

# The Land Rights and Responsibilities Statement Consultation Response

March 2017

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# INTRODUCTION

Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the Land Rights and Responsibilities Statement and the Government's general focus on land reform.

As the statement clearly emphasises, central to the Scottish Government's commitment to land reform should be a desire to reduce inequality and poverty and to increase the wellbeing of everyone in Scotland. As Shelter Scotland has been arguing ever since its creation almost 50 years ago, housing plays a key role in the wellbeing of the Scottish population.

In 2015, there were 1.48 million owner-occupier households, 570,000 households in the social sector (including 320,000 households living in local authority accommodation) and 350,000 households living in the private rented sector across Scotland, 91,000 of which contained children.<sup>1</sup> Across the UK, the housing stock is now 3.65 times worth Britain's GDP as UK homes are worth a record £6.8 trillion.<sup>2</sup> In 2014, it was estimated that Scottish homes were worth £325 billion.<sup>3</sup>

Not only does Scotland's housing have an immense impact on our economy, as the financial crisis clearly demonstrated, it also impacts the Scottish population's health and wellbeing. In March 2016, 142,500 households were on local authority waiting lists.<sup>4</sup> In 2015/16, 34,661 homelessness applications were submitted leading to 28,226 households being assessed as homeless.<sup>5</sup> 10,570 households, including over 5,700 children, across Scotland were living in temporary accommodation between July and September 2016.<sup>6</sup> Scotland's housing system is under a constant strain, which affects a significant part of the Scottish population – from people, who are homeless or at the risk of homelessness, to others, who experience bad housing that, for example, is overcrowded or damp. The Land Rights and Responsibilities Statement and land reform in general need to properly acknowledge the vital impact housing has on our wellbeing as individuals and as a society.

In its response to the Consultation on the Future of Land Reform in Scotland in February 2015, Shelter Scotland supported the creation of a Land Rights and Responsibilities Statement.<sup>7</sup> While Shelter Scotland continues to support the principle of a Statement, we believe that the Statement should go further in acknowledging the importance of housing, especially the need for good quality affordable housing. Moreover, due to the non-legal basis of the Statement, further regulations should be put in place that safeguard some of the rights and responsibilities incorporated into the Statement and that provide further clarification regarding the standards that are to be upheld.

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<sup>1</sup> Scottish Government (2016), [Scottish Household Survey: Annual Report 2015 – Tables and Charts](#).

<sup>2</sup> Savills UK (18 January 2017), [UK homes worth a record £6.8 trillion as private housing wealth exceeds £5 trillion](#).

<sup>3</sup> Savills UK (12 January 2015), [UK homes now worth a total of over £5.7 trillion, up 10% year on year](#).

<sup>4</sup> Scottish Government (2016), [Housing Statistics for Scotland – Housing lists](#).

<sup>5</sup> Scottish Government (2016), [Homelessness in Scotland: 2015/16](#).

<sup>6</sup> Scottish Government (2017), [Homelessness in Scotland: Update to 30 September 2016](#).

<sup>7</sup> Shelter Scotland (2015), [A Consultation on the Future of Land Reform in Scotland: Shelter Scotland response](#).

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# CONSULTATION QUESTIONS

Shelter Scotland is responding to this consultation in its capacity as a national housing and homeless organisation. We have not responded to all questions and instead focused on the ones which cover the issues faced by our service users and the people we represent.

## Question 1

### **Have we captured the range of policy areas to which you think the land rights and responsibilities statement should be relevant?**

No. While Shelter Scotland supports the range of policy areas that have been captured so far and acknowledges that not all relevant policy areas could be included due to the breadth of the topics, we believe that there is a very important area that currently is not being adequately considered: poverty.

The Land Rights and Responsibilities Statement Policy Context mentions the importance of tackling inequalities in Scottish society as one of its national outcomes and the diagram included in the consultation papers refers to tackling poverty and equality. However, the national plans and strategies and the related national policies make no mention of several policy areas that are vital in tackling inequality. The Child Poverty Strategy for Scotland<sup>8</sup> is a very important and clear example of this. As Shelter Scotland mentioned in its response to the Child Poverty Bill for Scotland Consultation, child poverty and housing are intrinsically linked.<sup>9</sup>

Other policies, such as the Play Strategy for Scotland, which aims to make Scotland the best place to grow up by valuing play as a life-enhancing experience,<sup>10</sup> are also important and directly linked to both land rights and responsibilities and poverty. As the Strategy rightly points out, housing and land perform a vital role in providing children with safe and educational opportunities to play.<sup>11</sup> Ensuring that every child has access to such play opportunities will help to promote equality and can make a big difference to the quality of life of children, families and society across Scotland. The Play Strategy for Scotland is also linked to other related national policies that have already been included in the statement policy context, such as the Physical Activity Implementation Plan.<sup>12</sup>

## Question 2

### **(a) Do you agree with the Scottish Government's proposed "human rights based approach" to the Land Rights and Responsibilities Statement?**

Yes.

### **(b) Please give any further thoughts on the best way to ensure that the Statement is based on human rights or gives full consideration to human rights.**

The Scottish Human Rights Commission's (SHRC) definition of a human rights-based approach enforces the importance of participation, accountability, non-discrimination,

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<sup>8</sup> Scottish Government (2014), [Child Poverty Strategy for Scotland: Our Approach: 2014 – 2017](#).

<sup>9</sup> Shelter Scotland (2016), [A Child Poverty Bill for Scotland: Consultation Response](#).

<sup>10</sup> Scottish Government (2013), [Play Strategy for Scotland: Our Vision](#).

<sup>11</sup> *Ibid.*

<sup>12</sup> Scottish Government (2014), [A More Active Scotland: Building a Legacy from the Commonwealth Games](#).

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empowerment and legality.<sup>13</sup> In recognition of this, Shelter Scotland believes that a vital part of a human rights-based approach is that everyone, especially people with lived experiences, can participate in the decision-making process and have their voice heard.

The Land Rights and Responsibilities Statement and its implementation therefore needs to ensure meaningful and mutually beneficial participation, including community participation, that centres around equality. This reflects the reality that land is a finite resource, which should be managed and used in a sustainable way that advances the common good of current and future generations. In order for this participation to be successful, adequate resources need to be made available. Some of the case studies described in relation to Question 10 illustrate what such meaningful participation can look like.

As mentioned above, two other key aspects of a human rights-based approach are accountability and legality. According to the SHRC, ‘accountability’ means that “there should be monitoring of how people’s rights are being affected”<sup>14</sup> and remedies should be available if this doesn’t happen, while ‘legality’ entails that “approaches should be grounded in the legal rights that are set out in domestic and international laws.”<sup>15</sup>

Shelter Scotland strongly supports the establishment of this Statement and doesn’t wish to undermine or underestimate its political importance and influence. While the Land Rights and Responsibilities Statement Consultation Paper clearly sets out what laws, especially human rights laws, the Statement is based on, the Statement itself is not legally binding. Furthermore, some of the laws that it is based on – specifically the International Covenant on Economic, Social and Cultural Rights – have a complicated status under UK and Scots law. Due to the dualist legal system, international conventions are not a legal force in domestic law unless they have been included in it.<sup>16</sup> While international law requires the UK and Scottish Governments and courts to ensure compliance with these rights and obligations, this only has a limited impact domestically. As many of the economic, social and cultural rights, such as land rights, are not properly incorporated into UK or Scottish domestic law, it therefore is particularly difficult to enforce them.

In regard to land rights, this is further complicated by the fact that, according to Dr Frankie McCarthy (Senior Lecturer in Law at the University of Glasgow), “the values underpinning property law rules are rarely acknowledged by the court.”<sup>17</sup> She claims that the Statement has almost no legal consequences at all.<sup>18</sup> While the Consultation Paper states that the Statement shall inform the actions of everyone, who owns, manages and uses land, neither the Statement nor the 2016 Land Reform (Scotland) Act create any legal obligations to do so.<sup>19</sup>

However, this intensifies the importance of the Statement as a clear step in the right direction. Shelter Scotland therefore hopes that the Statement, which it considers to be a significantly positive development, is followed by further actions. Further regulations, for example, should be put in place that enforce the Statement. The Scottish Government should further clarify specific standards, responsibilities and rights (as discussed further below in relation to Question 7) that can be monitored and used to legally enforce the rights and responsibilities expressed in the Statement.

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<sup>13</sup> Scottish Human Rights Commission (2017), [PANEL principles](#)

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Equality and Human Rights Commission (2016), [Socio-economic rights in the UK: Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK’s implementation of ICESCR](#)

<sup>17</sup> Frankie McCarthy (2017), [Scotland’s Land Rights & Responsibilities Statement – not a legal document?](#)

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

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### Question 3

#### **Do you agree with the Vision of the Land Rights and Responsibilities Statement?**

Yes. Shelter Scotland recognises that the Vision is intended to be a broad statement, which is further underpinned and examined by the 6 principles, and supports the Vision's focus on human rights. In this regard, Shelter Scotland would like point out that housing plays a key role in economic, social and cultural rights and in the development of a 'fair, inclusive and productive system of land rights and responsibilities.' In Shelter Scotland's opinion, such development can only be achieved when land reform helps to secure the access to good quality affordable housing to everyone in Scotland.

### Question 4

#### **Do you agree with Principle 1 of the Land Rights and Responsibilities Statement?**

No, Shelter Scotland does not agree with Principle 1 in its current form. Principle 1 refers to the link between land rights and building a fairer society and promoting economic prosperity, social justice and environmental sustainability. The description of Principle 1 further mentions that decisions "made on land ownership, management and use should consider" the outcomes of social justice, economic prosperity and environmental sustainability.

Shelter Scotland agrees that these outcomes are of vital importance. However, in order to truly acknowledge and promote the wellbeing of the Scottish population and their communities, another key outcome must be to secure access for everyone in Scotland to good quality affordable housing, which they can settle in long-term if they wish to do so. Just as with the three already existing outcomes, all decisions made on land ownership, management and use should consider the need for good quality affordable housing. While this should involve a careful balancing act, the severe demand for suitable housing and its impact on social justice, Scotland's economy and environmental sustainability should not be ignored.

Shelter Scotland was particularly disappointed that the section 'What we are doing' in relation to Principle 1 made no mention of affordable housing and the Scottish Government's commitment to it or housing in general. This further demonstrates the need to highlight good quality affordable housing, that meets the current and future demands of the Scottish population, including in relation to accessibility and location, as an outcome.

### Question 5

#### **Do you agree with Principle 2 of the Land Rights and Responsibilities Statement?**

Yes.

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## Question 6

### **Do you agree with Principle 3 of the Land Rights and Responsibilities Statement?**

Yes. Shelter Scotland would like to stress the importance of housing in relation to developing and sustaining communities. Security of tenure, especially in the private rented sector, has a vital impact in terms of the development of communities and the participation of people in the communities that they live in. This is one of the many reasons why the reform of the tenancy regime was so desperately needed. However, in order to tackle inequality and support community wellbeing, the Scottish Government has to ensure that the need for good quality affordable housing is met. Furthermore, community involvement and activities should be accessible for everyone. The issues regarding participation, including equality issues, are of relevance in this regard. This is further discussed in relation to Questions 2(b), 9 and 10.

## Question 7

### **Do you agree with Principle 4 of the Land Rights and Responsibilities Statement?**

While Shelter Scotland agrees with Principle 4, it believes that further information needs to be provided in regard to the standards of land ownership, management and use that holders of land rights should meet. This responsibility should not just be focused on the role of holders of land rights as stewards of Scotland's land resource for future generations but also on their responsibility towards the wider society. It might make sense to clarify what exactly these high standards are and what norms must be followed and to provide some examples of good practice.

Shelter Scotland was particularly pleased to see the inclusion of the topic of empty homes and our call for Compulsory Sale Orders. In our response to the 2015 Land Reform Consultation, we strongly supported the Land Reform Review Group's recommendation that local authorities should have the power to issue Compulsory Sale Orders.<sup>20</sup> Shelter Scotland, as the host of the Scottish Empty Homes Partnership, has been calling for an additional power for local authorities to use in relation to unused or empty residential property. We have repeatedly heard from members of the Scottish Empty Homes Officer Network that existing enforcement mechanisms are costly, time consuming and generally not fit for purpose.

It is important that these Orders include both property and vacant and derelict land, as this would encompass long-term empty homes and commercial properties with residential conversion potential. Shelter Scotland envisions that this enforcement tool would only be used as a last resort, while the emphasis will be on preventative and early intervention work and voluntary conversations in collaboration with empty property owners.

Moreover, responsible investment that ensures continued and increased prosperity must also take into consideration the current need for housing. While there is a clear demand for new house building in general, Shelter Scotland believes that Principle 4 should put more emphasis on the current demand and need for good quality affordable and accessible housing.

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<sup>20</sup> Shelter Scotland (2015), *op.cit.*

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## Question 8

### **Do you agree with Principle 5 of the Land Rights and Responsibilities Statement?**

Yes. Shelter Scotland believes that information on land and buildings, including housing, should be publicly available. This information needs to be of good quality and adequately balance the right to privacy with the right to property and the need for transparency. Both the users of such databases and the people, whose information is included in the databases, need to be able to trust the system, especially its security and accuracy. In order to empower communities to have more influence and actively participate in decision making processes, the information also has to be easily accessible. This will require local and national governments and organisations to better collaborate and co-ordinate.

It is Shelter Scotland's hope that this will reduce the delays and costs in the development process and thereby enhance the delivery of affordable housing. Moreover, it has the potential to tackle irregularities due to the complex layers of ownership. However, Shelter Scotland is concerned that the current 'right of access to information on persons in control of land' will only work to a limited extent, as, for instance, companies owning Scottish land could be registered in so-called secrecy jurisdictions, which are unable to share ownership information with anyone except tax authorities or where the details of company ownership are not maintained in official records.

In relation to what the Scottish Government is currently doing, the landlord and letting agent registers should also be mentioned. The private rented sector has more than doubled over the last decade.<sup>21</sup> The current landlord register and the upcoming letting agent register are important tools that help tenants to hold their landlords and letting agents accountable. This is further discussed in relation to Question 10.

## Question 9

### **Do you agree with Principle 6 of the Land Rights and Responsibilities Statement?**

Yes. Shelter Scotland believes that wide community engagement should be one of the main priorities of the decision making process in relation to land and buildings. This would reflect the importance land, especially housing, has on the overall wellbeing of communities and individuals.

While the Land Rights and Responsibilities Statement and the current Consultation clearly demonstrate the Scottish Government's commitment to human rights, Shelter Scotland believes that a human rights-based approach is key to developing efficient and meaningful community engagement. The description of Principle 6, in particular the section on what the Scottish Government is going, should therefore adequately reflect this importance and make clear reference to a human rights-based approach and Scotland's National Action Plan for Human Rights. Meaningful community engagement is further discussed in relation to Questions 2(b) and 10.

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<sup>21</sup> Scottish Government (2016), [Scottish Household Survey: Annual Report 2015 – Tables and Charts](#), *op.cit.*

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## Question 10

**We would like to hear real life stories about the relationship between Scotland's land and people. Please provide any case studies which you feel illustrate the vision or principles.**

Shelter Scotland would like to use this opportunity to illustrate the importance of some of the key topics that the Land Rights and Responsibilities Statement addresses.

### Housing and Poverty

Land, especially housing, is directly linked to poverty. In 2015/14, an additional 60,000 children in Scotland were living in poverty after housing costs were considered.<sup>22</sup> Throughout our work we see the impact that housing has on poverty across Scotland. Children living in housing that has damp or condensation, for example, face an increased risk of developing asthma and other respiratory problems.<sup>23</sup> In addition, children growing up in bad housing are more likely to not complete school and experience poverty as adults.<sup>24</sup>

Children need a stable environment to be able to achieve their full potential<sup>25</sup> – something that the over 5,700 children in temporary accommodation across Scotland between July and September 2016 did not experience.<sup>26</sup> Moreover, Shelter Scotland has found that the median time families with children spent in temporary accommodation has increased by almost 20% over the last two years.<sup>27</sup> Families with children now spend a median time of over 20 weeks in temporary accommodation, with 13% of them living in temporary accommodation for more than a year.<sup>28</sup> This clearly stresses the vital part housing plays in the lives of both current and future generations.

### The Private Rented Sector

The above-mentioned importance of stability for children while they are growing up is also related to the Scottish private rented sector, where Short Assured Tenancies, the most common type of tenancies, generally only provide a protection from eviction for no reason for 6 months. After the initial tenancy period, agreements often continue on a rolling basis giving a security of tenure of just two months. The reform of the tenancy regime, which is currently being implemented, will help to increase security of tenure. However, in order to address the increasing rents and lack of quality accommodation faced by private tenants, the Scottish Government's land reform has to prioritise the need for good quality affordable housing across all sectors.

The following case study illustrates the huge impact that the lack of tenure security in the Scottish private rented sector can have on individuals and families: A woman in her mid-forties, who is married with a young son, has been renting since the age of 18. Over this time period, she had to move over 40 times – not through her own choice. The longest her family has been able to live in a home was five years. Each move costs them time and money, diminishing their savings that they were hoping to use to buy their own home. To this day, they haven't had a single family holiday. Besides the constant moving, the family has endured some terrible and even life-threatening house conditions, such as unsafe chimneys. Her son, who is nine years old, has already lived in five different homes and was only two weeks old when the family received a notice to leave. She and her

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<sup>22</sup> Scottish Government (2016), [Poverty and Income Inequality in Scotland: 2014-15](#).

<sup>23</sup> Shelter Scotland (2010), [The facts: bad housing and homelessness for children and young people in Scotland 2010](#).

<sup>24</sup> Shelter (2006), [Chance of a Lifetime: the impact of bad housing on children's lives](#).

<sup>25</sup> Hogg, S., et al (2015), [An Unstable Start](#), NSCPP.

<sup>26</sup> Scottish Government (2017), *op.cit.*

<sup>27</sup> Shelter Scotland (2017), [The use of temporary accommodation in Scotland – 2016](#).

<sup>28</sup> *Ibid.*



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husband have decided to educate him at home partly due to the constant moving, as they don't want him to start at a school only to have to tear him away from it soon after. The insecurity of tenure means that she generally cannot plan for the long term, saying she would love to garden but has given up on planting, as she doesn't know if her family will be around to see the flowers or eat the vegetables.

## Data and Data Collection

Through its advice and law services, Shelter Scotland knows just how important it is to be able to quickly access important information, which is kept up-to-date. It is Shelter Scotland's hope that the experiences of stakeholders of the landlord register and other publicly available databases will be used to inform the creation of the online land and information system, as well as other online information databases. Especially the experiences of tenants, landlords, organisations such as Shelter Scotland, letting agents, the Scottish Government and local authorities should be taken into account.

Shelter Scotland would therefore like to highlight a case study, which demonstrates some of the issues our advisers deal with on a regular basis. The particular case involved a rented property, which had been sold with our client, a single woman, as the sitting tenant. The new owner entered the property on various occasions without prior warning and demanded that the tenant moves out. Feeling threatened, she decided it was no longer safe to live in her home, moved out and contacted Shelter Scotland in order to deal with the landlord. Our advisor contacted the local authority's Landlord Registration team. The advisor was told that the property was still registered under the previous owner's name and that the new owner could not register until the old owner had de-registered. The local authority therefore had no contact details for the current landlord. The local authority seemed to have no system in place for dealing with such a situation and were unable to provide further help.

This example clearly demonstrates that it is not merely enough to have a publicly accessible database but that its content must also be updated on a regular basis. Clear mechanisms, for example, need to be implemented for this to work efficiently.

## Participation

Shelter Scotland runs a project supporting families in Renfrewshire called Foundations First.<sup>29</sup> This project is one of the ways that we engage with people, who experience poverty. Most of them face both financial and housing difficulties. Shelter Scotland tries to identify creative ways to work and engage with people, who require support, and with the wider community. This has helped Shelter Scotland to develop a greater understanding of some of the issues they face. A prime example of meaningful and mutually beneficial participation is a participatory photography project called "[Photo Voice](#)", which Shelter Scotland ran to study the experiences of private tenants in Renfrewshire. The project provided a way for the participants to tell their stories using their images rather than printed words. By the end of the 8-week course, our participants had highlighted some of their housing concerns and ambitions through the use of photography. As the participants grew in confidence, they shared some very illuminating stories about their personal housing experiences. This especially focused on the impact their housing and neighbourhood had on them and their children in terms of health, wellbeing, community involvement and their children's education.

Participatory methods, such as this one, are often more meaningful and therefore more likely to elicit responses from hard-pressed families, who are not likely to have time to wade through lengthy consultations and may struggle to participate in meetings due to travel and childcare costs. In Shelter Scotland's experience, participants might also feel uncomfortable engaging with 'suited and booted' professionals and are therefore more

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<sup>29</sup> For more information, please see [Shelter Scotland's website on Foundations First](#).

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likely to participate in more informal, creative projects. This again stresses the importance of finding ways to support community involvement that encourages wide participation, takes people's individual needs, desires and circumstances into account and actually empowers participants.

## Human Rights

Together with the Scottish Human Rights Commission, Edinburgh Tenants Federation and Participation and the Practice of Rights (an organisation based in Belfast) have developed a human rights project focusing on housing.<sup>30</sup> Social tenants in Leith have led this project, after having received training on housing as a human right and on how to adopt a human rights-based approach. These tenants have identified key indicators related to their living conditions that they want to see clear improvements on and have advocated for change by engaging with Edinburgh City Council.

This example demonstrates what a human rights-based approach to housing and land can and should operate like. It not only needs to be based on the experiences of the people impacted by the relevant decisions but should be led by the people with lived experience themselves. Meaningful participation is of vital importance if Scotland is to ensure that everyone can have a say in how we use our land and buildings.

## Question 11

**Do you have any further comments?**

N/A.

## Question 12

**Please tell us about any potential impacts, either positive or negative, that you consider the proposals in this consultation may have (on equality).**

Shelter Scotland believes that the Land Rights and Responsibilities Statement will be beneficial and help to promote equality across Scotland if it is implemented properly. Especially regarding community involvement, this must entail that adequate resources are made available and that participation is led by people with lived experience of the issues at hand as much as possible. As one of our case studies demonstrates, participation needs to focus on the people, who will be affected by the policy decisions. Moreover, equality, especially in regard to participation, should be ensured by adequately catering for the different needs and wants that people have.

## Question 13

**Please tell us about any potential costs and burdens that you think may arise as a result of the proposals within this consultation.**

N/A.

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<sup>30</sup> Edinburgh Tenants Federation (2016), [Human Rights in Housing](#).

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## Question 14

**Please tell us about any potential impacts, either positive or negative, that you consider that any of the proposals in this consultation may have on the environment.**

N/A.

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

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