
Greenham and Crookham Commons Regulations

Committee considering report:	Delegated Officer Decision
Date of Committee:	24 June 2020
Portfolio Member:	Councillor Richard Somner
Report Author:	Paul Hendry, Countryside Manager

1 Purpose of the Report

This Report seeks this Council's approval for the Greenham and Crookham Commons Commission to proceed through the formal process as set out in the Greenham and Crookham Commons Act 2002 and also under s236 of the Local Government Act 1972 in order to introduce formal regulations for the management of commoner's rights. Note there are no delegated powers within the Constitution for decisions relating to the Greenham and Crookham Commons Act 2002 (The Act 2002).

2 Recommendation

- 2.1 That this Council provides consent to the Commission to seek approval from the Secretary of State for the introduction of regulations, a draft of which are set out at Appendix C. The Secretary of State is however the ultimate arbiter in this matter and the Commission will follow the due process as dictated by DEFRA guidance.

3 Implications and Impact Assessment

Implication	Commentary
Financial:	There are no financial implications related to the formal process seeking approval for regulations. There will be financial implications if and when the regulations are approved by the Secretary of State as there will be a means to impound cattle turned out without consent or contrary to the regulations. Note however that overall this should be a cost neutral exercise as a charge is proposed for the retrieval of cattle in order to recover actual costs. Belligerent and persistent offenders will however be subject to legal action through the magistrates' court and although costs may be applied, this is at the discretion of the court. Note that there are very few, around 4 active graziers on the Common so the legal issues may not be significant.

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Human Resource:	No implications. WBC has a partnership arrangement with BBOWT who manage the Commons on behalf of the council. It is their staff who will be involved in managing and enforcing regulations and levying fines.			
Legal:	WBC will ultimately determine whether legal action is appropriate in any particular case and therefore legal time and resource will be required. Overgrazing and resultant detrimental impacts on the Common is a trespass against the landowner. If BBOWT cannot address breaches of the regulations locally and legal action is required then this will fall to WBC. There are very few active commoners and therefore legal implications are not expected to be significant.			
Risk Management:	There is a risk that some commoners will test the resolve of the Commission, the council and BBOWT in enforcing regulations. Initially there may be a protest of some description with resultant media interest. It should be noted however that allowing the current overgrazing to continue could be more damaging to the reputation of these parties.			
Property:	The Commons are a Site of Special Scientific Interest (SSSI). The council has a legal duty to make sure that its activities do not damage the special interest of the Commons, further the council has a duty to ensure that it does not omit to carry out any management which is required to ensure that the special interest is not damaged, i.e. through neglect.			
Policy:	Environment Policy. The decision places great emphasis on protecting our environmental assets for future generations. Protection of lowland heathland habitats is also an objective of national policy.			
	Positive	Neutral	Negative	
Equalities Impact:				

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A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		Neutral		The introduction of regulations will not impact on equalities in any way.
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		Neutral		No impacts.
Environmental Impact:			Positive	Introduction of regulations will have a positive impact on the habitat on the Commons and the SSSI as a whole.
Health Impact:		Neutral		N/A
ICT or Digital Services Impact:		Neutral		N/A
Council Strategy Priorities or Business as Usual:	Positive			The management and protection of our countryside and specifically addressing negative impacts is business as usual for this Service and its partners BBOWT and the Commission.
Data Impact:		Neutral		N/A
Consultation and Engagement:	We have consulted with BBOWT on this report and the Greenham and Crookham Commission have consulted with us on the introduction of regulations.			

4 Executive Summary

- 4.1 The Greenham and Crookham Commons Commission (the Commission) are a statutory body constituted under the Greenham and Crookham Commons Act 2002 who have a role in managing those Commons.
- 4.2 Despite the best efforts of the Commission to work with commoners to try to bring about compliance with some sensible restrictions, the Commons are being overgrazed to an extent whereby there are damaging impacts on many of the key species which exist there. A worrying trend given the Commons status as a Site of Special Scientific Interest. The most visible example of overgrazing and a failure to comply with common sense restrictions is the presence of cattle in winter and spring. The Commission, acting on scientific evidence produced by BBOWT, asked that no cattle are grazed during the months January to April. Cattle numbers on the Commons during those months are significantly above the zero limit.
- 4.3 Impacts of overgrazing on the Commons include; a reduction in heathland wildflower abundance, heather which is grazed low to the ground with a consequent lack of age structure, a significant decline in skylark and other ground nesting bird territories, and an increase in bramble and gorse cover.
- 4.4 Having exhausted other options, including seeking compliance with good practice guidelines, the Commission has no option but to now seek more a more formal sanction against graziers who refuse to cooperate.
- 4.5 Over several years the Commission has researched and developed a form of regulation and documented these in a draft document. In April 2018 the Commission consulted informally as part of the good practice guidelines provided by DEFRA for the introduction of regulations and bylaws. The Commission received several emails of support but also, perhaps not surprisingly, the current graziers registered a number of objections. The Commission met with the graziers in July 2018 but fundamentally there was no agreement on the content of the draft regulations document.
- 4.6 Since 2018 the Commission have been in discussion with DEFRA over the process and format of more formal regulations. They asked to review the draft regulations to ensure that no proposed regulation replicates restrictions already enforceable in existing legislation, to ensure the draft regulations are legally enforceable and to determine whether a Justice Impact Test (JIT) is required. Having met with DEFRA on site in 2019, they have confirmed that the Commission can move forward with the confirmation process (of the draft regulations). No JIT is required as DEFRA consider the impact on the justice system as being minimal.
- 4.7 Under s23 (1) of the Act 2002 this Council has to consent to the Commission making regulations. This Report seeks the necessary consent for the Commission to begin a formal process to first consult and then apply for, confirmation of a set of draft regulations.
- 4.8 In conclusion officers recommend that this Council provides consent to the Commission, under s23 (1) of the Act 2002 to seek approval from the Secretary of State for the introduction of the draft regulations. These regulations are necessary in order to protect the special interest of the Commons and to prevent the ecology of the Commons falling

in to unfavourable status. This Council has a duty to protect the Commons from damaging activities.

5 Supporting Information

Introduction

5.1 The Greenham and Crookham Commons Act 2002 contains enabling clauses which allows either the Commission or this Council to apply for regulations or bylaws to control certain activities on the Common. The Act 2002 also provides a legal foundation for the establishment of the Greenham and Crookham Commons Commission. The Act 2002 also establishes a number of duties and powers which are the responsibility of either, or both, this Council and the Commission. One of these powers relates to the introduction of regulations in order to manage the exercising of commoner's rights. The Act 2002 can be viewed, in full, here:

<http://www.legislation.gov.uk/ukla/2002/1/contents/enacted>

5.2 On the whole the exercising of rights poses very few issues and there are only a few active commoners, mostly those exercising the right of pasturage, i.e. grazing. Although the principle need is to control grazing numbers the draft regulations allows the Commission to address a number of other concerns, for example; animal condition, prohibited or restricted animals, provisions for driving on the Commons, means of stock identification etc. The regulations which seek to control these matters are much less controversial than the regulation which places controls on grazing numbers. It is overgrazing which is the fundamental issue at hand.

Background

5.3 Common land is private land owned collectively by a number of landowners, or by one landowner (West Berkshire Council as in the case of Greenham and Crookham Commons), but over which others have certain traditional rights, such as to allow their livestock to graze upon it, to collect wood, or to cut turf for fuel. These rights have become protected in law. The turning out of animals on Greenham and Crookham Commons has been a feature of that landscape for hundreds of years and has been instrumental in the development of the ecologically diverse habitat which exists today.

5.4 The incidence and practice of turning out cattle on the Commons has changed remarkably over the years. Whereas in the early part of the last century small numbers of cattle would have been turned out by several active commoners, this was by way of subsistence living, making enough from the practice to keep a small family fed and clothed for a year. In the winter the animals would have been returned to the layback land on the property to which the rights are attached, only to return when the commons could support grazing again.

5.5 In the last few decades this traditional use of commons to turn out stock has changed remarkably. There are much fewer active commoners. Residents living in properties with rights have no inclination to exercise their rights, nor any need to do so. The practice increasingly over the last few decades is for a small number of active commoners to turn out large numbers of animals on the Common, supplemented by rights they have acquired from other commoners, and in most cases, with no layback

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land to return the animals to in the winter. What has been established is in fact small business enterprises which bear very little relationship to the traditional use of commons and which have helped shape its ecology over the years.

- 5.6 Current grazing practice has had a deleterious impact on the ecology of the Commons and an ongoing, often heated debate, has ensued concerning, on the one hand, the legal rights of graziers, versus on the other hand the council's duty to protect and enhance the ecology of the Common. Section 8 of the Act 2002 sets out the council and the Commission's overriding duty in this respect:

8. General duty of Council and Commission

(1) The Council and the Commission shall each have a duty to use their reasonable endeavours to exercise their functions in a manner which—

(a) restores and conserves the Common as a peaceful place of natural beauty and, in particular, conserves its flora and fauna and ecological, archeological, geological and physiographical features;

(b) conserves any part of the Common which is a site of special scientific interest as such a site; and

(c) subject to paragraphs (a) and (b) above—

(i) promotes and improves grazing on the Common;

- 5.7 The significant sub clause is highlighted in yellow. The fundamental responsibility of the council (and therefore BBOWT who are the managing agent) is to manage the flora and fauna and the Site of Special Scientific Interest. This takes precedence over the rights of graziers.

- 5.8 In the years since the Act 2002 came into force, and after the establishment of the Greenham and Crookham Commons Commission, it is true that the Commission actively encouraged grazing, by both cattle and ponies. At that time the great risk was that the loss of grazing 'pressure' would lead to the loss of important grassland habitat to invasive species such as birch scrub and gorse. For a time they achieved a reasonable balance with resultant ecological benefits and all parties appeared to be working towards the same objectives.

- 5.9 In the intervening time the management balance has gradually moved back to a point whereby the science is indicating that overgrazing is having a significant negative impact. In order to achieve some kind of balance the Commission, aided by grazing commoners, produced a guidance document, a good practice guide, which addressed all manner of issues which both supported, and aimed to control grazing. This had no statutory basis under the Act 2002, it was simply an agreed set of common sense principles. The Commission achieved only limited success by this means and grazing continued with unsustainably high numbers. Unhelpfully, winter grazing became an established practice, leading to complaints to the Council's Animal Health Officer and periodically DEFRA.

- 5.10 In 2016 BBOWT produced the document, 'Striking the Balance' and this is attached at Appendix D. This document makes it very clear that overgrazing is having a detrimental

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impact on the abundance of wildflowers. Notably this document is based on survey work collated over the years and also trials based on science. Although further research is being carried out it is clear the numbers of animals grazing on the commons are at unsustainable levels, specifically during the winter months.

5.11 Striking the Balance, as the name suggests, continues to try to balance the rights of graziers against ecological objectives. To this end it should be noted that the Commission is not seeking to reduce the numbers of cattle unnecessarily, only to reduce numbers at a time of year when the negative impact of overgrazing is greatest, i.e. when wildflowers are coming into flower/setting seed and during the winter months. Common sense would also indicate that in the winter, when there is nothing for the stock to eat, then there isn't any good reason for them to be there. Unfortunately that is not our experience on the Commons.

5.12 The table below shows that despite the Commission adopting Striking the Balance, and recommending its contents and the balance it strives to keep, this has largely been ignored. Cattle are consistently turned out on the Commons during the months of January, February, March and April whilst the shaded months indicate when stock numbers exceed the documents recommendations.

Year	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
2013/14	0	0	0	0	0	0	118	128	0	116	117	122
2014/15	138	0	114	109	151	159	152	131	117	116	120	128
2015/16	130	143	140	114	109	135	127	106	136	120	121	116
2016/17	128	163	114	91	131	126	134	126	8	29	29	55
2017/18	99	98	92	108	100	100	145	137	0	69	9	0
2018/19	9	86	161	102	113	105	112	110	85	27	37	40
2019/20	64	116	73	98	96	99	76	78	74	21	0	30

5.13 An added consequence of winter grazing in particular is that the graziers make continued requests to BBOWT for permission to introduce supplementary feeding, something which is specifically prohibited under the SSSI legislation.

5.14 The graziers will make the point that for the last several years their animals have been 'locked down' on the Commons due to the restriction on cattle movements brought about by positive TB tests. This is not a relevant justification however. The governments vet has already confirmed that animals which test inconclusive for TB from a herd where TB is present can, under certain circumstances, be moved off the Commons, whilst the rest are slaughtered. All grazing Commoners should have contiguous land to which they can remove their animals freely under these circumstances.

5.15 It is now patently clear that the Commission has exhausted all options. Wildflower abundance is significantly reduced and the presence of more invasive species is increasing. It is likely that the reduction in some vulnerable ground nesting bird species is also attributable to overgrazing, although this may also be as a result of other factors not related to grazing (predation, recreational pressures etc.). Overgrazing is however a factor which is entirely within the control of the Commission and BBOWT IF they have

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the sanctions to fall back on. The proposed regulations are vital to the future effective management of the Commons.

- 5.16 It is not the Commission's intention to act contrary to the fundamental rights of the commoners. Commons rights are protected in law. The Act 2002 acknowledges this and makes provision, under s23(3) to ensure that these rights are not impacted such that commoners are precluded from grazing less than 2 animals. Further the proposed regulations, which follow an existing model (Dartmoor Commons), provide for any dispute to be heard by an arbiter.
- 5.17 The Greenham and Crookham Commons Commission do however require the consent of the council in order to proceed through the formal process as set out in the Greenham and Crookham Commons Act 2002 and also under s236 of the Local Government Act 1972 to introduce formal regulations for the management of commoner's rights, s.23(1) states:

23 Regulations as to management of commoners' rights

(2) The Commission may, with the prior approval of the Council, make regulations to secure the good management of the Common as respects the exercise of rights of common and the good husbandry of animals grazed on the Common.

- 5.18 s.23 (2) provides a list of matters which regulations make may provision for, these include but are not restricted to the following:
- (a) to ensure that the Common is not overgrazed
 - (b) to ensure the good husbandry and maintenance of the health of all animals grazed on the Common
- 5.19 The Act 2002, under s 23(3), allows regulations which fix, or provide for the fixing, the number of animals on the Commons which can be grazed at any time so long as the regulation does not preclude the grazing of two or less animals.
- 5.20 In accordance with DEFRA guidance, the Commission has carried out some informal consultation. Their intentions received support from other registered commoners. The grazing commoners produced their own response and this was discussed and considered by the Commission at a meeting with grazing commoners in July 2018. Some minor changes were made to the draft regulations as a consequence. Largely however the grazier's proposals were considered unacceptable as the effect of their submission was to remove the regulation controlling animal numbers.
- 5.21 As the final arbiter in this matter is the Secretary of State, the Commission will have to follow published guidance and process with respect to the making of regulations. This will require a formal consultation process, consideration of responses before submission for determination. Ultimately the matter may be determined at a Public Inquiry, in which case officers of this Council, BBOWT and members of the Commission may be required to present evidence.

Proposals

- That this Council supports the Commission and in line with s 23(2) provides the necessary approval for the Commission to apply to the Secretary of State for consent to introduce the proposed regulations at Appendix C.

6 Other options considered

- 6.1 Do nothing: of course the council can determine not to provide consent to the Commission and in this case the grazing of the Commons will continue without restriction. Bearing in mind the Council, as freehold owner, and BBOWT who have the land on a long lease, have a legal responsibility to ensure the status of the SSI is not damaged.
- 6.2 Continue collaborative efforts: This has not worked to date despite efforts to secure compliance with good practice, the findings of striking the balance, and appeals to graziers to recognise the negative impacts their actions are having. This has not been successful to date. The consequence being a notable reduction in key protected species.

7 Conclusion

Striking the Balance provides ecological evidence which identifies overgrazing as a significant factor in the loss of key species on the Commons. The Commission and BBOWT have applied all possible means to protect the key species which are being negatively impacted by the impacts of overgrazing. The Greenham and Crookham Commons Act 2002 provides the means to introduce regulations to control the activities of commoners. The council should take this opportunity to support the Commission in its efforts to introduce regulations which can be used should the collaborative efforts of the Commission and persuasion continue to fail.

8 Appendices

- 8.1 Appendix A – Equalities Impact Assessment
- 8.2 Appendix B – Data Protection Impact Assessment
- 8.3 Appendix C – Draft Regulations
- 8.4 Appendix D – Striking the Balance document

Background Papers:

See report

Subject to Call-In:

Yes: No:

Wards affected:

Newbury Greenham

Thatcham Colthrop and Crookham

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1			
2			

Appendix A

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:**
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

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What is the proposed decision that you are asking the Executive to make:	
Summary of relevant legislation:	
Does the proposed decision conflict with any of the Council's key strategy priorities?	
Name of assessor:	Paul Hendry
Date of assessment:	13/05

Is this a:		Is this:	
Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	New or proposed	Yes <input type="checkbox"/> No <input type="checkbox"/>
Strategy	Yes <input type="checkbox"/> No <input type="checkbox"/>	Already exists and is being reviewed	Yes <input type="checkbox"/> No <input type="checkbox"/>
Function	Yes <input type="checkbox"/> No <input type="checkbox"/>	Is changing	Yes <input type="checkbox"/> No <input type="checkbox"/>
Service	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	Protection of the ecology of the Commons
Objectives:	Support for a partner organisation
Outcomes:	Support provided for the Commissions intentions
Benefits:	Ecological benefits and sustainability

Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.		
(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age	None	This decision is not impacting on individuals rather the behaviour of individuals and applies to all equally.
Disability	None	As above
Gender Reassignment	None	As above

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Marriage and Civil Partnership	None	As above
Pregnancy and Maternity	None	As above
Race	None	As above
Religion or Belief	None	As above
Sex	None	As above
Sexual Orientation	None	As above
Further Comments relating to the item:		

Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Please provide an explanation for your answer:	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Please provide an explanation for your answer:	

If your answers to question 2 have identified potential adverse impacts and you have answered ‘yes’ to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the Equality Impact Assessment guidance and Stage Two template.

Identify next steps as appropriate:	
Stage Two required	No
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

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Name:

Date:

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) (rachel.craggs@westberks.gov.uk), for publication on the WBC website.

Appendix B

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	Place
Service:	Environment
Team:	Countryside
Lead Officer:	Paul Hendry
Title of Project/System:	Greenham Common Regulations
Date of Assessment:	13/05/2020

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p><i>Note – sensitive personal data is described as “data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation”</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be processing data on a large scale?</p> <p><i>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will your project or system have a “social media” dimension?</p> <p><i>Note – will it have an interactive element which allows users to communicate directly with one another?</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will any decisions be automated?</p> <p><i>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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	Yes	No
Will your project/system involve CCTV or monitoring of an area accessible to the public?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will you be using the data you collect to match or cross-reference against another existing set of data?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will you be using any novel, or technologically advanced systems or processes?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<small>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</small>		

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

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