

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Tuesday 2 September 2008

Session 3

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

14th Meeting 2008, Session 3

CONVENER

*Keith Brown (Ochil) (SNP)

DEPUTY CONVENER

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)

*Jamie McGrigor (Highlands and Islands) (Con)

*Christina McKelvie (Central Scotland) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

*Dave Thompson (Highlands and Islands) (SNP)

COMMITTEE SUBSTITUTES

Trish Godman (West Renfrewshire) (Lab)

Alison McInnes (North East Scotland) (LD)

Alasdair Morgan (South of Scotland) (SNP)

Elizabeth Smith (Mid Scotland and Fife) (Con)

*attended

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERKS

Mary Dinsdale

Jane Sutherland

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 4

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Tuesday 2 September 2008

[THE CONVENER *opened the meeting at 14:15*]

Decision on Taking Business in Private

The Convener (Keith Brown): Good afternoon and welcome to the 14th meeting this year of the Standards, Procedures and Public Appointments Committee. I ask members, witnesses and everyone else to switch off their mobile phones and BlackBerrys.

Agenda item 1 is to take a decision on taking business in private. I seek the committee's approval to take in private item 5 on today's agenda, and a paper on its work programme at its next meeting. Under item 5, members will be invited to agree the final draft of section 8 of the "Code of Conduct for Members of the Scottish Parliament", which will involve discussion of the merits of suggestions made by members and other interested parties. It might be better to hold such discussions in private: in any case, their outcome will form part of the report which will, of course, be published in due course.

Do members agree to take these items in private?

Members *indicated agreement.*

Cross-party Group

14:16

The Convener: Under agenda item 2, I seek the committee's agreement on a proposal to establish a cross-party group that has not previously been active. In considering whether to approve proposed cross-party groups, members should take account of a range of matters including the group's purpose and whether it has been formed on the basis of public interest.

The proposal is for a CPG on supporting veterans. I would be one of the group's vice-conveners. No one else from the group is attending. If members have no questions, does the committee agree to approve the group?

Members *indicated agreement.*

Code of Conduct Review

14:16

The Convener: Agenda item 3 is consideration of the written responses received with regard to the committee's draft revised volume 2, section 8 of the "Code of Conduct for Members of the Scottish Parliament". I thank those who have taken the time to submit written evidence. The committee has already agreed to consider in private later in the meeting whether, in the light of written evidence, further revisions should be made to the draft revised section 8, so I ask at this stage whether members have any general comments.

Hugh O'Donnell (Central Scotland) (LD): I thank the clerks and those who have been responsible for the comprehensive and accurate collation of the evidence.

The Convener: Indeed. There was a lot of work involved in cross-referencing.

Equalities Review

14:17

The Convener: Item 4 relates to the review of equal opportunities in the work of committees. At its meeting on 26 February, the committee considered further the Equal Opportunities Committee's proposal for a rule change to require committees to report on their equal opportunities work. The committee agreed to defer its decision until publication of the parliamentary committees' annual reports, to review those reports and to revisit the issue in the light of that review. The committee also agreed to notify committees of its decision in writing. The Conveners Group supported the proposal for a review of mainstreaming equal opportunities, which would be co-ordinated by the Equal Opportunities Committee.

The committees' annual reports have been published: paper SPPA/S3/08/14/3 provides details of the results. All the committees have included specific equal opportunities sections that either refer to specific examples of work or state that the mainstreaming principles are embedded in their work.

I invite members' comments on the issues that are raised in the paper and their views on the options in the paper, or any other options they might wish to raise. I remind members that the options in the paper are: to support a rule change requiring committees either to include specific equalities information in their annual report or to produce reports on equalities at least once a session, with the Equal Opportunities Committee compiling the reports into one publication; or to agree that a rule change is not necessary and to advise the Conveners Group that the committee recommends that the inclusion of equalities sections be strongly encouraged when considering annual or sessional reports, whichever is the preferred option.

Do members have any comments?

Hugh O'Donnell: I simply have an observation to make. The coverage of equal opportunities in the committee annual reports appears, to say the least, to be variable and inconsistent. Of course, in some instances, there are legitimate reasons for such variability. Whichever option we go forward with, we need perhaps to consider producing guidance or a template for the section on mainstreaming equal opportunities in all committees' annual reports. That would provide consistency across them all and delineate the sections clearly so that interested parties would not have to trawl through an entire report if they were particularly interested in that section alone.

I understand the position that a rule change is unnecessary, but if we are serious about mainstreaming equal opportunities, we need to give serious consideration to a rule change that would mandate the inclusion of equal opportunities within the reports.

Jamie McGrigor (Highlands and Islands) (Con): Do we know what a rule change would entail and how much extra work it would mean for the clerks and others? Would we be able to do it well enough to make the Equal Opportunities Committee happy? I do not really know what it would entail.

The Convener: I suppose that that relates to Hugh O'Donnell's point that, if we give some kind of guidance or template, we are more likely to get something out of it. Certainly, when I attended the European and External Relations Committee, it did not have a clue what it would put into the report. The matter was dealt with cursorily.

The clerks would be better able to answer on the work that would be involved in a rule change.

Gillian Baxendine (Clerk): Whether or not there was a rule change, the committees would produce reports. We would have to work with legal colleagues to draft a rule change—although I do not think that it would be a substantial one—and the Parliament would have to agree to it, so time would have to be found to debate it. It is not a huge amount of work.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): From the responses that we have received from the various committees, it seems that the Public Petitions Committee is ahead of the game. It has a monitoring process in place and, unsurprisingly, is content that it is doing what is expected of it but does not think that a rule change would create any problem. We could invite some members of that committee along to find out how it goes about mainstreaming equal opportunities or the clerks to both committees should speak to one another to see what we can learn.

The Public Petitions Committee has good procedures, but some of the other committees seem to be kidding themselves that they are doing equalities work. For that reason, I lean towards a rule change. However, I realise that, if we change the rules, it is better to take members with us rather than impose something on them. The Equal Opportunities Committee has been working on the matter for some considerable time, and I respect the time and effort that it has put in. It probably knows the subject in a lot more depth and detail than we do.

Marlyn Glen (North East Scotland) (Lab): The idea is that all members should know the subject in depth, but it is obvious that they do not. Therefore, I am definitely for a rule change.

Compiling the annual report might not be a lot of work, but I hope that a lot of work would be put into mainstreaming equal opportunities much earlier in the game. When committees decide on their work programmes, they should think about equal opportunities right at the beginning rather than have a wee look at the end to see what they can squeeze into their annual reports under that heading. Without a rule change, it would be easy to be disappointed, so it would be better to change the rules and make mainstreaming equal opportunities an accepted part of all committees' work.

Jamie McGrigor: I am looking at the three recommendations in the paper from the clerks—SPPA/S3/08/14/3. It seems to me that the second is the most valuable and would be the least time-consuming. Committees would have to write a report only once a session, and all reports would then be collated by the Equal Opportunities Committee for it to produce one report covering all the committees. That would give us some idea of whether mainstreaming was working or not.

I am for a rule change, but it would not be a good idea to ask all committees to include equal opportunities in their annual reports because a lot of people who will not read the reports of other committees would be more inclined to read one combined report.

I presume that such work would come during the last year of the parliamentary session—there would be no point in doing it halfway through. The second recommendation seems to be the most sensible.

The Convener: I have been a wee bit ambivalent over whether or not there should be a rule change. Based on our experience, my fear is that a rule change might make it even easier for people just to tick a box without doing any substantial work, although that would depend on how the rule change was constructed.

It has been suggested that equal opportunities issues should be considered when work programmes are being drawn up. I agree. It would be useful if we could encourage that.

Cathie Craigie talked about learning from the best practice of the Public Petitions Committee. Because of the nature of that committee's work, it is easier for it to pull information together. We should perhaps encourage other committees to follow best practice—perhaps by drawing up a template, as Hugh O'Donnell suggested.

I do not think that, by itself, a rule change will change anything. However, if the change incorporated a requirement to consider equal opportunities at the work programme stage, or if it incorporated guidance, we might achieve something.

Hugh O'Donnell: I agree with the point about guidance. You would, I suspect, be right in saying that without guidance, the exercise might become merely a box-ticking exercise.

Monitoring by a committee could come under a number of headings. For example, committees could carry out gender-impact assessments on legislation that is being considered. A number of well-established criteria exist—inside and outside Parliament—for establishing guidelines and for considering the required level of detail. As all committee members will know, such work is supposed to be being done on the spending reviews and the Scottish Government's budget. I will not go into the detail of how successful that has been, because it may not be the best example. However, opportunities exist.

I am a member of the Equal Opportunities Committee and a variety of organisations have helped us with very good supportive work. That kind of work can give us a heads-up. There might be merit in the clerks of this committee talking to the clerks of the Equal Opportunities Committee, and also to the clerks or members of the Public Petitions Committee. I agree with Cathie Craigie that the Public Petitions Committee's work has been par excellence on this issue. Such discussions, covering the rule change and guidance, would help to avoid the creation of a box-ticking exercise.

Cathie Craigie: I hope that I am not asking them to abuse their position, but I wanted to ask a question of our colleagues who are also members of the Equal Opportunities Committee. The second recommendation, which Jamie McGrigor mentioned, seems reasonable. However, I would be concerned if the work were carried out only once a session—once every four years is not enough. When a session is over, a committee will leave a legacy paper for the committee to come, but that committee will often want to stamp its own views on its work. The first committee might have identified problems, but there is no guarantee that the new committee will pick up on them. This committee and others have shown that they do not always pick up on issues in legacy papers.

14:30

Hugh O'Donnell: That is a good point, given that committees produce annual reports. The other advantage of Cathie Craigie's suggestion is that the Equal Opportunities Committee and other interested parties would have the opportunity to flag up any laxness annually. That would give the committee that had fallen short the opportunity to rectify the problem within its period of responsibility, thereby avoiding the problem that the member has highlighted.

Jamie McGrigor: Ideally, the matter should be reported on once a year. The suggestion that the Equal Opportunities Committee should collate the responses into one document is good, but that would involve a lot of work and I am not sure that it could be done every year. I prefer recommendation 2 to recommendation 1, because I think that a collated report would be more interesting than individual reports from committees, which people may tend not to read. We have been presented with the option of having such a report only every four years, but perhaps we should have one every year. I would not argue against that, but it is not one of the recommendations.

The Convener: We do not have to go with what is in the paper—we can go with something else.

Jamie McGrigor: I suggest biennial reports, which would give us a good idea of what was happening. It would be onerous for the Equal Opportunities Committee to produce such reports annually.

The Convener: I see that. My objection to the proposal is the same, regardless of whether reports are produced annually or sessionally. If they are retrospective, they will provide ex post facto justifications of what committees have not done and will put the best spin on the fact that they have failed to address equal opportunities issues. I would prefer such issues to be included in committees' work programmes.

In many local authorities, committees are asked to consider the equal opportunities implications of every report that they produce. In anything that is produced after the event, it will fall to the clerks to put the best possible gloss on what committees have done, unless they have done a good job.

Hugh O'Donnell: Jamie McGrigor's point is well made. Alternatively, committees could produce annual reports and there could be a rule change stipulating that, at the end of each session, the Equal Opportunities Committee be responsible for bringing together the reports of the previous four years as part of its end-of-session report. That is just one possibility—never trust a Liberal to come up with an alternative.

Cathie Craigie: Jamie McGrigor suggested that the Equal Opportunities Committee produce a report midway through the session, which would flag up any problems. Presumably, the committee would pick up those problems.

Marlyn Glen: Two years is too long—reports must be produced annually. I do not want to pick out one committee, but in its report the Health and Sport Committee mentions health and deprivation—which is interesting, but is not the same as equal opportunities—but not sport. If the committee had to produce four reports, I presume

that it would discuss sport in one of them. Sport is really important to women, but getting girls to continue taking part in sport after they leave school is a massive problem. The Health and Sport Committee must consider that, because no one else will. Committees must report annually, but I agree that the Equal Opportunities Committee could compile a report once a session, rather than as an on-going part of its programme. As committees become better at mainstreaming, the Equal Opportunities Committee's work programme should shrink, until all that is left for it to do is to look at how well everyone else is doing.

Hugh O'Donnell: It is interesting that Marlyn Glen has picked up on sport, because there is extensive research from several years ago—impact assessments and policy positions—on the relationship between equal opportunities and sport. I think that the Scottish women's budget group was involved in that. That is a specific example.

Marlyn Glen and I perhaps have a little more knowledge simply because of our involvement in the Equal Opportunities Committee, but if other committees were serious about taking the agenda on board, they could do so. The information is not buried in an archive at the back of the National Library of Scotland. It is fairly readily available and can be obtained from a half-decent literature review. The work is not as difficult as it might appear to be.

Christina McKelvie (Central Scotland) (SNP): Based on the debate that we have had, I would probably opt for a rule change as well, and I agree that committees should report annually. The Public Petitions Committee has a good model and is an example of good practice. If it can do the work, I do not see why other committees cannot do it as well. I support a rule change to require the production of one report per year. The point was well made about the Equal Opportunities Committee pulling everything together at the end of a session. We should have interim reports and then a final one that covers four years.

The Convener: I acknowledge that, but I return to Marlyn Glen's point. If we put through a rule change that says, "You must put this in your annual report," and committees then nibble along and do not address the matter, they will get to the end of the year and say, "Well, how did we address it?" Somebody—usually a clerk, I think—will have the thankless task of going off and trying to find ways in which they considered equalities or took it into account. It would be more effective if, at the start of the year, committees had some guidance on how they could incorporate equalities in their work as they go along, rather than their having to justify whether they have incorporated it at the end of the year.

We could do what has been suggested and get together the clerks to the Standards, Procedures and Public Appointments Committee and the clerks to the Equal Opportunities Committee to consider fairly straightforward guidance and a format for what committees should be doing. We could incorporate in that at least the suggestion—or make it official in some way—that committees should take the matter into account when they set their work programmes rather than when they prepare their end-of-year reports. The guidance could then be brought back to the committee, and it could go to the Equal Opportunities Committee as well if it wants to consider it. We could decide at that point how we want equalities to be reported on.

We could take a decision now, and I am open to that, but it is probably the idea of having to take equalities into account that will change people's attitudes, as well as issuing a bit of guidance on what they are expected to put in their reports. I gave the European and External Relations Committee as an example because it is clear that it did not know what was expected of it. If there was a bit more guidance, that might make committees think more laterally about equal opportunities. That might be the best approach.

Christina McKelvie: I agree with everything that you just said, convener. One point that we should remember is that we should get this right. We should take the time to get it right rather than make a rule change now and find that people are not happy about it.

Marlyn Glen: I am looking at the letter from the Equal Opportunities Committee, in which it undertakes to discuss

“any relevant guidance and training that would be required.”

Personally, I believe that it is unacceptable for anybody in our position in the Parliament to say that they do not know how to go about reporting on equalities. My difficulty with the proposal for a format for the reports is that it would be limiting. It is astonishing how far the exercise can go and we do not want to limit people by giving them a format that constrains them.

Another motivating factor might be that if the Equal Opportunities Committee was to bring all the work together, it might want to take evidence from committee conveners about their input to equalities.

The Convener: I have a feeling that providing people with guidelines on what is expected of them might expand their horizons a wee bit rather than limit them, but that might be a cynical point of view.

We have the different options in front of us and we can decide to choose one of those. I am trying

to determine whether anybody is making a proposal that is not included in the options. There is also the other option that I suggested, which is that we ask for some kind of guidance, although we do not want to limit what we already have.

Marlyn Glen gave the example of the difficulties of involving women, especially young women, in sport both at secondary school and after school. The situation is even worse for female ethnic minorities in sport, and there are reasons for that. I do not think that anyone wants to limit equalities work. The question is more what more we can do to raise committees' awareness so that they take it into account when they consider their work programmes.

There are three options in the briefing paper, as well as the option of getting guidance from the clerks of the Equal Opportunities Committee before taking a decision.

Christina McKelvie: I support the option of getting the clerks together. That would be an important piece of preparatory work.

The Convener: That would not rule out a rule change.

Cathie Craigie: I missed the letter that Marlyn Glen mentioned. However, the fact is that the Equal Opportunities Committee has gone as far as thinking that, if there has to be guidance, training will be required. That committee is a step ahead of us in knowing what will be required. We are eight or nine years into the life of this Parliament and we have been working in a voluntary way—everyone is expected to do the work but not everyone does it. We are all guilty of that—we have not done the work.

I think that it would be best to go back to the Equal Opportunities Committee and say that the committee is minded to propose a rule change and that we want to talk about guidance. That would be a slightly different and more positive way of working, and would send the message that we accept the request from the Equal Opportunities Committee to consider a rule change, which it made because it felt that the system was not working.

Hugh O'Donnell: The view expressed by Cathie Craigie seems to be reflected in the variable amount and quality of the work that has been done.

Ultimately, drawing up wording for a rule change and providing guidance and training do not cancel each other out. Would it be practical or possible to ask those with the required command of the English language to draft a rule change based on what we have discussed while we contact the Equal Opportunities Committee and the Public Petitions Committee to find out what they are

doing? The wording of the rule change could include a reference to guidance in annex A—or whatever the heck it happens to be.

Rather than wait for one thing to happen before doing another thing, we could construct the rule change based on what we have said today, which seems to be that a rule change, guidance and training are all needed. There is no reason why we cannot move forward on all the strands simultaneously.

The Convener: Gillian Baxendine will comment on that, but it seems to me from the Equal Opportunities Committee's letter that it is saying that guidance and training would be required if this committee decided not to support a rule change—although it is not ruled out if we do support a rule change.

Gillian Baxendine: I want only to clarify the point made by Hugh O'Donnell about it being perfectly feasible for us to draft a rule change while also approaching the Equal Opportunities Committee. The committee could always draft a rule then change it if it needed to.

Dave Thompson (Highlands and Islands) (SNP): I wanted to make the point that you made, convener, which is that a rule change was proposed in the context of the Equal Opportunities Committee not offering guidance and training. We need to clarify whether it is willing to offer that guidance and training if we decide that we need a rule change.

My only reservation about guidance and training is that, given the amount of work that we put into section 8 of the code of conduct, it could get pretty complex over time. It could be more restrictive than liberating.

The Convener: I am slightly unclear in my mind about whom the guidance and training are for. As ever, the burden of putting together the reports will fall on the clerks, but the need for guidance and training is among members.

14:45

Jamie McGrigor: Does the Equal Opportunities Committee specify the sort of thing that it would like us to do? Given her experience, perhaps Marlyn Glen could provide specific examples of work that we—by which I mean parliamentary committees—are not doing but should be doing.

Marlyn Glen: The Finance Committee is the most interesting example of a committee that needs to do work on equalities, but every committee must consider the issue. Given that an economy will miss out if it does not make use of everyone's talents, the Economy, Energy and Tourism Committee needs to ensure that people who are disabled, for example, have the opportunity to find employment.

The Finance Committee has a massive job to do. If it does not examine where the money is going and what difference it is making to equal opportunities, the situation might get worse. Modern apprenticeships are a case in point. We have had seminars on such matters. The modern apprenticeship programme was supposed to bring in equalities but has led to greater job segregation. It is necessary to consider the consequences of any action that is taken from an equal opportunities point of view. The issue is complicated, but if we are not aware of it, the effect of some actions might be the opposite of what was intended.

Jamie McGrigor: Do we envisage that there will be penalties if committees do not do what they are meant to do? If so, what will those penalties be and how will they be applied?

The Convener: I do not know the answer to that. When we wrote to the other committees, we made it implicit that if they did not take action on the issue voluntarily, the penalty would be a rule change. I do not know what the penalties might be, other than condemnation for not having treated equal opportunities seriously.

I will try to draw together what members have said. I was worried about the clerks working on a rule change that might never happen, but it seems that they are happy to draft a rule change and to discuss with the Equal Opportunities Committee clerks guidance for committees on how to report properly on equal opportunities. We do not have to take a decision on the principle of a rule change today, although we can if we want to. We could take the decision at our next meeting, when those two pieces of work have been undertaken.

Hugh O'Donnell: I have a particular interest in concluding at least part of our work on the issue, but more of that at another time. I would like us to agree in principle to a rule change and for that to be recorded.

Gillian Baxendine: Can I clarify what that rule change would be?

The Convener: If we agree in principle to a rule change, a rule change might be proposed that we do not like. We cannot anticipate giving our support for a rule change that we have not seen, although I suppose that we could record the fact that, in principle, we are in favour of a rule change. That would not commit us to any particular proposal.

Hugh O'Donnell: That is right. It is the principle that I am interested in. I am quite keen on issues of principle at the moment.

Jamie McGrigor: I wonder whether the rule change could require committees to include specific equal opportunities information in their

annual reports, with the Equal Opportunities Committee being responsible for combining the relevant information from those reports in one publication once a session. That would pull together the best parts of the first and the second recommendations.

Cathie Craigie: As has been said, the clerks will go away and speak to others about drafting a rule change. Such a change would have to require parliamentary committees to mainstream equal opportunities in their work. Someone else can come up with the appropriate wording.

Hugh O'Donnell: We could also say that the matter should be reflected in committees' annual reports, in accordance with any guidance. Wording of that nature would be appropriate. I realise that I am being a bit specific.

Cathie Craigie: Whenever the Procedures Committee discussed rule changes in the previous session, it would not come up with the wording for those changes. The clerks always went away and drew something up. What matters is the committee's intention.

Gillian Baxendine: That is all that I want to clarify. A rule change on reports is distinct from a rule change on mainstreaming equalities, which would be much wider than the change that we have discussed.

Hugh O'Donnell: Someone may be able to help me—am I right to think that mainstreaming equal opportunities is built into the Scotland Act 1998?

The Convener: So what we are attempting to do would be narrower.

Hugh O'Donnell: Yes. That is why I was fairly specific about what committees would need to do to address the requirement.

The Convener: Although we will agree in principle to a rule change, I fear that we will be unable to agree on whether it is wide or narrow enough or on whether it will achieve anything before we see it. I would like to see the proposal before agreeing to it in principle, but several members have said that they agree in principle.

Does anyone else want to comment?

Dave Thompson: I have a question, because we have ranged over several issues. Is it just a matter of obtaining from committees reports of what they have done in their committee procedures? From some committees' comments, the position is pretty clear. For instance, the Economy, Energy and Tourism Committee said:

"The Committee has ensured that any meetings and events it organises reflect the Parliament's guidance on these issues and endeavours to ensure that equalities issues are covered in any scrutiny of legislation".

That is very basic. When that committee conducted its inquiry into the tourism industry, would we have expected it to consider all the equalities issues in that industry? If the requirement were as wide as that, it would be pretty massive.

Hugh O'Donnell: Yes.

Marlyn Glen: Yes—that is what the committee should do.

The Convener: I propose that a report should be prepared with a proposed rule change and that, after discussion between the clerks of this committee and of the Equal Opportunities Committee, guidance should be produced for committees on how they should report. I do not want to support a rule change before seeing what is proposed, but if the procedure happens in that way, that is fair enough.

Jamie McGrigor has made a separate point—I do not know whether he wants to make a different proposal on amalgamating recommendations 1 and 2 or whether he is happy with my proposal.

Jamie McGrigor: I just suggested a general idea—the work does not have to be done in that way. That just seemed to be what people were thinking.

The Convener: The last point to consider is whether, at the same time as asking for a draft rule change, we should agree in principle to the rule change. My position is that we should not agree until we see the proposal. Does anyone have a different view? By asking for a draft rule change, we will move to the next stage, and tell the most important other committee—the Equal Opportunities Committee—about it. I imagine that the cart will not go before the horse and that the discussion about the rule change will refer to the guidance that might accompany it. Are members agreed on that? Is anyone otherwise minded?

Hugh O'Donnell: No—that is okay.

The Convener: We will ask for a draft rule change to be prepared and for guidance to be produced after discussions between the clerks of this committee and of the Equal Opportunities Committee. Is that okay?

Gillian Baxendine: That is fine.

The Convener: Thanks very much.

We will move into private for agenda item 5, so I ask anyone who should not be here for that item to leave.

14:53

Meeting continued in private until 16:28.

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