The Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026

Equality Impact Assessment (EQIA)

November 2025

Scottish Government
Riaghaltas na h-Alba

Equality Impact Assessment (EQIA) for The Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026

Title of policy

The Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 ("the Regulations")

Summary of aims and desired outcomes of policy

The overarching aim of the Cross-border Placement of Children (Requirements, Effect and Enforcement) (Scotland) Regulations 2026 ("the Regulations") is to provide a robust legal framework in respect of cross-border placements into residential and foster care, thereby ensuring that the welfare of placed children in Scotland is safeguarded and promoted, and that their rights are upheld.

Directorate: Directorate for Children and Families
Division: Children's Rights, Protection and Justice Division and Justice and Care Experience, Children's Services Reform and The Promise Division
Team: Children's Residential Care Unit and A Good Childhood – Caregivers Unit

Executive summary

In this assessment, 'cross-border placements' are used to describe temporary placements of children into residential or foster care in Scotland from another part of the UK. Children placed into Scotland on cross-border placements remain the responsibility of the placing local authority. For most cross-border placements coming to Scotland, Scottish parties (including health and education) know very little about those children or their circumstances. In many cases, they do not know that children have been placed and often find out through crisis interventions.

The Children (Care and Justice) (Scotland) Act 2024 includes provision to allow the Scottish Ministers to further regulate cross-border placements of children from England, Wales and Northern Ireland into Scotland, which should only ever occur in exceptional circumstances. The Regulations provide for the legal effect in Scots law of court orders or arrangements underpinning placements from elsewhere in the UK and set out conditions to be met in respect of temporary placements into residential and foster care.

Cross-border placements into Scotland should only occur in exceptional circumstances where the placement is in the best interests of the individual child. The Scottish Government's intention through the Regulations is to ensure that cross-border placements into residential and foster care in Scotland are appropriately considered and assessed, and that a clear regulatory framework applies to these placements. This, in turn, will ensure that the rights and wellbeing of children who come to Scotland through cross-border placements are safeguarded and promoted.

The Regulations set out conditions to be met for temporary placements and also provide a route for the "conversion" of certain non-Scottish orders into compulsory supervision orders (CSOs) where the host local authority in Scotland agrees for this to happen. For temporary placements, the Regulations will help to ensure that children's rights are upheld by imposing exacting requirements for recognition of the order or arrangement underpinning the placement, as well as requirements which apply during it.

Background

Currently, the Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022 ("the 2022 Regulations") provide legal recognition in Scots law for Deprivation of Liberty orders (DoL orders)[1], subject to certain conditions and for certain purposes, where a child has been placed into residential care in Scotland. DoL orders are primarily issued by courts in England and Wales and provide legal authorisation for the deprivation of a child's liberty where this is necessary and proportionate.

The Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 ("the 2013 Regulations") also provide for conversion of certain orders made elsewhere in the UK into CSOs where a child is placed in Scotland on a more permanent basis.

When the 2022 Regulations were reviewed by Parliament, stakeholders expressed concerns that they did not sufficiently address issues related to cross-border placements. Although Parliament approved the Regulations in draft, this approval was contingent upon the expectation that additional legislative measures would be introduced to address these concerns.

Evidence gathering has highlighted that for most cross-border placements there is a similar level of risk present, regardless of their underpinning order or the agreement which has been used to place children into Scotland. For most of the cross-border placements coming to Scotland, the key risks are in relation to Scottish parties knowing very little about those children or their circumstances (and so being unable

[1] In 2021, in response to a shortage of secure accommodation as well as other appropriate care placements in England and Wales, local authorities sought authorisation under the inherent jurisdiction of the High Court in England and Wales to place children on DoL orders in other types of non-secure accommodation. The Supreme Court ruled that DoL orders could be implemented outwith secure accommodation without infringing Article 5 ECHR. However, DoL orders were not automatically recognised under Scots law. This meant that an authority which was granted a DoL order needed to petition the Court of Session in Scotland to get such recognition through the court's nobile officium/parens patriae jurisdiction(s). This was important, as lawful authority is an essential requirement for deprivation of liberty to be compliant with Article 5 of the ECHR.

to ensure necessary support can be provided). In many cases, they do not know that children have been placed and often find out through crisis interventions. Children expressed concern that they were sometimes unable to access health services, particularly mental health services, when placed in Scotland. The Scottish Government also understands that children are sometimes placed without education provision having been agreed, leading to children being without education for prolonged periods.

A comprehensive regulatory framework for cross-border placements into residential and foster care in Scotland will help to ensure that children's rights are upheld by requiring that the placement is suitable to meet their needs, that information is shared with the relevant parties and that all necessary support is in place for the duration of a child's placement.

Residential care

As at 31 October 2025, approximately 101 children were placed cross-border into residential care in Scotland. Of these:

- 94 were from England
- 6 were from Northern Ireland
- 1 was from Wales

Breakdown by legal basis for placement:

- Full Care Order – 63
- Interim Care Order – 8
- Voluntary Arrangement – 26
- Deprivation of Liberty Order – 4

These placements cover 21 Scottish local authority areas, with the highest numbers recorded in South Lanarkshire, East Ayrshire, Perth and Kinross, and Dumfries and Galloway.

The number of Deprivation of Liberty (DoL) order placements into residential care in Scotland has been steadily decreasing since the implementation of the Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022 ('the 2022 Regulations') - falling from 17 in December 2022 to 4 in October 2025.

Since the 2022 Regulations came into force, a total of 39 initial DoLs notifications have been received. 35 of these cases have subsequently been confirmed closed either by notification or advocacy intelligence..

Foster care

There is limited data on the number of cross-border fostering placements in Scotland. The Care Inspectorate published its annual Fostering and Adoption bulletin on 28 October which showed that:

‘Over the course of 2024, 11 children or young people from outside of Scotland were placed in Scottish foster care households. On 31 December 2024 there were 18 children or young people from outside of Scotland placed in Scottish foster care households, over both Independent and Local Authority services. Therefore, some of these children or young people will have been placed in Scottish foster care households prior to 1 January 2024.’

In September 2025 the Scottish Government wrote to English placing authorities and the Northern Ireland Executive to gather updated information on the number of cross-border placements into both fostering and residential care in Scotland. This showed that as of 23 September 2025 there were approximately 34 cross-border foster placements. These placements were from England and Northern Ireland. Wales could not provide this data.

The Regulations will provide more accurate data on cross-border foster placements.

The Scope of the EQIA

The Regulations apply to children from another part of the UK who are placed into residential or foster care in Scotland, subject to particular orders or arrangements. The Regulations provide legal recognition in Scots law for such orders and arrangements and set out requirements to be met in terms of the placement. As such, the direct impact on protected characteristics is expected to be minimal. However, the Regulations are likely to have some positive impacts by ensuring that these characteristics are given due consideration within a clearer legal framework.

It is important to note that the wider impacts of cross-border placements themselves are outside the scope of this policy. Such placements are already taking place, will continue to do so, and remain the responsibility of the placing authority outside Scotland. That authority must determine whether the placement is in the best interests of the child (considering the terms of any relevant court order) and should take account of any relevant protected characteristics in making its decision. This EQIA therefore focuses specifically on the impacts of the Regulations and supporting documents, rather than on the impacts of cross-border placements themselves.

The EQIA considered the full range of protected characteristics under the Equality Act 2012. In line with the Public Sector Equality Duty (PSED), the EQIA addressed the three needs:

- Eliminating unlawful discrimination, harassment and victimisation
- Advancing equality of opportunity
- Fostering good relations

In assessing each protected characteristic, we considered factors such as the available evidence, its strength and sufficiency, and any potential positive or negative impacts.

The EQIA used a combination of qualitative and quantitative methods to assess impact. Quantitative data included:

- National statistics (e.g. Children's Social Work Statistics 2023/24)
- Scottish Government data on DoL placements
- Care Inspectorate data on cross-border placements
- Care Inspectorate Fostering and Adoption Bulletin
- In March 2025, the Scottish Government wrote to English placing authorities to gather information including the number of cross-border placements into residential care in Scotland and the location of these placements.
- In September 2025 the Scottish Government wrote to English placing authorities to gather updated information on the number of cross-border placements into both fostering and residential care in Scotland

Qualitative evidence included:

- Stakeholder engagement workshops in March 2025 to test and refine the policy for residential care placements.
- In August and September 2024, two stakeholder workshops were held to understand key challenges with cross-border placements into residential care and how the Regulations could help to address them. The outputs of these sessions can be found on the Scottish Government's webpage.
- In February 2024 the Scottish Government wrote to English placing authorities to gather evidence in relation to why children are being placed in residential care in Scotland
- In October 2023 the Scottish Government facilitated a stakeholder workshop to review the effectiveness of the 2022 Regulations
- In August 2023 the Scottish Government worked with the Association of Directors of Children's Services (ADCS) in England to gather information on a sample of cross-border placements where children are subject to voluntary arrangements to understand why these types of placements arise.
- The Care Inspectorate's thematic review of cross-border placements into residential care Scotland, published May 2023
- The Independent Care Review -The Promise

The framing exercise and stakeholder engagement helped shape the scope and depth of the EQIA, ensuring that equality considerations were embedded throughout the policy development process. Stakeholder engagement was central to the EQIA process.

Key Findings

Currently, all UK public authorities involved in the care of children must comply with the public sector equality duty, including ensuring the activities and services they are providing do not discriminate against people with protected characteristics as listed in the Equality Act 2010. This means that the child's plan (and/or any court order) should include full consideration of all the child's unique needs. This will continue to be the case once the Regulations are, subject to Parliamentary approval, implemented.

Given the scope of the policy is to provide for legal recognition of orders and arrangement and better regulate the placement process, we consider that any impact of the Regulations on each protected characteristic will be minimal. We found no evidence that children with any protected characteristic would be disproportionately or adversely affected.

The Regulations will help to ensure that the placement process is better regulated, making it clear that the placing authority is responsible for ensuring the child's welfare in temporary placement scenarios. The Regulations will also provide a robust mechanism for information-sharing, which increases the ablility of those involved in the child's life to understand the child's unique needs and opportunities for unlawful discrimination to be identified and addressed. The introduction of an offer of advocacy to children who are placed into residential care in Scotland will bring further positive impact, supporting children to provide their views to the residential accommodation provider which is hosting them. For example, engaging with a Scottish advocate will allow the child to express how their in-placement experience aligns with their child's plan and how their welfare is being protected.

Further consideration is given to each protected characteristic below.

Age

- The Regulations apply to children people placed cross-border into Scotland, defined as individuals under the age of 18. However, they do not directly impact the protected characteristic of age.
- A key condition for recognising the legal underpinning of a placement is that the placing authority must notify relevant Scottish stakeholders and provide information about each placement, including the child's date of birth. Information on the age of children currently placed cross-border is not known.
- It remains the responsibility of the placing authority and/or the relevant court in the child's home jurisdiction to determine whether a placement is in the child's best interests. Consideration of whether the placement is age-appropriate should form part of that decision-making process.
- The Regulations will require that placing authorities adhere to duties they set out, which include, for example, to comply with requirements of any order the child is subject to and investigate from time to time whether these are being complied with, and to take such steps as are reasonable if not.
- The Regulations include provision for Scottish Ministers to offer and fund advocacy for all children temporarily placed cross-border into residential care. This will help ensure that these children are supported to express their own needs and views and to make informed decisions on matters which influence their lives.

Disability

- The Regulations apply equally to all children, regardless of disability.
- The Regulations will require placing authorities in the residential context to give an undertaking to provide or secure the provision of all services to support the child for the duration of the placement. This includes any necessary health and education support. The Regulations also require the

placing authority to comply with requirements of any order a child is subject to and investigate from time to time whether these are being complied with, and to take such steps as are reasonable if not.

- For residential care placements, the Regulations will require that placing authorities undertake regular reviews and visits to the child. The Regulations also include provision for Scottish Ministers to offer funded advocacy. This will ensure, for example, that children with disabilities – especially those with communication or cognitive impairments – can participate in decisions about their care. This promotes voice, choice, and control, key elements of equality of opportunity.
- For foster care placements, the Regulations require the placing fostering authority to provide or secure all services required to support the placed child and enter into an agreement with the foster carer. This agreement will place obligations on the placing fostering authority to provide all information to the foster carer about the child's care and wellbeing. This includes outlining a plan for regular reviews and visits in line with the legislative requirements in the child's home jurisdiction.
- A child's disability is particularly relevant when determining whether a placement is in their best interests and whether it meets their individual needs. These decisions are made by the placing local authority (and sometimes the relevant court in another part of the UK). Whether or not the placement appropriately takes account of any disability should be part of that decision-making. If a child's disability could not be appropriately accommodated in a proposed placement, the placement would not be in the best interests of the child.

Sex

- The Regulations apply equally to placements of boys and girls.
- The Regulations will require placing authorities in the residential context to give an undertaking to provide or secure the provision of all services to support the child. The Regulations also require the placing authority to comply with requirements of any order the child is subject to and investigate from time to time whether these are being complied with, and to take such steps as are reasonable if not.
- For residential care placements, the Regulations will require that placing authorities undertake regular reviews and visits to the child. The Regulations also include provision for Scottish Ministers to offer funded advocacy, which will ensure that children can participate in decisions about their care. This promotes voice, choice, and control, key elements of equality of opportunity.
- For foster care placements, the Regulations require the placing fostering authority to provide or secure all services required to support the placed child and enter into an agreement with the foster carer. This agreement will place obligations on the placing fostering authority to provide all information to the foster carer about the child's care and wellbeing. This includes outlining a plan for regular reviews and visits in line with the legislative requirements in the child's home jurisdiction.

- The decision to place a child is typically made by the placing local authority or the court in another part of the UK and fall outside the scope of this policy. However, the Regulations require that, for recognition of the legal underpinning of the placement in Scotland, an assessment must be made by an officer of the placing local authority/placing fostering authority that the proposed placement setting is suitable to meet the child's needs. This assessment will then be re-visited throughout the placement as part of the relevant review process.

Pregnancy and Maternity

- It remains the responsibility of the placing authority (and/or the relevant court) to determine whether a placement is in the child's best interests. If a child placed cross-border becomes pregnant, consideration of whether the placement is (or remains) appropriate forms part of that decision-making process.
- Information relating to pregnancy and maternity is particularly relevant when determining whether a placement is in the child's best interests and whether it meets their individual needs. These decisions – typically made by the placing local authority or the court in another part of the UK – fall outside the scope of this policy. However, the Regulations require that, for recognition of the legal underpinning of the placement in Scotland, an assessment must be made by an officer of the placing local authority/placing fostering authority that the proposed placement setting is suitable to meet the child's needs. This assessment will then be re-visited throughout the placement as part of the relevant review process.
- As with any placement, individual case considerations would be undertaken if a child became pregnant, and various options would be considered including foster care, specific mother and baby services, their existing children's home (if deemed safe and in their best interest).
- Under the Equality Act 2010, public authorities must not discriminate against people on the grounds of pregnancy and maternity. To date, there is no evidence of any child involved in a past or present cross-border placement being pregnant.
- In the event that a child in a future cross-border placement was or were to become pregnant, this policy would not influence any resulting impact. Responsibility for considering this protected characteristic would lie with the placing authority seeking the placement and any court granting or reviewing an order the child is subject to.

Gender reassignment

- The Regulations apply equally to all children, including those who identify as transgender, or are undergoing or have undergone gender reassignment.
- The Regulations will require placing authorities in the residential context to give an undertaking to provide or secure the provision of all services to support the child. The Regulations also require the placing authority to comply with requirements of any order the child is subject to and investigate from time

to time whether these are being complied with, and to take such steps as are reasonable if not.

- For residential care placements, the Regulations will require that placing authorities undertake regular reviews and visits to the child. The Regulations also include provision for Scottish Ministers to offer funded advocacy, which will ensure that children can participate in decisions about their care. This promotes voice, choice, and control, key elements of equality of opportunity.
- For foster care placements, the Regulations require the placing fostering authority to provide or secure all services required to support the placed child and enter into an agreement with the foster carer. This agreement will place obligations on the placing fostering authority to provide all information to the foster carer about the child's care and wellbeing. This includes outlining a plan for regular reviews and visits in line with the legislative requirements in the child's home jurisdiction.
- Information relating to gender reassignment is particularly relevant when determining whether a placement is in the child's best interests and whether it meets their individual needs. These decisions – typically made by the placing local authority or the court in another part of the UK – fall outside the scope of this policy. However, the Regulations require that, for recognition of the legal underpinning of the placement in Scotland, an assessment must be made by an officer of the placing local authority/placing fostering authority that the proposed placement setting is suitable to meet the child's needs. This assessment will then be re-visited throughout the placement as part of the relevant review process.

Sexual Orientation

- The Regulations apply equally to children of all sexual orientations.
- The Regulations will require placing authorities in the residential context to give an undertaking to provide or secure the provision of all services to support the child. The Regulations also require the placing authority to comply with requirements of any order the child is subject to and investigate from time to time whether these are being complied with, and to take such steps as are reasonable if not.
- For residential care placements, the Regulations will require that placing authorities undertake regular reviews and visits to the child. The Regulations also include provision for Scottish Ministers to offer funded advocacy, which will ensure that children can participate in decisions about their care. This promotes voice, choice, and control, key elements of equality of opportunity.
- For foster care placements, the Regulations require the placing fostering authority to provide or secure all services required to support the placed child and enter into an agreement with the foster carer. This agreement will place obligations on the placing fostering authority to provide all information to the foster carer about the child's care and wellbeing. This includes outlining a plan for regular reviews and visits in line with the legislative requirements in the child's home jurisdiction.
- Information relating to sexual orientation is particularly relevant when determining whether a placement is in the child's best interests and whether it

meets their individual needs. These decisions – typically made by the placing local authority or the relevant court in the child's home jurisdiction – fall outside the scope of this policy. However, the Regulations require that, for recognition of the legal underpinning of the placement in Scotland, an assessment must be made by an officer of the placing local authority/placing fostering authority that the proposed placement setting is suitable to meet the child's needs. This assessment will then be re-visited throughout the placement as part of the relevant review process.

Race

- The Regulations apply equally to all children, regardless of race.
- The Regulations will require placing authorities in the residential context to give an undertaking to provide or secure the provision of all services to support the child for the duration of the placement. This includes any necessary health and education support. The Regulations also require the placing authority to comply with requirements of any order a child is subject to and investigate from time to time whether these are being complied with, and to take such steps as are reasonable if not.
- For residential care placements, the Regulations will require that placing authorities undertake regular reviews and visits to the child. The Regulations also include provision for Scottish Ministers to offer funded advocacy. This will ensure, for example, that children with disabilities – especially those with communication or cognitive impairments – can participate in decisions about their care. This promotes voice, choice, and control, key elements of equality of opportunity.
- For foster care placements, the Regulations require the placing fostering authority to provide or secure all services required to support the placed child and enter into an agreement with the foster carer. This agreement will place obligations on the placing fostering authority to provide all information to the foster carer about the child's care and wellbeing. This includes outlining a plan for regular reviews and visits in line with the legislative requirements in the child's home jurisdiction.
- Information relating to race is particularly relevant when determining whether a placement is in the child's best interests and whether it meets their individual needs. These decisions – typically made by the placing local authority or the relevant court in the child's home jurisdiction – fall outside the scope of this policy. However, the Regulations require that, for recognition of the legal underpinning of the placement in Scotland, an assessment must be made by an officer of the placing local authority/placing fostering authority that the proposed placement setting is suitable to meet the child's needs. This assessment will then be re-visited throughout the placement as part of the relevant review process.

Religion or Belief

- The Regulations apply equally regardless of a child's religion, faith, or belief.
- The Regulations will require placing authorities in the residential context to give an undertaking to provide or secure the provision of all services to support the child for the duration of the placement. This includes any

necessary health and education support. The Regulations also require the placing authority to comply with requirements of any order a child is subject to and investigate from time to time whether these are being complied with, and to take such steps as are reasonable if not.

- For residential care placements, the Regulations require that placing authorities undertake regular reviews and visits to the child. The Regulations also include provision for Scottish Ministers to offer funded advocacy. This will ensure, for example, that children with disabilities – especially those with communication or cognitive impairments – can participate in decisions about their care. This promotes voice, choice, and control, key elements of equality of opportunity.
- For foster care placements, the Regulations require the placing fostering authority to provide or secure all services required to support the placed child and enter into an agreement with the foster carer. This agreement will place obligations on the placing fostering authority to provide all information to the foster carer about the child's care and wellbeing. This includes outlining a plan for regular reviews and visits in line with the legislative requirements in the child's home jurisdiction.
- Information relating to religion or belief is particularly relevant when determining whether a placement is in the child's best interests and whether it meets their individual needs. These decisions – typically made by the placing local authority or the relevant court in the child's home jurisdiction – fall outside the scope of this policy. However, the Regulations require that, for recognition of the legal underpinning of the placement in Scotland, an assessment must be made by an officer of the placing local authority/placing fostering authority that the proposed placement setting is suitable to meet the child's needs. This assessment will then be re-visited throughout the placement as part of the relevant review process.

Marriage and Civil Partnership

- We have not identified any potential impact of the policy on marriage or civil partnership due to the age and circumstances of the children who are subject to cross-border placements.
- The Regulations may also have minor indirect effects on children already in care in Scotland. For example, better-regulated cross-border placements are less likely to break down, reducing the need for emergency staff intervention and resources, which benefits all children in the same residential setting.

Recommendations and conclusion

Consideration of protected characteristics has driven this policy and informed decision making at every stage.

The EQIA has shaped the policy making process in a number of ways. It helped to inform the decisions to:

- Require an undertaking to be provided by or on behalf of the placing authority to all the listed Scottish authorities in the residential context, to set out that the

placing authority will provide or secure the provision of all services required to support the child, and to place a parallel obligation on a placing fostering authority to provide or secure such services for a child in a fostering context. This aims to ensure that any potential negative impacts on each characteristic are identified and mitigated and that provision of required services takes account of a child's specific needs, whether in relation to disability, religion or other protected characteristics.

- Require a written notice to be provided by the placing local or fostering authority to all the listed Scottish authorities, providing key information in relation to the child and their placement (including the child's age). Although limited data on equality characteristics is shared, the improved framework for information-sharing could help to increase the opportunity for any unlawful discrimination to be identified and addressed. It will also support improved planning in respect of required support and services for children placed into Scotland and improved data about these placements.
- Require regular visits and reviews of residential care placements to ensure the child's wellbeing and that placement remains suitable to meet the child's needs.
- Require the Scottish Ministers to, as soon as reasonably practicable, inform all children placed cross-border into residential care of the availability of children's advocacy services. Where advocacy is offered and is taken up, children will have a chance to express their views through the advocate – which provides an opportunity for any issues in terms of impacts on a particular protected characteristic to be identified and communicated to the responsible authorities.
- Require an agreement to be made between the placing fostering authority and the foster carer. This agreement will place obligations on the placing authority to provide all information to the foster carer about the child's care and wellbeing. This includes outlining a plan for regular reviews and visits in line with the legislative requirements in the child's home jurisdiction.
- Retain powers similar to those provided in the 2022 Regulations to allow Ministers to apply a sheriff for an enforcement order if a placing authority does not comply with certain duties – for example, allowing them to seek a judicial remedy where a placing authority does not effectively implement a non-Scottish order which has effect as if it were a CSO and to enforce requirements for visits and reviews in the residential context. However, recognising the time required to see through this formal enforcement process (noting some issues require immediate attention), in consultation with Chief Social Work Officers, the Scottish Government has developed an escalation process that aims to resolve concerns between parties on an informal basis, where possible. This has already been introduced for DoL order placements under the 2022 Regulations and, if the Regulations are passed by Parliament, this will be replicated for all cross-border placements into residential care.

Whilst no issues were identified as a result of this EQIA, there will be continued consideration of the impact of the Regulations following implementation (if passed by Parliament). We will continue to work collaboratively with the UK Government and other devolved administrations to monitor the effectiveness of the Regulations. A

review of the implementation of the Regulations will be undertaken after one year, if the Regulations are approved by Parliament.

All providers of care services for children are required to register with the Care Inspectorate, who have a duty to regulate care services and report on their quality, investigate complaints and help support improvement, as required.

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Any enquiries regarding this publication should be sent to us at

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