

Agenda – Finance Committee

Meeting Venue:	For further information contact:
Committee Room 3 – Senedd	Bethan Davies
Meeting date: Wednesday, 25 January 2017	Committee Clerk 0300 200 6372
Meeting time: 09.30	SeneddFinance@assembly.wales

Private item

At its meeting on 19 January 2017, the Committee resolved under Standing Order 17.42 to exclude the public from item 1.

1 Consideration of the Draft Public Services Ombudsman (Wales) Bill (09.30) (Pages 1 – 48)

Paper 1 – Draft Public Services Ombudsman (Wales) Bill

2 Introductions, apologies, substitutions and declarations of interest (10.00)

3 Paper(s) to note (10.00)

**Letter from the Secretary of State for Wales – Financial provisions of Wales Act
2014 – 28 December 2016**

(Pages 49 – 50)

**Letter from the Chair of the Constitutional and Legislative Affairs Committee – A
stronger voice for Wales: engaging with Westminster and the devolved institutions
– 17 January 2017**

(Pages 51 – 57)



4 Landfill Disposals Tax (Wales) Bill: Evidence session 6

(10.00)

(Pages 58 – 76)

Mike Trotman, Associate Director, Deloitte LLP

Gareth Pritchard, Tax Partner, Deloitte LLP

Paper 2 – Deloitte – written evidence

5 Landfill Disposals Tax (Wales) Bill: Evidence session 7

(11.00)

(Pages 77 – 94)

Jennifer Doyle, Senior Project Manager, Cory Environmental

Jacqueline Doone, Group Indirect Tax Manager, Biffa Group Limited

Paper 3 – Cory Environmental – written evidence

6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

(12.00)

7 Landfill Disposals Tax (Wales) Bill: Consideration of evidence

(12.00)

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Rt Hon Alun Cairns MP
Secretary of State for Wales
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Simon Thomas MP *AM*
National Assembly for Wales
Cardiff Bay
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Ref: 99SOS 16

28th December 2016

Annual implementation report in relation to the financial provisions of the Wales Act 2014

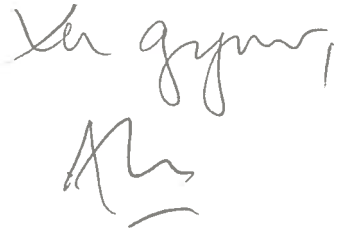
Thank you for your letter of 7 December inviting me to attend a meeting of the Finance Committee to discuss the second annual report on the implementation and operation of Part 2 (finance) of the Wales Act 2014. In line with the requirements under section 23 of the Wales Act 2014, copies of this report have been laid before Parliament and laid before the Assembly by the Cabinet Secretary for Finance and Local Government.

I am pleased that the Committee has identified the scrutiny of fiscal devolution as one of its key priorities over the fifth Assembly. As you are aware a fiscal framework has been agreed between the UK and Welsh governments, setting out how the Welsh Government will be funded following the devolution of stamp duty land tax, landfill tax and Welsh rates of income tax. Under the new arrangements both governments have agreed Wales will have a fair level of funding for the long term.

This is a historic deal that will pave the way for the National Assembly and Welsh Government taking on more responsibility for how money is raised in Wales. The Agreement, together with the implementation report, give a clear signal on the Government's progress towards tax devolution and I do not feel there is anything further I can add at this time. I must therefore decline your request to give evidence.

I am more than happy to meet committee members on an individual basis to raise any particular concerns. I suggest that committee members' dairy secretaries contact mine to agree mutually beneficial dates.

I wish you well with your inquiry and will await your report with interest.

Handwritten signature of Alun Cairns in black ink, consisting of two lines of cursive script.

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Simon Thomas AM
Chair
Finance Committee

17 January 2017

Dear Simon,

A Stronger Voice for Wales: engaging with Wales and the devolved institutions

We have recently launched an inquiry looking at inter-institutional relations between Wales and the UK. A copy of the consultation letter is attached.

As effective inter-governmental working cuts across all the remit of all committees, we welcome any views your committee may have on any area of our terms of reference.

We are also aware that a number of committees have established working relationships with committees with shared interests from across the United Kingdom, and we would welcome any further views you may have on how we can better improve inter-parliamentary working.

We will be sharing our findings with all the Assembly committees when we have completed our work.

Yours sincerely



Huw Irranca-Davies AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



December 2016

Dear Colleague

A stronger voice for Wales: engaging with Westminster and the devolved institutions

The Constitutional and Legislative Affairs Committee have agreed to undertake an inquiry into inter-institutional working. The Committee intends to build on the work already undertaken by other legislatures on this issue, including the House of Commons Public Administration and Constitutional Affairs Committee; the House of Lords Constitution Committee and the Scottish Parliament's Devolution (Further Powers) Committee.

The Committee has set the following inquiry objectives:

Inquiry objectives:

To produce best practice principles for inter-institutional working for constitutional legislation.

To reflect and build on the work of other legislatures on inter-institutional working as it relates to broader policy areas.

To seek, establish and promote opportunities for inter-parliamentary working, including promotion of citizen engagement.



The Committee has split the work into two strands. We will start work on the first strand in January, with the aim of finishing work on both strands by summer 2017.

Terms of reference

In order to assist us in our work we would welcome your views on any or all of the following points:

Strand I: Inter-institutional relations [Constitutional matters]

To review how inter-institutional relations have influenced development of Welsh devolution since 1998.

This will include looking at:

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- How inter-governmental mechanisms have impacted on the development of the devolution settlement.
 - How inter-governmental relations have developed and evolved, what worked well and the impact these relations have had on the devolution settlement.
 - How inter-parliamentary relations have evolved, the current state of these relations and how they could be further developed in relation to the development and scrutiny of constitutional legislation.
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Strand II: Inter-institutional relations [Policy matters]

By building on the work previously undertaken across the UK to explore within the Welsh context:

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- The nature of relationships between the Welsh and UK Government, how these relationships function and how they can be improved.
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- Improving opportunities for improved policy learning between Governments and Parliaments.
 - Best practice in inter-institutional relations from across the UK which could be imported into the Welsh context.
 - The nature of the relationship between the Welsh and UK legislatures and to identify opportunities for effective inter-parliamentary working.
-

To cover any other matters that relate to inter-institutional relationships, including relevant implications of the UK leaving the EU.

Invitation to contribute

General information regarding consultation procedures, which should be considered carefully before submitting evidence to the Committee, is set out in the Annex. Responses should be submitted by **Friday 17 February 2017**. It may not be possible to take into account responses received after this date.

If you have any queries, please contact Gareth Williams, Committee Clerk on 0300 200 6362 / SeneddCLA@assembly.wales

Yours sincerely

Huw Irranca-Davies

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English



Annex

Submitting Written Evidence to the Committee

Disclosure of Information

1. The Assembly's [policy on disclosure of information](#) is available; please ensure that you have considered these details carefully before submitting information to the Committee. Alternatively a hard copy of this policy can be requested by contacting the Clerk.

Submitting evidence

2. If you wish to submit evidence, an electronic copy of your submission should be returned to: SeneddCLA@assembly.wales

Alternatively, you can send it to:

Constitutional and Legislative Affairs Committee

National Assembly for Wales

Cardiff Bay

CF99 1NA.

3. Submissions should arrive by **17 February 2017**. It may not be possible to take into account responses received after this date.

4. When preparing your submission, please keep the following in mind:

- your response should address the terms of reference;
- the National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed by Assembly Members at Committee meetings. If you do not want your response or name published, it is important that you specify clearly this in your submission; and
- please indicate whether you are responding on behalf of an organisation, or as an individual.



Guidance for witnesses providing written evidence for committees

5. The Assembly is committed to providing accessible information to the widest audience possible. This short guide is to assist witnesses who produce written information for committees. This will enable the Assembly to provide information submitted by third parties in an accessible manner.

- Use plain English and plain Welsh – avoid unnecessary jargon.
- Use a minimum of font size 12.
- Use a clear sans serif typeface, such as Lucida Sans.
- Do not have writing over graphics, pictures or watermarks.
- Colours and contrast – writing should have maximum contrast to the background: dark on light, light on dark.
- Do not use block capitals, and minimise use of bold, underlining and italics.
- If you wish to refer to a published document, please include a hyperlink to that document, rather than the document itself.

6. Where possible, information should be provided in Microsoft Word to ensure accessibility. Where a scan or PDF is provided, particularly in the case of signed letters or tables of information, the original Word document should be provided along with it.

General

7. The Committee welcomes evidence from those with an interest in this subject. If you are responding on behalf of an organisation, please provide a brief description of the role of your organisation.

8. The Committee welcomes contributions in both or either of our official languages, English and Welsh. Information not submitted bilingually will not be translated and will be published in the language of submission only.

9. The Committee will consider responses to the written consultation.



10. For your information, the Committee has invited submissions from a wide range of organisations, a list of which is available on request. A copy of this letter has also been placed on the National Assembly's website with an open invitation to submit views. However, the Committee would be grateful if you could forward a copy of the consultation letter and Annex to any individuals or organisations that you believe might wish to contribute to the inquiry.



The Committee Clerk

Finance Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

11 January 2017

Emailed to: seneddfinance@assembly.wales

Dear Sir/Madam

Consultation on the Landfill Disposals Tax (Wales) Bill ("The Bill")

We welcome the opportunity to respond to the Finance Committee of the National Assembly's call for evidence on the Bill. We attach at an appendix our specific comments on the Bill but the general points we would also like to make are set out below.

1. Since its introduction in the UK on 1 October 1996 landfill tax has been relatively successful in achieving its stated aims of changing behaviour in the waste treatment sector from environmentally damaging practices of landfilling waste material to more positive practices of developing and adopting less polluting treatment processes. The escalator applied to the standard rate has led to prohibitively expensive waste treatment technologies becoming viable and more widely implemented. This, along with other regulatory measures introduced to encourage diversion of waste from landfill has contributed significantly to substantial falls in the volume of waste material going to landfill sites. The tax has had a dual role – firstly to encourage behaviour change and secondly (arguably) to raise revenue. These two roles are not necessarily compatible and devolving the tax to Wales will give the Welsh Government the challenge of successfully managing both objectives.
2. The inevitable consequence of increasing the cost of landfill has been to increase motivation to deposit waste in unauthorised sites and to fly-tip. The Bill introduces a novel approach to this problem by bringing unauthorised disposals into the scope of the tax, providing the Welsh Revenue Authority (and the NRW) with an additional tool to combat illegal disposals. Given that landfill tax has proven successful in changing behaviour in the legitimate waste treatment sector there are good grounds for using landfill disposals tax to encourage further behaviour change in Wales.
3. As the tax is geographical – revenue arising according to the location of the landfill site – differences between the structure of Landfill Disposals Tax in Wales and Landfill Tax in England and differences in the approaches adopted by the different revenue agencies, can affect the level of waste being brought to landfill sites in Wales (on the border with England) and the revenue arising from the tax. Landfill tax is continuing to be revised in England in an attempt to address operational concerns and legal disputes, so a further challenge for Wales is to what extent revisions in England should be mirrored in Wales.

If you have any specific queries then please do not hesitate to get in touch.

Yours sincerely



Gareth Pritchard

Deloitte LLP

Appendix

1. Section 3(4) sets out that for a disposal to be a 'taxable disposal' the material must be 'waste'. Section 6 then goes on to better define what is meant by 'waste' in this context, stating that whether or not material is waste depends upon the intention of the person responsible for its disposal. Current legislation for landfill tax in England and Wales (Finance Act 1996, s64) contains a similar definition for the purpose of determining taxable material, specifying that if the person making the disposal does so with the intention of discarding the material then the material is 'waste' for the purposes of landfill tax. This definition has previously been the subject of high profile litigation including *HMRC v Waste Recycling Group Limited* (2008) EWCA Civ 849, which found that putting material to use within a landfill site meant that there could not have been an intention to discard it as waste and therefore the material was not part of a taxable disposal. HMRC subsequently sought to address this apparent gap in the definition by introducing legislation (Finance Act 1996, s65A) that specifically prescribed uses of material that would always be treated as taxable even if the material had a useful function on the site. In light of this litigation and the perception that defining taxable material by reference to what is in the mind of the person discarding it is difficult to establish empirically, HMRC consulted stakeholders during 2016 and on 5 December 2016 published plans to remove the waste criteria from the definition of a taxable disposal. These changes will come into effect from a future date (once the Finance Act 2017 receives Royal Assent). Thereafter, unless similar changes are introduced in Wales, there will be a fundamental difference between definitions of taxable disposals in Wales and those in England. As with any difference between the application of the tax in Wales and England, it will be important to consider the potential impact it may have on behaviour in the waste sector and whether the difference has the potential to draw waste into Wales or drive it out of Wales and into landfill sites across the border. Given the fundamental nature of this particular difference in definition, we recommend that due consideration is given to adopting a similar definition in Wales.
2. Sections 6 ('Disposal of material as waste') and 7 ('Disposal of material as waste: person responsible for disposal') specify that the person whose intention is relevant to determining whether or not the material is 'waste', is the operator of the site at the time of disposal, and a third party's intention is only relevant if that party makes a disposal without the knowledge of the site operator. We note that this also varies from the extant legislation in England where the intention criterion is not limited to the site operator but can also extend to a third party on whose behalf the site operator makes a disposal. This criterion has been examined at tribunal (including *Parkwood Landfill Ltd v Commissioners of Customs and Excise* (2002) EWCA Civ 1707) concluding that the intention of the person actually making the disposal to landfill is the relevant one rather than the intention of entities further back in the supply chain. In light of this it seems sensible that the more restrictive condition adopted in the draft Bill is the better, more appropriate one (notwithstanding our comments at 1 above).
3. Section 6(2) states that whether or not a person has the intention to discard material may be 'inferred from the circumstances of its disposal' – i.e. if the

material is deposited in a landfill then it is likely to be discarded as waste. In general, establishing tax liability by inference is challenging and we wonder whether this section provides any practical assistance.

4. Section 7 identifies that the person responsible for disposal is the operator of the site or, if a disposal is made by a third party without the knowledge of the operator, the person responsible is that other party. There are occasions where someone other than the recognised site operator controls material being deposited on a site with full permission of the site operator. It seems that the current drafting of the Bill does not recognise this 'controller' as having any responsibility for landfill tax for material deposited in a landfill site under their direction. Rather, under the Bill as drafted, the site operator holds all responsibility for this material even though the site operator may have little detailed knowledge of the quantum and weight of material being deposited by a site controller. We wonder whether a 'controller' of waste entering a landfill site should also be recognised by the Bill so as to ensure that such a person is held to account for the tax (perhaps jointly and severally with the site operator as is the case in extant legislation in England) and also to remove from the site operator a risk of exposure to tax on operations for which he has little detailed knowledge.
5. Section 8 (Landfill site activities to be treated as taxable disposals) sets out particular on-site uses of material that will be taxable. Similar activities are prescribed as taxable in England (Finance Act 1996 s65A - as noted in 1 above) but the need to do so will end once the Finance Act 2017 receives Royal Assent and the waste criteria is removed from the definition of a taxable disposal is removed. As commented above, if, after due consideration, the waste criteria is removed from the definition of a taxable disposal in Wales to reflect the changes in England, section 8 would also become redundant.
6. Sections 9, 10 and 11 (Exempt Disposals) provide exemption from the tax for material deposited at the same site for a second time (section 10) and for specified material deposited in pet cemeteries (section 11). Currently there are also exemptions for material removed from water courses, material arising from certain mining operations and qualifying material being deposited into quarries. We note that the Bill similarly allows for these materials to be tax free but does so by granting them 'relief' (in sections 26 and 27) rather than exemption. It is not entirely clear to us why some tax free material is classified as relieved from the tax in the Bill rather than exempt from the tax as in the extant legislation in England. Material falling into both categories will need to be reported in tax returns. We note that a relief is only available for relevant disposals made at authorised landfill sites so we query whether the underlying reason here is to restrict tax free status for unauthorised sites. In the absence of any strategic aims we consider that tax free treatment might be applied through exemptions only.
7. Section 16 sets out the tax treatment of qualifying (i.e. lower rate) mixtures of materials, stating that a 'small amount' of non-qualifying (i.e. standard rated) material which appears incidentally in a mixed load would not prevent the lower rate of tax being applied to the entire load. Taking a view on what is 'small' and

'incidental' will be difficult for taxpayers and for the WRA but given the inevitability that many loads will contain a mix of materials a subjective test of this type is unavoidable. We therefore endorse the inclusion in the Bill (s16 (3)) of a provision that regulations can prescribe what percentage constitutes a 'small' amount. Determining a percentage by weight or volume will also be challenging for taxpayers but this measure will provide greater clarity than that provided by the subjective terms 'small' and 'incidental' – particularly where there are disputes.

8. Section 21 provides for the weight of taxable material to be discounted for added water content. We are aware that the appropriateness of water discounts has become more contentious given that landfill regulations (we understand) seek to reduce or wholly prevent water being sent to landfill. Nevertheless, water discounting is available for material deposited in sites elsewhere in the UK including Scotland currently, so we endorse its inclusion in the Bill. In any case water discounting will only be available on approval by the WRA so the risk of abuse is minimal. Current legislation restricts water discounting to material where added water constitutes 25% or more of the waste material. In prescribing the conditions where discounting is available, section 21 of the Bill does not include such a requirement and, given that setting a minimum would appear to be quite arbitrary, we endorse this. It seems to us that the WRA, perhaps assisted by NRW will be better placed to determine whether the discount applies in the context of the specific material being deposited.
9. Part 4 of the Bill concerns disposals made at locations other than authorised landfill sites and seeks to tax unauthorised disposals. The deterrent effect of this measure may depend upon how readily and effectively it can be applied, and this would be hindered if the provisions are too complicated or difficult to apply. Areas of complication and contention may include:
 - a. Applying the tax to a person who owns land upon which unauthorised disposals are made (by someone else) and where it may be necessary to establish at tribunal that the landowner knowingly caused or knowingly permitted that such a disposal was made (s46(2)).
 - b. Timescales – the WRA will have 20 years after an unauthorised disposal is believed to have taken place to issue a Preliminary Notice advising the relevant person that the tax may be applied. A Charging Notice applying the tax must be issued by the WRA within the subsequent 45 days, and the tax assessed must be paid within the following 30 days. Given the extent of history that the person may have to review, a timescale of 75 days from the Preliminary Notice to payment of tax (and possible penalties) does seem disproportionately short (s47, 48, 49, 50).
 - c. There does not appear to be any provision in the Bill for the person to seek time to pay the assessed tax where, for instance, the matter is disputed and the person is in financial hardship.

10. Section 59 - where an unauthorised disposal has taken place this section provides for information to be shared with the WRA by a county council, borough council or the NRW. The nature of the tax is such that these bodies are intrinsic to its application and so each of them is likely to hold information relevant to waste disposal activities in Wales. In practice it seems likely that this information will relate mostly to authorised disposal activities and that the data relating to wholly unauthorised disposals will be very limited or – given the nature of the activity – negligible. In this context, it is important that the legitimate right to confidentiality of businesses in their dealings with each of the bodies concerned, is not compromised in the pursuit of information that may be of limited use to the WRA.

By virtue of paragraph(s) vi of Standing Order 17.42

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National Assembly for Wales
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16th January 2017
www.coryenvironmental.co.uk

Dear Mr Thomas

Consultation on the Landfill Disposals Tax (Wales) Bill - Invitation to contribute to the inquiry

Further to an invitation by your colleague, Georgina Owen, I include below a statement for consideration by your Finance Committee members at their meeting on 25th January 2017. I should be happy to attend if you consider my presence would be helpful.

My role in Cory as Senior Project Manager involves managing business development projects, environmental systems and trusts.

I, on behalf of Cory, welcome the opportunity to present to the Committee and to offer support in the development of the Landfill Disposals Tax (Wales) Bill. During the process we have very much appreciated the openness shown by your representatives, their willingness to learn from operators and to improve upon the established systems used elsewhere in the UK. The approach shown by your Government and your representatives give us great confidence that the Landfill Disposals Tax (Wales) Bill, LTD, will be introduced in a smooth and orderly manner and that given sufficient resources will be operated in an efficient fair and professional manner.

In developing the LDT for Wales the Welsh Government stated its commitments to

- be fair to landfill operators and to businesses who pay the taxes
- apply simple clearly stated rules which seek to minimise compliance and administration costs
- support growth and jobs and in turn help tackle poverty
- provide stability and certainty for tax payers

We consider that given the content and current status of the Bill the Government's objectives should indeed be fulfilled.

The government has achieved its aims by

- recognising the need for maintaining continuity with current practices in order to retain on landfill diversion and sustainability objectives and provide financial stability for local authority and commercial waste producers,
- streamlining administrative systems including changing the Communities Scheme funding to a grant rather than a relief,
- taking the opportunity to introduce important new enforcement measures to deter illegal deposits of waste and punish the perpetrators

We note that the income from landfill tax in Wales is currently estimated at c £44M and that by the time the tax is introduced in April 2018 it is set to reduce to c £27M. Even with the Welsh Government's

efficient mode of operation, it is projecting that the annual cost of administration of the tax will be between £14m and £19M leaving a surplus of between £8M and £13M in the first year. There will therefore be a relatively small sum of money to distribute to community, sustainability and biodiversity projects and for use in supporting additional enforcement measures and campaigns. Furthermore the sum is set to decrease each subsequent year as the need for landfill reduces. We therefore suggest that the Government exercises caution in any commitments it makes regarding expenditure of the new income and does not raise expectations too high.

We appreciate the greater clarity in the descriptions of materials for which tax will be charged which in turn should reduce challenges, costly and time consuming litigation. To further assist in this simplification process we ask that consideration be given to the use of a small proportion of the tax income to assist NRW in the assessment of materials qualifying for "End of Waste". This will assist in recognising the treatment of waste materials to a sufficient extent and measurable standard to enable them to be considered no longer waste and potentially suitable for use as engineering materials in Wales.

We particularly applaud the Government for its commitment to use the LDT Bill as a deterrent to illegal deposits of waste through the application of significant financial penalties on those engaged in causing environmental damage, nuisance and tax avoidance. We welcome the support that the measures will give to legitimate business, as such as ours, and are willing to help publicise the Government's new powers at the appropriate time.

We note that the Bill is drafted in a way that allows for subordinate legislation thus enabling sufficient flexibility for the legislation to be changed according to evolving and advancing technology and policy. We should be happy to assist in the development of the regulations and codes of practice both prior to their introduction and in their future modification post 2018.

We recognise the need for the administration of the legislation to be simplified in order to improve understanding, compliance and to control costs. In particular, we support the changes to the Landfill Disposals Tax Communities Scheme to become funded by a simple grant. This should reduce administrative costs and enable a greater proportion of the diminishing income from landfill tax to be used in supporting communities and improving habitats in the proximity landfill sites. As it is intended there will no longer be an operator contribution we anticipate operator involvement in the scheme will also cease.

In conclusion we thank the Committee and your representatives for inviting us to be involved in the development of the Landfill Tax Disposals (Wales) Bill. We look forward to continuing exchanges and a close and helpful working relationship in the development of the subordinate legislation and in its subsequent introduction.

Should the committee wish to ask any questions I should be happy to assist.

Yours sincerely



Jennifer Doyle

Senior Project Manager

By virtue of paragraph(s) vi of Standing Order 17.42

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