

# **Final Business and Regulatory Impact Assessment**

# **Consumer Scotland Bill**

**June 2019**



**Scottish Government**  
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## Final Business and Regulatory Impact Assessment

### **Title of Proposal**

Consumer Scotland Bill

### **Purpose and intended effect**

#### **Background**

In June 2015, in anticipation of devolution of consumer powers under the 2016 Scotland Act, the Scottish Government established an independent, short-life Working Group for Consumer and Competition Policy in Scotland. Membership was drawn from a wide spectrum of expertise, including Which?, Citizens Advice Scotland (CAS), Trading Standards Scotland, the Scottish Public Services Ombudsman (SPSO) and the Federation of Small Businesses.

This group was asked to consider the optimal arrangements for delivering consumer protection and competition policy in Scotland. It was also tasked with providing recommendations to Scottish Government on specific improvements that could be made to the consumer protection and competition landscape. Its main recommendation was that the Scottish Government establish a public body, underpinned by statute and dedicated to representing the consumer interest in Scotland.

This recommendation was generally well received. In 2016, the SNP manifesto committed to make the most of newly devolved powers and create a consumer body.

Very broadly, consumer advice and advocacy are devolved matters. The Scotland Act 2016 brought the following within the devolved competence:

- Powers over consumer advocacy in energy, post and water, and the general economy, which ensures we can influence how the consumer voice is represented to regulators, policy makers and industry; and
- Powers over the provision of consumer advice, education and information, which allows us to provide publicly funded assistance to help individuals understand and exercise their consumer rights.

Scottish Ministers also now have the power to act with the Secretary of State to request that the Competition and Markets Authority carry out a second stage market investigation, and the functions of the Competition Appeal Tribunal can be transferred (with UK Government agreement) to a Scottish tribunal.

However, many aspects of consumer protection are still reserved to Westminster, including the regulation of the sale and supply of goods and services, guarantees, hire-purchase and trade descriptions. The Consumer Scotland Bill will not stray into these areas. Nonetheless, there are compelling reasons for Scottish Government to develop a distinctive Scottish consumer policy. The Consumer Scotland Bill will be a key part of our work to achieve this.

## **Objective**

The main purpose of the Consumer Scotland Bill will be to establish a public body for Scotland. A second purpose is to include a consumer duty, which will require consideration of consumer impacts of policy-making by designated public authorities in Scotland.

## **Consumer Scotland**

Consumer Scotland will be an investigatory public body, tasked with carrying out a strategic review of consumer welfare to identify areas of harm that require in-depth inquiry, and recommend solutions to these issues. The body will conduct a small number of inquiries per year to ensure that it has meaningful impact where there is most pressing need for change.

The overarching purpose of Consumer Scotland will be to provide consumer advocacy and advice with a view to:

- reducing consumer harm in Scotland;
- increasing confidence among consumers in Scotland in dealing with businesses that supply goods and services to consumers; and
- increasing the extent to which consumer matters are taken into account by public authorities in Scotland.

## **Rationale for Government intervention**

The Scottish Government's overarching purpose is to create a fairer, more equal Scotland. It recognises that our society thrives when our citizens feel they are treated well and have the opportunity to participate in and genuinely influence change, and it recognises that when our citizens feel disempowered and unheard, trust and confidence in institutions is weakened. This dual understanding drives our focus on not just economic growth, but inclusive economic growth.

Policies such as fair work, reducing poverty and a social security system that emphasises dignity and respect for its users are at the centre of our inclusive growth agenda. A strong consumer policy that emphasises fairness and confidence must also become a key part of our work. There are several reasons for this:

- Firstly, Scotland's distinct economic, social and geographic circumstances provide challenges in ensuring that markets work well for Scottish consumers. Even in reserved markets where harm can occur across the UK, the detriment in Scotland can be of a greater scale or impact because of these factors.
- Secondly, devolution presents a distinctive policy and political context in which consumers in Scotland operate. Key areas, such as legal services, water, education and health, are devolved. As a result, consumers and businesses are governed by a different regulatory and policy regime, and in these markets, the costs of consumer harm – whether caused by regulatory decisions or unscrupulous trading practices – can be significant and even life-changing. Consumer welfare must therefore be actively considered and safeguarded by Scottish institutions and policy makers.
- Thirdly, Scotland has a substantial rural population that often faces different issues from urban consumers, including accessing key services and choosing providers in essential services. Scotland is also characterised by

an increasing ageing population and considerable areas of deprivation, which means there are an increasing number of potentially vulnerable consumers who need more interventionist or tailored support to ensure they are protected when purchasing goods and services.

These considerations gave rise to the Working Group's recommendation for a dedicated consumer body in Scotland that could bring strategic focus to identifying and tackling consumer harm. In particular, such a body has potential to fill a number of gaps identified in the current system:

- Although there is a plethora of data around consumer harm, there is no central place to evaluate and understand it.
- Although the data may reveal evidence of consumer harm, there is not always a clear picture of the underlying causes.
- Although consumer bodies, including CAS and Which?, conduct research and raise issues with Scottish Government and regulators, their impact is limited by a lack of a strategic approach to identifying the issues that are of specific Scottish importance, and to taking an inquiry-led approach to understanding how these might be resolved.
- Although a number of organisations can influence and challenge government and regulators, there is no authority, remit or obvious oversight mechanism to coordinate and drive forward calls for change.
- Although many organisations work to support consumers that may be vulnerable and experiencing particular detriment, a dedicated body will have scope to represent a wider range of collective consumer concerns in Scotland.

In light of this, Consumer Scotland will therefore be established to:

- be a dedicated source of expertise focused on advocating for change on issues which particularly affect consumers in Scotland, taking into account our distinct circumstances, such as our rural population and our devolved sectors;
- conduct in-depth investigations to understand the underlying causes of harm and identify solutions to tackle these; and
- send a clear signal that consumer fairness is part of the Scottish Government's fairer Scotland agenda.

### **Consumer Duty**

The Consumer Scotland Bill will establish a statutory duty on relevant public authorities in Scotland to ensure that they safeguard the consumer interest in policy making. In doing so, we recognise that consumers will not have undue primacy - public health outcomes or environmental concerns may still take precedence, for example - but efforts should still be made to minimise negative impacts on consumers where there are competing policy interests.

By imposing the duty, we anticipate that:

- Considering and safeguarding the consumer interest will form part of the policy-making process from an early stage.
- There will be an increase in meaningful consultation with consumers and consumer groups during policy development.

- Reviews of consumer impacts of policies will be carried out after implementation to ensure that consumers are not being unreasonably or unintentionally impacted by the real-world consequences of the policy.

We recognise that there are already a number of duties imposed on public authorities, and that a consumer duty must be carefully developed so that it has a meaningful impact without becoming a burden on public authorities. The Bill therefore only establishes the core duty. Its application (i.e. the public authorities to which it applies) and its coming into force date will be set out in regulations, which will be developed in consultation with public authorities and consumer groups.

Consumer Scotland will be responsible for supporting the duty, including maintaining guidance and monitoring the duty's impact. Development of the guidance which will supplement the duty will also be consultative to ensure it meets the needs of those to whom the duty will apply.

### **Rationale for Government intervention**

Consumers impact policies as well as being impacted by them. Understanding consumer buying habits and behaviour choices, and gaining their support for new initiatives, is therefore necessary to tackle these challenges - for example, to reduce our carbon emissions to tackle climate change, or to tackle unhealthy patterns of eating and drinking. Consumers can also drive the behaviour of others - for example, encouraging businesses to pay the living wage or reduce their own environmental footprint.

It is vital that this is recognised in the policy-making process. Where policies or decisions affect consumers - either directly or indirectly - policy and decision-makers must safeguard consumers with a view to either improving consumer outcomes or minimising harm where other considerations legitimately overrule the consumer interest. This means ensuring that the views of consumers are sought and taken into account during the policy-making process, and giving weight to the consumer interest in the final formulation of policies or decisions. This should happen both in the early stages of policy or decision-making and as their real-world consequences unfold. Failure to do so can have unintended consequences that are detrimental to individual consumers and limit the effectiveness of the overall policy interventions.

### **Consultation**

The proposals for a new consumer body and duty have been developed through wide-ranging and on-going consultation as outlined below.

#### **Within Government**

Discussions have been on-going with colleagues across Scottish Government to develop the Bill. These include:

- Directorate for Energy and Climate Change
- Directorate for Housing and Social Justice
- Directorate for Justice
- Directorate for Population Health
- Directorate for Local Government and Communities

- Directorate for Social Security
- Scottish Government Legal Directorate

These discussions allowed us to refine and develop the policy proposals that were set out in the Consumer Scotland consultation and to identify areas with cross-working opportunities.

### **Public and Business Consultation**

Prior to the formal consultation, we conducted informal consultation with a number of stakeholders including:

- Citizens Advice Scotland
- COSLA
- Drinking Water Quality Regulator
- Scottish Environment Protection Agency
- Scottish Legal Aid Board
- Scottish Natural Heritage
- The Society of Chief Officers of Trading Standards in Scotland
- Trading Standards Scotland
- Water Industry Commission for Scotland

A 12 week public consultation was held between July and September 2018, which invited views on the objectives and functions of the new body. The consultation had two distinct sections:

- Section 1 – focused on the proposals for establishing a consumer body which would carry out in-depth investigations into areas of most pressing harm to consumers in Scotland, and use its findings to advocate for specific and practical solutions.
- Section 2 – focused on more generic Scottish Government policy for consumers, including providing more holistic advice services, improving the impact of consumer advocacy, and increasing the consideration of consumer interests in public policy-making, potentially through development of a statutory duty for public authorities in Scotland.

This on-line consultation was supported by four stakeholder engagement events which were attended by around 50 individuals, including regulators, consumer groups, third sector and business organisations. These events allowed businesses to directly influence the formulation of our proposals. The consultation received 58 responses from a mixture of consumer groups, regulators and individuals. Taken together, feedback from the consultation and consultation events shows broad support for the investigatory function proposed for Consumer Scotland, the implementation of a consumer duty, and clear agreement that there is a gap in the landscape such a role can fill.

However, the responses also highlighted:

- The need for clarity over the relationship between Consumer Scotland and other public bodies with responsibility for consumer protection.
- The need for Consumer Scotland to do more to support consumer advocacy than conduct investigations into the most harmful consumer issues.
- The need to address the complexity and fragmentation of the advice

landscape – it was repeatedly suggested that Consumer Scotland should play a part in addressing this, with potential roles ranging from oversight and coordination to direct delivery as a one-stop shop.

- The need to ensure that the consumer duty is implemented in a way that allows it to have meaningful impact without being unduly burdensome on those to whom it applies.

As a result of these comments, in addition to its investigatory role, Consumer Scotland will now take responsibility for ensuring an effective system of consumer advice (though this need not be through direct delivery), and for taking on a more general horizon scanning role to monitor and tackle consumer harm even where investigations are not warranted. The Scottish Government also recognises that significant work must be carried out to ensure the consumer duty is correctly targeted and implemented properly, and thus the Bill will provide for regulations that will be made only after further consultation.

A copy of the consultation document can be found here:

<https://consult.gov.scot/energy-and-climate-change-directorate/establish-a-consumer-body/>

Non-confidential responses to the consultation can be found here:

[https://consult.gov.scot/energy-and-climate-change-directorate/establish-a-consumer-body/consultation/published\\_select\\_respondent](https://consult.gov.scot/energy-and-climate-change-directorate/establish-a-consumer-body/consultation/published_select_respondent)

Independent analysis of the consultation can be found here:

<https://www.gov.scot/publications/analysis-responses-consultation-consumer-body-scotland/pages/1/>

Stakeholder engagement has continued since the consultation closed, and has included a Ministerial meeting with consumer organisations and officials presenting at a Regulatory Review Group meeting. Stakeholders will continue to be a vital part of the Bill's development and its practical implementation going forward.

### **Ministerial Taskforce on Consumers and Markets**

The Minister for Business, Fair Work and Skills chairs the Taskforce on Consumers and Markets, which has provided guidance on the practical implications of both establishing Consumer Scotland and the consumer duty. The Taskforce membership is based on individual skills and strengths and not affiliation with particular organisations. Further information on the Taskforce can be found at <https://www.gov.scot/groups/consumers-and-competition-policy-unit/>

### **Options for Consumer Scotland**

Four options for progressing following the Working Group's recommendation were identified:

- do nothing
- expand the functions of existing consumer organisations
- establish a new public body
- expand the functions of an existing public body.

In considering the options, we assessed that three key criteria were important to address the Working Group and wider stakeholder feedback:

- A statutory underpinning, to provide the body with permanence, independence, credibility and strong mechanisms to ensure impact and value for public money.
- A dedicated focus on consumer well-being to create a stronger voice for consumers and send a clear signal to regulators, consumer groups and consumers themselves that consumer fairness is a priority of the Scottish Government; and
- An organisation that could provide strategic focus to and increase collaboration across the consumer landscape.

### **1. Do nothing**

This first option would continue with the current model. In particular, consumer advocacy would be delivered as it currently is by CAS and there would be only minor changes to ensure increased coordination across the landscape.

#### **Sectors and groups affected**

None.

### **2. Maintain but build on the status quo by attempting to build a Consumer Scotland brand**

This option would seek to unite the landscape through a Consumer Scotland brand. CAS would continue to deliver consumer advocacy under a Consumer Scotland brand; existing consumer advice services would do likewise; and a Consumer Scotland Partnership would be developed to bring consumer organisations across the landscape together to develop collaborative solutions to consumer issues.

This option would minimise disruption and costs. However, it would not meet the three criteria set out above. In particular,

- It would not have a statutory underpinning, limiting its credibility, independence, and accountability for public funds;
- It would not provide a dedicated consumer voice focused solely on consumer issues – CAS, for example, provides a number of functions, including acting as support for the Bureaux network, enabling key frontline services through provision of training and IT. CAS also has a very strong focus on citizens, and therefore provides advocacy on a range of issues, such as debt and benefits issues.
- It would not fully provide a strategic focus and increased collaboration – by definition, this option would continue to have leadership spread throughout a number of organisations, and while initiatives such as a Consumer Scotland Partnership could strengthen networks and collaboration, it would still be a largely informal mechanism.

#### **Sectors and groups affected**

All organisations in receipt of Scottish Government funding for consumer functions would require to adopt a Consumer Scotland brand, and organisations across the landscape would be asked to commit to joining a Consumer Scotland partnership. Organisations such as CAS, Advice Services Direct and Trading Standards services

could be asked to increase their functions, for example to conduct more in-depth investigations into consumer harm.

### **3. Set up a new public body**

As already mentioned earlier in this BRIA, the main recommendation of the independent short-life Working Group on Consumer and Competition Policy was to set up a new public body to represent the consumer interests. Responses to the Consumer Scotland consultation subsequently confirmed many of the gaps identified by the Working Group, and were broadly in agreement that a dedicated body was the best way to fill these. This is therefore the preferred option and meets the three criteria set out above.

#### **Sectors and groups affected**

The establishment of a new body will have an impact on other organisations already operating in the consumer landscape. Careful relationship building will be necessary to ensure collaborative working and to avoid duplicated effort. Clear roles and responsibilities will also need to be set out to ensure Consumer Scotland does not increase confusion for consumers and businesses. Developing arrangements for intelligence sharing will also be vital if Consumer Scotland is to drive a more strategic approach to tackling consumer detriment in Scotland.

Consumer Scotland's establishment will also return CAS to its original focus of citizens' advocacy and frontline Bureaux support as the new body will take responsibility for the majority of Scottish Government-funded consumer advocacy in Scotland. The Scottish Government is committed to the principle that public funding should align with function delivery to ensure value for public money, and the funding arrangements will reflect this. However, we will work with CAS to ensure that it remains supported to collectively represent the consumer experiences of Bureaux clients.

Consumer Scotland's establishment will not impact the funding provided by the Scottish Government to support delivery of frontline advice services by the 59 Citizens Advice Bureaux. Additionally, Consumer Scotland will be tasked with ensuring its work on national consumer issues is complemented by support for local campaigns and projects.

### **4. Expand the functions of an existing public body**

There are a number of public bodies that were considered as potential mechanisms to deliver consumer functions. These include:

- Accountant in Bankruptcy
- Food Standards Scotland
- Highlands and Islands Enterprise
- Revenue Scotland
- Scottish Enterprise
- Scottish Housing Regulator
- SPSO
- Water Industry Commission Scotland

Expanding the functions of one of these bodies would have been done through legislation and met the criteria of a statutory underpinning. However, none of these

options could satisfy the requirement for a dedicated focus on consumers. Indeed, many of the bodies listed above have conflicting functions or aims in their roles as regulators or business support which would have been incompatible with an advocate for improving consumer outcomes.

### **Sectors and groups affected**

The chosen public body for delivery of consumer functions would require to increase staffing and functions. Assigning new consumer functions to an existing public body would also require relationship building across the consumer landscape, and a clear demarcation of roles and responsibilities among current organisations.

### **Benefits**

#### **Option 1: Do Nothing**

- No additional demand on Scottish Government budget, although Scottish Government's sponsorship role will require resource.
- As the sponsoring department, Scottish Ministers will have oversight of consumer advocacy and advice delivery and will provide direction through grant conditions.

#### **Option 2: Establish Consumer Scotland as a brand**

- It would avoid disruption to the consumer landscape.
- There would be less additional demand on Scottish Government's budget than setting up a new consumer body.
- Avoids adding another consumer body to the landscape.
- As the sponsoring department, Scottish Government will be able to provide strategic direction and strengthen delivery through appropriate grant conditions.

#### **Option 3: Set up a new public body**

- Would implement the key recommendation of the Working Group to create a strong, dedicated consumer voice.
- Allows scope to improve evidence gathering and understanding of consumer harm by appointing dedicated experts with specialist regulatory and analytical knowledge.
- As a body established by statute, it will have particular credibility with stakeholders and those it seeks to influence.
- Creates a dedicated consumer body, highlighting Scottish Government's commitment to consumers as an economic force.
- As an independent body with Scottish Government backing, has greater scope to join up the consumer landscape, for example, developing and maintaining a central knowledge hub.
- Would give consumer representation a distinct brand and would be more effective in raising the profile of consumer issues in Scotland.
- As a public body, it would have robust and transparent governance and accountability arrangements.

#### **Option 4: Expand the functions of an existing public body**

- Less demand on Scottish Government's budget, avoiding the cost of creating and running a new public body.

- Robust and transparent governance and accountability arrangements would be in place.
- Additional consumer functions would be enshrined in statute.

## **Costs**

### **Option 1: Do nothing**

There would be no additional costs related to this option.

### **Option 2: Maintain but build on the status quo**

There would be around an additional £0.5 million costing to Scottish Government as it would need to provide additional money to CAS to allow it to take on additional functions. However, these would be less than establishing a new public body.

### **Option 3: Set up a new public body**

The estimated one-off costs of establishing the new body are in the range of £0.9-£1.2 million, with this being met from Scottish Government's budget. Annual running costs would be in the range of £2-£2.5 million. This overall represents an increased investment from the Scottish Government; however, the transfer of functions to the new body makes it likely that some of the annual running costs will be offset by existing consumer budget.

Further information on the costs of Consumer Scotland, and the assumptions and estimates surrounding them, are set out in the financial memorandum accompanying the Consumer Scotland Bill. It will be for Scottish Ministers to decide the overall budget allocation for the new body as part of the relevant Scottish Government budget process in future years, and for the chair and members to make operational decisions about the detail of how the body best uses its budget to deliver its aims.

### **Option 4: Expand the functions of an existing public body**

There could be additional budget costs to Scottish Government if an existing public body agreed to take on additional functions. As this option was ruled out at an early stage, costs have not been calculated.

## **Options for the Consumer Duty**

Three options to achieve greater consideration of consumer impacts of policy making were considered:

- do nothing
- a statutory duty
- a voluntary duty

### **1. Do nothing**

This would not seek to change how policy and decision-making is made by public authorities. There would be no familiarisation costs to affected bodies and no potential costs to them either from reviewing and making changes to their operational policies and practices.

### **Sectors and groups affected**

None.

## **2. Implement the duty via non-statutory measures**

This option would place a voluntary duty on relevant public bodies to consider consumers when making policy decisions which had a direct or indirect impact on consumers. As it is voluntary some affected public bodies may not implement this duty or not implement it to a satisfactory level with no adequate reporting processes in place.

### **Sectors and groups affected**

Public bodies that exercise functions in a way that impact (or potentially impact) consumers.

## **3. Implement the duty via statutory measures**

This option would ensure that affected public bodies must consider consumers when implementing policy that has a direct or indirect impact on consumers. It also ensures that robust reporting / post implementation procedures are in place.

### **Sectors and groups affected**

Public bodies that exercise functions in a way that impact (or potentially impact) consumers.

### **Benefits**

#### **Option 1: Do Nothing**

- No additional demand on Scottish Government budget.
- No additional demand on affected public bodies.

#### **Option 2: Implement the duty via non-statutory measures**

- Potentially still some increased consideration of consumers in policy making.

#### **Option 3: Implement the duty via statutory measures**

- Sends out a strong message to consumer and public bodies that the Scottish Government is committed to tackling consumer harm.
- Ensures that impacted public bodies consider and safeguard the consumer interest at an early stage of the policy-making process.
- Increases meaningful consultation with consumers and consumer groups during policy development.
- Reviews of consumer impacts of policies carried out after implementation to ensure that consumers are not being unreasonably or un-intentionally impacted by the real-world consequences of the policy.

### **Costs**

#### **Option 1: Do nothing**

No additional costs related to this option.

#### **Option 2: Implement the duty via non-statutory measures**

Limited costs to Scottish Government or Consumer Scotland of producing guidance papers and workshops to ensure impacted public bodies understand what the duty entails. As there would be no formal reporting processes, there would likely be no additional costs on public bodies.

**Option 3: Implement the duty via statutory measures**

Limited costs to Scottish Government or Consumer Scotland of producing guidance papers and workshops to ensure impacted public bodies understand what the duty entails. Details of how the duty will operate and be reported on by public bodies will be developed consultatively and will be governed by the principle of cost neutrality for affected bodies.

**Scottish Firms Impact Test**

As mentioned above a 12 week public consultation was held along with various stakeholder engagement events. The consultation part of this BRIA provides details. The Scottish Government has carefully considered the views expressed through the online consultation and events in shaping the Bill's provisions. The Scottish Government will continue to engage with stakeholders as the Bill progresses through Parliament and beyond.

**Competition Assessment**

Having answered the four test questions below, we do not consider that our proposals will have an effect on competition. Our proposal is to fill the gap in the consumer landscape and complement existing delivery of consumer advocacy.

- Will the measure directly or indirectly limit the number or range of suppliers?  
No
- Will the measure limit the ability of suppliers to compete?  
No
- Will the measure limit suppliers' incentives to compete vigorously?  
No
- Will the measure limit the choices and information available to consumers?  
No

**Test run of business forms**

No new forms for businesses will be introduced.

**Legal Aid Impact Test**

As confirmed by Scottish Government's Access to Justice Team, none of the proposals in this Bill are likely to give rise to increased use of legal processes or create new rights or responsibilities or have possible impacts on the legal aid fund.

**Enforcement, sanctions and monitoring**

This new consumer body will be created as a body corporate. Accountability for policy delivery, compliance with statutory duties and performance against agreed strategic objectives will be to the Scottish Parliament. This new body will lay reports such as its annual report in Parliament covering how it has performed. The Parliament and Committees will be able to invite the Chair or Chief Executive to explain the matter. This allows robust arrangements to be in place to ensure accountability for its activity, impact and finances.

### **Implementation and delivery plan**

It is anticipated that the new body will be established no earlier than September 2020, but this is subject to the Bill timetable and ongoing policy development. The application of the consumer duty (i.e. the bodies to which it will apply) and its coming into force date will be established by regulations.

### **Post-implementation review**

The Bill provides that Consumer Scotland will be reviewed by an external organisation every three years to evaluate its impact.

### **Summary and recommendation**

Option 3 is the preferred option for both the setting up of a new public body under primary legislation and the implementing of a consumer duty. Initially it is the most costly of all options to Scottish Government; however, stakeholders consistently confirm that it is the option most likely to address the current challenges of the current consumer system, and which can most effectively champion the interests of consumers in Scotland. Setting up a new public body under legislation also meets the requirements of this body needing to be independent and having robust arrangements to ensure accountability for its activity, impact and finances.

### **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

#### **Signed:**



**Date: 29 May 2019**

**Minister's name: JAMIE HEPBURN**

**Minister's title: Minister for Business, Fair Work and Skills**

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