

2003 No. 428 (L. 10)

SUPREME COURT OF ENGLAND AND WALES

**The Criminal Appeal (Confiscation, Restraint and
Receivership) Rules 2003**

Made - - - - - *20th February 2003*

Laid before Parliament *28th February 2003*

Coming into force - - *24th March 2003*

We, the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 84(1), 86 and 87(4) of the Supreme Court Act 1981(a), and with the concurrence of the Treasury under section 84(7) of the Supreme Court Act 1981, hereby make the following Rules:

PART I

Introduction

Citation and commencement

1. These Rules may be cited as the Criminal Appeal (Confiscation, Restraint and Receivership) Rules 2003 and shall come into force on 24th March 2003.

Interpretation

2. In these Rules—

“the 1968 Act” means the Criminal Appeal Act 1968(b);

“the 2002 Act” means the Proceeds of Crime Act 2002(c);

“appellant” means a person who brings or seeks to bring an appeal;

“defendant” has the meaning given to it in Part 2 of the 2002 Act;

“the Director of the Assets Recovery Agency” is the Director appointed under section 1 of the 2002 Act;

“the Order” means the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003(d);

“the principal rules” means the Criminal Appeal Rules 1968(e);

“respondent” means—

(i) a person other than the appellant who was a party to the proceedings in the Crown Court and who is affected by an appeal; and

(ii) a person who is permitted by the Court of Appeal to be a party to the appeal;

“the registrar” means the registrar of criminal appeals of the Court of Appeal;

references to the Court of Appeal are to the criminal division of the Court of Appeal;

(a) 1981 c. 54.

(b) 1968 c. 19.

(c) 2002 c. 29.

(d) S.I. 2003/82.

(e) S.I. 1968/1262, to which there are amendments not relevant in this context.

a reference to a form is a reference to a form set out in the Schedule to these Rules or a form with the same effect;
references to a single judge are to any judge of the Court of Appeal or of the High Court.

PART II

Provisions applicable only to appeals under section 31 of the 2002 Act

Notice of appeal

3.—(1) Where an appellant wishes to apply to the Court of Appeal for leave to appeal under section 31 of the 2002 Act, he must serve a notice of appeal in Form 1 on—

- (a) the appropriate officer of the Crown Court; and
- (b) the defendant.

(2) When the notice of the appeal is served on the defendant, it must be accompanied by a respondent's notice in Form 2 for the defendant to complete and a notice which—

- (a) informs the defendant that the result of an appeal could be that the Court of Appeal would increase a confiscation order already imposed on him, make a confiscation order itself or direct the Crown Court to hold another confiscation hearing;
- (b) informs the defendant of any right he has under article 6 of the Order to be present at the hearing of the appeal, although he may be in custody;
- (c) invites the defendant to serve notice on the registrar if he wishes—
 - (i) to apply to the Court of Appeal for leave to be present at proceedings for which leave is required under article 6 of the Order; or
 - (ii) to present any argument to the Court of Appeal on the hearing of the application or, if leave is given, the appeal, and whether he wishes to present it in person or by means of a legal representative;
- (d) draws to the defendant's attention the effect of rule 16 (supply of documentary and other exhibits); and
- (e) advises the defendant to consult a solicitor as soon as possible.

(3) The appellant must provide the appropriate officer of the Crown Court with a certificate of service stating that he has served the notice of appeal on the defendant in accordance with paragraph (2) or explaining why he has been unable to effect service.

Respondent's notice

4.—(1) This rule applies where a defendant is served with a notice of appeal under rule 3.

(2) If the defendant wishes to oppose the application for leave to appeal, he must, not later than 14 days after the date on which he received the notice of appeal, serve on the registrar and on the appellant a notice in Form 2—

- (a) stating the date on which he received the notice of appeal;
- (b) summarising his response to the arguments of the appellant; and
- (c) specifying the authorities which he intends to cite.

(3) The time for giving notice under this rule may be extended by the registrar, a single judge or by the Court of Appeal.

(4) Where the registrar refuses an application under paragraph (3) for the extension of time, the defendant shall be entitled to have his application determined by a single judge.

(5) Where a single judge refuses an application under paragraph (3) or (4) for the extension of time, the defendant shall be entitled to have his application determined by the Court of Appeal.

Amendment and abandonment of appeal

5.—(1) The appellant may amend a notice of appeal served under rule 3 or abandon an appeal under section 31 of the 2002 Act—

- (a) without the permission of the Court at any time before the Court of Appeal have begun hearing the appeal; and

(b) with the permission of the Court after the Court of Appeal have begun hearing the appeal,
by serving notice in writing on the registrar.

(2) Where the appellant serves a notice abandoning an appeal under paragraph (1), he must send a copy of it to—

- (a) the defendant;
- (b) the proper officer of the court of trial; and
- (c) the magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

(3) Where the appellant serves a notice amending a notice of appeal under paragraph (1), he must send a copy of it to the defendant.

(4) Where an appeal is abandoned under paragraph (1), the application for leave to appeal or appeal shall be treated, for the purposes of section 85 of the 2002 Act, as having been refused or dismissed by the Court of Appeal.

PART III

Provisions applicable only to appeals under section 43 or 65 of the 2002 Act

Leave to appeal

6.—(1) Leave to appeal to the Court of Appeal under section 43 or section 65 of the 2002 Act will only be given where—

- (a) the Court of Appeal considers that the appeal would have a real prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(2) An order giving leave may limit the issues to be heard and be made subject to conditions.

Notice of appeal

7.—(1) Where an appellant wishes to apply to the Court of Appeal for leave to appeal under section 43 or 65 of the 2002 Act, he must serve a notice of appeal in Form 3 on the appropriate officer of the Crown Court.

(2) Unless the registrar, a single judge or the Court of Appeal directs otherwise, the appellant must serve the notice of appeal, accompanied by a respondent's notice in Form 4 for the respondent to complete, on—

- (a) each respondent;
- (b) any person who holds realisable property to which the appeal relates; and
- (c) any other person affected by the appeal,

as soon as practicable and in any event not later than 7 days after the notice of appeal is served on the appropriate officer of the Crown Court.

(3) The appellant must serve the following documents with his notice of appeal—

- (a) four additional copies of the notice of appeal for the Court of Appeal;
- (b) four copies of any skeleton argument;
- (c) one sealed copy and four unsealed copies of any order being appealed;
- (d) four copies of any witness statement or affidavit in support of the application for leave to appeal;
- (e) four copies of a suitable record of the reasons for judgment of the Crown Court;
- (f) four copies of the bundle of documents used in the Crown Court proceedings from which the appeal lies.

(4) Where it is not possible to serve all of the documents referred to in paragraph (3), the appellant must indicate which documents have not yet been served and the reasons why they are not currently available.

(5) The appellant must provide the appropriate officer of the Crown Court with a certificate of service stating that he has served the notice of appeal on each respondent in accordance with paragraph (2) and including full details of each respondent or explaining why he has been unable to effect service.

Respondent's notice

- 8.—(1) This rule applies to an appeal under section 43 or 65 of the 2002 Act.
- (2) A respondent may serve a respondent's notice on the registrar.
- (3) A respondent who—
- (a) is seeking leave to appeal from the Court of Appeal; or
 - (b) wishes to ask the Court of Appeal to uphold the decision of the Crown Court for reasons different from or additional to those given by the Crown Court,
- must serve a respondent's notice on the registrar.
- (4) A respondent's notice must be in Form 4 and where the respondent seeks leave to appeal to the Court of Appeal it must be requested in the respondent's notice.
- (5) A respondent's notice must be served on the registrar not later than 14 days after—
- (a) the date the respondent is served with notification that the Court of Appeal has given the appellant leave to appeal; or
 - (b) the date the respondent is served with notification that the application for leave to appeal and the appeal itself are to be heard together.
- (6) Unless the registrar, a single judge or the Court of Appeal directs otherwise, the respondent serving a respondent's notice must serve the notice on the appellant and any other respondent—
- (a) as soon as practicable; and
 - (b) in any event not later than 7 days,
- after it is served on the registrar.

Amendment and abandonment of appeal

- 9.—(1) The appellant may amend a notice of appeal served under rule 7 or abandon an appeal under section 43 or 65 of the 2002 Act—
- (a) without the permission of the Court at any time before the Court of Appeal have begun hearing the appeal; and
 - (b) with the permission of the Court after the Court of Appeal have begun hearing the appeal,
- by serving notice in writing on the registrar.
- (2) Where the appellant serves a notice under paragraph (1), he must send a copy of it to each respondent.

Stay

10. Unless the Court of Appeal or the Crown Court orders otherwise, an appeal under section 43 or 65 of the 2002 Act shall not operate as a stay of any order or decision of the Crown Court.

Striking out appeal notices and setting aside or imposing conditions on leave to appeal

- 11.—(1) The Court of Appeal may—
- (a) strike out the whole or part of a notice of appeal served under rule 7; or
 - (b) impose or vary conditions upon which an appeal under section 43 or 65 of the 2002 Act may be brought.
- (2) The Court of Appeal will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.
- (3) Where a party is present at the hearing at which leave to appeal was given, he may not subsequently apply for an order that the Court of Appeal exercise its powers under subparagraph (1)(b).

Hearing of appeals

- 12.—(1) This rule applies to appeals under section 43 or 65 of the 2002 Act.

(2) Every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

- (3) The Court of Appeal will allow an appeal where the decision of the Crown Court was—
- (a) wrong; or
 - (b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.

(4) The Court of Appeal may draw any inference of fact which it considers justified on the evidence.

(5) At the hearing of the appeal a party may not rely on a matter not contained in his notice of appeal unless the Court of Appeal gives permission.

PART IV

General provisions

Extension of time

13.—(1) An application to extend the time limit for giving notice of application for leave to appeal under Part 2 of the 2002 Act must—

- (a) be included in the notice of appeal; and
- (b) state the grounds for the application.

(2) The parties may not agree to extend any date or time limit set by these Rules or by the Order.

Other applications

14. Rule 3 of the principal rules (application relating to bail, leave to be present or reception of evidence)(a) shall apply in relation to an application—

- (a) by the defendant to be given leave by the court to be present at proceedings for which leave is required under article 6 of the Order;
- (b) by a party to an appeal under Part 2 of the 2002 Act that, under article 7 of the Order, a witness be ordered to attend or that the evidence of a witness be received by the Court of Appeal,

as it applies in relation to applications under Part I of the 1968 Act and the forms in which rule 3 of the principal rules require notice to be given may be modified as necessary.

Examination of witness by court

15.—(1) Rule 9 of the principal rules (examination of witness by court) shall apply in relation to an order of the court under article 7 of the Order to require a person to attend for examination as it applies in relation to such an order of the court under Part I of the 1968 Act.

(2) The form in which rule 9 of the principal rules requires the order of the court to be made may be modified as necessary.

Supply of documentary and other exhibits

16. Rule 8 of the principal rules (supply of documentary and other exhibits) shall apply in relation to an appellant or respondent under Part 2 of the 2002 Act as it applies in relation to an appellant and respondent under Part I of the 1968 Act.

Registrar's power to require information from court of trial

17. The registrar may require the Crown Court to provide the Court of Appeal with any assistance or information which they may require for the purposes of exercising their jurisdiction under Part 2 of the 2002 Act, the Order or these Rules.

(a) Rule 3 was amended by S.I. 1978/1118 and S.I. 1987/1977.

Hearing by single judge

18. Rule 11 of the principal rules (hearing by single judge) shall apply in relation to a judge exercising any of the powers referred to in article 8 of the Order or the powers in rules 4(3) and (4), 7(2), 8(6) and 23(1), (2) and (4), as it applies in relation to a judge exercising the powers referred to in section 31(2) of the 1968 Act or rule 5 of the principal rules.

Determination by full court

19.—(1) Rule 12 of the principal rules (determination by full court) shall apply where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 8 of the Order or the power in rule 4(3) or (4) as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(2) The form in which rule 12 of the principal rules requires notice to be given may be modified as necessary.

Notice of determination

20.—(1) This rule applies where a single judge or the Court of Appeal has determined an application or appeal under the Order or under Part 2 of the 2002 Act.

(2) The registrar must, as soon as practicable, serve notice of the determination on all of the parties to the proceedings.

(3) Where a single judge or the Court of Appeal has disposed of an application for leave to appeal or an appeal under section 31 of the 2002 Act, the registrar must also, as soon as practicable, serve the order on the proper officer of the court of trial and any magistrates' court responsible for enforcing any confiscation order which the Crown Court has made.

Record of proceedings and transcripts

21.—(1) Rules 18, 19 and 20 of the principal rules shall apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part 2 of the 2002 Act as they apply in relation to proceedings in respect of which an appeal lies to the Court of Appeal under Part I of the 1968 Act.

(2) The Director of the Assets Recovery Agency shall be treated as an interested party for the purposes of rule 19 of the principal rules as it applies by virtue of this rule.

Appeal to House of Lords

22.—(1) An application to the Court of Appeal for leave to appeal to the House of Lords under Part 2 of the 2002 Act must be made—

- (a) orally after the decision of the Court of Appeal from which an appeal lies to the House of Lords; or
- (b) in Form 5, in accordance with article 12 of the Order and served on the registrar.

(2) The application may be abandoned at any time before it is heard by the Court of Appeal by serving notice in writing on the registrar.

(3) Rule 11 of the principal rules (hearing by single judge) applies in relation to a judge exercising any of the powers referred to in article 15 of the Order, as it applies in relation to a judge exercising the powers referred to in section 31(2) of the 1968 Act or rule 5 of the principal rules.

(4) Rule 12 of the principal rules (determination by full court) applies where a single judge has refused an application by a party to exercise in his favour any of the powers listed in article 15 of the Order as it applies where the judge has refused to exercise the powers referred to in section 31(2) of the 1968 Act.

(5) The form in which rule 12 of the principal rules requires notice to be given may be modified as necessary.

Service of documents

23.—(1) Where these Rules require service of a document on the registrar then, unless the registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant who is in custody, by delivering it to the person who has custody of him;
- (b) by addressing it to the registrar and delivering it at, or sending it by first-class post to, his office in the Royal Courts of Justice, London WC2.

(2) Where these Rules require service of a document on the appropriate officer of the Crown Court then, unless the registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in the case of a defendant who is in custody, by delivering it to the person who has custody of him;
- (b) by delivering it to, or sending it by first-class post to, the appropriate officer at the Crown Court centre at which the decision being appealed against was made.

(3) A person who has custody of a defendant and to whom the defendant delivers a document under paragraph (1)(a) or (2)(a) must endorse on it the date of delivery and forward it to the registrar or the appropriate officer of the Crown Court, as the case may be.

(4) Where these Rules require the service of a document on any other person then, unless the registrar, a single judge or the Court of Appeal directs otherwise, the document may be served by any of the following methods—

- (a) in all cases, by delivering the document personally to the party to be served;
- (b) if no solicitor is acting for the party to be served by delivering the document at, or by sending it by first-class post to, his residence or his last-known residence;
- (c) if a solicitor is acting for the party to be served—
 - (i) by delivering the document at, or sending it by first-class post to, the solicitor's address for service; or
 - (ii) where the solicitor's address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange; or
 - (iii) if the solicitor has indicated that he is willing to accept service by facsimile transmission, by sending a legible copy of the document by facsimile transmission to the solicitor's office.

Irvine of Lairg, C.
Woolf, C. J.
Master McKenzie, Q.C.
Kay, L. J.
C. Hagen, Q.C.
C. Harris, Q.C.
J. V. Regden, Q.C.
E. Barnett, J. P.
G. White,
Miss L. Dickinson

Dated 20th February 2003

The Court of Appeal Criminal Division
NOTICE and GROUNDS of opposition to application for leave to appeal and appeal by Prosecutor or
Director of Assets Recovery Agency

Section 31 Proceeds of Crime Act 2002

CAO No. / /

The Respondent

(Give full name. If in custody give Prison and address where detained)

Surname:

Forenames:

Address:

Post Code:

Date of Birth:

Prison Index No (where approximate)

Confiscation Hearing at Crown Court

Name of Judge:

Dates of Hearing:

Indictment Number:

Date on which appellant's notice of appeal was received:

The Respondent is applying:

(Please tick as appropriate)

for an extension of time in which to give notice of opposition to appeal
 (give reasons below)

to be given leave to be present on the hearing of the appeal or any proceedings preliminary or incidental
 to it (if respondent is in custody)
 (give reasons below)

to oppose the application for leave to appeal

If you require an extension of time in which to give notice of opposition to appeal or wish to be present
 at the hearing of the appeal state reasons:

Grounds

Summarise the arguments you intend to put to the Court of Appeal, specifying any authorities to be cited.

Signature

Signature of respondent:

Details of any person signing on behalf of the respondent:

Name:

Solicitor/Counsel* *Delete as appropriate

Address:

Date:

Post Code:

Solicitor's Ref:

For Prison Use

This notice was handed to me by
 the respondent today.

Signed: (Prison Officer)

Date:

Respondent's Index No:

For Criminal Appeal Office Use

Received (date):

Acknowledged (date):

**The Court of Appeal Criminal Division
NOTICE and GROUNDS of application for leave to appeal and appeal against restraint or receivership
decision**

Sections 43 and 65 Proceeds of Crime Act 2002

CAO No. / /

Details of the case

Crown Court centre:

Case number:

Name of defendant:
(sections 88(3) and 40(9) Proceeds of Crime Act 2002)

Are you (please tick as appropriate):

the person who applied for the order

the defendant

a person affected by the order or decision

Your (appellant's) name and address

(Give full name. If in custody give Prison and address where detained)

Your full name:

Address:

Post Code:

Date of Birth:

Prison Index No (where appropriate):

Details of the order(s), part(s) of order(s) or decision(s) you want to appeal

Name of Judge:

Date of order(s) or decision(s):

Description of order(s) or decision(s)

If only part of an order is appealed, write out that part (or those parts):

Grounds for appeal

Specify the question(s) in respect of which the appeal is brought.

Arguments in support of grounds

Summarise the arguments you intend to put to the Court of Appeal, specifying any authorities to be cited.

What decision are you asking the Court of Appeal to make?

I am asking that (please tick as appropriate):

the order(s), parts of order(s) or decision(s) I am appealing against be set aside

the order(s), parts of order(s) or decision(s) I am appealing against be varied and the following order(s) or decision(s) substituted

a re-hearing by the Crown Court be ordered

the Court of Appeal makes the following additional orders

Other applications

(section 43(3)(b) and section 65(6)(b) Proceeds of Crime Act 2002)

I wish the Court of Appeal to make the following additional orders.

Part A

I apply for an order (a draft of which is attached) that:

because:

Part B

I wish to rely on (please tick as appropriate):

evidence in Part C

witness statement (affidavit)

Part C

I wish to rely on the following evidence in support of this application:

Supporting documents

If you do not yet have a document that you intend to use to support your appeal, identify it, give the date when you expect it to be available and give the reasons why it is not currently available in the box below.

Please tick the papers you are filing with this notice and any you will be filing later.

Four additional copies of this notice

Four copies of your skeleton argument (*if separate*)

One sealed copy and four unsealed copies of any order being appealed

Four copies of any witness statements or affidavits in support of any application included in this notice

Four copies of a suitable record of the reasons for the judgment of the Crown Court

Four copies of the bundle of documents used in the Crown Court proceedings

Signature

Signature of applicant:

Details of any person signing on behalf of the appellant:

Name:

Solicitor/Counsel* *Delete as appropriate

Address:

Date:

Post Code:

Solicitor's Ref:

For Prison Use

This notice was handed to me by the appellant today.

Signed: (Prison Officer)

Date:

For Criminal Appeal Office Use

Received (date):

Acknowledged (date):

Appellant's Index No:

The Court of Appeal Criminal Division
NOTICE and GROUNDS of opposition to application for leave to appeal and appeal against
restraint or receivership decision

Sections 43 and 65 Proceeds of Crime Act 2002

CAO No. / /

Details of the case

Crown Court centre:

Case number:

Name of defendant:
 (sections 88(3) and 40(9) Proceeds of Crime Act 2002)

Are you (please tick as appropriate):

the person who applied for the order

the defendant

a person affected by the order or decision

Your (respondent's) name and address

Your full name:

Address:

Post Code:

Date of Birth:

Prison Index No. (where appropriate):

Details of the order(s), part(s) of order(s) or decision(s) you want to appeal

Name of Judge:

Date of order(s) or decision(s):

Description of order(s) or decision(s):

If only part of an order is appealed, write out that part (or those parts):

Grounds for appeal or for upholding the order

I (please tick as appropriate):

appeal the order(s) or decision(s) of the Crown Court

wish the Court of Appeal to uphold the order(s) or decision(s) of the Crown Court on different or additional grounds

because:

Arguments in support of grounds

Summarise the arguments you intend to put to the Court of Appeal, specifying any authorities to be cited.

What decision are you asking the appeal court to make?

I am asking that (please tick as appropriate):

the order(s), parts of order(s) or decision(s) I am appealing against be set aside

the order(s), parts of order(s) or decision(s) I am appealing against be varied and the following order(s) or decision(s) substituted

a re-hearing by the Crown Court be ordered

the Court of Appeal makes the following additional orders

the Court of Appeal upholds the order(s), parts of order(s) or decision(s) but for the following different or additional reasons

Other applications

(section 43(3)(b) and section 65(6)(b) Proceeds of Crime Act 2002)

I wish the Court of Appeal to make the following additional orders.

Part A

I apply for an order (a draft of which is attached) that:

because:

Part B

I wish to rely on (please tick as appropriate):

evidence in Part C

witness statement (affidavit)

Part C

I wish to rely on the following evidence in support of this application:

Supporting documents

If you do not yet have a document that you intend to use to support your appeal, identify it, give the date when you expect it to be available and give the reasons why it is not currently available in the box below.

Please tick the papers you are filing with this notice and any you will be filing later.

Four additional copies of this notice

Four copies of your skeleton argument (*if separate*)

Four copies of any witness statements or affidavits in support of any application included in this notice

Reasons why you have not supplied a document and date when you expect it to be available.

Signature

Signature of respondent:

Details of any person signing on behalf of the respondent:

Name:

Solicitor/Counsel* *Delete as appropriate

Address:

Date:

Post Code:

Solicitor's Ref:

For Prison Use

This notice was handed to me by the respondent today.

Signed: (Prison Officer)

Date:

For Criminal Appeal Office Use

Received (date):

Acknowledged (date):

Respondent's Index No:

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision as to procedure in the criminal division of the Court of Appeal for the purposes of three new appeals introduced by the Proceeds of Crime Act 2002 (“the 2002 Act”).

The first is an appeal under section 31 of the 2002 Act to the Court of Appeal (and from there to the House of Lords under section 33 of the 2002 Act) by the prosecutor or Director of the Assets Recovery Agency against a confiscation order or a failure of the Crown Court to make a confiscation order. The second is an appeal under section 43 of the 2002 Act to the Court of Appeal (and from there to the House of Lords under section 44 of the 2002 Act) in respect of decisions of the Crown Court about restraint orders. The third is an appeal under section 65 of the 2002 Act to the Court of Appeal (and from there to the House of Lords under section 66 of the 2002 Act) in respect of decisions of the Crown Court about receivers.

All three appeals are to be heard in the criminal division of the Court of Appeal by virtue of section 89(2) of the 2002 Act.

Part I of these Rules makes introductory provision. Part II deals with appeals under section 31 of the 2002 Act. Part III deals with appeals under sections 43 and 65 of the 2002 Act. Part IV makes general provision.

S T A T U T O R Y I N S T R U M E N T S

2003 No. 428 (L. 10)**SUPREME COURT OF ENGLAND AND WALES****The Criminal Appeal (Confiscation, Restraint and
Receivership) Rules 2003**

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