

Retail market transition arrangements – a consultation

About this document

At the moment only a small number of business customers across England and Wales can choose their water retailer and most customers must use services provided by the monopoly water companies. The UK Government is committed to opening an expanded retail market in April 2017 that will provide choice to all eligible business, charity and public sector customers (business customers) in England and Wales. The current 50MI threshold will be retained and maintaining competition for retail water supply only will continue for customers who are supplied using the supply systems of appointed companies whose areas are wholly or mainly in Wales, reflecting the policy position of the Welsh Government. A new legal and regulatory framework is being put in place to facilitate that market, and provide the necessary market governance.

This consultation is about a proposed transition scheme to help with the transition from the current arrangements to the new legal and regulatory framework. In particular, we propose to use a statutory transition scheme under Schedule 11 of the Water Act 2014 to help manage the transition from the current retail licensing regime to the new one. This includes plans to revoke the existing licences immediately prior to introducing the new Water Supply and/or Sewerage Licences.

We also explain how the proposed transition scheme will sit alongside the wider transition arrangements, including those with the Open Water plan to make sure that the various new bodies that will help to provide the necessary market governance are appointed in time for market opening, so that stakeholders can respond effectively to our proposals for the statutory transition scheme. We are seeking views on the proposed content of the statutory transition scheme, and whether there are any other issues that should also be addressed using the scheme.

To prepare for the retail market, we need to make some changes ahead of market opening in April 2017, although in most cases, the changes would only take effect at market opening. Appointees whose areas are wholly or mainly in Wales will also be affected by the changes as they will need to interact with the market arrangements, although their numbers of eligible customers will be limited because of the retention of 50MI threshold.

Responses to this consultation will inform the development of our discussions with Defra about any required transitional order (the legislation that would be needed to give effect to our transition scheme) and our drafting of the proposed transition scheme. Subject to the outcome of this consultation and our discussions with Defra about the transition of existing arrangements to the new regulatory framework under transitional orders, we plan to consult on the detailed draft scheme in October.

Responding to this consultation

The deadline for responses to this consultation is 9 September 2016.

Please e-mail responses to RMOtransition@ofwat.gsi.gov.uk or post them to:

Retail Market Opening Programme
Ofwat
21 Bloomsbury Street
London WC1B 3HF

If you wish to discuss any aspect of this consultation, please contact Chris Daly on 0121 644 7786 or by e-mail at Chris.Daly@ofwat.gsi.gov.uk

We will publish responses to this consultation on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation - primarily the Freedom of Information Act 2000 (FoIA) the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' which deals among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

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1. Executive Summary

1.1 Background and purpose

At the moment only a small number of business customers across England and Wales can choose their water retailer and most customers must use services provided by the monopoly water companies. The Water Act 2014 (the Act) will allow all eligible business customers to choose their supplier of water and wastewater retail services from April 2017. The current 50Ml threshold will be retained and maintaining competition for retail water supply only will continue for customers who are supplied using the supply systems of appointed companies whose areas are wholly or mainly in Wales, reflecting the policy position of the Welsh Government. For customers who are supplied using the supply system of appointed companies whose areas are wholly or mainly in England, the current 5Ml threshold for water supply will be reduced to 0Ml, so that all public sector, charity and business customers will be able to switch.

Opening the retail market in this way will mean that in April 2017 new systems and processes will need to be brought in to enable about 1.2 million customers to engage with the market, and for new retailers to enter the market. The transition from the current smaller market to the expanded retail market is a fairly complex one. A number of activities must be carefully managed so that there is a seamless transition from the existing retail market arrangements to the new market arrangements, without causing any disruption or confusion for customers or water and wastewater companies.

Under the new retail market arrangements, water and wastewater retail services will be provided by either a regional monopoly water and/or sewerage company holding an Instrument of Appointment (IoA) (appointed company), or a licensed retailer holding a Water Supply and/or Sewerage Licence (WSSL) (together referred to as market participants). Some aspects of the transition arrangements may affect them differently, so we have explained where that is the case.

The IoA covers both the wholesale and retail activities of an appointed company. The Act, together with the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (Retail Exit Regulations), provides for appointed companies whose supply systems are wholly or mainly in England to apply to the Secretary of State for permission to exit from the business, charity and public sector retail market (it should be noted that this does not apply to appointees whose supply system is wholly or mainly in Wales). If permission is granted, the appointee would no longer be able to supply retail business customers, and those

customers would be transferred to a WSSL retailer (which may be associated with the appointee). The appointee would remain a participant in the retail market as a wholesaler, in addition to continuing to serve residential customers. This is referred to as 'retail exit'.

1.2 Proposed approach to transition

In this consultation, we set out what we expect to happen between now and the opening of the new retail market to facilitate the effective transition to the new market arrangements. In particular, we propose to use a transition scheme in accordance with section 91 and Schedule 11 of the Act to help to facilitate an effective transition. Among other things, we propose to use such a transition scheme to revoke the existing retail licences (Water Supply Licences or WSLs), as these will be replaced by new WSSLs under the provisions of the Act. We previously explained our proposed approach in the summary of the [legal framework](#) and the [guidance on applications](#) for the new WSSLs.

To enable stakeholders to understand the context for the proposed transition scheme, we also explain the wider planned transition arrangements. These include:

- Giving effect to the new legal and regulatory framework (for example, WSSLs and various codes);
- Removing and/or revoking the current market arrangements (for example, revoking existing WSLs and removing the current customer switching processes and agreements between wholesalers and WSL retailers);
- Establishing or appointing the bodies that will play a key role in the market governance framework (the Market Operator (MO) and Panel).

There are many interdependencies between these, which require careful timing, sequencing and planning. A seamless transition is extremely important for both customers and market participants as it is essential for the effective operation of the expanded market from April 2017.

The recently published Open Water Programme Update summarises the main planned transition activities, and should be read together with this consultation.

1.3 Structure of the rest of this document:

- Chapter 2 – Summary of the wider transition arrangements
- Chapter 3 – Proposed transition scheme
- Chapter 4 – Next steps

2. Summary of the wider transition arrangements

As explained above, the transition to the new market arrangements involves three main areas of activity:

- Giving effect to the new legal and regulatory framework;
- Removing or revoking existing arrangements or instruments that are no longer required; and
- Establishing or appointing the new bodies that will play an important role in the new market governance framework.

In the rest of this chapter, we summarise each of these in turn, to provide the background to the proposed transition scheme. Many of these have already been subject to separate consultation, and are completed or in progress, but provide a helpful context for our proposals for the transition scheme.

2.1 Giving effect to the new legal and regulatory framework

One key element of the [legal and regulatory framework](#) is the new retail licensing regime. WSSLs will replace existing WSLs, and all retailers wishing to participate in the retail market after April 2017 will need to have a WSSL in accordance with the provisions of the Act. Defra has already published the standard conditions for WSSLs, and our [licence applications process](#) opened in April 2016. We are processing applications already and a WSSL will be issued as each one is granted. Although at least some are expected to be granted ahead of market opening, no WSSL will take effect until the market opens in April 2017. To achieve this, we plan to include provisions in each WSSL, confirming that it takes effect from market opening, or the date of issue, if later.

The IoAs for appointed companies also need to be updated to add some new conditions, and amend other conditions. The IoAs cover both wholesale and retail activities, so some of these changes will be required even if the appointed company is permitted to exit the market ahead of market opening. We have made some changes to the IoAs already, and are consulting currently on a series of further proposed changes. These changes are anticipated to take effect only from market opening in April 2017.

The other main strand of the legal and regulatory framework is the codes. There are a number of different codes which set out the rules for the market participants, and these are summarised in the [legal framework](#). Some of these are statutory codes

required or provided for under legislation, which will be issued by Ofwat. These include the [Wholesale-Retail Code](#) (WRC), the [Interim Supply code](#) (ISC) and the [Retail Exit Code](#) (REC), which have all been published and are under change control. All market participants will be bound by the relevant provisions of the codes once these take effect (that is, the codes will automatically apply without market participants having to actively sign up to them). We expect these statutory codes to take effect at market opening in April 2017.

Other codes will be given effect by inserting new obligations into the IoAs and WSSLs: these are the [Market Arrangements Code](#) (MAC) and the [Customer Protection Code of Practice](#) (CPCoP). We anticipate that these codes will also take effect at market opening. The CPCoP already states that it will take effect on 3 April 2017 and therefore will apply automatically to those participants with the licence obligation to comply with the CPCoP from that date. The MAC is slightly different, as market participants will be required under a condition in their IoA or WSSL to sign up to, and give effect to the MAC. This will be achieved by all initial market participants and the MO signing the framework agreement, which will give effect to the MAC. Any additional market participants would then sign an accession agreement to that framework agreement.

The table below summarises the plan for giving effect to the various codes:

Code	Purpose	When is it anticipated to take effect?	How will this happen?
Market Arrangements Code (MAC)	Creates the market governance arrangements for how the market will operate, including the Market Operator and the Panel	Market opening (April 2017)	All initial market participants and MO sign the framework agreement, following consultation on the draft MAC by Ofwat
Wholesale-Retail Code (WRC)	Sets out the rules which are to apply to agreements ('wholesale contracts') between undertakers (who operate water and/or sewerage systems) and licensees (who use those systems to supply water to customers)	Market opening (April 2017)	Ofwat will consult on, issue and designate the WRC
Interim Supply Code (ISC)	Regulates what happens to the customers of a licensee which ceases to supply them	Market opening (April 2017)	Ofwat will issue and designate the ISC
Retail Exit Code (REC)	Sets out the provisions about the terms which will apply to the supply of water and /or provision of sewerage services to customers affected by retail exit	Market opening (April 2017)	Ofwat will issue and designate the REC under the Retail Exit Regulations
Customer Protection Code of Practice (CPCoP)	To protect customers in relation to various retail activities	Market opening (April 2017)	Given effect by a condition in both loAs and WSSLs, so no further action required.

2.2 Removing or revoking existing elements

2.2.1 WSLs

In addition to giving effect to the new elements of the market framework as explained above, we will also need to remove or revoke those elements that will no longer be required. These include the current WSL retail licences, as those who want to provide retail water and sewerage services after market opening, other than under an loA, will need to hold a WSSL as explained in our [guidance](#).

Prior to opening the applications for WSSL in April 2016, we considered whether to replace all WSLs with WSSLs without requiring retailers currently holding a WSL to apply for a WSSL. As that approach would mean that WSL retailers would not be assessed against the requirements of the new expanded market, we decided it was

necessary for WSL retailers to apply for a WSSL if they wished to continue operating in the retail market after April 2017. The change in the market, both in terms of size and scope, means that the licensing process previously used for WSLs will no longer be appropriate to support the proper functioning of the expanded market.

We expect to revoke WSLs with effect from 23:59 on the day before market opening¹, so that there is seamless transition between the existing licensing regime and the new one, which is expected to take effect the following day. We consider that this is the best way to avoid either:

- a gap in the licensing arrangements, which would be undesirable for both customers and retailers; or
- an overlap between two different licensing regimes, which could cause confusion and uncertainty.

We have considered what would happen if a retailer currently holding a WSL either decides not to apply for a WSSL, or applies and is unsuccessful. In both of these scenarios, the WSL retailer would be expected to manage the transfer of their customers to one or more other retailers that hold a WSSL. As part of that process, we would expect the retailer to inform their customers about the transfer, providing an opportunity for customers to choose their own terms and/or retailer, if preferred.

As set out in the recent [Open Water programme update](#), the deadline for applications for enhanced Market Entry Assurance Certificate (MEAC) WSSL applications is 2 December 2016, and 2 January for self-certified MEAC applicants, if they want to participate in the market from April 2017. The latest date that we will grant WSSLs for market opening is 10 March 2017.

We propose to revoke the WSLs through the proposed transition scheme, and more details are provided in Chapter 3 below.

¹ The intention is to revoke WSLs immediately before the WSSLs come into effect when the market opens. The change is intended to be instantaneous. There will be no interruption of services to the existing customers of WSLs. However, it is accepted practice where sequential changes are implemented at the point at which the day changes to describe the time as 23.59 on the first day and 00.01 on the second day. The accepted practice is followed in this document. There is proposed to be no gap in sequencing the transition.

2.2.2 Combined Supply Licences (CSLs)

CSLs are a type of WSL that includes permission for the licensee to introduce water into an appointee's supply system for the purposes of supplying a retail customer of the licensee. There are currently five companies that hold CSLs.

Although the retail elements of the CSL would form part of the retail authorisation for WSSLs, introductions of water would not be covered by the retail authorisation. So we propose to retain the current arrangements for introductions of water until the provisions of the Act which relate to wholesale authorisations (in England) and supplementary authorisations (in Wales), which replace the current wholesale elements of the CSL, take effect. We are separately consulting on these particular transitional arrangements². Subject to the outcome of that consultation, we propose to revoke the CSLs at the same time as all other WSLs through the transition scheme. We propose to open applications for the wholesale authorisations and supplementary authorisations in November 2016, which would allow current holders of CSLs to apply for one of the new authorisations ahead of market opening and so the revocation of their existing CSL could occur as proposed for all WSLs. New applicants for WSSLs can also apply for a wholesale or supplementary authorisation from November 2016.

2.2.3 Current switching and access arrangements

In addition to revoking the WSLs, the current switching and access arrangements will need to be removed, as these will be replaced by the new arrangements. In particular, Condition S (Customer Transfer Protocol) and Condition R1-4 (access codes) of the IoAs will no longer be required for the retail market, as these will be replaced by the relevant provisions of the WRC and MAC. We are consulting separately at present on our proposals to remove switching and access arrangements from the IoAs with effect from market opening in April 2017, although these arrangements may need to be retained in relation to introductions of water prior to the coming into effect of wholesale and supplementary authorisations (see above), and we are consulting on that as part of our separate consultation on wholesale and supplementary authorisations.

² <http://www.ofwat.gov.uk/consultation/consultation-wholesale-supplementary-authorisations-condition-s/>

We have considered how to manage effectively the transition from the current switching arrangements to the new switching process set out in the draft WRC, as it is possible that some customer switches could be mid-way through the switching process on the date that the current switching arrangements are revoked and the new arrangements take effect. This could cause confusion and delay for customers and retailers.

To prevent this from happening, we propose to restrict customer switching via the CTP during an appropriate period prior to market opening to enable a smooth transition from the current retail market processes to the new arrangements. This would prevent any transactions being caught in the middle of the transition to the new arrangements. When this was discussed briefly during recent stakeholder workshops on the IoAs, it was suggested that the period for such a freeze on switching should align to the time taken for a switch under the CTP – currently 20 working days. This seems a sensible approach, and would not prevent retailers from contracting with new customers in the meantime. It would simply mean that WSSL retailers would have to set a date for the switch that falls on or after market opening in April 2017.

We are interested in stakeholder views on this proposed freeze on switching during the final transition period ahead of market opening.

Q1:	Do you agree with our proposal to mandate that there can be no customer switches under the existing Customer Transfer Protocol during the last [x] days before market opening?
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2.3 Establishing or appointing the new bodies

In addition to giving effect to the new legal and regulatory framework, and removing or revoking existing elements of the market framework that are no longer required, it is also necessary for the bodies that will play an important role in the governance of the market to be appointed. These are the MO and the Panel.

2.3.1 Market Operator (MO)

The MO will act on behalf of all market participants to administer the systems, processes and interfaces that will enable registration, customer switching and settlement between wholesalers and retailers to take place.

Although Market Operator Systems Limited (MOSL) has been established by existing water companies in anticipation of it becoming the MO, under the legal and regulatory framework a process needs to be followed formally to appoint MOSL as the MO. Ofwat does not have a role in the appointment of the MO, but the appointment process is expected to take place ahead of market opening due to the obligations on market participants at market opening under the proposed “MAC condition” in the WSSL and IoA. It is expected that the MO will be appointed through a collective decision by companies holding an IoA (appointed companies), licensed retailers holding a new WSSL and retailers who have submitted a trading application to MOSL and a licence application to Ofwat by 30 November 2016 as these are the parties who should anticipate being subject to the MAC condition at market opening.

Before such a collective decision can be taken, MOSL will need to confirm that it is putting itself forward for appointment as the MO, and to seek approval from its members and any other appointed companies or retailers holding or applying for a WSSL, if not already members of MOSL, for its draft business plan and budget that is currently being produced on the basis of it becoming the MO.

Open Water anticipates that the decision by companies to appoint MOSL as the MO will be taken by January 2017. That appointment will then be formalised through the legal and regulatory market framework when appointed companies, WSSL retailers and MOSL as the MO all sign the framework agreement for the MAC. It is expected that this will happen in March 2017, ahead of the market opening in April 2017. MOSL would then take on the duties of the MO from April 2017 when the market opens.

2.3.2 Panel

The Panel will have a role in a number of important areas of market governance, including recommending whether Ofwat should accept or reject proposed changes to the WRC and the MAC, as well as considering and commenting on the MO budget and charges. A list of the proposed duties and responsibilities of the Panel is set out in Section 5 of the current draft of the MAC.

The Interim Code Panel (ICP) is currently carrying out a similar role but only in relation to proposed changes to the draft MAC and WRC. We plan that the ICP will continue in this role until market opening, when its functions will be carried out by the Panel, and it will then be abolished. In the meantime, the members of the Panel will be nominated and confirmed, so that the Panel can undertake any preparatory work, and be ready to begin its role once the market opens.

The composition of the Panel is set out in paragraph 5.3 of the draft MAC. Please note: this is slightly different to the current composition of the ICP, but there is no restriction on members of the ICP also being nominated for the Panel. Please see the Open Water Programme Update for more details on how members of the Panel will be selected. We anticipate that the Panel nominations process will open in December 2016.

3. The proposed transition scheme

The purpose of this Chapter is to provide information about the transition scheme that we propose to make in accordance with the provisions of Schedule 11 of the Act.

3.1 The relevant legal framework

Under the provisions of Schedule 11 of the Act, which is given effect by section 91 of the Act, we may use a 'qualifying scheme' to establish the necessary transition arrangements for water supply licensing. Under paragraph 2(3) of Schedule 11, a scheme is only a qualifying scheme if it is made by us and it makes provision about the matters set out in paragraph 2(4) of Schedule 11, namely provision about revocation of current WSLs. A qualifying scheme may also contain provision about matters set out in paragraphs (5) and (6), although that list is not exhaustive.

3.2 The proposed content of the transition scheme

3.2.1 WSLs

As explained in our [guidance on applying for a WSSL](#), all retailers who wish to participate in the market after April 2017 must hold a WSSL with a retail authorisation in accordance with the provisions of the Act. So any holder of a WSL that wishes to continue to participate in the retail market after April 2017 must successfully apply for a WSSL before April 2017.

We expect the market to open in April 2017. Consequently, we propose to use the transition scheme to revoke all WSLs in force at 23:59 on the day immediately prior to market opening. The new WSSLs are expected to take effect at 00:01 on the day the market opens.

3.2.2 Combined Supply Licences (CSLs)

We have also considered whether we need to make any special provision for the transition of CSLs as the introductions of water would not be covered by the retail authorisations.

We propose to retain the ability for retailers with the necessary wholesale authorisations to put water into the network for the purposes of supplying water to their own customers. We are separately consulting on the proposed arrangements for wholesale authorisations (for customers of appointed companies whose supply systems are wholly or mainly in England) and supplementary authorisations (for customers of appointed companies whose supply systems are wholly or mainly in Wales) that would replace the current wholesale elements of the CSL. Subject to the outcome of that consultation, we propose to revoke the CSLs along with all other WSLs through the transition scheme, as they would be replaced by WSSLs with wholesale authorisations and/or supplementary authorisations. We currently propose to open applications for the wholesale authorisations and supplementary authorisations in November 2016, which would allow current holders of CSL to apply for one of the new authorisations ahead of market opening and would enable the revocation of their existing CSL at the same time as other WSLs.

In the unlikely event that our plans change and wholesale and supplementary authorisations are not available in time for market opening, we would reconsider our proposed draft transition scheme. If there is a risk that CSLs could be revoked without the replacement arrangements being in place, we would use the transition scheme to retain the introductions of water under CSLs on a temporary basis, until the new arrangements came into effect.

Q2:

Do you agree with our proposal to use a Schedule 11 transition scheme to revoke all WSLs (including CSLs – subject to alternative provisions being put in place)?

3.3 Other considerations

3.3.1 Protecting customers

It should be noted that if an existing retailer holding a WSL does not apply for a WSSL, or is unsuccessful in its application for a WSSL, that retailer would not be able to participate in the retail market after market opening. In those circumstances, we would expect the retailer effectively to manage the transfer of its customers to one or more WSSL retailers, and inform those customers about the transfer and how it would impact on them. As the applications process for new WSSLs opened in April 2016, we would expect this to be managed in an orderly fashion. If, on an exceptional basis, there was a disorderly exit very close to market opening in April 2017, and the WSL retailer was unable to reach a commercial agreement to transfer the customers within the necessary timescales before its licence was revoked, the interim supply provisions of section 63AC of the Water Industry Act 1991 (WIA91) would require the relevant appointee to supply those customers. As this would occur prior to market opening, the ISC and associated statutory provisions would not yet be in effect. Therefore, even if the relevant appointee is in the process of exiting the business retail market, we would expect them to fulfil their duty to supply until exit and for any customer who had not switched to an alternative retailer prior to the exit date to pass to the acquiring licensee as part of the exit process.

3.3.2 Compensation

Under paragraph 2(4)(b) of Schedule 11, any qualifying scheme must also provide for the payment of compensation by Ofwat in connection with the revocation of rights attached to WSLs or any other restriction imposed on WSLs under a qualifying scheme (even if such compensation may be nil as permitted by paragraph 2(5) of Schedule 11). The proposed transition scheme will include details of how to apply for such compensation, although it should be noted that we would expect any such compensation payable to be nil, as it is possible for an existing WSL retailer to apply successfully for a WSSL if they satisfy the application criteria.

3.3.3 Other issues

The provisions of Schedule 11 also permit a qualifying scheme to be used to terminate any existing s66D agreements between appointed companies acting in their capacity as wholesalers and WSL retailers (wholesale contracts). Any current s66D agreements should be replaced with new wholesale contracts that are compliant with the provisions of the WRC from April 2017. So we are seeking the views of appointed companies and WSL retailers that currently have such agreements in place to understand whether they consider that it would be necessary or helpful for the proposed transition scheme to provide for these agreements.

We are also very interested in stakeholder views on whether there are any other issues that could be addressed using the proposed transition scheme.

Q3:	Should the proposed Schedule 11 transition scheme make provision for what should happen to any existing wholesale contracts?
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Q4:	Are there any other elements of the current arrangements that should be included in the proposed Schedule 11 transition scheme (either to revoke or terminate them, or to make provision for them to continue in some form, if that is consistent with the provisions of the Act)?
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4. Next steps

The deadline for responses to this consultation is **9 September 2016**. Responses to this consultation will inform the detailed drafting of the proposed transition scheme. Subject to the outcome of this consultation and the development of our discussions with Defra about transitional orders, we plan to consult on the draft transition scheme in October.

In the meantime, we plan to finalise the proposed modifications to the Instruments of Appointment that are required as part of the preparations for the retail market. Subject to the responses to that recent consultation, we plan to do this by the end of August 2016.

We are currently consulting on our proposals for replacing the wholesale element of the current combined supply licences with the Wholesale and Supplementary Authorisations for the introductions of water.

We plan to begin the process to select the members of the Panel in December 2016, with a view to confirming all the Panel members in early 2017, ahead of market opening.

We also plan to consult on the draft MAC and draft WRC in October.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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