

Suffolk Fire and Rescue Service



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Title: Enforcement Policy Statement
Reference: FP1.1

Enforcement Policy Statement

1. Introduction

- 1.1 This statement sets out the general policy and principles that Suffolk Fire and Rescue Service (SFRS) expects to follow in carrying out Protection (fire safety) enforcement work in relation to the Regulatory Reform (Fire Safety) Order 2005 (FSO) and any subsequent amendments/fire safety legislation/acts, for which the fire service is the Enforcing Authority, on behalf of Suffolk County Council Fire and Rescue Authority ('The Authority').
- 1.2 It sets out the general principles and approaches which SFRS's personnel, who make enforcement decisions with regard to fire safety, are required to follow. It should be read in conjunction with the applicable specific SFRS policy. Personnel taking enforcement decisions will be authorised officers within the SFRS Protection Department in line with the National Fire Chiefs Council (NFCC) competency framework; which this policy refers to as 'inspectors', consistent with the use of the term in the legislation.
- 1.3 SFRS recognises that the Competency Framework for Fire Safety Regulators is a beneficial objective which will provide identified benchmarks to confirm competences, but SFRS notes the acknowledgement in paragraph 6.3 that it may take time for enforcing authorities to implement the Framework. SFRS position is that its fire safety regulators, who are working towards the objectives of the Framework, are not to be regarded as not competent to carry out their respective fire safety duties, if such officers meet all other criteria for competence in the Framework, as fire safety regulators will only be appointed to roles which SFRS considers that its fire safety regulators can competently fulfill.

- 1.4 This Enforcement Policy Statement takes into account, the [Regulators' Code](#) April 2014, the regulatory principles required under the Legislative and Regulatory Reform Act 2006. SFRS will always have regard to statutory and other relevant codes of practise relating to enforcement action and sanctions, and criminal proceedings.
- 1.5 SFRS believes in firm but fair enforcement of the FSO. We aim to achieve this by exercising the principles of proportionality in law and securing compliance by; helping and encouraging regulated entities to understand and meet their regulatory requirements; by having a consistency of approach; by targeting enforcement action where the risk is greatest; by having transparency in how we operate and in what the regulated may expect from us; and by being accountable for our actions.
- 1.6 The appropriate use of enforcement powers, including prosecution, is important, to ensure public safety, secure compliance with the law and to ensure that those who have duties under it may be held to account.
- 1.7 A range of possible actions will always be considered where non-compliance with the fire safety legislation is identified, and any action taken will be proportionate to the risks or other consequence of the non-compliance. SFRS will have no hesitation in prosecuting those who flout the law; in particular where there has been gross failure(s) by the duty holders to safeguard relevant persons from fire and its associated effects.
- 1.8 Any departure from this policy statement must be exceptional, justified, and approved by SFRS Protection Department's Group/Area Manager.

2. The purpose and methods of Enforcement

- 2.1 The ultimate purpose of enforcement is to ensure that responsible persons/'duty holders' under law (identified in Article 3 of the FSO as 'The Responsible Person'; being the employer, person in control, or owner; and in Article 5 as other persons with defined degrees of relevant control) adequately discharge their responsibilities and manage and control fire risks effectively, thus preventing harm to relevant persons.
- 2.2 The term 'enforcement' has a wide meaning and applies to all dealings between SFRS and those on whom the FSO places duties (e.g.; employers, owners, the self-employed, employees and others), and is intended to:
 - Ensure that responsible persons/duty holders take action to deal immediately with serious risks.
 - Promote and achieve sustained compliance with the law.

- Ensure that responsible persons/duty holders who breach fire safety requirements may be held to account; which may include SFRS bringing alleged offenders before the court in the circumstances set out in this Enforcement Policy Statement.
- 2.3 Enforcement is distinct from civil claims for compensation, and will not be undertaken by SFRS in all circumstances where civil claims may otherwise be pursued or to assist such claims.
- 2.4 The FSO gives certain powers to 'authorised inspectors' to enable them to carry out their work and to take actions to ensure compliance. Inspectors decide on the use of these powers as permitted by the legislation and dictated by the situation. Their actions may include offering duty holders information and advice; both face-to-face and in writing; may involve 'seizing' items for testing and/or evidence; and/or warning a duty holder that, in the opinion of 'The Authority', they are failing to comply with the law.
- 2.5 Educating, informing and advising Responsible Persons/Duty Holders about their duties under the fire safety legislation will form a fundamental element of our enforcement regime. SFRS will fulfil its obligation under Section 6(2) of the 'Fire and Rescue Services Act 2004' (as amended) to give, on request, fire safety advice free of charge.
- 2.6 Giving information and advice in Deficiency Notifications and Agreed Action Plans, issuing Enforcement, Prohibition, and Alterations Notices, and making comment on Licensing and Building Regulations applications are the principal means which SFRS inspectors will use to achieve the broad aim of dealing with serious fire risks and securing compliance with fire safety law and preventing harm. 'The Authority' may also issue simple cautions and prosecute.
- 2.7 All Notice types, and written advice, may be used in court proceedings. Information on Enforcement, Prohibition and Alteration Notices is made publicly available on the National Fire Chiefs Council (NFCC) website [National Enforcement Register](#)
- 2.8 Simple cautions and, if appropriate, prosecution are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with this policy statement, 'The Authority' will use these measures in addition to issuing formal Notices.
- 2.9 A simple caution is a statement in writing, by 'The Authority', that is accepted by the alleged offender, that the alleged offender has committed an offence for which there is a realistic prospect of conviction. (See Section 8) A simple caution will be used only where a prosecution could be properly brought. If it is refused by the alleged offender, proceedings will be instituted.

3. Achieving Compliance with Legislation

- 3.1 Advice on how to achieve compliance with fire safety legislation is set out in Government issued guidance under Article 50 of the FSO, British Standards and their equivalents, and Approved Codes of Practice (ACOP). These give practical advice on compliance and some have legal recognition.
- 3.2 Following such guidance is not compulsory but doing so tends to show compliance with the law. If a responsible person/duty holder is prosecuted for a breach of fire safety law and did not follow the relevant provisions of such guidance, the onus is on them to show that they complied in another equivalent way.
- 3.3 In places, the legislation is straightforward and prescriptive, i.e. specifically requiring what must be done. For example; under Article 9 of the FSO, the premises' the Responsible Person has a statutory duty to; "...undertake a suitable and sufficient fire risk assessment."
- 3.4 However, no government guidance, recognised public standard, nor ACOP can be written in terms which necessarily fit every case. Therefore, in considering whether the law has been complied with, SFRS inspectors will take relevant guidance into account and use sensible, professional judgement about the extent of the risks and the effort that has been applied to counter them.

4. The Principles of Enforcement

- 4.1 SFRS believes in firm but fair enforcement of fire safety law. This is informed by the principles of proportionality in applying the legislation and securing compliance; consistency of approach; targeting of enforcement action; transparency about how 'The Authority' (as regulator) operates and what those regulated may expect; and accountability for its actions.
- 4.2 ***Proportionality***
 - i. Proportionality means relating enforcement action to the identified risk, i.e. the source of possible harm, the likelihood of that harm occurring, and the likely severity of any harm. Statutory duty holders expect that action taken by enforcing authorities, to achieve compliance or bring duty holders to account for non-compliance, should be proportionate to any risks to fire safety, or to the seriousness of any breach; which includes any actual or potential harm arising from a breach of the law.

- ii. In practise, applying the principle of proportionality means that SFRS will take account of how the responsible person/duty holder has fallen short of what the legislation requires and the extent of the risks to people arising from the breach.
- iii. Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, when considering the preventive and protective measures taken by duty holders SFRS will take account of the degree of risk on the one hand, and on the other the cost, in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures to reduce the risk. Ultimately, the courts determine what is reasonably practicable in particular cases.
- iv. Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.
- v. While the duty to carry out a fire risk assessment and act on its findings rests on all responsible persons, SFRS will take care to work with small businesses and organisations so that, where practicable, they can meet their legal obligations without unnecessary expense. We will only intervene when there is a clear case for protection.

4.4 **Targeting**

- i. Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.
- ii. SFRS implement a risk-based inspection programme focussing primarily on those whose premises and activities give rise to the most societal risk. SFRS will maintain a strategy that will identify and assess the risks within premises and the community, and allocate resources to carry out inspections accordingly.
- iii. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to relevant persons than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that enforcing authorities can give public assurance that such risks are properly controlled.

- iv. Any enforcement action will be directed against responsible persons and duty holders primarily responsible for a breach. This may be employers in relation to workers or others exposed to risks; the owners of premises; fire safety equipment installers or engineers; or employees themselves.
- v. Where several responsible persons/duty holders have responsibilities, 'The Authority' may take action against more than one when it is appropriate to do so in accordance with this policy statement.

4.5 **Consistency**

- i. SFRS will carry out its enforcement duties in a fair, equitable and consistent manner. Consistency of approach does not mean doing the same thing in comparable cases. It means taking a similar approach in similar circumstances to achieve similar ends, while being mindful of distinctions between cases.
- ii. SFRS recognises that, in practice, consistency is not a simple matter. Our inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the responsible person/duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law.
- iii. Decisions on enforcement action are discretionary, involving judgement by the enforcer. SFRS will adhere to standards and guidance where possible to promote consistency.

4.6 **Fairness**

- i. SFRS will treat all people fairly; we will respect their privacy, dignity and pay particular attention to those with special needs.
- ii. All communications will be clear. Appropriate translated material will be provided where necessary and practical help provided for people with impaired hearing, vision or other disability.

4.7 **Helpfulness**

- i. SFRS has adopted a positive and proactive approach towards ensuring compliance with fire safety legislation. We will work actively with business, especially small and medium-sized businesses, to advise and assist with compliance.
- ii. We will provide a courteous and efficient service. Our staff will identify themselves by name and will provide contact points and telephone numbers for further communication.

- iii. We will encourage business to seek advice/information. We will also strive to coordinate our services effectively to minimise unnecessary overlaps and time delays.

4.8 **Transparency**

- i. Transparency means helping duty holders to understand what is expected of them and what they should expect from SFRS. It also means making clear to responsible persons/duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- ii. Transparency also involves SFRS having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.
- iii. When SFRS inspectors offer responsible persons/duty holders information, or advice, whether face-to-face or in writing, including any formal warning, inspectors will tell the responsible person/dutyholder what to do to comply with the law and explain why. Inspectors will, if asked, write to confirm any advice and to distinguish legal requirements from best practice advice.
- iv. For example; in the case of Enforcement Notices the SFRS inspector will discuss the Notice and, if possible, resolve points of difference before serving it. The notice will say that in 'The Authority's opinion a breach of the law has been committed, what needs to be done, why, and a deadline date will be agreed with the Responsible Person.
- v. In the case of a Prohibition Notice the Notice will explain why the prohibition is necessary.

4.9 **Accountability**

- i. Regulators are accountable to the public for their actions. This means that SFRS must have policies and standards (such as the enforcement principles described above) against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
- iii. SFRS has a procedure for dealing with comments and handling complaints. Further information is available on request.

4.10 ***The Regulators Code and Customer Satisfaction Surveys***

Suffolk Fire and Rescue Service are committed to reducing regulatory burdens and supporting compliant business growth through the development of an open and constructive relationship between regulators and those they regulate.

The Regulators' Code (The Code) is a statutory code of practice intended to encourage regulators to achieve their objectives in a way that minimises the burdens on business. The purpose of the code is to embed a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement among the regulators to which it applies. This approach will ensure that regulators are efficient and effective in their work, without imposing unnecessary burdens on those they regulate.

Suffolk Fire and Rescue Service is committed to better, smarter regulation which promotes business growth and already has policies, procedures and mechanisms in place to ensure we carry out our regulatory responsibilities, including firm but fair enforcement, in accordance with the principles of good regulation. We comply with the five principles of good regulation i.e. proportionality, accountability, consistency, transparency, and targeting which are enshrined in our current Enforcement policy.

Our key policies that enable us to meet regulatory obligations are Suffolk Fire and Rescue Service's policies on:-

- Enforcement Policy
- Compliments and Complaints Procedure

These key policies are supplemented by other policies, detailed guidance and operational procedures.

5. Enforcement Procedures

- 5.1 In each case of enforcement action the appropriate specific SFRS policy will be applied, in conjunction with this Enforcement Policy Statement.
- 5.2 SFRS will seek compliance with the law by offering responsible persons/duty holders information and advice, both verbally and/or in writing. This will include an explanation of why any specified work is necessary and a time period for completion. This is without prejudice to immediate enforcement action being taken where necessary.

- 5.3 SFRS may deal with this by informal means or, when appropriate, 'The Authority' may serve Notifications and formal Notices; or they may issue simple cautions, and prosecute. The Enforcement Procedures Policy adds detail to these levels of enforcement action and will be followed by inspecting officers at all times.
- 5.4 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing with the documentation.
- 5.5 All SFRS staff that take enforcement decisions will be required to follow the principles and guidance in the 'Enforcement Management Model' (EMM) issued by the Health and Safety Executive (HSE).

6. Dealing with Contraventions

- 6.1 The FSO details offences under the legislation such as the failure to comply with a formal Notice and an offence may result in prosecution. Contraventions will be considered on an individual basis following the Service policies and the principles outlined in this Enforcement Policy Statement.
- 6.2 In exceptional circumstances, breaches of the FSO may not warrant any action. For example, when the cost of action to be taken by the duty holder to comply, or the cost of required enforcement action by 'The Authority', outweighs the detrimental impact of the breach on the community.
- 6.3 A decision of no action may also be taken when formal enforcement is inappropriate in the circumstances, e.g.; when the entity constituting the Responsible Person has dissolved, or ceased trading, etc. In taking the no action decision, 'The Authority' will always consider the implications of the identified breach, and may take other action appropriate in the circumstances.

7. Investigation

- 7.1 In accordance with the principles of enforcement recognised by this policy statement, SFRS will use discretion in deciding whether circumstances of identified non-compliance, findings of post-fire inspections, or information imparted by third parties or partner agencies should be formally investigated.
- 7.2 Investigations will be undertaken in order to determine:
 - Causes of identified breaches.
 - Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law.

- Lessons to be learnt, and to influence the law and guidance.
- What response is appropriate to any identified breaches of the law.

7.3 To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. 'The Authority' recognises that it is neither possible nor necessary for the purposes of the Regulatory Reform (Fire Safety) Order 2005 to investigate all issues of non-compliance with the law which are uncovered in the course of inspection, or in the investigation of reported events.

7.4 In selecting which inspection outcomes or post-fire incidents to investigate, and in deciding the level of resources to be used, SFRS will take account of the following factors:

- The severity and scale of potential or actual harm.
- The seriousness of any potential breach of the law.
- Knowledge of the duty holder's past fire safety performance.
- The Service's enforcement priorities.
- The practicality of achieving results.
- The wider relevance of the event, including serious public concern.

8. Prosecution

8.1 The decision to proceed with a court case rests with SFRS acting on behalf of Suffolk County Council Fire and Rescue Authority as the enforcing authority. 'The Authority' will use discretion in deciding whether to bring a prosecution.

8.2 Before considering the initiation of a prosecution, the case must satisfy both the evidential and public interest tests of the Code for Crown Prosecutors. Prosecution will be authorised only when the SFRS Protection Department's senior manager finds that there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

8.3 The Code for Crown Prosecutors requires the decision to prosecute to be kept under continuous review, so that any new facts or circumstances, in support of or undermining the prosecutions' case, are considered in the decision to continue or terminate the proceedings. Where the circumstances warrant it and the evidence to support a case is available, 'The Authority' may prosecute without warning or recourse to alternative sanctions.

8.4 Before a prosecution will be considered, the facts relating to the infringement(s) must show behaviour by an individual, or organisation responsible for the breach, which, for example:

- Involved deliberate or persistent breach of legal obligation, e.g. the disregarding of previous advice or warnings, or following other enforcement action such as simple cautions, prosecutions, etc.
- Was caused through intentional or careless disregard of legal obligations which has caused, or was likely to cause, serious injury or death.
- Involved the obstruction of an authorised inspector in carrying out his or her duties.

8.5 In deciding whether to prosecute, 'The Authority' will also consider:

- How well the prosecution supports the achievement of corporate aims or the delivery of corporate priorities.
- Action taken by other enforcement agencies in relation to the same facts.
- The willingness of the alleged offender to prevent a recurrence of the infringement.
- The likelihood of the alleged offender being able to establish a statutory defence.
- The probable public benefit of a prosecution and the importance of the case, e.g. the possibility of establishing legal precedent.
- The cost-effectiveness of prosecution, i.e.; the need to balance likely overall cost against the 'value' of the likely outcome.
- The impact of the intervention on small businesses, in particular, to ensure that the action is proportionate.

8.6 Subject to the above, 'The Authority' expects that, following an investigation, in the public interest it will normally consider initiating prosecution where one or more of the following circumstances apply:

- Death was a result of a breach of the legislation;*
- The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the duty holder warrants it.
- There has been reckless disregard of fire safety requirements.
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance.
- A duty holder/responsible person's standard of managing fire safety is found to be far below what is required by fire safety law and to be giving rise to significant risk.
- False information has been supplied wilfully, or there has been intent to deceive or seek 'unfair competitive advantage', in relation to a matter which gives rise to significant risk.
- SFRS inspectors have been intentionally obstructed in the lawful course of their duties. In the event that an SFRS inspector is assaulted, SFRS will seek police assistance with a view to seeking the prosecution of offenders.

* Established Health and Safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence that any fire safety breach caused the death, SFRS will normally bring such cases before the court; with due regard given to any alternative prosecution mechanisms in that event. (See Section 9)

8.7 SFRS may also consider initiating prosecution where it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.

8.8 ***Prosecution of individuals***

i. Subject to the above, SFRS will identify and initiate prosecution of individuals if they consider that such a prosecution is warranted.

ii. In particular, it will consider the management chain and the role played by individual directors and managers within an organisation, and will take action against them where the inspection or investigation reveals that the alleged offence was committed with their consent or connivance, or to have been attributable to neglect on their part; and where it would be appropriate to do so in accordance with this policy statement.

iii. By virtue of Article 23 of the FSO, 'The Authority' is given power to consider taking prosecution action against employees who may otherwise not be in a recognised position of 'control', where the employee is shown to have not taken reasonable care of themselves or others affected by their acts or omissions, or to have not suitably cooperated with the employer with regard to it performing its duties under the Order.

8.9 When any form of prosecution is mounted, 'The Authority' will select allegations which adequately reflect the seriousness of the offending and give the court adequate sentencing power, but which do not overburden the administrative process or make the case unnecessarily complex.

9. **Death from fire**

9.1 Where there has been a breach of fire safety law leading to a death, SFRS must consider whether the circumstances of the case might justify a charge, for example, of manslaughter or corporate manslaughter, etc.

9.2 In England and Wales the police are responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges.

9.3 If, in the course of their fire safety investigation activities, SFRS finds evidence suggesting manslaughter or corporate manslaughter, it will be passed on to the police. If the police or CPS decides not to pursue a manslaughter or corporate manslaughter case, 'The Authority' will consider whether to bring a fire safety prosecution in accordance with this policy statement.

10. Crown bodies

10.1 Crown bodies must comply with fire safety requirements, although they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing fire safety requirements in Crown bodies.

11. Action by the Courts

11.1 Fire safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. 'The Authority' will usually seek to bring to the court's awareness the gravity of fire safety offences and the full extent of their sentencing powers; while recognising that it is for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction.

11.2 When appropriate, 'The Authority' will draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction.

12. Representations to the Courts

12.1 In cases of sufficient seriousness, and when given the opportunity, 'The Authority' will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed.

13. Publicity and the Public Register

- 13.1 Subject to the provisions of the applicable, associated regulations (see Section 14), to fulfil its obligation to educate and inform those with responsibilities for fire safety in order to help them to achieve compliance with current fire safety legislation, or to deter anyone tempted to disregard their duties under fire safety law, SFRS will consider drawing appropriate media attention to factual information publicising any case, or conviction, or other enforcement action it may take.
- 13.2 In accordance with the 'Environment and Safety Information Act 1988' (as amended), 'The Authority' is obliged to enter details of certain Notices, called 'relevant notices, into a register to which the public have free access. Further details are available on request and on the NFCC website [National Enforcement Register](#)

14. Associated Regulations

14.1 Data Protection

- i. SFRS will comply with the principles of the 'Data Protection Act ' (as amended) governing the use of personal data received or obtained during the course of its work, and will respect the rights and freedoms of individuals when processing their details. Suffolk County Council's strategic approach to meeting legal requirements is available on request.

14.2 Freedom of Information

- i. Under the 'Freedom of Information Act , individuals are given a 'general right of access to information held by public authorities in the course of carrying out the functions, subject to certain conditions and exemptions.'
- ii. Under Section 19 of the Act, public authorities are required to produce a publication scheme setting out details of; the information routinely published or made available; how the information is made available (e.g. hard copy and online); and whether it is available free of charge or on payment. Details of Suffolk County Council's publication scheme are available on request.

14.3 Primary Authority Scheme

- i. Whenever 'The Authority' is considering enforcement action against a duty holder for which Suffolk County Council Fire and Rescue Authority is not the designated lead authority under the '**Primary Authority Scheme**' (PAS – the Regulatory Enforcement and Sanctions Act) or a similar Partnership arrangement, 'The Authority' will seek to appropriately liaise with that lead Authority at every stage.

Author SM Wayne Crabb
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- 14.4 Subject to the provisions of the applicable, associated regulations, 'The Authority' will appropriately pass information on identified fire safety breaches to other interested enforcement agencies, and/or relevant stakeholders.

Owner

Protection Technical Manager

EIA has not been completed for this document

(contents are deemed technical).

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| 1.1 | 02.11.2021 | W Crabb | |
| 1.2 | 07.03.2022 | C Hawes | Minor updates, insertion of NFCC Competency Framework wording as requested by S Hammond |
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