enabled to make joint BID arrangements. It provides that such local authorities shall appoint a single billing body in respect of the joint arrangements which may be one of them, another local authority or another person. It specifies that any BID levy is to be paid to the local authority with responsibility for the BID Revenue Account. It also deals with how references to local authorities in certain other parts of this Order are to be read when there is a joint BID arrangement.

Article 10 applies the Order to the Crown, except for paragraphs 9 and 10 of the Schedule which contain provisions for the recovery of BID levy by diligence procedures.

The Schedule to the Order sets out further provisions in relation to—

- (a) the requirements for the content of, and service of, demand notices for BID levy;
- (b) payment requirements under demand notices;
- (c) the local authority hearing appeals against BID levy charged;
- (d) recovery by the billing body of arrears of BID levy, by diligence procedures and actions for payment.

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