

<b>Title:</b> Investigatory Powers Bill: Bulk Personal Datasets <b>IA No:</b> HO0238  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b> FCO, GCHQ, MI5, SIS	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 6 July 2016
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
<b>Contact for enquiries:</b> investigatorypowers@homeoffice.gsi.gov.uk	

**Summary: Intervention and Options** **RPC Opinion: Not applicable**

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCBS on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?
£0m	£0m	£0m	No   NA

**What is the problem under consideration? Why is government intervention necessary?**  
 As terrorists, criminals and hostile states become more security and technologically aware, they are using increasingly sophisticated techniques to evade detection. A bulk personal dataset refers to a set of information that includes personal data relating to a number of individuals, the majority of whom are unlikely to be (or unlikely to become) of interest to the security and intelligence agencies. Analysis of bulk personal datasets is a vital tool that helps the security and intelligence agencies to keep pace with these threats. While the legal basis (the Intelligence Services Act 1994 and Security Service Act 1989) for acquiring such datasets is long-standing and remains in place, the Government wants to strengthen the safeguards and oversight in relation to the use and retention of bulk personal datasets by the security and intelligence agencies.

**What are the policy objectives and the intended effects?**  
 To provide clearer safeguards, oversight and accountability for the retention and use of bulk personal datasets by the security and intelligence agencies. To provide greater transparency and give greater assurance to the continued use of this capability by the security and intelligence agencies to investigate and tackle terrorist groups, criminals and threats to our national security. This legislation will increase the existing safeguards around the use and retention of bulk personal datasets.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option**  
 Option one: No legislation – no changes are made to the safeguards and oversight regime for the security and intelligence agencies' use of bulk personal datasets. They will continue to acquire them under the Security Service Act 1989 and the Intelligence Services Act 1994 and subject to the handling arrangements published alongside the draft Bill on 4 November 2015.  
 Option two: Legislate to increase the safeguards and oversight for security and intelligence agencies' use and retention of bulk personal datasets, whilst maintaining the current statutory bases for the agencies to acquire such data.  
  
 Option two is our preferred option as it best meets the policy objectives set out above.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date: December 2022**

Does implementation go beyond minimum EU requirements?	N/A				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A		

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister:  Date: 7/7/16

# Summary: Analysis & Evidence

Policy Option 1

Description: No legislation

## FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised costs by 'main affected groups'**  
This is the baseline option; there are no additional costs.

**Other key non-monetised costs by 'main affected groups'**  
This is the baseline option; there are no additional costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised benefits by 'main affected groups'**  
This is the baseline option; there are no additional benefits.

**Other key non-monetised benefits by 'main affected groups'**  
This is the baseline option; there are no additional benefits.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
The lack of certainty around safeguards that apply to bulk personal datasets could reduce public confidence concerning the security and intelligence agencies' use and retention of bulk personal datasets. This could, in time, have an impact on public trust in the agencies and may have a bearing on the ability of the security and intelligence agencies to tackle national security and serious crime threats.		

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Legislate to increase the safeguards and oversight for security and intelligence agencies' use of bulk personal datasets

## FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

Further reporting requirements to the oversight body will create additional staffing and training costs. These costs are covered in the overall reporting costs contained within the Oversight Impact Assessment, and are therefore not included here.

### Other key non-monetised costs by 'main affected groups'

There will be additional training and familiarisation costs for the reporting arrangements, applicable to the Commissioners, security and intelligence agencies, the Home Office and the Foreign and Commonwealth Office, policy officials and legal advisers as they spend time understanding the new authorisation and reporting arrangements. These have not been quantified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/K	N/K	N/K
High	N/K	N/K	N/K
Best Estimate	N/K	N/K	N/K

### Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised for this option.

### Other key non-monetised benefits by 'main affected groups'

The enhanced safeguards will improve public confidence in the security and intelligence agencies' use and retention of bulk personal datasets, providing the public with greater understanding and transparency. This will also strengthen our ability to defend the lawfulness of the agencies' use and retention of bulk personal datasets.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Greater transparency of this capability and its safeguards may lead to changes in criminal and terrorist behaviour, which could reduce the effectiveness of bulk personal datasets analysis.		

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: N/A	No	NA
Benefits: N/A		
Net: N/A		

# Evidence Base

## Strategic Overview

### A.1 Background

As terrorists, criminals and hostile states become more security and technologically aware, they are using increasingly sophisticated techniques to evade detection and threaten the UK and perpetrate serious crime. In response to these challenges, the security and intelligence agencies need to employ a range of investigative methods to identify threats and progress investigations and operations. Analysis of bulk personal datasets is a vital tool that helps them keep pace with these threats.

A bulk personal dataset refers to a set of information that includes personal data relating to a number of individuals the majority of whom are unlikely to be (or unlikely to become) of interest to the security and intelligence agencies. Examples include public telephone directories and the electoral roll. Datasets like these may be held on one or more analytical systems within the security and intelligence agencies.

Agencies use bulk personal datasets to identify subjects of interest, to validate intelligence, or to ensure the security of operations or staff. They can be used to establish links between subjects that would otherwise not be known and help to rule out individuals from an investigation without resorting to more intrusive methods, such as surveillance or interception. A bulk personal dataset is primarily acquired and used by the security and intelligence agencies under provisions in the Security Service Act 1989 and the Intelligence Services Act 1994. This will remain the case, but the use and retention of bulk personal datasets will be governed by the safeguards and oversight contained within the Investigatory Powers Bill. The security and intelligence agencies' use of bulk personal datasets and its oversight was avowed in March 2015 and the current handling arrangements were published alongside the draft Bill in November 2015. While the legal basis for use of this capability is long-standing, there is a need to clarify the safeguards and oversight of the use and retention of bulk personal datasets.

David Anderson's Report, entitled "A Question of Trust", was published in June 2015. In the report it was recommended that bulk personal datasets should be made subject to equivalent safeguards as those he recommended for other investigative powers (Recommendation 6(d) page 285).

In the Intelligence and Security Committee of Parliament's report, entitled "Privacy and Security: A modern and transparent legal framework" (March 2015), the Committee stated that:

*.... The Intelligence Services Act 1994 and the Security Service Act 1989 provide the legal authority for the acquisition and use of Bulk Personal Datasets. However, this is implicit rather than explicit. In the interests of transparency, we consider that this capability should be clearly acknowledged and put on a specific statutory footing.*

Legislation is needed in order to clarify the safeguards and oversight of the use and retention of bulk personal datasets by the security and intelligence agencies.

The draft Bill published in November 2015 was scrutinised by three Committees of Parliament: the Intelligence and Security Committee of Parliament, the Joint Committee convened to scrutinise the draft Bill and the Commons Science and Technology Committee.

A revised Bill, which took into account the recommendations made by the Parliamentary Committees, was introduced on 1 March. Further amendments were made to the Bill, including the Part relating to bulk personal datasets, during House of Commons Committee and Report stages of the Bill. The Bill was introduced into the House of Lords on 8 June and had its second reading on 27 June 2016.

### A.2 Groups Affected

- The security and intelligence agencies (GCHQ, SIS, MI5)
- Government Departments (Home Office, FCO)
- The Intelligence Services Commissioner

### **A.3 Consultation**

#### **Within Government**

All Government departments were consulted in the policy development making process.

#### **Public Consultation**

The draft Bill was subject to pre-legislative scrutiny by three Parliamentary Committees which considered the draft Bill in detail. A call for written evidence was issued by the Joint Committee and substantial evidence was submitted as a result of this public consultation. Operational stakeholders were also consulted as part of the policy-development and pre-legislative process.

## **B. Rationale**

New legislation is necessary to clarify and put the safeguards around the security and intelligence agencies' use and retention of bulk personal datasets onto a more robust and firmer statutory footing and to provide greater public confidence in the transparency and accountability of the security and intelligence agencies' use and retention of bulk personal datasets.

Analysis of bulk personal datasets is a vital tool for security and intelligence agencies. It helps provide immediate context for other targeted intelligence received and enables the agencies to develop leads more quickly. Importantly, it also enables the agencies to rule out people who are not of concern more quickly, without resorting to more intrusive and resource-intensive intelligence methods. For example, if information is received that a person with a specific name is planning to commit a terrorist attack, then bulk personal datasets can be used to identify which person with that name fits other elements of the information given and therefore eliminate others with that same name from further investigation.

Additionally, when significant events, such as the NATO Summit, take place the agencies work in conjunction with law enforcement and other partners to ensure that national security is not put at risk. The use of bulk personal datasets is an important tool to trace the details of individuals with access to venues so as to mitigate the risk that subjects of national security interest might gain access to these events. The capability that bulk personal datasets provide therefore contributes to the safety and security of the UK.

Legislation will provide greater public confidence in the safeguards relating to the security and intelligence agencies' use and retention of bulk personal datasets. It will also provide the public with greater confidence that the agencies are using this data to both help protect the public and reduce their need to use more intrusive capabilities to progress investigations.

The Intelligence and Security Committee of Parliament highlighted the value of bulk personal datasets in their report and stated:

*The Agencies use Bulk Personal Datasets ... to identify individuals in the course of investigations, to establish links, and as a means of verifying information obtained through other sources. These datasets are an increasingly important investigative tool for the Agencies....*

Recommendation X, Page 59, Privacy & Security: A modern and transparent legal framework (March 2015)

In his report "A Question of Trust", David Anderson also stated:

*MI5 considers that, due to the proliferation of communications platforms and techniques available to those it is investigating, it needs to use a wider range of techniques more frequently to obtain comparable insight. Equipment interference, for example, which may require both a property and an interception warrant, epitomises that need. Access to bulk personal data sets is also becoming more important to its investigative work.* Section 10.35, Page 199

The draft Bill was subject to pre-legislative scrutiny by three Parliamentary Committees. A draft Code of Practice to illustrate how the legislation will work in practice was published alongside the Bill as introduced into the House of Commons.

## **C. Objectives**

The objective of new legislation is to provide greater public confidence in and understanding of the use and retention of bulk personal datasets by the security and intelligence agencies. Greater understanding will stem from increased transparency of the safeguards that apply, and greater public confidence from the strengthening of these safeguards in new legislation and the associated accountability and oversight that is in place. This legislation does not increase the powers of the security and intelligence agencies beyond their current capability in respect of bulk personal datasets.

## **D. Options**

Option 1 is to make no changes (do nothing).

This option would see the security and intelligence agencies continue to rely on existing provisions, including in the Intelligence Services Act 1994 and Security Service Act 1989 subject to safeguards set out in existing published handling arrangements. Base costs will remain the same under this option. There will be no additional benefits under this option.

Option 2: Legislate to provide an oversight and authorisation regime for the security and intelligence agencies' use and retention of bulk personal datasets, whilst maintaining the current statutory bases for the agencies to acquire such data.

This option would increase accountability and transparency of the use of this capability and provide greater assurance to the general public and increased legal resilience.

This option would provide for class-based warrants issued by the Secretary of State followed by approval by a Judicial Commissioner to security and intelligence agencies for the use of bulk personal datasets on a six-monthly basis for certain purposes. It would also introduce a mechanism by which the Secretary of State can issue, after Judicial Commissioner approval, a warrant for specific datasets. A class BPD warrant authorises a security and intelligence agency to retain or examine bulk personal datasets that fall within the class described in the warrant. An example of a category of bulk personal datasets that might be the subject of a class BPD warrant is a particular type of 'travel' data. (In contrast, a specific BPD warrant authorises a security and intelligence agency to retain or examine the particular bulk personal dataset described in the warrant.) The Bill also makes clear that where the purpose, or one of the purposes, of a specific BPD warrant would be to authorise the retention, or the retention and examination, of health records, the Secretary of State may issue the warrant only if he or she considers that there are exceptional and compelling circumstances that make it necessary to do so.

The safeguards that apply to security and intelligence agencies' access, retention, storage, destruction, disclosure and audit of bulk personal datasets would be set out in a statutory Code of Practice, as illustrated by the draft Code published alongside the Bill.

## E. Appraisal (Costs and Benefits)

### GENERAL ASSUMPTIONS & DATA

- That the security and intelligence agencies will continue to exercise the power to acquire bulk personal datasets under the Security Service Act 1989 and Intelligence Services Act 1994 as necessary to fulfil their statutory functions.

### OPTION 2 – Legislate to create an authorisation process, and additional safeguards for the security and intelligence agencies’ use and retention of bulk personal datasets

#### COSTS

As this policy does not provide a new power to the security and intelligence agencies to acquire bulk personal datasets, the only additional costs derive from reporting requirements and oversight of the additional safeguards. The agencies will be required to provide requested information on their use and retention of bulk personal datasets, such that additional staff and training may be required. These costs are captured in the Oversight Impact Assessment for the Investigatory Powers Bill, and are therefore not reflected here.

#### BENEFITS

There are no monetary benefits for this option. However, non-monetary benefits include increased public confidence and assurance in the scrutiny and oversight of the security and intelligence agencies’ use and retention of bulk personal datasets.

#### Business Impact Target

Not applicable.

## F. Risks

### OPTION 2 – Legislate to create an authorisation process, and additional safeguards for the security and intelligence agencies’ use and retention of bulk personal datasets

There is an overarching risk that in consolidating existing legislation, and providing for greater transparency, individuals that wish to do the UK harm (e.g. terrorists, criminals and hostile states) will be more aware of the capabilities of the security and intelligence agencies to detect and prevent threats. This may help them to take new or additional measures to evade exposure through the exploitation of bulk personal datasets.

## G. Enforcement

Not applicable.

## H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Option	Costs	Benefits
2	£0	N/K

	Training and familiarisation	Improved public confidence in the use of bulk personal datasets
Source: Refer to costs and benefits section		

Option 2 is recommended on the basis it is considered to offer the most cost effective approach to meeting the policy objectives.

## I. Implementation

The Government will commence the provisions in the Investigatory Powers Act once full implementation plans have been considered and as soon as is feasibly possible once the associated public cost has been approved by Parliament. A full consultation process with affected Government departments, agencies and stakeholders will form part of implementation. A Code of Practice, which was published in draft alongside the Bill, will set out the practical effects of the legislation in relation to the Agencies' use and retention of bulk personal datasets, and will be subject to public consultation and approval from Parliament.

## J. Monitoring and Evaluation

The legislation will now be subject to Parliamentary scrutiny before the Bill is enacted. The Investigatory Powers Commissioner will be obliged to report annually on the exercise of investigatory powers under this Act. The Act will be subject to post-legislative scrutiny five years after the Act has received Royal Assent. The Intelligence and Security Committee of Parliament will continue to oversee the activities of the security and intelligence agencies, including their exercise of investigatory powers. And the Investigatory Powers Tribunal will provide a right of redress to any individual who believes they have been unlawfully surveilled. A Code of Practice, which will be approved by Parliament, will set out the practical effects of the legislation in relation to the agencies' use and retention of bulk personal datasets.

## K. Feedback

The Government has considered all of the recommendations of the three Parliamentary Committees and the public submissions made as part of the consultation process in responding with revised legislation.

### Impact Assessment Checklist

The impact assessment checklist provides a comprehensive list of specific impact tests and policy considerations (as of October 2015). Where an element of the checklist is relevant to the policy, the appropriate advice or guidance should be followed. Where an element of the checklist is not applied, consider whether the reasons for this decision should be recorded as part of the Impact Assessment and reference the relevant page number or annex in the checklist below.

The checklist should be used in addition to [HM Treasury's Green Book guidance](#) on appraisal and evaluation in central government.

#### Economic Impact Tests

Does your policy option/proposal consider...?	Yes/No (page)
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<p><b>Business Impact Target</b></p> <p>The Small Business, Enterprise and Employment Act 2015 (s. 21-23) creates a requirement to assess the economic impacts of qualifying regulatory provisions on the activities of business and civil society organisations. [Better Regulation Framework Manual] or [Check with the Home Office Better Regulation Unit]</p>	N/A
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<p><b>Review clauses</b></p> <p>The Small Business, Enterprise and Employment Act 2015 (s. 28) creates a duty to include a review clause in secondary legislation containing regulations that impact business or civil society organisations. [Check with the Home Office Better Regulation Unit]</p>	N/A
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<p><b>Small and Micro-business Assessment (SaMBA)</b></p> <p>The SaMBA is a Better Regulation requirement intended to ensure that all new regulatory proposals are designed and implemented so as to mitigate disproportionate burdens. The SaMBA must be applied to all domestic measures that regulate business and civil society organisations, unless they qualify for the fast track. [Better Regulation Framework Manual] or [Check with the Home Office Better Regulation Unit]</p>	N/A
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<p><b>Clarity of legislation</b></p> <p>Introducing new legislation provides an opportunity to improve the clarity of existing legislation. Legislation with multiple amendments should be consolidated, and redundant legislation removed, where it is proportionate to do so.</p>	N/A
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<p><b>Primary Authority</b></p> <p>Any new Government legislation which is to be enforced by local authorities will need to demonstrate consideration for the inclusion of Primary Authority, and give a rationale for any exclusion, in order to obtain Cabinet Committee clearance. [Primary Authority: A Guide for Officials]</p>	N/A
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<p><b>New Burdens Doctrine</b></p> <p>The new burdens doctrine is part of a suite of measures to ensure Council Tax payers do not face excessive increases. It requires all Whitehall departments to justify why new duties, powers, targets and other bureaucratic burdens should be placed on local authorities, as well as how much these policies and initiatives will cost and where the money will come from to pay for them. [New burdens doctrine: guidance for government departments]</p>	N/A
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<p><b>Competition</b></p> <p>The Competition guidance provides an overview of when and how policymakers can consider the competition implications of their proposals, including understanding whether a detailed competition assessment is necessary. [Government In Markets Guidance]</p>	N/A
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Social Impact Tests

<p><b>New Criminal Offence Proposals</b></p> <p>Proposed new criminal offences will need to be agreed with the Ministry of Justice (MOJ) at an early stage. The Justice Impact Test (see below) should be completed for all such proposals and agreement reached with MOJ before writing to Home Affairs Committee (HAC) for clearance. Please allow 3-4 weeks for your proposals to be considered.</p>	N/A
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<p><b>Justice Impact Test</b></p> <p>The justice impact test is a mandatory specific impact test, as part of the impact assessment process that considers the impact of government policy and legislative proposals on the justice system. [Justice Impact Test Guidance]</p>	N/A
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<p><b>Statutory Equalities Duties</b> The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services. [Equality Duty Toolkit]</p>	N/A
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<p><b>Privacy Impacts</b> A Privacy Impact Assessment supports an assessment of the privacy risks to individuals in the collection, use and disclosure of information. [Privacy Impact Assessment Guidance] or [Contact the Corporate Security Information Assurance Team Helpline on 020 7035 4969]</p>	Yes.
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<p><b>Family Test</b> The objective of the test is to introduce a family perspective to the policy making process. It will ensure that policy makers recognise and make explicit the potential impacts on family relationships in the process of developing and agreeing new policy. [Family Test Guidance]</p>	N/A
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<p><b>Powers of Entry</b> A Home Office-led gateway has been set up to consider proposals for new powers of entry, to prevent the creation of needless powers, reduce unnecessary intrusion into people's homes and to minimise disruption to businesses. [Powers of Entry Guidance]</p>	N/A
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<p><b>Health Impact Assessment of Government Policy</b> The Health Impact Assessment is a means of developing better, evidenced-based policy by careful consideration of the impact on the health of the population. [Health Impact Assessment Guidance]</p>	N/A
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Environmental Impact Tests

<p><b>Environmental Impacts</b> The purpose of the environmental impact guidance is to provide guidance and supporting material to enable departments to understand and quantify, where possible in monetary terms, the wider environmental consequences of their proposals. [Environmental Impact Assessment Guidance]</p>	N/A
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<p><b>Sustainable Development Impacts</b> Guidance for policy officials to enable government departments to identify key sustainable development impacts of their policy options. <i>This test includes the Environmental Impact test cited above.</i> [Sustainable Development Impact Test]</p>	N/A
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<p><b>Rural Proofing</b> Guidance for policy officials to ensure that the needs of rural people, communities and businesses are properly considered. [Rural Proofing Guidance]</p>	N/A
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