



Memorandum to the Transport Select Committee

Post Legislative Assessment of the Road Safety Act 2006

Presented to Parliament by the
Secretary of State for Transport,
by Command of Her Majesty
July 2011

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Introduction

1. This Memorandum provides a preliminary assessment of the Road Safety Act 2006 ("the Act") and has been prepared by the Department for Transport (DfT) for submission to the Transport Select Committee. It will be published as part of the process set out in the document *Post Legislative Scrutiny – The Government's Approach* (Cm 7320).

2. The extent of the Act is provided for in section 62 of the Act.

Objectives of the Act

3. The Act received Royal Assent on 8 November 2006. The Act was a package of largely self-contained measures (many of which amended existing legislation), in support of road safety, either directly or indirectly. These included commitments that stemmed from the previous Government's Road Safety Strategy, *Tomorrow's Roads – Safer for Everyone*¹, launched in March 2000, which established casualty reduction targets to be achieved by 2010.

4. The Act included a variety of measures to update penalties for a range of road traffic offences, including provision for remedial training as an alternative (in part or whole) to penalty points and disqualifications. It introduced new offences of causing death by careless, or inconsiderate, driving and keeping a vehicle without insurance. It also allowed for the introduction of a fixed penalty deposit scheme for where drivers are not able to provide a satisfactory UK address. There were other specific provisions on –

- drink-driving
- speeding
- driving tuition and driving tests
- driving licences, the vehicle register and vehicle registration plates
- level crossings
- private hire vehicles

Commencement

5. The provisions of the Act have been commenced progressively. Further to the commencement provisions of section 61 of the Act, the following commencement orders have been made:

- The Road Safety Act 2006 (Commencement No 1) Order 2007 (SI 2007 No 237)

¹ Available on-line at - <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/roadsafety/strategytargetspormance/tomorrowsroadssaferforeveryone>

- The Road Safety Act 2006 (Commencement No 1) (England and Wales) Order 2007 (SI 2007 No 466)
- The Road Safety Act 2006 (Commencement No 2) Order 2007 (SI 2007 No 2472)
- The Road Safety Act 2006 (Commencement No 2) (England and Wales) Order 2007 (SI 2007 No 3492)
- The Road Safety Act 2006 (Commencement No 3) (England and Wales) Order 2008 (SI 2008 No 1862)
- The Road Safety Act 2006 (Commencement No 3) Order 2008 (SI 2008 No 1864)
- The Road Safety Act 2006 (Commencement No 4) Order 2008 (SI 2008 No 1918)
- The Road Safety Act 2006 (Commencement No 5) Order 2008 (SI 2008 No 3164)
- The Road Safety Act 2006 (Commencement No 6) Order 2011 (SI 2011 No 19)
- Road Safety Act 2006 (Commencement No 7) Order 2011 (SI 2011/1119).

6. Except as provided for in section 61(10) (i.e.: exercise of powers to make orders and regulations), and for reasons explained in more detail further below, the following sections or Schedules of the Act have not yet been brought into force: sections 2, 10 (and Schedule 3), 13, 15 to 19, 34, 35, 37 to 39, 42 (and Schedule 6), 47, 48, 56 and 57.

Content of the Act

7. Set out below is an overview of the main subject areas of the Act and an assessment of how particular measures have been operating. Where it was not possible to provide such an assessment, then detail of the intentions of the measure have been set out. These provide an update from the Explanatory Notes that were published alongside the Act. If a provision has not been commenced then we have explained why and set out whether or not we expect this to happen in the future.

Penalties for road traffic offences

8. The Act made various changes to the fixed penalty scheme laid down in the Road Traffic Offenders Act 1988.

9. Section 4 of the Act increased the maximum fixed penalty amount for various road traffic offences and provided for graduation of fixed penalties for offences and in circumstances specified by order. These changes followed the most recent periodic Home Office review of road traffic penalties in 2002², with a range of changes judged to be necessary to ensure a consistent and effective regime to sanction road traffic offenders.

² This was published by the Home Office and DfT on 24 July 2002, and is available online at - <http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/traffic.pdf>

10. Section 5 enabled vehicle examiners to issue fixed penalty notices for those offences which they have powers to enforce (for example roadworthiness and drivers hours offences). It set up a system similar, but not identical, to the fixed penalty system administered by the police and fixed penalty clerks. VOSA have been issuing fixed penalties since spring 2009.

11. Provision was made in section 11 of the Act to prevent drivers who do not have a satisfactory UK address from escaping punishment in Great Britain, by requiring them to pay a financial penalty deposit on the spot where an offence is committed.

12. Immobilisation provisions under section 12 of the Act were introduced in 2009. Their purpose was to protect the public from continued use of unsafe vehicles on the roads, and to ensure that drivers without a satisfactory address within the UK could not avoid the payment of a roadside deposit by absconding.

13. The changes to the fixed penalty scheme referred to above were brought about by the following secondary legislation (all of which came into force on 31 March 2009):

- The Road Safety (Financial Penalty Deposit) Order 2009 (SI 2009 No 491) – This order enabled constables or vehicle examiners to impose a financial penalty deposit requirement on a person who does not have a satisfactory UK address.
- The Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (SI 2009 No 492) – This order specified the amount of the deposit which can be imposed by an enforcement officer.
- The Fixed Penalty (Amendment) Order 2009 (SI 2009 No 488) – This Order prescribed the amount of fixed penalties for certain fixed penalty offences.
- The Fixed Penalty Offences Order 2009 (SI 2009 No 483) – This Order prescribed certain offences which will be subject to fixed penalties, for example offences relating to drivers' hours.
- The Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009 (SI 2009 No 493) – These Regulations made provision for the immobilisation, removal and disposal of certain vehicles which have been prohibited from being driven.

14. Since the roll out of the graduated fixed penalty and financial penalty deposit scheme in spring 2009, VOSA has taken over £7m in financial penalty payments which are transferred into the consolidated fund.

Remedial training

15. To improve enforcement of road traffic legislation, the Act extends the use of retraining courses to offenders convicted of speeding and careless driving. The Strategic Framework for Road Safety confirmed that rehabilitative training is a priority and we are considering when these powers will be introduced.

Causing death by driving offences

16. The Act introduced new offences of causing death by careless or inconsiderate driving (section 20) and causing death by driving whilst unlicensed, disqualified, or uninsured (section 21).

17. These offences were created following the Government's Review of Road Traffic Offences involving Bad Driving in 2005 and carry maximum prison terms of five years and two years respectively. Prior to these changes, the maximum sentence for careless driving or driving when uninsured or unlicensed was a fine and the maximum penalty for driving when disqualified was six months' imprisonment, regardless of whether a death was caused. There was a public perception that these penalties did not adequately reflect the seriousness of the offence or provide justice for victims and their families.

18. Since these offence provisions were brought into force on 18 August 2008, there have been 155 convictions for causing death by careless driving and 34 convictions for causing death by driving when unlicensed, uninsured or disqualified.

Drink-driving

19. Section 13 of the Act prevents those drink-drive offenders at highest risk of re-offending from driving pending medical enquiries, and it amends the current drink drive rehabilitation scheme. The previous Government held over this measure pending a report from Sir Peter North on drink- and drug-driving³. He proposed that it be implemented as a matter of urgency and this section will now be commenced in the near future.

20. Sections 15 and 16 of the Act provide for introduction of an experimental scheme for alcohol ignition interlocks. The Department has undertaken research into the practicalities of a judicial interlock programme⁴. The Government has indicated (in its response to Sir Peter North's report on drink and drug-driving) that it has concluded from this work that the costs of implementing and enforcing a scheme are likely to be disproportionate. Therefore there are no plans to bring these sections of

³ The North Review website has been archived and is now available from the National Archives website at: <http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/>

⁴ Beirness, D.J., Clayton, A. and Vanlaar, W. (2008) "An Investigation of the Usefulness, the Acceptability and Impact on Lifestyle of Alcohol Ignition Interlocks in Drink-Driving Offenders". Road Safety Research Report 88. Department for Transport: London

the Act into force. In relation to this section 38(2) of the Act, which amended section 97 of the Road Traffic Act 1988 (“RTA”) to give the Secretary of State a new regulation-making power (to grant a licence subject to prescribed conditions that are effective for a prescribed period or until the happening of a prescribed effect) will not now be used for alcohol ignition locks.

Speeding

21. Section 2 of the Act provided for regulations to be made to enable surplus income from safety camera enforcement to be used by public authorities for road safety purposes. There are no current plans to make such regulations. This is because, since the Act was passed, funding arrangements for safety camera enforcement have changed. Public authorities locally no longer have direct access to the revenue from fines related to offences detected by safety enforcement cameras. Instead, from April 2007, fine income from safety camera enforcement has been paid into general central Government funds.

22. Section 17 of the Act provides for graduated fixed penalties for speeding and increases the range of penalty points available for those offences. The previous Government consulted on these provisions. There are no current plans to introduce graduated fixed penalty points for speeding. This is because of the increased use being made of remedial training as an alternative to prosecution.

23. Section 18 of the Act amends section 41 of the RTA, which is an enabling provision allowing the Secretary of State to make regulations. The change means that it will be possible to prohibit the fitting to, or use of, a vehicle carrying speed assessment equipment detection devices. There are two distinct types of device that may be covered by these regulations; those that prevent cameras from working (“jammers”) and those that alert the driver to the presence of a camera (“detectors”). The police are starting to prosecute those drivers using jammers on the grounds of perverting the course of justice. In light of the change made by section 18 of the Act, regulations would make such prosecutions more straightforward and cost effective – as the existing process is quite burdensome for the police, the Crown Prosecution Service and the courts. However the Department is not convinced that regulation of detectors would be proportionate; and it would be arguably inconsistent with our general approach to primarily focus on making speed camera enforcement visible in order to get immediate improvements in driver behaviour. We therefore plan to commence this section when resources allow; and to make regulations to prohibit laser and radar jammers, but not detectors.

24. Section 19 of the Act substitutes a new section 87 of the Road Traffic Regulation Act 1984 (“RTRA”). Section 87 RTRA currently provides that vehicles being used for emergency service purposes are exempt from speed limits if observance of the limit would be likely to hinder their purpose on a particular occasion. The change will enable the Secretary of State to make regulations to prescribe additional purposes for which vehicles may be exempted from speed limits – subject to completion of additional training courses in the driving of vehicles at high speeds. There is a need to proceed with this as there are several vehicle purposes which mirror those of the emergency services but are not currently covered. The

prescribed training course will ensure that these drivers, and existing emergency services drivers, are of the highest calibre before they are able to use the exemption. We are planning to commence this section by 2012.

Vehicle insurance

25. Section 22 of the Act, which was commenced in January 2011, inserted new sections 144A, 144B, 144C and 159A into the RTA. These sections introduce an offence of being the registered keeper of a vehicle which does not have insurance cover (“the section 144A offence”). The Motor Vehicles (Insurance Requirements) Regulations 2011 (SI 2011 No 20), provided for exceptions to the offence, and provide that liability for conviction of the offence may be discharged by paying a fixed penalty; other regulations provide for the disclosure of information in connection with enforcement.

26. The scheme which supports the offence of keeping a vehicle without insurance is known as continuous insurance enforcement (CIE). CIE identifies uninsured vehicles by comparing regularly the DVLA’s database of registered vehicles and the motor insurance industry’s database, which holds all motor insurance policies. Those that appear to have no insurance, and for which there is no valid Statutory Off Road Notification (SORN) for the vehicle, will receive a letter advising them that they appear to be uninsured and to take action. Those that do not comply and fail to insure their vehicles face a fixed penalty of £100, the possibility of court action which carries a maximum fine of £1,000, and the threat of their vehicle being clamped, impounded or destroyed.

27. The Government is concerned that a significant proportion of people drive uninsured, which has consequences for responsible motorists who cover the cost of uninsured driving through their premiums. The process of detection through CIE will be largely automatic and will no longer require the police spotting vehicles in use on the road. It builds on existing police powers to seize uninsured vehicles and prosecute offenders for using an uninsured vehicle. The intention is that motorists will find it much harder to evade detection and penalties if they drive uninsured. The CIE scheme only started on 20 June 2011, so we are not yet able to assess its impact.

Driving tuition and driving tests

28. Section 36 of the Act amends section 89 (drivers tests) and section 91 (repayment of test fees) RTA. This has facilitated the introduction of a requirement for driving test candidates to surrender their driving licence to the examiner in prescribed circumstances (Eg: where it fails a security check). It also allowed for more flexible arrangements to be made for booking, cancelling and rearranging driving test appointments and for the appointment of driving examiners, including more flexible charging arrangements in respect of those appointments.

29. The Driving Standards Agency (DSA) is developing proposals to modernise the driving instruction industry using the powers contained in existing legislation which was amended by Schedule 6 of the Act (as introduced by section 42). These will facilitate the introduction of a new, smarter qualifying process, an improved quality assurance regime, and allow greater emphasis to be placed on continuing professional development for driving instructors. The intention will be to ensure that instructors are better equipped to deliver the training needed to ensure that new drivers are safe drivers.

30. The Act contains a number of provisions in respect of driving tests and the way in which drivers learn to drive:

- **Section 37:** This provides for a new definition of “appropriate driving test”, to enable the Secretary of State to prescribe by regulations when an appropriate test is to be an extended test. This power is due to be used to fulfil the commitment in the Strategic Framework for Road Safety to develop a remedial training course, and potentially linked assessment, that a driver disqualified for committing more serious offences must undertake before regaining their licence.
- **Section 38:** This amended existing legislation so as to enable the Secretary of State to make regulations to grant full driving licences subject to prescribed conditions (for example, within a certain time), effective for a certain period or until the happening of a prescribed event. These powers would have allowed the introduction of minimum learning or probationary periods, or to allow a driver disqualified from driving for a drink driving offence to participate in an alcohol ignition programme (as provided by section 15). However the Government has no plans to make such arrangements.
- **Section 41:** This made minor changes to section 99ZC(1) RTA, so as to create powers – not so far used – to include express provision regarding those persons giving instruction on compulsory driver training courses. The Government is considering the use of these powers as part of the development of driver training by the Driving Standards Agency and the Department for Transport.
- **Section 43:** This introduced a new section 162A into the RTA. This gives the Secretary of State the power to introduce a statutory scheme for persons who may assist test candidates who have difficulty in hearing, understanding or responding to questions in the course of a driving test or of a test or assessment conducted as part of a driving instructor qualification examination. These arrangements are presently on hold pending a review of service delivery in languages other than English.

Driving licences and the vehicle register

31. Sections 10, 38 to 40, and 47 to 49 of the Act contribute to enforcement of road traffic laws through changes to the driver and vehicle licensing systems.

32. Section 10 of the act will extend the new system of endorsement to all drivers and will enable abolition of the paper counterpart. This is part of the Driver and Vehicle Licensing Agency's (DVLA's) Efficiency Programme of work. However new systems and processes need to be in place before this section can be commenced and counterpart driving licences can be abolished. Access to the driver record is needed in order to see accrued endorsements. It is anticipated that it will be early 2014 before full access will be available.

33. Section 39 will enable the recall of any paper driving licences still in circulation. It will be the logical follow-up to abolishing the counterpart and is therefore a power that we expect to use in the future.

34. Section 40 was commenced in 2007. It allowed the Secretary of State to charge for the renewal of a photocard licence. The fee is currently set at £20.

35. Section 47 would allow for particulars to be included in the vehicle register to be prescribed by regulations. It was intended that this would include the vehicle mileage. However this will not be taken forward as it would not be cost effective to develop a process that could validate any mileage data provided to the DVLA before a vehicle was three years old.

36. Section 48 relates to the collection, amendment and use of heavy goods vehicle and vehicle identity check inspection data. It places a duty on the Secretary of State to maintain records in relation to the testing of goods vehicles and provides that such records may be used to check the accuracy of, amend or supplement records made by the Secretary of State for the purposes of his functions under the Vehicle Excise and Registration Act 1994. It has not been considered necessary to commence this section.

37. Section 49 provides statutory authority for relevant Government agencies to disclose certain data to their foreign counterparts. This provision came into force at the beginning of 2007 and allows DVLA to share driver and vehicle data via the European Car and Driving Licence Information System (EUCARIS). It also allows other licensing authorities to make requests directly to DVLA. These are considered on a case by case basis.

38. A new section 49A (disclosure of information relating to foreign-registered vehicles) and section 49B (use of information relating to foreign registered vehicles) were inserted by the Local Transport Act 2008. These provisions were commenced in 2009 by the Local Transport Act 2008 (Commencement No 1 and Transitional Provisions) Order 2009 (SI 2009 No 107).

Vehicle registration plates

39. Number plate suppliers were previously regulated in England and Wales under Part 2 of the Vehicles (Crime) Act 2001. Section 46 of the Act extended this to Scotland and Northern Ireland. Suppliers have to register with DVLA and comply with requirements as to sale of number plates, record keeping and submission to inspection. Suppliers can be prosecuted if they fail to meet these requirements. Section 44 provides for authorised persons – including trading standards officers – to inspect the premises of number plate suppliers and to prosecute offenders.

Level crossings

40. Under the Level Crossings Act 1983 (“the 1983 Act”) the Secretary of State may by order provide for the protection of those using any level crossing to which the public have access. The most significant changes to the 1983 Act brought about by the Act are as follows:

- Section 50 of the Act enables a level crossings order to place requirements on the local traffic authority, as well as on the operator of the level crossing. It is intended to make it clear that road traffic measures (e.g. measures to slow traffic or deter zig-zagging) may be included in level crossings orders.
- Section 51 of the Act allows for an agreement to be made whereby Office of Rail Regulation (ORR), on behalf of the Secretary of State, may make, vary or revoke orders made under the 1983 Act.

41. The ability to place specific duties on traffic authorities regarding road traffic measures has been greatly welcomed by ORR. This feature assists in securing greater safety at crossings and recognises that level crossings are not solely a railway concern. All new orders made routinely set out traffic authority responsibilities. ORR believes that the agreement whereby it makes, varies and revokes level crossings orders on behalf of the Secretary of State has worked well, reducing processing time and increasing efficiency. The regulatory framework for level crossings has recently been reviewed by the Law Commission.

Private hire vehicles

42. The Act includes the following provisions on private hire vehicles (PHVs):

- **Section 52:** This provided licensing authorities with a power they did not previously have to suspend or revoke a taxi or PHV driver's licence with immediate effect in cases where it appears to them that the interests of public safety require such a course of action. This section has been implemented and local authorities have used the powers available. The effects of this provision were assessed in a report published in November

2009⁵ and most of the people and organisations involved in the review regarded the amendment as appropriate and working very well. 33 local authorities were questioned and the results showed that 75% of them had actually made use of the power to suspend or revoke a licence with immediate effect.

- **Section 53:** This removed an exemption from private hire vehicle licensing for vehicles used only for carrying passengers for hire and reward under a contract for the hire of the vehicle for a period of not less than seven days.
- **Section 54:** This amended the definition of “private hire vehicles” in section 1(1)(a) of the Private Hire Vehicles (London) Act 1998 to bring within the private hire vehicle licensing regime in London operators and drivers providing a private hire service to an identified group or organisation (but not the public at large).

43. These sections have been commenced. The effects of removing the exemption were assessed and it was found that only half of the people and organisations questioned as a part of this assessment considered that the public safety objective associated with this measure had been achieved. The main reason for this was that too many local authorities were uncertain about whether or not to license as PHVs vehicles which were at the margins of the PHV definition (e.g. care and support workers where driving a client was a small and incidental part of a wider care package.) The Department is currently taking steps to address these concerns by issuing further guidance as to what the Department considers to be a private hire vehicle.

Miscellaneous provisions

44. Other measures to note are as follows.

45. **Trunk Road picnic areas** – Section 55 of the Act enabled the Secretary of State to provide picnic sites on land adjoining, or in the vicinity of motorways, as well as on sites on trunk roads that are not motorways. These powers have not so far been used. Unlike France – where costs are typically met from tolls, the cost of providing and maintaining sites of this kind would fall on the Department. The budget from which trunk roads and motorways are funded is under considerable pressure, and the previous Government had decided that the cost of these facilities could not be justified as a priority. In addition to the cost of buying the land and constructing parking and toilet facilities, motorway design standards have to be applied to ensure safety on the slip roads. There would also be problems of security and maintenance.

46. **Vehicles modified to run on fuel stored under pressure** – Section 56 of the Act empowers the Secretary of State to make regulations, amongst other things on the modification of vehicles to run on gaseous fuels – in particular to introduce an

⁵ <http://www.dft.gov.uk/pgr/regional/taxis/phvcontractexemption/>

approval scheme for such modifications and to make the granting of vehicle licences for such vehicles conditional on their having been approved. Establishing a regulatory approval scheme would be a significant undertaking, incurring administrative costs to Government and imposing costs on businesses involved in the fitting of gaseous fuel systems to vehicles. The Government is not aware of any evidence that poor installation of these systems is resulting in a safety risk in practice and is mindful of the fact that the industry has introduced a voluntary approved installer scheme. For these reasons the Government has not proceeded to make regulations under these powers.

47. **Powers to regulate transport of radioactive materials** – Section 57 allows regulations to be made to impose formal requirements for the provision of assistance and information on those involved in the transport of radioactive material; and to authorise such requirements being imposed by inspectors when conducting an investigation. The intention was to provide additional powers under section 2 of the Radioactive Material (Road Transport) Act 1991 (“the 1991 Act”) analogous to those provided by section 20 of the Health and Safety at Work Act 1974 (“the 1974 Act”). However, in July 2007, regulations for the transport of radioactive material by road which had been made under the 1991 Act were repealed and replaced by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 (SI 2007 No 1573), made under the 1974 Act. This removed the need for the provisions in section 57 and it is not now expected to be commenced.

Post-legislative reviews

48. The Transport Select Committee has conducted the following enquiries on road safety matters since the Act was passed –

- The Government’s Motorcycling Strategy – report published on 29 March 2007
- Novice Drivers – report published on 19 July 2007
- Ending the Scandal of Complacency – Road Safety Beyond 2010 – report published 29 October 2008
- The enforcement activities of the Vehicle and Operator Services Agency (VOSA) – report published 24 August 2009
- Mobility Scooters – report published 7 April 2010
- Drink and Drug Driving Law – report published on 2 December 2010
- The Cost of Motor Insurance – report published 11 March 2011
- Licensing of Taxis and Private Hire Vehicles – evidence sessions were held on 18 January and 15 March 2011

49. The National Audit Office (NAO) published the following reports on road safety matters –

- Improving road safety for pedestrians and cyclists in Great Britain – 8 May 2009
- Vehicle and Operator Services Agency: Enforcement of regulations on commercial vehicles – 8 January 2010.

50. The Public Accounts Committee (PAC) conducted inquiries on the subjects of these two NAO reports, and published its reports on 22 October 2009 (HC 665) and 18 March 2010 (HC 284) respectively.

Preliminary assessment of the Act

51. We consider that the Act has made a useful contribution to improving road safety. While it is not possible to isolate its effects from the other improvements that we have seen in recent years, in areas such as car technology, road engineering, changing social attitudes and enforcement, it is likely to be a factor in Great Britain's continuing casualty reduction.

52. A highlight is the financial penalty deposit scheme that has been successful in providing an effective enforcement mechanism to deal with non-UK resident offenders who do not comply with the rules of the road in Great Britain. As well as the expected road safety benefit, this has helped to alleviate a public concern about the variation in enforcement against UK and non-UK resident drivers.

53. We expect the introduction of Continuous Insurance Enforcement to help with our efforts to reduce uninsured driving. It is too soon to assess this, but we will be monitoring its effect on an ongoing basis through the numbers of warning letters, enforcement action and proceedings that it generates.

54. As set out above there are several measures that have not been taken forward, for a variety of reasons. In some cases we do not expect these to now be commenced while others will be useful in either fulfilling our commitments and intentions on road safety, or as a contingency for possible future use if needed.

55. In particular the provisions around driver training will be useful to fulfil our intentions to modernise the driver training industry, as set out in the Strategic Framework for Road Safety. Similarly the extensions to remedial training will be important in delivering a key strategic priority.

56. Great Britain is currently a world leader in road safety. We see the Act as an important addition to the legislative framework that is helping to maintain this. Our aim is to continue to reduce deaths and serious injuries on our roads and the Act will play an important part in this going forward.

**Department for Transport
July 2011**



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