

Business Guides



Illegal Encampments and Other Forms of Trespass: Police and Local Authority Powers

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Illegal Encampments and Other Forms of Trespass: Police and Local Authority Powers

INTRODUCTION

This Business Guide should be read alongside NFU Business Guide 009 Illegal encampments; precautionary measures and applying for a Possession Order. Copies of this document can be obtained from NFU CallFirst on 0370 845 8458 or downloaded from www.nfuonline.com.

The law recognises a number of offences involving the unauthorised occupation of land and disruptive mass gatherings.

The Criminal Justice and Public Order Act 1994 ("the 1994 Act") replaced, extended and strengthened the old police powers set out in the Public Order Act 1986 ("the 1986 Act") and introduced new police powers to deal with encampments and trespassers.

More recently, the Criminal Justice Act 2003, the Anti-Social Behaviour Act 2003 and the Serious Organised Crime and Police Act 2005 have also amended some of the relevant provisions. In some instances the powers conferred by the Anti-social Behaviour Crime and Policing Act 2014 may also be relevant if there is an antisocial component to the behaviour; these provisions are outside the scope of this guide and landowners should discuss anti-social behaviour with the police and/or the relevant local authority to ascertain whether any provisions are applicable to their specific situation.

One of the most frequently asked questions is "*do the local authority or the police have a duty to move travellers or trespassers where they are on land without the landowner/occupier's permission?*" Unfortunately for those suffering the trespass the answer is 'no'. Trespass is a civil matter, not a criminal offence.

The powers which the local authority and the police have are discretionary (so they cannot be forced to use them) and can only be used when certain conditions exist. When local authorities and the police do exercise their powers they have to ensure that they do so lawfully, or they may face a challenge in court.

In November 2019, the government published a consultation entitled 'Strengthening police powers to tackle unauthorised encampments'. This consultation closed on 4 March 2020, and at the time of writing there is not yet any response from the government. Further information can be found [here](#), and this

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Business Guide will be updated if there are any changes to the law in this area as a result of this consultation.

The Home Office and the Department for Communities and Local Government (DCLG) issue guidance to local authorities and the police on how to manage the illegal encampments (see below) and other offences covered in this document and the legislation itself has also been subject to interpretation by the courts. Further information is available online at <https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>.

Another issue of major concern is the cost of cleaning up the rubbish left behind when the trespassers have moved on. Local authorities, the Environment Agency, and other relevant agencies try to use the existing legislation to deal with this problem when possible. However, where the rubbish is left on private land the responsibility for removing it and the cost of doing so often falls on the private landowner, particularly where those responsible for leaving it cannot be identified or located. This can be very expensive, particularly if the waste left behind needs specialist treatment.

By the time a trespass has occurred and you are looking to the provisions discussed in this document for assistance, you may already have serious problems.

In some cases, it may be possible to negotiate with the trespassers to agree a departure date, but you should be careful when attempting this in case a confrontation develops. However, if you grant permission to allow the travellers to remain on the land for a fixed period it may be more difficult to get them to leave, particularly before the agreed deadline arises. You should consider the implications of entering into such arrangements, particularly where there are other issues relating to use of the land in this way, such the absence of planning consent for the use. You may, therefore, wish to take independent legal advice regarding your situation before entering into negotiations.

If possible, it is better to take preventative action so that the situation does not occur in the first place, rather than trying to resolve a situation that has already arisen. NFU Business Guide 009 contains information on further practical steps that can be taken to prevent a trespass occurring in the first place, and initial steps to take when it has occurred.

The remainder of this document focuses on the powers available to the police to deal with trespassers on private land.

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Each situation will have to be considered on its own facts and circumstances and this guide cannot take account of the facts of any given case. NFU members can obtain free initial legal and professional advice from NFU CallFirst on 0370 845 8458.

The NFU has a separate Business Guide 092 covering livestock straying and trespass to land, including fly-grazing, which can be downloaded from NFU online or ordered from NFU CallFirst on 0370 845 8458.

POLICE POWERS TO REMOVE TRESPASSERS AND VEHICLES FROM LAND UNDER SECTION 61 OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Situations covered

Section 61 of the 1994 Act gives the police the power to formally 'direct' trespassers to leave land and to remove any vehicles or other property.

Under s.61 a senior police officer may issue a direction (i.e. an order) to trespassers if, on a visit to the scene of an encampment, he reasonably believes that all of the following conditions are satisfied:

1. There are two or more trespassers;
2. The trespassers are present with the common intention of residing on the land for any period;
3. Reasonable steps have been taken by or on behalf of the landowner/occupier to ask the trespassers to leave; and
4. Either any of the trespassers:
 - Have caused damage to the land or property on the land, or
 - Used threatening, abusive or insulting words or behaviour towards the landowner/legal occupier, a member of his family, or an employee or agent of his, or
 - Have six or more vehicles on the land.

In order for the police to be able to exercise their powers under the 1994 Act, it will be necessary for the landowner/occupier to try to persuade the trespassers to leave. It may be useful if you can produce some evidence (photographic/video/witnesses) to demonstrate this, in case the police need to justify their actions at a later date. However, it is important to ensure that you do not put yourself or others in danger when approaching the travellers and withdraw from the situation promptly if you feel threatened.

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When does section 61 not apply?

S.61 does not apply if the people on the land are there with the landowner/occupier's consent, unless the permission to be there has expired or there has been a breach of the consent.

If you do grant consent to people to be on your land for a limited period of time it may be useful to have recorded this in writing so that you can produce evidence of what was agreed at a later date. This also

applies if you agree to allow the police to direct travellers into one of your fields for a short period to prevent an obstruction on the highway. You may also wish to consider getting written assurances from the police about the assistance they will offer in terms of moving the travellers on and cleaning up the site if you agree to allow this to happen.

If you do agree to allow visitors onto your land, be clear about when they have to leave and about the condition the site is to be left in when they leave.

There are four conditions which must be satisfied before the police can use their powers to move trespassers from land; these are listed below. If the trespassers were originally on the land with the consent of the landowner these conditions must have been satisfied after they became trespassers.

They must be on land that falls within the scope of these provisions

The "land" covered by s.61 and s.62 (see below) is agricultural and common land and certain agricultural buildings (as defined). These sections cannot be used in relation to residential or general commercial property, or to highways (except public rights of way which cross agricultural and common land). The powers that can be used in connection with assemblies on highways are discussed below.

They must be residing on that land

The 1994 Act gives no direct definition of "residing" except to say that a person may be regarded as "residing" in a place notwithstanding that he has a home elsewhere. It is suggested that the standard 'dictionary' definition of the word "residing" would apply.

There must have been a request to leave

The senior police officer must reasonably believe that the occupier has taken "reasonable" steps to ask the trespassers to leave and that any notice period given to the trespassers has expired before he can issue a direction under s.61.

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What amounts to “reasonable steps” will depend on the facts and circumstances of each case. For example, a request by loud hailer may be reasonable if there are a large number of trespassers, whereas this may not be reasonable if there is only a small group. It may also be necessary to consider whether the timeframe specified for leaving is reasonable, e.g. if there is a considerable amount of equipment to be packed away, would that be possible within the period specified?

Some police forces have streamlined this process by drawing up standard forms which the landowner/occupier completes and which gives the police the authority to act as their agents in dealing with the encampment. Landowners can contact their local police force to find out whether this is the case in their area.

Non-compliance with a Police direction

Trespassers commit a criminal offence if they fail to leave as soon as is reasonably practicable following a direction to leave, or, after leaving, re-enter the same land within a three month period of the date on which the s.61 direction was given. These offences can be committed by just one person, despite the fact that there must be two or more people present in order for the s.61 direction to be given in the first place.

It is a defence for the accused to show that he was not trespassing or that he had “reasonable” excuse for not complying with the direction (e.g. he was returning to collect something).

Following conviction in the Magistrates' Court, this offence currently carries a maximum punishment of 3 months imprisonment and/or a fine not exceeding level 4 on the standard scale (currently £2,500).

A uniformed police officer who reasonably suspects that someone remains on land in spite of a s.61 direction can arrest him without a warrant.

POWER TO SEIZE VEHICLES LEFT ILLEGALLY UNDER SECTION 62 OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Situations covered

Section 62 of the 1994 Act allows a police officer who reasonably suspects that a person to whom a s.61 direction has been given has:

- failed to remove his vehicle, or
- re-entered the land as a trespasser with a vehicle within the three month period, to seize and remove that vehicle.

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This section does not give the police the power to seize goods other than vehicles. "Vehicles" here includes unroadworthy vehicles or parts of vehicles and caravans (as defined).

POWER TO REMOVE TRESPASSERS WHERE AN ALTERNATIVE SITE IS AVAILABLE UNDER SECTIONS 62A – 62E OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Sections 62A – 62E provide the police with the power to direct trespassers to leave land and remove vehicles and other property where there is a suitable pitch available on a relevant caravan site in the local authority's area.

This power may be used where all of the following criteria are satisfied:

- At least two persons are trespassing with the intention of residing there for any period;
- The trespassers have at least one vehicle with them;
- If it appears to an officer that the person has one or more caravans on the land and there is a suitable pitch on a relevant caravan site for each of those caravans;
- The landowner/occupier of the land or someone acting on their behalf has asked the police to remove the trespassers.

"Land" and "residing" have the same meanings as above.

Unfortunately, in many areas there is a shortage of places on approved sites. This fact is likely to prevent these powers being used in many instances, due to the lack of an alternative site for the travellers to move to.

'Relevant Caravan Site' and 'Suitable Pitch'

A relevant caravan site is one which is situated in the same local authority area as the land on which the trespass has occurred and which is managed by the local authority (or a registered social landlord) or other body as specified by an order of the Secretary of State.

There is no definition of a suitable pitch but the Secretary of State has said that it would include a pitch that provided basic amenities, including water, toilets and waste disposal facilities.

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Where a senior police officer believes the above conditions are satisfied he may issue a direction to the trespassers (the direction may be communicated by any constable at the scene).

Non-compliance with a Police Direction

Trespassers commit a criminal offence if they fail to leave as soon as is reasonably practicable after a direction, or, after leaving, enter any land in the local authority's area as a trespasser within three months of the direction being given.

On conviction in the Magistrates' Court this offence carries a maximum punishment of three months imprisonment and/or a fine not exceeding level 4 on the standard scale (currently £2,500) or both.

A uniformed police officer who reasonably suspects that someone is committing this offence can arrest him without a warrant.

It is a defence for the accused to show that he was not trespassing or that he had "reasonable" excuse for failing to leave as soon as reasonably practicable (e.g. vehicle failure) or for entering land in the relevant local authority area as a trespasser.

Seizure of vehicles

S.62C allows a police officer who reasonably suspects that a person to whom a s.62A direction has been given has:

- failed to remove his vehicle, or
- entered any land in the relevant local authority area as a trespasser with a vehicle within the three month period

may seize and remove that vehicle.

POWER TO REMOVE PERSONS COMMITTING OR PARTICIPATING IN AGGRAVATED TRESPASS UNDER SECTIONS 68 AND 69 OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Situations covered

Sections 68 and 69 of the 1994 Act deal with the offence of aggravated trespass. This offence is aimed at trespassers who seek to intimidate, obstruct or disrupt people engaged in lawful activities on land. Again,

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highways are excluded from the definition of land for these purposes. Unlike s.61, these powers can be used where there is a single trespasser.

The provisions were primarily directed to activities of anti-hunt saboteurs going beyond peaceful protest, although they also cover many other situations, for example, animal rights supporters seeking to disrupt shooting at game, and protestors demonstrating to prevent work on new motorways. This covers situations in which the trespassers are committing the offence inside a building as well as in the open air.

In order to be convicted of the offence, the trespasser must do something (e.g. let off crackers to scare away birds during a game shoot) with the intention of intimidating or deterring people from carrying on with the activity, or obstructing or disrupting it. Peaceful protests are not covered.

Furthermore, the intimidation, obstruction or disruption must actually affect someone, i.e. there must be someone present in order for there to be an aggravated trespass. This point was clarified in the case *DPP v Rowan Tilly & Others* (2001), in which trespassers who destroyed a crop of GM maize could not be found to be obstructing or disrupting farming activity because no workers were on that area of land at that time and therefore they were not disrupting any person engaged in a lawful activity. (Other offences, such as criminal damage, may have been committed in those circumstances, so the fact that these provisions do not apply does not necessarily mean that the police are powerless to intervene).

Power to remove persons committing or participating in aggravated trespass

A senior police officer may formally direct a person to leave land if, being on site, he reasonably believes that:

- A person is committing, has committed or intends to commit an aggravated trespass, or
- Two or more people are trespassing on land with the common purpose of intimidating others in order to deter them from engaging in a lawful activity, or of obstructing or disrupting a lawful activity.

Non-compliance with a Police direction

Aggravated trespass is an offence in its own right under s.68. It is also an offence under s.69 to fail to comply with a s.69 direction (i.e. failing to leave) “as soon as practicable” or to re-enter the land within a three month period following a s.69 direction.

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A person found guilty of an offence under either s.68 or s.69 in the Magistrates' Court may be liable to a maximum sentence of 3 months imprisonment or a fine not exceeding level 4 on the standard scale (currently £2,500), or both.

Again, a police officer in uniform who reasonably suspects that a person is committing either of these offences may arrest a person without warrant.

Defences available to the accused are that he was not trespassing, or that he had reasonable excuse for failing to leave as soon as practicable, or for re-entering the land.

If the trespass is on your land, you should record evidence whenever possible, e.g. on video with dates and times recorded, but be careful to avoid putting yourself into a dangerous situation. Sufficient evidence is essential as it may be impractical for the police to be present on the scene at the critical time. Use a diary to record dates of entry and any particular incidents. Ensure that you have up-to-date maps of your land and copies of any deeds or tenancy agreements available should you need to produce evidence of your ownership/right to occupy the land in question.

When gathering evidence, take care not to inflame the situation, and do not put yourself or your employees/family/friends in danger.

TRESPASSORY ASSEMBLIES AND SECTIONS 14A – 14C OF THE PUBLIC ORDER ACT 1986

Situations covered

Sections 14A to 14C of the 1986 Act provide a general statutory power to prohibit an assembly in the open air if it is likely to involve a trespass, and to stop people travelling to it. In this context, an "assembly" means an assembly of 20 people or more.

These sections are intended to protect communities from serious disruption, and to protect land of significant importance, and/or a building/ancient monument on it, from damage. They only apply to open air assemblies held on land to which the public has no right, or only limited right, of access. The sections do not apply if the landowner/farmer has given permission for the assembly, unless the trespassers behave in such a way to exceed the terms of the permission.

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A chief constable may apply for an order forbidding all trespassory assemblies in a certain area for a defined time if he reasonably believes that:

- A planned assembly is likely to be held without the permission of the occupier of the land, and
- It may result in serious disruption to community life or damage to ancient monuments or buildings of architectural, archaeological or scientific importance.

This application must be made to the council of the district in which the planned assembly is to be held. The council may make an order in the terms applied for or make modifications to it, subject to the Secretary of State's consent.

The difficulty with these provisions is that they are really designed to be used in advance of the trespassory assembly taking place, which may limit the use of these powers when assemblies take place with little or no advance warning. However, there may be some situations in which these provisions are of value.

The offence

There are 3 offences connected with a prohibition under section 14A:

1. Organising an assembly, knowing that it is prohibited under section 14A. This is punishable by a fine not exceeding level 4 (currently £2,500) and/or 3 months imprisonment.
2. Participating in an assembly, knowing that it is prohibited under section 14A. This is punishable by a fine not exceeding level 3 (currently £1,000).
3. Inciting another to participate in an assembly knowing that the assembly is prohibited. This is punishable by a fine not exceeding level 4 (currently £2,500) and/or imprisonment for up to 3 months.

A police officer in uniform may arrest without warrant anyone he reasonably suspects is organising or taking part in a prohibited assembly.

Also, under s.14C, a uniformed police officer can also stop anyone he reasonably believes is en-route to an area to which an order applies and direct him not to proceed in the direction of the prohibited assembly. It is an offence not to comply with a direction from a police officer and a person may be liable on conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

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Landowners and farmers should not attempt to deal with trespassory assemblies or offences arising from a prohibition order themselves. Individuals faced with these sorts of situations should contact the police to deal with the situation.

RAVES AND SECTIONS 63-65 OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Situations covered

Sections 63-65 of the 1994 Act deal with "raves". Most rave music has a low frequency which can penetrate buildings and can be heard over long distances. Rave parties also cause congestion and tailbacks on local roads. The 1994 Act gives police powers to prevent unlicensed raves from being set up, stop them if started and even seize musical equipment if necessary.

A "rave" is defined as:

- A gathering of 20 or more persons (whether trespassers or not) on land in the open air or in a building ("land in the open air" includes land partly in the open air);
- At which amplified music is played during the night; and
- Which is likely to cause serious distress to the inhabitants of the locality, because of the volume of the music, the duration of the event and the time at which it is held.

Unfortunately the Act:

- Defines raves as night time events, even though such events also cause distress during daylight hours; and
- Is vague about the volume of music and duration of an event causing serious distress.

However, a rave is regarded as continuing during intermissions in the music and, where a gathering extends over several days, the rave continues throughout the period during which amplified music is played at night.

Local authorities also have some powers to deal with noise complaints under s.80 and s.81 of the Environmental Protection Act 1990. These powers allow a Local Authority to serve an abatement notice when it is satisfied that a statutory nuisance exists.

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Anyone aggrieved by a rave can bring proceedings in a Magistrates' Court, which has the power to issue an abatement notice or fine the defendant. However, it will be necessary for the person bringing the proceedings to gather sufficient evidence to prove that the rave is occurring and that it is causing the problems complained of.

The 1994 Act definition of a rave excludes gatherings licensed by local authority entertainment licence as these are covered by other legislation. Such licensed events have terms and conditions covering noise and unreasonable disturbance attached to the licence and breach of these would give rise to criminal liability.

Police powers to direct people to leave

Under s.63(2) of the 1994 Act a senior police officer can direct people to leave land if he reasonably believes preparations are being made to hold a rave (as defined above) or a rave is in progress and:

- (a) 2 or more people are making preparations for holding a rave there; or
- (b) 10 or more people are waiting for a rave to begin there; or
- (c) 10 or more people are attending a rave in progress.

The senior officer need not be at the scene to make the direction - he can communicate it to another officer on the scene. The police must take reasonable steps to communicate the direction to the "ravers" (e.g. use a loud hailer to ensure that they are heard), and if they do so, the "ravers" will be unlikely to mount a successful defence that they did not hear or see the direction to leave.

Failure to leave the land as soon as is reasonably practicable after a direction has been given, or re-entry within seven days after that, is a summary offence under s.63(6) of the Act and punishable by up to 3 months imprisonment, and/or a fine not exceeding level 4 (currently £2,500) on the standard scale.

Stopping people travelling to a rave site

Under s.65(1), a police officer in uniform who reasonably believes that someone is on his way to a rave can stop him and direct him not to proceed in the direction of the gathering. This power can only be exercised within five miles of the boundary of the site of the rave.

Failure to comply is a summary offence (i.e. it will be dealt with in the Magistrates' Court) with a fine not exceeding level 3 on the standard scale (currently £1,000). A police officer in uniform can, without a warrant, arrest anyone he suspects to be committing this offence.

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Entering and seizing/removing equipment

If a senior police officer reasonably believes that circumstances exist which justify him issuing a s.63 direction, he may authorise any police officer to enter the land in question without a warrant;

- To ascertain whether the circumstances exist,
- To communicate a direction to leave,
- To make an arrest without warrant, or
- To exercise the power of seizure and removal under s.64(4).

The police may seize vehicles or sound equipment if, following a direction, a person fails to remove such items belonging to him, or, within seven days, re-enters the site. Such items may be retained in accordance with regulations made by the Home Secretary; sound equipment may be retained until conclusion of proceedings.

Where a person is convicted of an offence under s.63, the Magistrates' Court is also empowered to make an order for the forfeiture of any sound equipment seized from a person under s.64(4), or which was in his possession or under his control at the time of the arrest or the issue of a summons in respect of an offence under s.63. Once the Court is satisfied that the equipment was used at the "rave", the property is taken into the possession of the police.

UNAUTHORISED VEHICLE CAMPERS UNDER SECTIONS 77-79 OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Unauthorised vehicular travellers/campers

Sections 77-79 of the 1994 Act give local authorities powers to remove "unauthorised campers". The 1994 Act abolished local authorities' duties to provide traveller sites (although they retain discretionary powers to do so); the shortage of authorised sites has exacerbated the problem of unauthorised camps.

Unauthorised vehicular campers are people residing in a vehicle or vehicles:

- On any land forming part of the highway;
- On any other unoccupied land in the open air; or
- On occupied land in open air without the occupier's consent.

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No minimum number of persons is specified, but the use of the word "persons" suggests that there must be at least two people.

“Vehicles” includes unroadworthy vehicles or parts of vehicles and caravans.

Unauthorised lodging in a tent or outhouse is covered by the Vagrancy Act 1824 rather than under these provisions; if faced with this situation contact the police for assistance.

Direction ordering unauthorised campers to leave

The powers of direction to order unauthorised campers to leave the land lie with the local authority; i.e. the county council, district council or London borough council.

The local authority may direct unauthorised campers in its area to leave the land and remove vehicle(s) and other property under s.77 of the 1994 Act. It is an offence to fail to comply with a s.77 direction to leave the land and remove vehicles and property “as soon as practicable” or to re-enter the land within a three month period beginning with the day the direction was given. On summary conviction a person found guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale (currently £1,000).

In proceedings under this section, it is a defence for the accused to show that his failure to leave as soon as practicable or his re-entry was due to mechanical breakdown, illness or other immediate emergency.

If the direction is ignored then, on a complaint by the local authority, a Magistrates' Court may make an order under s.78 for the removal of such persons and their vehicles. The local authority must not enter on any occupied land unless they have given the owner or occupier at least 24 hours notice of their intention to do so. Its officers or employees may enter and remove vehicles or property and anyone who obstructs such exercise wilfully commits an offence and on conviction is liable to a fine not exceeding level 3 on the standard scale (currently £1,000).

CONCLUSIONS

Situations involving trespassers can become volatile, and landowners/occupiers should be careful to ensure that tensions do not escalate if attempting to deal with a situation themselves or when gathering evidence to demonstrate that particular steps have been taken. Where possible, it is best to prevent the situation arising in the first place. Business Guide 009 contains an overview of the things farmers can do to prevent these sorts of incidents.

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In the majority of cases, if an initial, polite, request to leave is ignored it is probably better to contact the police or the local authority and request assistance.

The NFU can take no responsibility for any consequences arising from individual circumstances which cannot be fully accounted for in this document.

It is advisable to seek professional advice.

**For free initial Legal & Professional advice telephone NFU CallFirst
0370 845 8458**

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