

Good Food Nation (Scotland) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Good Food Nation (Scotland) Bill introduced in the Scottish Parliament on 7 October 2021.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 4-EN);
 - a Financial Memorandum (SP Bill 4-FM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 4-LC);
 - a Delegated Powers Memorandum (SP Bill 4-DPM).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Purpose of the Bill

4. The purpose of the Bill is to provide for the Scottish Ministers and certain other public authorities to produce good food nation plans and to make provision as to the effect of those plans, namely that the Scottish Ministers and specified public bodies must have regard to the plans when exercising certain functions.

5. The main policy objectives of the Bill are:

- to underpin the work that is already being done across the Scottish Government to contribute to the aim of being a Good Food Nation; and
- to ensure that the Scottish Ministers and certain other public authorities provide a clear lead on the delivery of a Good Food Nation.

Background

6. In 2009, the Scottish Government published 'Recipe for Success'¹: Scotland's national food and drink policy, which set out the next steps for a National Food and Drink policy. This included supporting the growth of our food and drink industry, ensuring healthy and sustainable choices, making our public sector an exemplar for sustainable food procurement, ensuring our food supplies are secure and resilient to change, making food both available and affordable for all and ensuring people understand more about the food they eat.

7. Since then there has been increased emphasis on the importance of food issues in Scotland and in 2014 the Scottish Government's discussion document titled 'Recipe for Success: Scotland's National Food and Drink Policy – Becoming a Good Food Nation'² was published. This set out a new vision for Scotland: that by 2025 Scotland will be "a Good Food Nation, where people from every walk of life take pride and pleasure in, and benefit from, the food they produce, buy, cook, serve, and eat each day".

8. The Good Food Nation policy recognised that change was required to achieve this vision, in which:

- it is the norm for Scots to take a keen interest in their food, knowing what constitutes good food³, valuing it and seeking it out whenever they can;

¹ 'Recipe for Success: Scotland's national food and drink policy' is available at: <https://www.gov.scot/publications/recipe-success-scotlands-national-food-drink-policy/>.

² 'Recipe for Success: Scotland's National Food and Drink Policy – Becoming a Good Food Nation' is available at: <https://www.gov.scot/publications/recipe-success-scotlands-national-food-drink-policy-becoming-good-food/>.

³ Good food can refer to broad range of different positive aspects of food for different people and different areas of policy; for example being healthy and nutritious,

- people who serve and sell food – from schools to hospitals, retailers, cafes and restaurants – are committed to serving and selling good food;
- everyone in Scotland has ready access to the healthy, nutritious food they need;
- dietary-related diseases are in decline, as is the environmental impact of our food consumption;
- Scottish producers ensure that what they produce is increasingly healthy and environmentally sound;
- food companies are a thriving feature of the economy and places where people want to work; and
- other countries look to Scotland to learn how to become a Good Food Nation.

9. To help achieve this vision, the non-statutory Scottish Food Commission was established in 2015 to provide advice on the existing and future challenges facing Scotland’s food culture, and to advise on how these might be addressed. The Scottish Food Commission held a Good Food Nation Summit on 28 September 2017, the final report with the Commission’s recommendations was based on the output from this meeting. Having undertaken the task it was established to do, and submitted its final report, the Scottish Food Commission held its final meeting in June 2018.

10. The Commission submitted its recommendations in December 2017⁴. The Scottish Ministers were grateful to the Commission for their work and agreed with their recommendation that framework legislation should be the basis of Good Food Nation legislation. Full consideration has been given to all the recommendations during the development of the next stage of consultation i.e. the Consultation on Good Food Nation Proposals for Legislation (see below). Many of the recommendations were already being

environmentally sound and sustainably produced food or locally produced food. The initiatives that contribute to our being a Good Food Nation straddle a wide range of Scottish Government policy.

⁴ Scottish Food Commission: Final report

<https://www.gov.scot/publications/scottish-food-commission-final-report/>

taken forward through policy developments across Government as set out below.

11. Much work is being carried out to achieve the aim of becoming a Good Food Nation as set out in the 'Good Food Nation Programme of Measures'⁵, which was first published in September 2018 and updated in November 2019. The Programme of Measures provides information on the diverse range of work that is ongoing throughout Scotland across five key areas of health, social justice, knowledge, environmental sustainability and prosperity. The examples below are a small selection that demonstrate the broad and cross cutting work being carried by a wide range of policy areas across the Scottish Government.

- Health: We invested £200,000 over a three year period from 2018/19 to 2020/21 to support Scottish Small and Medium sized Enterprises to reformulate i.e. reduce portion sizes or change the recipe to, for example, reduce sugar, salt, fat content and calories of commonly consumed products. In 2021/22 we are investing an additional £105,000 to continue the project;
- Social justice: We allocated over £1 billion last year to help people and communities impacted by Covid and to build resilience in public services, including over £140 million to support households to access food and other essentials. Our activities are underpinned by a human rights approach in which we seek to prevent poverty by strengthening incomes from fair work, social security and reduced cost of living to make sure everyone has enough income to afford food that meets their needs and preferences. Where financial hardship occurs, we promote a cash-first approach through emergency financial assistance and money advice alongside holistic support services to reduce the need for food banks. Where help to access food is required, we support activities that seek to maximise dignity and reduce future need.
- Knowledge: In 2019-20 nearly £400,000 of funding was provided to the Food for Thought Fund that supports food education related projects in schools to help pupils learn about food;
- Environmental sustainability: The Scottish Rural Development Programme supports farmers and land managers to adopt

⁵ The 'Good Food Nation Programme of Measures' 2019 Update is available at: <https://www.gov.scot/publications/good-food-nation-programme-measures-2019-update/pages/2/>.

environmentally friendly land management and farming practices and contracts worth £214 million have been put in place since 2015 under the Agri-Environment Climate Change Scheme; and

- Prosperity: The Scottish Government works in partnership with the food and drink industry to deliver Ambition 2030, an industry-led strategy to drive profitable, responsible growth across the entire food and drink industry and double its size to £30bn in turnover by 2030.

12. The Scottish Government undertook to consult on proposals for legislation that would help to underpin the significant work already undertaken across the Scottish Government in terms of key measures and activity to deliver a Good Food Nation.

13. The ‘Consultation on Good Food Nation Proposals for Legislation’⁶ was published in December 2018 and the ‘Good Food Nation Proposals for Legislation: analysis of consultation responses’⁷ was published in September 2019 and informed the policy action and the development of proposals for this Bill.

14. The Scottish Government’s Programme for Government 2019-20 contained a commitment to introduce a Good Food Nation Bill to the Scottish Parliament. The need for Parliamentary time to debate and implement emergency Covid-19 legislation means this Bill was not introduced in the last Parliamentary term.

15. The SNP manifesto (published April 2021) restated the commitment to introduce a Good Food Nation Bill in the current Parliamentary session. The manifesto also noted that “As part of a Good Food Nation Bill, we will create a single independent Scottish Food agency to promote food, drink and horticulture, attract investment, help increase processing capacity and improve supply chains and infrastructure”.

16. The Good Food Nation Bill will not include provisions to create a single independent Scottish food agency. Time is needed to complete an

⁶ The ‘Consultation on Good Food Nation Proposals for Legislation’ is available at: <https://www.gov.scot/publications/good-food-nation-proposals-legislation/>.

⁷ The ‘Good Food Nation Proposals for Legislation: analysis of consultation responses’ is available at: <https://www.gov.scot/publications/good-food-nation-proposals-legislation-consultation-analysis-report/>.

ongoing detailed review (including of international comparators) to develop recommendations to inform decisions about the need for a new agency and how this fits into the existing landscape.

Policy Objectives of the Bill

17. The overall policy ambition of the Bill is to provide the framework to make the vision of Scotland as a Good Food Nation a reality. The Bill will underpin existing work and put the Good Food Nation ambition on a statutory footing for both the Scottish Government and relevant authorities. The Bill provides a structure through which we can work together across the public, private and third sectors to create a food system that works for the people of Scotland. In addition to ensuring greater policy coordination, the good food nation plans brought about by this Bill will set out the outcomes we want to achieve, clear actions for Scottish Government and public bodies to take, and indicators through which progress will ultimately be measured.

18. The Bill imposes a duty on the Scottish Ministers to produce a national good food nation plan. The Scottish Ministers are required to have regard to the national plan in the exercise of functions to be specified in secondary legislation.

19. The national good food nation plan required by the Bill must set out:

- the main outcomes in relation to food-related issues which the Scottish Ministers want to be achieved in relation to Scotland;
- indicators or other measures by which progress in achieving the outcomes may be assessed; and
- the policies which the Scottish Ministers intend to pursue in order to secure the achievement of the outcomes.

20. The national good food nation plan may include such other material in relation to food-related issues as the Scottish Ministers consider appropriate. The Scottish Ministers are to have regard, among other things, to the scope for food-related issues to affect outcomes in relation to social and economic wellbeing, the environment, health and economic development, when determining the content of the national good food nation plan.

21. The Bill requires the Scottish Ministers to have regard to specified articles of certain international instruments when preparing the national good food nation plan; to consult on a draft plan and have regard to the consultation responses; to publish the plan and lay it before the Scottish Parliament; to publish a progress report every two years; and to review the plan every five years and revise the plan as appropriate.

22. The Bill imposes similar duties on health boards, local authorities and other public authorities as may be specified by the Scottish Ministers in regulations (collectively referred to as “relevant authorities”). Relevant authorities are required to publish a good food nation plan and to have regard to that plan when exercising functions as specified by the Scottish Ministers in regulations. They are required to have regard to the Scottish Ministers’ national good food nation plan when preparing their own plan. They are required to consult on a draft of the plan and have regard to the responses; to publish a progress report every two years; and to review the plan every five years and revise the plan as appropriate.

Alternative Approaches

23. During the inception and development of the Bill a range of alternative approaches were considered. These included continuing to deliver the Good Food Nation ambition via delivery of policy actions alone i.e. without introducing legislation; incorporating a right to food into the Bill; and placing similar requirements on businesses to those for the Scottish Ministers and relevant authorities.

Option 1 - Deliver a Good Food Nation via delivery of policy actions

24. As work on the Good Food Nation policy has progressed the Scottish Ministers have driven and overseen the development of a wide range of policies across Government that are contributing to the delivery of the Good Food Nation ambition. The ‘Good Food Nation Programme of Measures’ published in September 2018 and updated in November 2019 is evidence that there is ongoing delivery of policy actions across Government and this is making a real difference to the lives of people in Scotland.

25. Legislation is not the only way to make progress and, in some cases, policy actions can often mean quicker and more tangible results than are possible through legislation. In the case of this Bill, the Scottish Ministers recognise that there is a case for legislation to underpin the significant work already being done. The requirement for the Scottish Ministers and the relevant authorities to have regard to good food nation plans will mean that there is a statutory requirement to consider the determined outcomes, indicators and policies when exercising functions as specified by the Scottish Ministers in regulations, which are expected to be specified functions in relation to food.

Option 2 - Including a right to food into the Bill

26. Some human rights campaigners and civil society organisations in particular have led a 'Right to Food' campaign calling for a right to food to be included into domestic law and the responses to the Consultation on Good Food Nation Proposals for Legislation reflected this.

27. The National Taskforce for Human Rights Leadership was established in 2019, in response to the recommendations made in December 2018 by the First Minister's Advisory Group on Human Rights. The Taskforce worked to develop detailed proposals for a statutory framework for human rights to bring internationally recognised human rights into domestic law and protect the human rights of every member of Scottish society.

28. In March 2021 the Taskforce published its recommendations for a new framework for human rights for Scotland, including the incorporation of four UN human rights treaties into Scots law. The Taskforce comprised human rights experts and public authorities, including the Scottish Human Rights Commission, Law Society of Scotland, Equality and Human Rights Commission, Public Health Scotland and COSLA.

29. As part of taking forward the Taskforce's recommendations, the Scottish Government will introduce a new multi-treaty Human Rights Bill during this parliamentary session. The Human Rights Bill will set out for the first time, and in the one place, the wide range of internationally recognised human rights belonging to everyone in Scotland. It will give effect to these human rights, as far as possible within devolved competence, and strengthen domestic legal protections by making them enforceable in Scots law. This will include the incorporation of the International Covenant on

Economic Social and Cultural Rights (ICESCR), which includes a right to adequate food, as an essential part of the overall right to an adequate standard of living.

30. The Good Food Nation Bill is informed by our international obligations, but does not seek to include a right to food in domestic legislation in isolation from any broader package of human rights measures. Realising the right to adequate food is not just about food – all human rights are indivisible and interdependent. The Human Rights Bill will provide a coherent, clear and operable framework that resolves interactions between treaties, addresses complex cross-cutting policy issues and recognises and caters for intersectionality.

31. The obligations set out in international human rights treaties are legally binding as a matter of public international law and (unless specific exceptions are made) they apply to the UK as a whole. Public authorities in Scotland, as in other parts of the UK, should therefore act in a way that gives proper effect to these rights, in accordance with the undertakings entered into by the UK when it ratified the relevant treaties.

32. The Good Food Nation Bill contributes to ensuring that the UK meets its international obligations by creating a new domestic statutory requirement for the Scottish Ministers to have regard to specified articles of certain relevant international instruments when preparing the national good food nation plan, reflecting the importance of the right to food as both a human right and a treaty obligation. These are:

- Article 11 (so far as it concerns adequate food) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 provides that a right to an adequate standard of living includes, among other things, adequate food;
- Article 24(2)(c) (so far as it concerns the provision of adequate nutritious foods) of the United Nations Convention on the Rights of the Child (UNCRC). Article 24(2)(c) sets out the right of a child to the enjoyment of the highest attainable standard of health which requires those bound by the UNCRC to combat disease and malnutrition, including through the provision of adequate nutritious foods;
- Articles 27(1) and (3) (so far as they concern nutrition) of the UNCRC. Articles 27(1) and (3) of the UNCRC require those bound

by the UNCRC to recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development and to take appropriate measures to assist parents and others responsible for the child to implement this right and, in case of need, provide material assistance and support programmes, particularly with regard to, for example, nutrition; and,

- Article 12(2) (so far as it concerns adequate nutrition during pregnancy and lactation) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 12(2) requires those bound by the Convention to ensure women are provided with, among other things, adequate nutrition during pregnancy and lactation.

Option 3 – Requirements on businesses

33. The Scottish Food Commission suggested placing requirements on private food-related businesses similar to those placed on the Scottish Ministers and the relevant authorities by the Bill. The 'Consultation on Good Food Nation Proposals for Legislation' included a question asking to what extent Government should encourage and enable businesses to play their part in achieving the Good Food Nation ambition. The responses to this question demonstrated that almost all respondents agreed that businesses should be involved in achieving the Good Food Nation ambition. The responses indicated that half of those that responded to this question thought this could be via means other than legislation and that businesses needed to be supported, encouraged or incentivised as opposed to being forced or regulated to play their part in achieving the Good Food Nation ambition.

34. The Bill does not require private companies to prepare a good food nation plan. The intention is that the Scottish Ministers and the relevant authorities will provide a clear lead on the delivery of the Good food Nation policy and in doing so will provide an example for other organisations, including private businesses, to follow.

Option 4 - Introduce legislation

35. As outlined in the 'Good Food Nation Programme of Measures' the delivery of policy actions demonstrate that much good work can be done without requiring legislation but the Scottish Ministers recognise that there

is a clear place for legislation to underpin the significant work already being done.

36. This Bill will ensure that there is a more co-ordinated approach to the setting of main outcomes which the Scottish Ministers and the relevant authorities want to be achieved in relation to food, and their policies to achieve those outcomes, supported by indicators or other measures to assess progress. This means that when the Scottish Ministers and the relevant authorities are exercising certain functions, specified by the Scottish Minister in regulations, in relation to food-related issues there will be a statutory requirement to consider the determined outcomes, indicators and policies set down in good food nation plans. It is therefore intended that the plans will support a more coordinated, coherent and joined up approach to delivery of the Good Food Nation ambition in Scotland.

Preferred option

37. Following the above considerations, the Scottish Ministers' preferred option is to prepare legislation to be introduced in the Scottish Parliament, the content of which will:

- underpin the significant work already being done across the Scottish Government in relation to the achievement of the Good Food Nation ambition;
- increase accountability of Scottish Ministers to have regard to specified articles of certain relevant international instruments when preparing the national good food nation plan but will not include a right to food; and
- impose duties on the Scottish Ministers and the relevant authorities but not on private businesses.

Consultation

38. To gather views on the proposals for a legislative framework the Scottish Government ran the 'Consultation on Good Food Nation Proposals for Legislation'⁸. The consultation ran between 21 December 2018 and 18 April 2019 with the aim to gather views on the means to achieve outcomes in relation to the Good Food Nation ambition through legislation. There was

⁸ Consultation on Good Food Nation Proposals for Legislation
<https://www.gov.scot/publications/good-food-nation-proposals-legislation/>

a wide consultation list covering public authorities, business, third sector bodies and others.

39. There were 1,360 responses, over 40% of which were campaign responses from the third sector, notably the Scottish Food Coalition. From the total of 1,360 responses received, once blank responses, duplicates and campaign responses were removed, this resulted in a total of 802 responses; 175 from organisations and 627 from individuals.

40. The key findings from the consultation analysis report⁹ were:

- the overwhelming majority (88%) of respondents supported the proposal for the preparation of plans of policy on food (good food nation plans) by the Scottish Ministers and specified public authorities;
- almost all respondents (93%) agreed that Government should encourage and enable businesses to play their part in achieving the Good Food Nation ambition. Almost half (47%) of the consultation respondents thought that businesses needed to be supported to play their part but that this should not be through legislation or the imposition of obligations. A much smaller proportion (around one in ten) were in favour of regulating businesses or making them legally bound to ensure policy aims are met;
- most respondents (59%) did not agree with the proposals for accountability i.e. that Scottish Ministers and specified public authorities would be required to publish a statement of policy on food and report every two years on the implementation of the policy. The consultation paper noted that the Scottish Ministers have a presumption against the establishment of new statutory bodies in all but exceptional cases. The consultation paper noted that there was not seen to be value in establishing an independent statutory body for the purpose of overseeing the Good Food Nation policy for reasons of increased cost and bureaucracy. The highest level of agreement on the proposed approach came from 44% of local authorities, with disagreement (66%) coming from most other groups. Of the 552 respondents who provided comments on this

⁹ Good Food Nation proposals for legislation: analysis of consultation responses
<https://www.gov.scot/publications/good-food-nation-proposals-legislation-consultation-analysis-report/documents/>

question 44% saw a need for an independent statutory body to oversee all aspects of food in Scotland;

- more respondents agreed (35%) than disagreed (23%) with the proposal for targeted legislation relevant to specific policy areas (e.g. on health, education or food waste) as an alternative to a single piece of legislation, however the highest number (43%) noted they neither agreed nor disagreed;
- although the consultation did not include a question about a right to food, there were requests from around a third of consultation respondents for a right to food to be enshrined in law, although not explicitly through the Good Food Nation legislation; and
- the most significant campaign response, from the Scottish Food Coalition (with 457 submissions) outlined 5 key elements for the Bill, i.e. a 'right to food' in law; setting targets for improving the food system; setting new requirements for public bodies; having a Scottish National Food Plan; and the creation of a statutory Food Commission.

41. During the development of the Bill Ministers have engaged with the Convention of Scottish Local Authorities (COSLA) about the likely impact of the Bill on local authorities. These discussions took account of the fact that work was ongoing to reduce the volume of local authority data reporting to Scottish Government, with a view to streamlining where practicable. The outcome was that as local accountability would be achieved by the statutory duty to consult on, and publish, a good food nation plan and have regular progress reports there was no need to report to Scottish Ministers. There would be a statutory duty to publish all the plans and reports and Ministers would be able to see the reports, whether or not they received them directly. The Bill Team have liaised with COSLA officers for the purposes of the Financial Memorandum who indicated that the areas identified where costs would arise seemed appropriate. The Bill Team has also engaged with policy officials on the impact of the Bill and possible costs for health boards.

42. Ministers and the Bill Team have met with key stakeholders including representatives of the third sector and the food sector during the development of the Bill. The third sector organisations focussed on the need for a Right to Food and the need for changes to the food system and the organisations representing food and drink businesses were supportive

but cautioned that there needed to be evidence to support incorporating any specific actions on businesses as without such evidence there was a risk of a negative impact.

Effects on Equal Opportunities, Human Rights, Island Communities, Local Government, Sustainable Development etc.

43. A framing workshop was held with policy leads from a wide range of areas (health, education, local government, social justice, food and drink industry and agriculture) to assess the potential impacts of the Bill. The discussion covered a wide range of topics, many of which were also raised in the 'Consultation on Good Food Nation Proposals for Legislation', which closed in April 2019. The conclusion was that as the Bill mainly includes enabling powers, which in themselves cannot impact on specific groups, it is not possible to identify at this stage how specific groups will be impacted by the Bill.

Equal opportunities

44. The high level nature of the Bill means it is not possible to assess impacts on specific groups of people at this stage. As is standard practice when Scottish Ministers make any regulations there will be a process of impact assessment for any secondary legislation made under the regulation-making powers in the Bill. A high level [Equalities Impact Assessment](#) has been completed for the Bill.

Human rights

45. As noted above there have been calls to include a right to food into the Bill from some stakeholders. The Bill is informed by our international obligations, but does not seek to include a right to food in domestic legislation in isolation from any broader package of human rights measures. The multi-treaty Human Rights Bill will provide a coherent, clear and operable framework that resolves interactions between treaties, addresses complex cross-cutting policy issues and recognises and caters for intersectionality. The Human Rights Bill will give effect to international human rights law in Scots law, as far as possible within devolved competence, including the incorporation of ICESCR. This includes a right to

adequate food, as an essential part of the overall right to an adequate standard of living.

46. The Good Food Nation Bill requires that in preparing the national good food nation plan, the Scottish Ministers must have regard to Article 11 (so far as it concerns adequate food) of the ICESCR, Article 24(2)(c) (so far as it concerns the provision of adequate nutritious foods) of the UNCRC, Articles 27(1) and (3) (so far as they concern nutrition) of the UNCRC and Article 12(2) (so far as it concerns adequate nutrition during pregnancy and lactation) of the CEDAW.

Island communities

47. The high level nature of the Bill means it is not possible to assess whether the Bill will have an effect on islands communities that is significantly different from the effect on other communities. As is standard practice when Scottish Ministers make any regulations there will be a process of impact assessment for any secondary legislation made under the regulation-making powers in the Bill.. A high level [Islands Communities Impact Assessment Scoping](#) has been completed for the Bill.

Local government

48. The Bill imposes a duty on local authorities and health boards to publish a good food nation plan and to have regard to that plan when exercising functions specified by the Scottish Ministers in regulations. They are required to have regard to the Scottish Ministers' national good food nation plan when preparing their own plan. They are required to consult on a draft of the plan and have regard to the responses; to publish a progress report every two years; and to review the plan every five years and revise the plan as appropriate.

49. The Scottish Government will support local authorities and health boards in preparing and publishing the good food nation plan.

Sustainable development

50. The Bill supports a range of United Nations Sustainable Development Goals (SDG) including:

This document relates to the Good Food Nation (Scotland) Bill (SP Bill 4) as introduced in the Scottish Parliament on 7 October 2021

- SDG 2: Zero hunger – the Bill supports the Good Food Nation vision of everyone in Scotland having ready access to the healthy, nutritious food they need
- SDG 12: Reduced consumption and production – the Bill supports the Good Food Nation vision of reducing the environmental impact of our food consumption

Strategic Environmental Assessment

51. A [Strategic Environmental Assessment pre-screening report](#) has been completed. Due to the Bill's high level and enabling nature, the Scottish Government considers that the provisions of the Bill itself are likely to have no or minimal environmental effects. The Good Food Nation plans and any secondary legislation resulting from powers within the Bill will be considered against the requirements of the Environmental Assessment (Scotland) Act 2005. This assessment was supported by the relevant Consultation Authorities.

Business and Regulatory Impact Assessment

52. A [Business and Regulatory Impact Assessment](#) (BRIA) has been undertaken and as the Bill does not impose duties on businesses the conclusion is that there is no direct, immediate financial implications for businesses or individuals.

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