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# UK

## Company

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### **Tax measures (deferrals, reductions)**

- HM Revenue & Customs (“HMRC”) is operating the Coronavirus Job Retention Scheme (the “Scheme”), which is described in the “Enforced Leave” section below.
- Businesses and self-employed people who are experiencing difficulty meeting tax liabilities may be eligible to receive support on a case-by-case basis through HMRC’s “Time to Pay” arrangements (see “Social Security measures” section below).
- The Government has deferred, until April 2021, proposed changes around the treatment of self-employed contractors disguised as employees under “IR35”.
- Income tax payments due on 31 July 2020 through the “self-assessment” system do not need to be paid until 31 January 2021. Individuals do not need to be self-employed to be eligible for the deferral, but it is likely to be of most significance for self-employed people, given that almost all employees have their employment tax withheld from payroll through the PAYE system. The deferral is optional and automatic. No application is required, and no penalties or interest for late payment will be charged if individuals defer the payment.

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### **Social Security measures (deferrals, reductions)**

- HMRC’s “Time to Pay” arrangements may cover employer’s National Insurance contribution (“NICs”) liabilities on a case-by-case basis. Those concerned about being able to pay their taxes due to COVID-19 should contact HMRC through the dedicated helpline: 0800 024 1222.
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# UK

## Employer

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### **Sick pay (eligibility, obligations to pay, recovery from Government)**

- Employees who earn over £120 per week are entitled to receive statutory sick pay (“SSP”) if they are off work sick. These employees will now be entitled to SSP if they are self-isolating or “shielding” due to COVID-19 in accordance with official guidance. SSP will be payable from the first day of absence (on or after 13 March 2020) at £95.85 per week.
- Employers with fewer than 250 employees may be able to claim a refund of up to two weeks’ SSP per employee off work due to COVID-19 symptoms or self-isolation. The Government will work with employers to set up a repayment mechanism. An online service is now available for employers to make claims to recover qualifying SSP payments they have made to their employees.
- Employers should not require a GP note from employees off work due to COVID-19, and this will not be required to obtain an SSP refund. For those who have to self-isolate for more than seven days, an alternative “isolation note” from NHS 111 is available online [here](#).
- If, for business reasons, employers wish to furlough employees who are currently on a period of sickness absence, they may do so in line with the guidance (see “Enforced leave / use of holiday” section below). Where employees have been furloughed, they should no longer receive sick pay, and would instead be classified as furloughed employees (subject to the requirement for their agreement). Where employees have been furloughed, employers can only reclaim expenditure through the Scheme (and not the SSP rebate scheme).
- Furloughed employees retain their employment rights, which include their right to SSP. This means that furloughed employees who are unwell or become unwell must be paid at least SSP. In practice, however, SSP may be lower than an employee’s furlough pay. It is up to employers to decide whether to move furloughed employees who become unwell onto SSP or to keep them on furlough (where they would be paid at their furloughed rate).

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### **Enforced leave / use of holiday (paid vs unpaid)**

- All employers in all sectors (including both profit and not-for-profit) are eligible for the Scheme. The Scheme will run until 31 October 2020, and, under the Scheme, HMRC will provide grants to reimburse employers for the following amounts:
  - Until the end of July 2020:
    - the lower of: (i) 80% of the furloughed employee’s reference salary (before tax) attributable to the claim period (i.e. an employee who is, by agreement between the employer and employee, on a leave of absence and not performing any work for the employer during that leave of absence); and (ii) £2,500 (or

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- o such lower pro-rata amount if the claim period does not cover the whole month); PLUS
  - o employer's NICs; PLUS
  - o minimum auto-enrolment employer pension contributions up to 3% of the qualifying earnings of furloughed staff; however
  - o if an employer has agreed to top up the employee's pay above the Scheme limit, this is at the employer's cost and will not be reimbursed through the Scheme;
  - Between 1 August 2020 and 31 August 2020:
    - o the lower of: (i) 80% of the furloughed employee's reference salary (before tax) attributable to the claim period; and (ii) £2,500 (or such lower pro-rata amount if the claim period does not cover the whole month); however
    - o employers will be required to pay, but will not be able to recover, employer's NICs and pension contributions, plus any pay that the employer has agreed to pay the employee in excess of the Scheme limit;
  - Between 1 September 2020 and 30 September 2020:
    - o the lower of: (i) 70% of the furloughed employee's reference salary (before tax) attributable to the claim period; and (ii) £2,187.50 (or such lower pro-rata amount if the claim period does not cover the whole month); however
    - o employers will be required to pay 10% of the employee's reference salary (before tax) up to £312.50 (to make up the 80% total (for the time that the employee is furloughed) up to the £2,500 cap (or the lower pro-rata amount)), employer's NICs and pension contributions, plus any pay that the employer has agreed to pay the employee in excess of the Scheme limit; and
  - Between 1 October 2020 and 31 October 2020:
    - o the lower of: (i) 60% of the furloughed employee's reference salary (before tax) attributable to the claim period; and (ii) £1,875 (or such lower pro-rata amount if the claim period does not cover the whole month); however
    - o employers will be required to pay 20% of the employee's reference salary (before tax) up to £625 (to make up the 80% total (for the time that the employee is furloughed) up to the £2,500 cap (or the lower pro-rata amount)), employer's NICs and pension contributions, plus any pay that the employer has agreed to pay the employee in excess of the Scheme limit.
  - The Scheme contains complex provisions for calculating the employee's reference salary that will need to be worked through on a case-by-case basis. However, generally, an employee's reference salary for the purposes of the Scheme must not include benefits in kind, anything provided or made available in lieu of a cash payment otherwise payable to the employee (including salary sacrifice schemes), and any payment that is not regular salary or wages. Any elements of salary that vary as a result of performance, either by the business or the employee, should not be included, unless those elements constitute "non-discretionary payments".
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Non-discretionary payments include: (i) overtime, fees and commission; (ii) payments “made in recognition of the employee undertaking additional or exceptional responsibilities”; (iii) payments “made in recognition of the circumstances in which the employee undertakes the employee’s duties or time when they are undertaken”; or (iv) payments made “in recognition of other matters similar to those described above”. There must also be a legally enforceable agreement which prescribes the method of calculating non-discretionary payments.

- In order to be eligible for the Scheme, employers will need to reach an agreement in writing with each employee that he or she will be furloughed and keep a record of the agreement for five years. If employers wish to reduce a furloughed employee’s salary to the 80% level (and employer pension contributions to the minimum level, if they exceed this), there is nothing to stop them from doing this under the Scheme, but this will need to be covered by the written agreement reached with employees under normal contractual principles and employment law. Selecting furloughed employees should also be done in compliance with equality and discrimination laws.
- The last day that an employer could place an employee on furlough for the first time and have access to the Scheme was 10 June 2020 (the Scheme was closed to new entrants from 30 June 2020). However, this does not apply to persons on statutory maternity and paternity leave, adoption leave, shared parental leave, and parental bereavement leave, and armed forces reservist employees, who return to work after the cut-off date. These persons will be eligible for the Scheme (if their employer has previously furloughed employees) and may still be furloughed even after the 10 June 2020 cut-off date.
- From 1 July 2020, employers have been able to bring furloughed employees back to work for any amount of time and any shift pattern, while still being able to claim under the Scheme for the hours employees do not work. Under this flexible furlough arrangement, employers are expected to pay their employees for the hours or days worked (at the normal rate), and claim under the Scheme for the period that they are on furlough.
- In order to place employees on flexible furlough, employers will need to agree this with the employees, or reach a collective agreement with a trade union and confirm this agreement in writing. Where the original furlough agreement clearly specifies the terms of the furlough, these terms may be varied by agreement to reflect the new flexible furlough terms. Where there is any doubt as to whether the employer had a clear written agreement recording the original furlough period, it would be advisable to enter into a new written agreement which confirms the flexible furlough arrangement. Whilst the agreement can subsequently be varied, it must precede the claim period. Employers will need to:
  - ensure the agreement is consistent with employment, equality and discrimination laws;
  - keep a record of the agreement or confirmation of the agreement until at least 30 June 2025; and

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- keep records of how many hours their employees work and the number of hours they are furloughed for.
  - From 1 July 2020, the Scheme covers: (i) qualifying employees (which includes (a) all employees and company directors who are paid through the UK's PAYE withholding system; and (b) members of LLPs who are treated as employees for these purposes, provided in both cases that they were on the payroll as at 19 March 2020) whose employer made a claim under the Scheme in respect of the employee on or before 31 July 2020 for a period ending on or before 30 June 2020, and who ceased all work (whether directly or indirectly) for the employer (or person connected with the employer) for a period of 21 calendar days or more beginning on or before 10 June 2020; (ii) employees returning from family leave who began such leave before 10 June 2020 and who return from that leave after 10 June 2020; and (iii) employees who are armed forces reservists who were away on a period of mobilisation that started before 10 June 2020 and returned from that mobilisation after 10 June 2020. In all cases, employers must have notified HMRC of payment in respect of the relevant employee through an RTI submission on or before 19 March 2020. The Government has confirmed that this includes employees who are unable to work because they are: (i) on long-term sick leave; (ii) "shielding" in line with public health guidance for extremely vulnerable persons (i.e. following measures including not leaving the house at all); or (iii) caring for dependents. The Government has confirmed that the Scheme is not intended for employees on short-term sick leave. From 1 July 2020, agreed flexible furlough arrangements need not last for a minimum of three weeks (as was previously the case); however, unless employers are claiming for no more than the first or last six consecutive days in a calendar month, the period that employers may claim for must be for a minimum period of seven consecutive days.
  - Following recent judgments, administrators can furlough employees during the 14-day moratorium period and, if the employees agree to becoming furloughed employees, their contracts will be adopted by the administrator when: (i) the administrator makes an application under the Scheme; or (ii) payment is made to the employees under their varied contracts.
  - Claims for reimbursement can be made to HMRC through an online portal. Claims can be backdated to 1 March 2020, if applicable. A new period of claims commenced from 1 July 2020 following the introduction of flexible furlough. Any claims for the period up to and including 30 June 2020 must be lodged by 31 July 2020. Thereafter, a similar cut off also applies on 31 July 2020 for any flexible furlough claims related to that month, and similarly for August, September and October, until the Scheme ends. There is no roll over of claims across months. Further, the number of employees an employer can claim for in any claim period cannot exceed the maximum number they have claimed for under any previous claim submitted (however, an employer is able to include any employees returning from family leave and armed forces reservist employees in this calculation). HMRC aims to provide grants between four and six working days after a claim is submitted.
  - Employees may carry over up to four weeks of unused annual leave into the next two leave years if, due to the COVID-19 pandemic, it is not

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reasonably practicable for a worker to take some or all of the holiday to which they are entitled.

- Employees who are furloughed under the Scheme continue to accrue, and may take, annual leave whilst furloughed, and this will not break a period of furlough. Employers must pay employees for statutory leave at the employee's normal rate of pay (or, where this varies, at the employee's average rate of pay over the previous 52 working weeks). Guidance provided makes it clear that an employee's "normal rate of pay" means their usual holiday pay, based on their full non-furlough pay calculated in accordance with the Working Time Regulations. If this is higher than the employee's furlough pay, the employer must make up the difference (whilst continuing to claim under the Scheme for the lower of 80% of the usual monthly wage cost or £2,500 (or such lower amounts depending on when the claim is made, as outlined above)).
- Furloughed employees who take paid maternity, paternity, parental or adoption leave on or after 25 April 2020, and who were on furlough for any of the eight week period immediately prior to starting such leave, will be entitled to have their average weekly earnings for their period of furlough during that eight week period calculated using the higher of the furloughed pay they received and what they would have received if they had not been on furlough. If the employee is entitled to enhanced contractual pay during the period of family-related leave, the employer will be entitled to claim for this pay under the Scheme, subject to the usual criteria.
- Employers may require staff to take annual leave at certain times, if their employment contracts do not prohibit this. They should receive holiday pay as normal, unless agreed otherwise with the employees.
- Employers must generally give employees at least twice as many days' notice as the number of days' annual leave they are being required to take (for example, 10 days' notice for five days' annual leave). This should be in writing and, where possible, specify the relevant dates.
- On 8 July 2020, the Government announced that a one-off bonus payment of £1,000 would be paid for every furloughed employee that satisfies the criteria below (the "Bonus"). Employers must have: (i) complied with their obligations to pay and file PAYE accurately and on time under the RTI reporting system for all employees; (ii) maintained enrolment for PAYE online; and (iii) a UK bank account. Further, in order for employers to be eligible for the Bonus, the relevant employees must:
  - have been furloughed and have had a Scheme claim submitted for them that meets all the relevant eligibility criteria;
  - have been continuously employed by the relevant employer from the time of the employer's most recent Scheme claim for that employee until at least 31 January 2021;
  - have been paid an average of at least £520 per month between 1 November 2020 and 31 January 2021 (a total of at least £1,560 across the three months). The employee does not need to have been

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- paid £520 in each month, but they must have received some earnings in each month that have been paid and reported to HMRC via RTI;
- have up-to-date RTI records for the period to the end of January 2021; and
  - not be serving a contractual or statutory notice period, that started before 1 February 2021, for the employer making the claim.
- Employers can claim the Bonus for all employees who meet the relevant criteria, including office holders, company directors, agency workers, and those on fixed term contracts. Employees who were on statutory parental leave, or military reservists, who returned after 10 June 2020 and were claimed for under the Scheme, will also be eligible for the Bonus.
  - A new employer may be eligible to claim the Bonus in respect of employees of a previous business which transferred to the new employer if the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) applies or the PAYE business succession rules apply to the change in ownership. A new employer may also be eligible to claim for the Bonus in respect of employees associated with a transfer of business from the liquidator of a company in compulsory liquidation where TUPE would have applied were it not for the company being in compulsory liquidation. In these circumstances, the transferred employees must have been furloughed and successfully claimed for under the Scheme by the new employer. A new employer will not be eligible for the Bonus in respect of employees transferred under TUPE, or the business succession rules, after 31 October 2020 (i.e. after the Scheme has closed).
  - Employers will be able to claim the Bonus after they have filed PAYE for January 2021 and Bonus payments will be made from February 2021. The Bonus is taxable and must be included as income by employers when calculating their taxable profits for Corporation Tax or Self-Assessment. Detailed guidance on the Bonus scheme is expected in September 2020.
  - The Government announced that employers in England will be given a bonus payment for each new apprentice they hire between 1 August 2020 and 31 January 2021. Employers will receive £2,000 for each apprentice aged under 25 and £1,500 for each new apprentice aged 25 or above. This is in addition to the existing £1,000 payment the Government currently provides for new 16-18 year old apprentices and those aged under 25 with an Education, Health and Care Plan.

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### Temporary layoffs

- Employers may require employees to cease work, with or without pay, for a temporary period (a “Layoff”). A Layoff without pay is permitted only if provided for in an employment contract or a trade union agreement, or if an employer receives the employee’s consent. Legislation may be introduced to allow Layoffs without an express contractual provision or consent.
- If provided for in their employment contracts, employees may be entitled to receive “Contractual Guarantee Pay” during a Layoff period. If the Layoff is unpaid, employers may have to pay “Statutory Layoff Pay” of £29

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per day if certain criteria are met (including one month's continuous employment) for up to five days in any three-month period.

- If a Layoff period continues for four consecutive weeks or six weeks within a period of 13 weeks (of which no more than three are consecutive), employees may be entitled to claim statutory redundancy pay if certain conditions are met (including two years' continuous service).

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## **Reduction in pay and/or hours**

- Employers may reduce an employee's contractual hours and corresponding pay ("Short-time Working") only if this is permitted in their employment contract or a trade union agreement or if they receive the employee's consent.
- During a Short-time Working period, employees should receive full pay unless their employment contracts provide for unpaid Short-time Working or Contractual Guarantee Pay of a different amount. If the Short-time Working arrangement is unpaid, employers may have to pay Statutory Layoff Pay in relation to days on which no hours are worked.
- If a Short-time Working period continues for four consecutive weeks or six weeks within a period of 13 weeks (of which no more than three are consecutive), employees may be entitled to claim statutory redundancy pay if certain conditions are met (including two years' continuous service).

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## **Terminations**

- Employees with two years' continuous service may have a claim for unfair dismissal where their employment is terminated, unless there is a fair reason (as defined by statute) and the employer has acted reasonably (i.e. followed a fair process). Dismissal on the grounds of redundancy may be fair where an employer has a reduced need for work of a particular kind or where a business or premises is shut down.
  - Employers should consider whether furloughing employees provides a viable alternative to making employees redundant.
  - Employers must follow a fair redundancy procedure, including informing/consulting with employees or, in collective redundancies of certain sizes, consulting with employee representatives over 30 or 45 days, depending on the number of employees. Employers should consider voluntary redundancy and ensure they provide adequate notice or payment in lieu of notice where applicable.
  - Employees will be entitled to statutory redundancy pay where they have worked for more than two years. Employers should check whether employees are entitled to enhanced redundancy pay. HMRC has confirmed that employers can claim under the Scheme for furloughed employees who are serving statutory or contractual notice periods; however, guidance has confirmed that the Scheme cannot be used to substitute redundancy payments.
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# UK

## Workforce

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### Teleworking

- The Government has brought in measures which require workers to work from home unless this is not possible, and they advise particular caution in relation to employees from vulnerable groups. In order to facilitate this, employers should:
  - support employees to continue to work wherever possible, including providing technology where possible to facilitate remote working; and
  - maintain contact with employees and encourage staff members to support each other and be flexible whilst the workforce adjusts.
- On 17 July 2020, it was announced that from 1 August 2020, employers will be given discretion to make decisions about returning to the workplace. Such discretion will mean that employers can ask employees to return to the workplace, provided that steps have been taken to ensure that the workplace is “COVID-secure” and that social distancing measures are implemented. The Government has emphasized that these decisions should be made by employers on a case-by-case basis and that employers are under no obligation to require employees to return to the workplace. The Government has prepared guidance for employers on reopening the workplace safely, which is available [here](#).

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### Travel (business and personal)

- The Foreign & Commonwealth Office advised against all non-essential travel worldwide for an initial period of 30 days from 17 March 2020. This has now been extended “indefinitely”. Travel to certain countries is currently exempt from this advice. A list of exempt countries is available [here](#).
- Individuals who travel abroad will have to self-isolate for 14 days upon their arrival in England if they travel from a country which is not covered by the “travel corridor” exemption, within the common travel area (Ireland, the Channel Island, and the Isle of Man), or a British overseas territory. A list of countries where no self-isolation is required following arrival is available [here](#).
- Employers should encourage staff to avoid unnecessary travel, including to and from the workplace or work-related events. In the event of necessary travel, employers should encourage staff to comply with Government guidance to minimise risks, including avoiding busy times, maintaining distance from other commuters, and washing their hands as soon as they arrive at their destination.
- If employees cannot travel abroad as planned, it is likely that they will request a cancellation of booked annual leave. Employers are not obliged to allow employees to cancel leave, but should consider whether this would be appropriate in the circumstances.

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- From 15 June 2020, it has been compulsory to wear a face covering whilst travelling on public transport in England, with limited exceptions.

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### **Preventive actions (reception policy, public interactions, management of infected employees)**

- The Government has required certain non-essential industries to cease operations, restricted movement of individuals and social gatherings, and provided authorities with the power to enforce these measures. Certain non-essential retailers were able to open from 15 June 2020, provided they were compliant with 'COVID-secure' guidance. From 4 July 2020, an extended list of businesses and venues was permitted to reopen, provided that they comply with COVID-19 related restrictions. This includes, but is not limited to, certain restaurants, cinemas, places of worship and hotels. This list was further extended on 25 July 2020 to include businesses such as indoor gyms. From 1 August 2020, other businesses, including conference centres, were permitted to reopen.
- The Government has published guidance for employers, employees and those who are self-employed on how to keep their workplaces as safe as possible (i.e. COVID-secure). Employers must undertake a risk assessment of their workplaces using the guidance to inform decisions and control measures. There are eight guides which cover a variety of different types of workplaces including offices and contact centres, construction and other outdoor work, and factories, plants and warehouses. The guidance covers such topics as, who should go to work, social distancing at work and cleaning the workplace, and is available [here](#).
- Employers must consult on health and safety measures with the health and safety representative selected by a recognised trade union or, if there is no such representative, a representative chosen by employees. Employers should ensure the workforce is kept updated as to preventative actions being taken by the business and the latest guidance on how to reduce their risk.
- Where workplaces are open, employers should provide facilities for hand washing and hand sanitiser and encourage staff to use them regularly.
- Companies should ensure that managers are made aware of how to identify symptoms in staff and of procedures to follow in the event a staff member exhibits symptoms.

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### **Employees with children or older dependants**

- Employees are entitled to reasonable time off to care for dependants. This will apply, for example, to time off to care for a child whose school has closed or another dependant who is sick.
  - Employers are not required by law to pay employees for time off to care for dependants unless this is provided for in employment agreements or contractual workplace policies.
  - Employers should consider whether special arrangements can be made for employees whose caring responsibilities temporarily affect their
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availability for work, for instance flexible hours, to enable them to continue to work.

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## Consultants

- Self-employed individuals (including members of partnerships who are not paid as employees under PAYE) may be eligible for a second taxable grant of 70% of average monthly trading profits, measured over the last three years, paid out in a single instalment covering three months' trading profits (capped at £6,570) under the Self-Employed Income Support Scheme ("SEISS") if their business has been adversely affected by COVID-19.
  - Applications for this grant will be open on 17 August 2020 and claims must be submitted on or before 19 October 2020. The grant does not need to be repaid, but will be subject to income tax and self-employed National Insurance contributions.
  - The SEISS will be available to self-employed individuals or members of a partnership with: (i) trading profits / partnership profits of up to £50,000; or (ii) average trading profits / partnership profits for the previous three years of less than £50,000, provided in both cases that these profits constitute more than half of total taxable income.
  - To be eligible for the SEISS, self-employed persons or members of a partnership must: (i) have traded in the 2018/19 tax year and submitted a Self-Assessment tax return on or before 23 April 2020 for that year; (ii) have traded in the 2019/20 tax year; (iii) intend to continue to trade in the 2020/21 tax year; and (iv) their business has been adversely affected by COVID-19 on or after 14 July 2020. Government guidance has been provided on what constitutes "adversely affected", and is available [here](#). Self-employed persons must keep evidence to confirm their business was adversely affected at the time they make a claim under the SEISS.
  - You cannot claim the grant if you trade through a limited company or a trust. HMRC will contact those eligible and invite them to claim through an online service on a specified date. Self-employed persons can check their allocated date using HMRC's online checker [here](#).
  - Those who receive the grant can continue to work and/or take on other employment, which can include volunteer work.
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