STATUTORY RULES.

1919. No. 177.

REGULATIONS UNDER THE WAR SERVICE HOMES ACT 1918.

I, SIR ARTHUR LYULPH STANLEY, the Deputy of the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *War Service Homes Act* 1918, to come into operation forthwith.

Dated this second day of July, 1919.

A. L. STANLEY,
Deputy of the Governor-General.

By His Excellency's Command,

E. D. MILLEN,
Minister of State for Repatriation.

WAR SERVICE HOMES REGULATIONS 1919.

PART I.—PRELIMINARY.

Short title.

1. These Regulations may be cited as the War Service Homes Regulations 1919

Parts.

2. These Regulations are divided into parts as follows:—

Part I.—Preliminary.
Part II.—Applications for homes and advances.
Part III.—Mortgage to secure balance of purchase money.
Part IV.—Conditions of contracts of sale and advances.
Part V.—Modifications and adaptations of the *Lands Acquisition Act* 1906-1916.
Part VI.—Miscellaneous.

Definitions.

3. In these Regulations, unless the contrary intention appears—

"Deputy Commissioner" means the Deputy Commissioner for War Service Homes for a State, appointed under the Act;

"Home" means a dwelling-house and the land upon which it is erected;

"The Act" means the *War Service Homes Act* 1918 and any amendments made thereto from time to time.

PART II.—APPLICATIONS FOR HOMES AND ADVANCES.

Applications for homes

4. Applications for homes or for advances under the Act shall be made to a Deputy Commissioner in writing in the manner and on the form approved by the Commissioner.

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Applications—how dealt with.

5. Applications shall be dealt with in the manner laid down in the General Orders issued by the Commissioner.

Certificate of Deputy Commissioner as to eligibility, &c., of applicant.

6. A Deputy Commissioner shall, on receipt of an application for a home or for an advance certify whether the applicant is an eligible person and whether the Deputy Commissioner is satisfied that the applicant has a reasonable prospect of carrying out the terms of the contract of sale or the mortgage in respect of the advance into which he is desirous of entering.

Appeals.

7. (1) Where an applicant is dissatisfied with the certificate of a Deputy Commissioner given in pursuance of the last preceding regulation, he may appeal in writing to the Deputy Commissioner stating fully the grounds of his appeal.

(2) Upon receipt of the appeal the Deputy Commissioner shall reconsider the case, and may either grant a fresh certificate, or forward together with the appeal, the file and such report as he considers necessary to the Commissioner for decision.

(3) The decision of the Commissioner shall be final.

Part III.—Mortgage to Secure Balance of Purchase Money.

Form of mortgage.

8. For the purposes of sub-section (6.) of section 19 of the Act, the prescribed form of mortgage shall be such form as is required for registration under the Acts of the States relating to registration.

Notice of intention to execute mortgage.

9. Any purchaser may execute a mortgage to the Commissioner in pursuance of sub-section (6) of section 19 of the Act upon giving to the Commissioner one month's notice of his intention to do so.

Part IV.—Conditions of Contracts of Sale and Advances.

Rate of interest.

10. The rate of interest to be charged to any purchaser or borrower in respect of any purchase money or advance shall be Five pounds per centum per annum.

Commissioner to hold title deeds till mortgage discharged.

11. The title deeds of land mortgaged to the Commissioner shall remain in the custody of the Commissioner so long as any money remains due and unpaid under the mortgage.

Borrower to observe Acts and Regulations, applicable to home, &c.

12. Each borrower shall in all respects conform to the provisions and regulations of any general or local Act of Parliament or local authority which may be applicable to the home or the work of erecting completing or enlarging the dwelling-house.

Proof of account with Commissioner.

13. A certificate signed by the Commissioner or a Deputy Commissioner containing a statement of the account of a purchaser or a borrower with the Commissioner shall be evidence of the matters stated.

Power of Commissioner, where mortgage property seized in execution, to call in amount due.

14. Should any land mortgaged to the Commissioner be seized in execution the Commissioner may by notice in writing at once call in the amount due under the mortgage whether as principal interest or otherwise.

Power of Commissioner to receive amount due.

15. Whenever the Commissioner calls in an amount due under a mortgage the borrower shall forthwith pay that amount and in default the Commissioner shall have the same remedies for the recovery of the amount called in as are provided by the Act or these Regulations for the recovery of sums payable by the borrower.

16. The Commissioner may consent to the transfer of land or a home or of any estate or interest therein to an eligible person where the person proposing to transfer is suffering hardship by reason of— Conditions of transfer to eligible persons.

(a) loss of employment;
(b) financial stress;
(c) illness;
(d) unsuitability of the locality to the health of the person or any member of his family; or
(e) such other cause as the Commissioner deems sufficient.

17. (1) Where the Commissioner effects repairs in pursuance of sub-section (2) of section 31 of the Act the expenses thereby incurred together with interest at the same annual rate as that which is payable on the purchase money shall be repayable by the purchaser over a period not exceeding three years in weekly fortnightly or monthly instalments as the Commissioner determines. Payment for repairs.

(2) The Commissioner shall estimate the cost of the repairs prior to the repairs being effected and shall notify the estimated cost to the purchaser.

(3) Any failure by the Commissioner to notify the estimated cost of repairs to the purchaser or any notification of an estimated cost which is lower than the actual cost shall not relieve the purchaser from his liability to repay the expenses incurred in effecting the repairs, and the interest.

18. The insurance policy issued by the Commissioner may be incorporated in a contract of sale, mortgage or other security under the Act. Insurance policy.

19. For the purposes of section 38 of the Act the other prescribed risks shall be lightning, storm and tempest. Prescribed insurance risks.

Part V.—Modifications and Adaptations of the Lands Acquisition Act 1906-1916.

20. The *Lands Acquisition Act* 1906-1916 in its application in relation to land acquired or to be acquired by the Commissioner for the purposes of the Act shall be modified and adapted as follows:— Modifications and adaptations of the *Lands Acquisition Act* 1906–1916.

(a) Every reference, to the Commonwealth, or to the Governor-General, or to the Attorney-General or to the Minister in any section other than in sections 5, 20, 41, 44, 57, 58, 62, 62A, 63, 64, 66 and 67 shall be read as a reference to the War Service Homes Commissioner:

Provided that the War Service Homes Commissioner shall not acquire any Crown lands of a State without first obtaining the approval of the Governor-General thereto;

(b) Section 5 shall be modified—

(a) as if for the definition of "Convey" there were substituted the following definition:—"'Convey' includes grant, convey, release and transfer";

(b) as if from the definition of "land" there were omitted all the words following the words "Crown land"; and

(c) as if in the definition of "Owner" there were substituted for the word "Commonwealth" the word "Commissioner";

(*c*) Section 8 shall be modified as if for the words "sell and convey the land to the Commonwealth and may enter into any agreement for that purpose" there were substituted the following words:—

"(i) sell or convey the land to the Commissioner; and

(ii) if the land is acquired by the Commissioner by compulsory process—

(*a*) subject to this Act, make or join with any person in making a claim for compensation; and

(*b*) accept or not accept any offer of compensation by the Commissioner; and

(*c*) take any action authorized by this Act to be taken by a claimant to determine a disputed claim for compensation; and

(iii) enter into any agreement incidental to the exercise of any power conferred by this section.";

(*d*) Section 9 shall be modified as if for the words "The power to sell and convey land may be exercised" there were substituted the words "The powers conferred by the last preceding section may be exercised";

(*e*) Section 10 shall be modified to read as follows:—

"(1.) Where any land is sold or conveyed to the Commissioner by or acquired from any person who was not entitled to sell or convey the land to the Commissioner except under this Act (which person is in this section referred to as the person under disability) the purchase money or compensation may be applied in the manner provided in this section.

"(2.) With the consent of all parties interested the purchase money or compensation may be paid to a trustee subject to such trusts as are declared by a deed of trust approved by the Commissioner.

"(3.) Where any infant, lunatic or idiot is interested in or entitled to receive any purchase money or compensation, his consent to any application or disposition thereof may be given by a guardian or committee on his behalf.

"(4.) The purchase money or compensation may be paid to a Registrar of the High Court or the Master-in-Equity or other proper officer of the Supreme Court to be applied in accordance with any order of the Court.

"(5.) The High Court or the Supreme Court may on the application of any person interested order any purchase money or compensation to be applied as follows:—

(a) in the discharge of any debt or encumbrance affecting the land, or affecting other land settled therewith to the same or the like uses, trusts and purposes; or

(b) in the purchase of other land or of Government securities of the Commonwealth, or of a State, to be conveyed, limited and settled upon the like uses, trusts and purposes and in the same manner as the land in respect of which the purchase money or compensation was paid; or

(c) if the purchase money or compensation has been paid in respect of any buildings acquired under the authority of this Act, in removing or replacing the buildings or substituting others in their stead; or

(d) in such manner as the High Court or the Supreme Court directs; or

(e) in payment to any person becoming absolutely entitled to the purchase money or compensation.

"(6.) If the person under disability is a Corporation the purchase money or compensation may be paid to the Corporation.

"(7.) If the person under disability is a trustee or feoffee in trust the purchase money or compensation may be paid to the trustee or feoffee in trust to be dealt with by him as nearly as may be in accordance with the trusts upon which the land is held.

"(8.) If the person under disability is an executor or administrator, the purchase money or compensation may be paid to the executor or administrator to be dealt with by him in accordance with his duties as such executor or administrator.

"(9.) If the person under disability is an infant, lunatic or idiot, the purchase money or compensation may be paid to his guardian or committee.

"(10.) Whenever the amount of purchase money or compensation does not exceed Fifty pounds it may be paid to the persons who would for the time being have been entitled to the rents and profits of the land.

"(11.) In this section 'Compensation' includes compensation together with any interest payable thereon and any amount payable in addition thereto under this Act.";

(f) Section 14 shall be modified to read as follows:—

"The Commissioner may execute or accept any conveyance or document and enter into any covenant or agreement and do anything necessary for the purpose of effecting the acquisition of the land.";

(*g*) Section 15 shall be modified as if for sub-sections (1.) and (2.) there were substituted the following sub-section:—

"(1.) The Commissioner may by notification published in the *Gazette* declare that the land specified in the notification has been acquired by compulsory process for the purposes of the *War Service Homes Act* 1918.";

(*h*) Section 19 shall be modified to read as follows:—

"Whenever any land has been acquired by the Commissioner by compulsory process—

(*a*) either House of Parliament may within thirty days after a copy of the notification of acquisition has been laid before it, pass a resolution that the notification shall be void and of no effect either wholly or as to any part of the land acquired; or

(*b*) the Commissioner may by declaration published in the *Gazette* within six months after the date of the publication in the *Gazette* of the notification of acquisition, revoke the notification of acquisition either wholly or as to any part of the land acquired,

and thereupon, to the extent specified in the resolution or declaration of revocation the notification shall be void and of no effect, and the land shall be deemed not to have been vested in the Commissioner, and the owner of the land shall be entitled to compensation for any damage which he may actually and unavoidably have suffered by reason of the notification or of the exercise of the powers of the Commissioner consequent thereupon.";

(*i*) Section 20 shall be modified—

(*a*) as if for the word "Attorney-General" there were substituted the word "Commissioner";

(*b*) as if for the words "transfer of the land to the Commonwealth" there were substituted the words "transfer of the land to the Commissioner"; and

(*c*) as if there were added thereto the following sub-section:—

"(2.) Whenever there is lodged with him a certificate under the hand of the Commissioner certifying that pursuant to the last preceding section a notification of acquisition is void and of no effect either wholly or in part, the Registrar-General or Registrar of Titles or other officer by whom the notification of acquisition was registered shall, to the extent set forth in the certificate, cancel the registration of the notification and any certificate of title issued thereunder and restore the Register to the same condition as if to that extent the notification had not been published or registered.";

(*j*) Section 28 shall be modified as if there were added thereto the following sub-section:—

"(3.) The lessee of any land acquired by compulsory process shall be entitled to compensation in respect only of that portion (if any) of the term of the lease which is unexpired on the date upon which he ceases occupation of the land, but in determining the compensation payable to the owner of the reversion the lessee shall be deemed to have ceased occupation of the land on the date of acquisition.";

(*k*) Section 29 shall be modified to read as follows:—

"The value of any land acquired by compulsory process shall be taken not to exceed its unimproved value or the interest of the owner therein on the first day of January, 1919, together with the value of his interest in the improvements on the land at the date of the acquisition of the land.";

(*l*) Section 30 shall be modified as if for the words "tenant holding from year to year" there were substituted the words "monthly tenant";

(*m*) Section 34 shall be modified to read as follows:—

"(1.) On the expiration of the time limited for making claims for compensation, the Commissioner shall cause any claims made to be examined and a report made to him as to the compensation payable.

"(2.) After receipt of the report, the Commissioner or any person authorized by him in that behalf shall—

(*a*) notify the claimant that the claim for compensation is admitted, and that the compensation claimed will be paid to him on compliance with this Act; or

(*b*) offer the claimant such amount as the Commissioner thinks reasonable in satisfaction of the claim for compensation and notify the claimant that the amount offered will be paid to him on compliance with this Act if he accepts the offer; or

(*c*) notify the claimant that he disputes the claim for compensation.

"(3.) The claimant shall within sixty days after the receipt of the offer of the Commissioner by notice in writing notify the Commissioner whether he does or does not accept the offer.

"(4.) Where more than one claim for compensation is made in respect of the acquisition of the same land the Commissioner may if he thinks fit make an offer to all or any two or more of the claimants jointly, without apportioning the amount offered among the claimants to whom the joint offer is made.";

(*n*) Section 37 shall be modified as if there were added thereto the following sub-sections:—

"(2.) For the purpose of this section—

(*a*) the Supreme Court shall be a Court of competent jurisdiction in all cases; and

(*b*) a County, District or Local Court having jurisdiction over the place where the land is situated shall, when constituted or presided over by a Judge or a Police, Stipendiary or Special Magistrate, be a Court of competent jurisdiction in cases where the total compensation claimed does not exceed £500.

"(3.) When an action for compensation has been instituted the Court may, on the application of the Commissioner, by order direct any person who has claimed compensation or who appears to have had at the date of acquisition any estate or interest in the land, to join as a plaintiff in the action within a time specified in the order.

"(4.) If any person so ordered fails to join as a plaintiff in the action within the time fixed by the order, he shall be absolutely debarred from thereafter instituting any action for compensation against the Commissioner in respect of the land.

"(5.) When in an action for compensation in a County, District or Local Court, by reason of joinder of new plaintiffs or otherwise, the total compensation claimed exceeds £500, the action shall, on the application of the Commissioner to—

(*a*) the High Court, be removed into the High Court; or

(*b*) the Supreme Court, be removed into the Supreme Court,

and shall thereafter proceed in the Court to which it is removed as if it had been instituted in that Court.

"(6.) On the trial of the action the Court shall—

(*a*) determine the total amount of compensation payable by the Commissioner to the plaintiffs; and

(*b*) where two or more persons are entitled to share in the compensation, determine the amount payable to each person and the manner in which it shall be paid.

"(7.) It shall not in any action for compensation be necessary for the Commissioner to pay compensation into Court, and the Commissioner shall not in any way be prejudiced in the defence of the action by reason of non-payment into Court.";

(o) Section 38 shall be modified—

(a) as if in sub-section (1.) for the word "claim" (last occurring) there were substituted the words "amount of compensation payable by the Commissioner";

(b) as if for sub-section (2.) there were substituted the following sub-section:—

"(2.) The Court shall, after such notice to such persons as it directs, hear the application, and—

(a) determine the amount of compensation payable by the Commissioner; and

(b) where two or more persons are entitled to share in the compensation, determine the amount payable to each person and the manner in which it shall be paid"; and

(c) as if for sub-section (4.) there were substituted the following sub-section:—

"(4.) The determination of the Court shall be final and conclusive and without appeal and shall be binding upon all persons having any right to compensation in respect of the acquisition of the land, whether represented before the Court on the hearing of the application or not.";

(p) Section 39 shall be modified as if for sub-section (4.) there were substituted the following sub-section:—

"(4.) The Court shall, after such notice to such persons as it directs, hear the application, and—

(a) determine the amount of compensation payable by the Commissioner; and

(b) where two or more persons are entitled to share in the compensation, determine the amount payable to each person and the manner in which it shall be paid.";

(q) Section 48 shall be modified as if for sub-sections (1.) to (4.) there were substituted the following sub-sections:—

"(1.) If any land acquired under this Act by agreement is subject to a mortgage, the Commissioner may pay off the mortgage at any time at which the principal secured by the mortgage is repayable.

"(2.) If the principal secured by the mortgage is not repayable at the date of acquisition or at any time within six months thereafter, the Commissioner may give notice to the mortgagee that he intends at the expiration of six months from the date of the notice, to pay off the mortgage and may at any time after that period has expired pay to the mortgagee the amount to which he is entitled under this section.

"(3.) The amount to which a mortgagee is entitled under this section shall be—

(a) the principal secured by the mortgage;

(b) the interest due under the mortgage at the lowest rate secured by the mortgage (whether for prompt payment or otherwise) at the date upon which the amount to which the mortgagee is entitled under this section is paid or tendered to the mortgagee;

(c) the costs and charges (if any) due to the mortgagee under the mortgage;

(d) the reasonable costs of the mortgagee of discharging the mortgage and conveying his interest in the land to the Commissioner; and

(e) if the principal is not repayable under the mortgage (with or without notice) at the time the mortgage is paid off—

(i) the costs of the mortgagee of re-investing the principal paid off; and

(ii) should a loss of interest reasonably be expected, regard being had to the rate of interest secured by the mortgage and the rate of interest obtained or likely to be obtained on the re-investment—a reasonable allowance for loss of interest until the date on which the principal would have been repayable (with or without notice).

"(4.) The mortgagee shall upon payment or tender to him of the amount to which he is entitled under this section execute a discharge of the mortgage and any conveyances necessary to convey his interest in the land to the Commissioner.";

(r) Sections 49 and 50 shall be modified to read as follows:—

"49.—(1.) Where any land acquired by compulsory process is at the time of acquisition subject to a mortgage, the mortgagee may either—

(a) claim compensation under division 2 of Part IV. of this Act; or

(b) refrain from claiming compensation under this Act and rely upon his rights and remedies against the mortgagor under the mortgage.

"(2.) The mortgagee shall set forth in his claim—

(a) the amount of principal due under the mortgage at the date of the acquisition of the land; and

(b) the amount of interest, costs and charges due to the mortgagee under the mortgage at that date.

"(3.) When a mortgagee claims compensation under this Act the acquisition of the land shall to the extent to which the compensation payable to the mortgagor in respect of the land mortgaged is sufficient to satisfy the mortgage debt, have the effect of discharging the mortgage debt and extinguishing the liability of the mortgagor under the mortgage as from the date of acquisition.

"(4.) The Commissioner may by notice in writing sent by post addressed to the mortgagee at the address given in the mortgage, require the mortgagee to—

(*a*) furnish particulars of—

(i) the amount of principal due under the mortgage at the date of the acquisition of the land, and

(ii) the amount of interest, costs and charges due to the mortgagee under the mortgage at that date; and

(*b*) make a claim under this Act for compensation as mortgagee.

"(5.) If the mortgagee fails to furnish the particulars to the Commissioner, and to make a claim for compensation within thirty days (or such further period as the Commissioner may in writing allow for that purpose) after the date of the notice, he shall be deemed to have waived all rights under this Act to compensation as mortgagee and shall be absolutely debarred from claiming or recovering as mortgagee any compensation or other amounts from the Commissioner.

"(6.) The Commissioner may by notice in writing served upon the owner of the land, either personally or by registered letter posted to his last-known place of abode, require the owner to furnish the following particulars:—

(*a*) whether or not the land is subject to a mortgage; and

(*b*) if so—

(i) the name and address of the mortgagee; and

(ii) the amount of principal due under the mortgage at the date of acquisition; and

(iii) the amount of interest, costs and charges due to the mortgagee under the mortgage at that date.

"(7.) If the owner of the land fails to furnish the particulars to the Commissioner within thirty days (or such further period as the Commissioner may in writing allow for that purpose) after the service of the notice, the Commissioner may agree with any person claiming to be a mortgagee of the land as to the amounts due under the mortgage and the owner shall be absolutely debarred from disputing the correctness of any amounts so agreed upon.";

(*s*) Section 51 shall be modified to read as follows:—

"(1.) The compensation payable to a mortgagee shall be—

(*a*) the principal due under the mortgage at the date of acquisition; and

(*b*) any interest, costs or charges due to the mortgagee under the mortgage at that date;

but not exceeding in any case the amount of compensation payable to the mortgagor in respect of the land.

"(2.) In addition to the compensation mentioned in sub-section (1.) of this section the mortgagee shall be entitled to the following amounts:—

(*a*) (i) if the principal was repayable (with or without notice) at the date of the acquisition of the land, interest on the amount of principal included in the compensation at the lowest rate (whether for prompt payment or otherwise) secured by the mortgage from the date of acquisition until payment of the compensation to the mortgagee; or

(ii) if the principal was not repayable (with or without notice) at the date of the acquisition of the land, interest on the amount of principal included in the compensation at the lowest rate (whether for prompt payment or otherwise) secured by the mortgage from the date of acquisition until the principal would be repayable (with or without notice) or until payment of the compensation to the mortgagee (whichever is the later) but not in any case exceeding six months from the date of acquisition; and

(*b*) the reasonable costs of the mortgagee of executing any discharge or mortgage required by the mortgagor or the Commissioner; and

(*c*) if the principal was not repayable (with or without notice) at the date when interest ceases to be payable under this section—

(i) the costs of the mortgagee of re-investing the principal paid off; and

(ii) should a loss of interest reasonably be expected, regard being had to the rate of interest secured by the mortgage and the rate of interest obtained or likely to be obtained on the re-investment—a reasonable allowance for loss of interest until the date on which the principal would have been repayable (with or without notice).

"(3.) Where the Commissioner gives notice to the mortgagee that the compensation is ready for payment, and the mortgagee does not, on or before a date specified in the notice, attend and receive payment of the compensation, interest under sub-section (2.) of this section shall be payable only to the date specified in the notice.";

(t) Section 52 shall be modified to read as follows:—

"(1.) The compensation payable to a mortgagee under sub-section (1.) of section 51 shall be deducted from the compensation payable to the mortgagor.

"(2.) Upon payment or tender of the compensation to the mortgagee, he shall if so required by the mortgagor or the Commissioner execute a discharge of the mortgage to the extent to which the amount paid or tendered is sufficient to satisfy the mortgage.

"(3.) The rights and remedies of the mortgagee shall not be affected as regards the remainder (if any) of the mortgage debt, or as regards any other land subject to the mortgage.";

(u) Section 53 shall be modified as if for the words "has waived his rights to" there were substituted the words "refrains from claiming";

(v) Section 56 shall be modified as if for sub-section (3.) there were substituted the following sub-section:—

"(3.) After the apportionment has been settled, then—

(a) in respect of the part not acquired—

(i) the lessee shall as to future accruing rent be liable only to the lessor for the rent apportioned to such part; and

(ii) the lessor shall have the same rights and remedies, both against the land and against the lessee, for the rent so apportioned as he had previously to the apportionment for the whole rent; and

(iii) all covenants, conditions and agreements in the lease (except as to the amount of rent) shall remain in force; and

(b) in respect of the land acquired, if the lessee continues after the date of acquisition in occupation of such land—

(i) the lessee shall as to future accruing rent be liable to the Commissioner for the rent apportioned to such land;

(ii) and the Commissioner shall have the same rights and remedies both against the land and against the lessee, for the rent so apportioned as the lessor previously had for the whole rent.".

Part VI.—Miscellaneous.

Commonwealth Bank to be prescribed institution.

21. The Commonwealth Bank of Australia shall, for the purposes of section 50 of the Act, be a prescribed institution.

Service of notices.

22. Any notice to be given by the Commissioner or a Deputy Commissioner under the Act or these Regulations shall be deemed to have been duly given if signed for or on behalf of the Commissioner and posted in a prepaid letter to—

(*a*) a purchaser or borrower at the dwelling-house purchased from, or in respect of which an advance has been made by the Commissioner; or

(*b*) the last known address of the person to whom the notice is required to be given,

and shall be deemed to have been duly received at the time at which in the ordinary course of post it would have reached the dwelling-house or that address.

Proof of signature of Commissioner, &c.

23. Any certificate, insurance policy, notice or other document bearing the written, stamped or printed signature of the Commissioner or a Deputy Commissioner shall, until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to be signed.

Repeal of S.R. 1919, No. 165.

24. The regulation made by Statutory Rules 1919, No. 165 is hereby repealed

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