



Scottish Specific Equality Duties: Get Ready for April 2021

Coalition for Racial Equality and Rights, 2020



The Coalition for Racial Equality and Rights works to eliminate racial discrimination and promote racial justice across Scotland. Through capacity building, research and campaigning activities which respond to the needs of communities, our work takes a strategic approach to tackling deep rooted issues of racial inequality.

CRER has experience of anti-racist work covering areas such as community engagement and empowerment, research and resource development, practical training and equality mainstreaming support for Public and Voluntary Sector organisations.

CRER takes a rights based approach, promoting relevant international, regional and national human rights and equality conventions and legislation.

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Scottish Specific Equality Duties: Get Ready for April 2021

This briefing is part of a series of publications from CRER designed to help public sector organisations in Scotland to implement their public sector equality duties.

It updates and replaces guidance previously provided in the CRER publication ‘Scottish Specific Equality Duties: Get Ready for April 2017.’

Since the introduction of the Scottish specific equality duties in 2012, CRER has undertaken a wide range of activity to support public sector organisations in developing their approach to equality. Scotland’s public bodies employ over half a million people and provide services used by everyone in Scotland. They have the power to make a real difference to people’s lives by tackling racial and other forms of inequality. Scotland’s specific public sector equality duties provide a useful framework to drive that progress.

This briefing is primarily aimed at staff and managers in Scotland’s public bodies who already have some experience in implementing the public sector equality duties (PSED). It should be read alongside the Equality and Human Rights Commission’s [non-statutory and technical guidance](#) on PSED, which contain essential information on your organisation’s legal responsibilities.

This briefing provides a range of good practice tips for meeting the requirements of the equality duties in the run up to the April 2021 publication round.¹

The information set out here is based on a range of research and guidance on PSED produced by CRER, the Equality and Human Rights Commission and other bodies; these sources of useful information are referenced in footnotes throughout the document.

Organisations may also find it useful to refer to the Scottish Government’s Race Equality Framework 2016-2030.² A number of the goals and actions within the Framework relate to better performance of the public sector equality duties.

¹ The requirements covered within this publication apply to organisations following the standard reporting cycle; requirements for other organisations will differ. More information is provided on p.3.

² Available from: <http://www.gov.scot/Publications/2016/03/4084>

Publication Dates

Most parts of the Scottish specific duties require certain publications to be produced at specific intervals. Generally, the documents have to be published every two years from 2013 onwards. The main exceptions to this rule are revised sets of equality outcomes and the equal pay statement, which must be published every four years. The information must be published no later than 30th April in the relevant year.

This timetable for publication applies to all listed public bodies except some new or merged institutions which have been added to the list after its original approval.³ This includes Health and Social Care Integrated Joint Boards (IJBs),⁴ whose publication duties began in April 2016. Public bodies are permitted to publish earlier than the statutory publication dates, so it is possible for public bodies to align with the standard timetable if desired. For example, IJBs may find it beneficial to align with their partner organisations (Local Authorities and NHS Health Boards).

For organisations following the standard publication cycle beginning in 2013, the requirements for 2021 are shown below.⁵

	2021	Ongoing
Mainstreaming report		
Employee information annual breakdown (including collecting / using information)		
Membership / Board of Management information breakdown*		
Equality outcomes progress report		
Set of equality outcomes		
Gender pay gap**		
Equal pay statement / occupational segregation data**		
Equality impact assessment		
Procurement		

*Requirement for selected public bodies only

**As of 2016, these duties which formerly applied only to listed organisations with 150 or more staff now apply to all listed organisations with 20 or more staff.

The duty to assess equality impact requires publication on an ongoing basis, whilst the duty to consider equality in procurement has no publication requirement. These two duties are not covered by this briefing.

³ More information is available from the Equality and Human Rights Commission website: [Listed Public Bodies](#)

⁴ For more information on how the duties apply to IJBs, see: Equality and Human Rights Commission [FAQ page for IJBs](#)

⁵ The Equality and Human Rights Commission advise that [they will not be providing leeway](#) on enforcement of publication dates for 2021 in response to Covid-19 unless the Coronavirus (Scotland) Act 2020 is extended.

Meeting the duties in 2021

The 2021 publication round marks the end of the second four-year cycle of PSED implementation. CRER undertook research into the effectiveness of implementation over the first four-year cycle on behalf of the Equality and Human Rights Commission in 2017. This research looked specifically at the duties to set and report progress on equality outcomes; to gather and use employee information; and to report on the gender pay gap. Public Authorities may find the resulting report useful in understanding how their PSED work can become more effective: [Effectiveness of the PSED Specific Duties in Scotland](#)

The research findings indicated a number of areas for improvement which CRER would recommend public bodies consider in planning for the 2021 publication round:

- Improving the evidence base used in setting outcomes, including greater use of baselines from which to measure change
- Ensuring that equality outcomes are explicitly worded to describe the change the public body wishes to see in the lives of people with specific protected characteristics, and avoiding broad outcomes which focus on actions, outputs or organisational ambitions
- Setting out clearer and more appropriate progress measurement criteria for equality outcomes, and using those criteria consistently over the four-year cycle to track change
- Reducing the amount of reporting on actions and outputs, and increasing the amount of reporting which demonstrates change in the lives of people with protected characteristics
- Ensuring that the full required range of employee information (covering workforce profile, recruitment, development and retention for each of the relevant protected characteristics) is collected, published and used to create change
- Checking that the correct calculation is being used for the gender pay gap
- Adhering closely to the recommended processes, systems and standards contained in the Equality and Human Rights Commission guidance

The following sections set out practical information and recommendations on preparing for the 2021 publication round across a range of areas of work, beginning with evidence gathering processes.

Gathering evidence

It's arguably impossible to comply with PSED without a strong evidence base. Approaches to meeting the duties must be based on sufficient evidence, and if an organisation lacks that evidence they must take steps to obtain it.⁶

The Scottish specific duties require listed public bodies to consider relevant evidence relating to people who share a relevant protected characteristic (and any person who appears to the authority to represent the interests of those people) when preparing and publishing equality outcomes.⁷ In practice, evidence is also needed to report progress on outcomes set previously; in a consultation exercise commissioned by the Scottish Government, public bodies said that difficulties in measuring progress were one of the main barriers to implementing PSED.⁸

Although the mainstreaming reporting duty does not specify how evidence should be gathered, without it, compiling an adequate mainstreaming report would be very difficult.

With the April 2021 deadline fast approaching, most organisations will have considerable work to do in gathering and analysing the required evidence.

You may find it useful to develop structured approaches to evidence gathering, for example:

- Setting up an information hub where staff can save any useful information on equality from their own area of work
- Mapping the evidence you already have for each protected characteristic and each of the 'needs'⁹ of the general duty

⁶ Equality and Human Rights Commission (2016). [Technical Guidance on the Public Sector Equality Duty: Scotland](#)

⁷ Equality and Human Rights Commission (2016). [Evidence and the Public Sector Equality Duty: A Guide for Public Authorities](#)

⁸ ODS Consulting / Scottish Government (2013). [Implementation of Scottish Specific Duties: Views from public authorities](#)

⁹ See [Equality and Human Rights Commission guidance](#) for more detail on the three 'needs' of the general duty – eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations

In terms of reporting on mainstreaming, the aim should be to collect the best possible evidence for each protected characteristic group across the three 'needs' of the general equality duty, particularly on how these might be impacted by your organisation's functions. How much evidence you need for each function depends on how relevant the needs of the general duty and protected characteristics are to that function.

In terms of outcome setting, the evidence you gather around protected characteristics and the 'needs' of the general equality duty should relate not just to the situation within your own organisation, but to equality issues more broadly. Identifying the range of inequalities which affect particular groups is vital to inform your organisation's thinking about how it can eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations.

Whether for mainstreaming or equality outcomes purposes, the evidence you gather should encompass a range of quantitative and qualitative information:

- Internal evidence on the situation within your organisation, including statistics, information from comments and complaints processes, grievances and disciplinaries, and staff or service user consultations
- External evidence from local and national research, equality organisations and statistical sources
- Evidence from involvement activities with people who share a protected characteristic and their representatives (for outcome setting, this is a legal requirement which should be carried out when you begin to develop any new set of equality outcomes; see p.12 for more information)

Reporting progress on mainstreaming the equality duty

Our research into PSED performance in Glasgow in 2013, 2015 and 2019 found that the type and amount of information published in mainstreaming reports varied enormously.¹⁰

To make sure your report is both compliant and coherent, it's important to publish enough information to meet the duties without including too much detail on processes which don't relate to equality. The concept of mainstreaming means different things to different people, but in this case, the focus must be on how your organisation embeds each of the needs of the general duty for each protected characteristic throughout all of its work. Specifically, the duty requires organisations to 'report on the progress it has made to make the equality duty integral to the exercise of its functions so as to better perform that duty.'

Suggestions which could help to focus mainstreaming reports effectively include:

- Including information for each of your organisation's functions, covering the work of staff at all levels and considering all needs and protected characteristics covered by the equality duties
- Concentrating on ongoing activities, policies, processes, strategic work and organisational ethos
- Using a combination of narrative and statistics to explore mainstreaming in your organisation
- Including case studies which show good practice
- Making sure that all of the content relates to equality
 - If what you're describing doesn't address a disadvantage or close a gap for one or more protected characteristic groups, it's unlikely to be relevant

April 2021 marks the fifth round of mainstreaming reporting for most organisations. By this time, you should have a good idea of the strengths and weaknesses of your previous approaches, making it easier to set out mainstreaming reports in an accessible and coherent way.

Once you have established the best structure and range of information for your organisation's mainstreaming report, the main challenge is ensuring that the information published is accurate each time. It's also good to have continuity in the data and narrative reported over the years, building on previous work to demonstrate how the approach to is developing and improving. This can be

¹⁰ CRER, Equality in Glasgow: Glasgow's Public Sector Bodies and the Public Sector Equality Duty: [2013](#), [2015](#), [2019](#)

challenging in large organisations where changes in staffing and shifting work priorities are common, but can make a big impact on the effectiveness and sustainability of efforts to make the equality duty integral to the exercise of your functions.

You may wish to think about:

- Ensuring that each organisational function has a reporting process through which you can collate information on mainstreaming; for example by building a section on mainstreaming into each area or department's standard annual report
- If copying information from a previous mainstreaming report, checking carefully that all information remains accurate and providing narrative explanations of changes over time
- Providing support and information to any new or reassigned / promoted members of staff who will be required to report on mainstreaming activities in their area or department at an early stage

Some organisations find it difficult to separate out mainstreaming activity and activity which is more suitable for inclusion in equality outcomes. An easy way to address this is to remember that equality outcomes relate solely to specific and targeted work being done to achieve change in the lives of people with protected characteristics. Mainstreaming activity, on the other hand, is the day-to-day work your organisation does on equality – processes, policies, practices and so on.

Employee information

Employee information should be published as part of your mainstreaming report. Gathering and using employee information is not only a legal duty, but provides vital evidence to underpin mainstreaming reporting and equality outcomes.

For many public bodies, ensuring the right systems were in place to collect employee information was initially challenging. Some still have unresolved data gaps, making their employee information publication non-compliant. In these cases, we strongly recommend that organisations audit and improve their data collection processes.

In some cases, low rates of response to equality monitoring surveys has been a problem. The duties require organisations to tackle this pro-actively, publishing details of the progress that the authority has made in gathering employee information to enable it to better perform the equality duty within their mainstreaming reports (see p.10). Low response rates can often be easily addressed by communicating the reason for monitoring clearly and consistently to staff and job applicants.

CRER's research on the effectiveness of PSED in Scotland¹¹ demonstrated that the employee information duty is implemented poorly in a large number of organisations. Whilst workforce composition data is frequently published, this often fails to cover all of the relevant protected characteristics. The other types of employee information which should be published (recruitment, retention, and particularly development) are less widely reported.

To maximise the effectiveness of your employee information:

- Check that the categories your monitoring system uses for each protected characteristic match up with external data sources you can use to benchmark progress (plan to update your monitoring system in line with the 2022 Census)
- Be clear about what data on ethnicity means
 - Categories such as 'white' vs 'non-white' are often used when reporting ethnicity data; be aware that this disguises the substantial differences between ethnic groups within those categories, which should be disaggregated as far as possible
 - If you need to combine ethnicity categories, explain clearly which specific categories have been combined and in what way
 - Include a narrative on what the data means for specific ethnic groups

¹¹ CRER (2018). [Effectiveness of the PSED Specific Duties in Scotland](#). London: Equality and Human Rights Commission

- Ensure the most detailed data possible is made available for internal use in tackling inequalities
- Ensure that your equality monitoring system covers the whole range of data required by the employee information duty
 - Composition – information on current employees
 - Recruitment – e.g. applicants, candidates shortlisted for interview and appointees
 - Development – e.g. promotions, training, performance reviews, take up of employee benefits, grievances, disciplinarys
 - Retention – e.g. dismissals, redundancies, end of fixed term contracts, resignations; return rates of staff on maternity or long-term sick leave
- Report numbers as well as percentages for better transparency and analysis
- Avoid suppressing data for data protection reasons unless you have strong evidence of a disclosive risk
- If it becomes necessary to suppress data, explain clearly how this has been done and why; methods of data suppression often lead to misrepresentation or misunderstanding
 - If using an asterisk or other symbol to represent low numbers (for example numbers under five), do not use this to represent zero
 - Only round figures up or down where necessary and proportionate, and explain how this has been done (for example avoid rounding all numbers under five up to five)

Progress in gathering and using employee information

As mentioned previously, the public sector equality duties require you to detail progress in gathering employee information. They also require you to detail progress on using that information. This means that as well as publishing tables showing employee data within your mainstreaming report, you should describe how your organisation is gathering and using that information to enable it to better perform the equality duty.

This is your opportunity to report the issues you have identified and how they're being tackled, for example:

- Set out plans for improving data collection and filling gaps in your evidence base
- Explain how your employee monitoring results have informed outcome setting
- Detail any positive action measures or other steps you are taking to address the inequalities identified through employee information

Information on membership of public authorities and Boards of Management

Certain public bodies which have appointed members or boards of management need to publish information on their gender balance within their mainstreaming report. This does not apply to councils, joint boards, licensing boards, education authorities or individual public office holders. The requirement to publish data only relates to gender, however the regulations also state that Scottish Ministers will, from time to time, gather and provide information to public bodies on the protected characteristics of their membership or boards of management. Where this information has been received by a public body, they must use it to better perform the general equality duty. They must also publish information on how the information has been used and/or is intended to be used to take steps towards diversity.

Equality outcomes

Listed organisations are legally obliged to publish a revised set of equality outcomes by the end of April 2021. In 2013, the Equality and Human Rights Commission rated 29% of public bodies as 'poor' in terms of the quality of the outcomes.¹² When that equality outcomes cycle came to an end in 2017, the result of four years spent implementing poor quality outcomes was clear - almost no evidence of measurable change in the lives of people with protected characteristics could be identified.¹³ Whether this has been improved upon in the most recent cycle remains to be seen. Nevertheless, ensuring that your new set of equality outcomes are well framed and tightly focussed is essential.

The first consideration is always involvement. When planning equality outcomes, involving people with protected characteristics and their representatives from an early stage is a legal obligation. It's important to understand what involvement means in the context of setting equality outcomes. The Equality and Human Rights Commission is clear that this should be an in depth, ongoing process. Simple consultation is not sufficient to meet the legal requirement.¹⁴

In particular, you may wish to bear in mind:

- Creating an involvement plan which sets out how you will involve stakeholders and make sure their input forms the basis for equality outcome setting
- Involving people before the drafting process gets underway - consulting on fully formed draft outcomes is not enough to meet the duties
- Ensuring that that the people you involve have the support, information and capacity they need to be involved
 - Consider using the Scottish National Standards for Community Engagement and/or co-production methods
 - Think about the information people might find useful in order to contribute – do they understand what your organisation does; do they need to know about your previous outcomes and any outstanding equality issues you're aware of?
- Feeding back to stakeholders on which of their views were taken forward, which were not and why

¹² Equality and Human Rights Commission (2013). [Measuring Up? Report 3](#)

¹³ CRER / Equality and Human Rights Commission (2018). [Effectiveness of the PSED Specific Duties in Scotland.](#)

¹⁴ Equality and Human Rights Commission (2016). [Involvement and the Public Sector Equality Duty in Scotland.](#)

Further information on involvement is available in the Equality and Human Rights Commission publication *Involvement and the Public Sector Equality Duty: A guide for Public Authorities in Scotland*.¹⁵

It's important to contrast the evidence gathered through involvement with other types of evidence (see p.5 for details of legal obligations on evidence). Combining these two types of information will give a more rounded picture and help you to effectively prioritise the issues.

Once you have the evidence you need to set outcomes, consider ways to structure them effectively. In particular, it's important to avoid using outputs (things your organisation will produce) or actions (things your organisation will do) in place of outcomes. The focus of each outcome needs to be on the change you want to see in the lives and experiences of people with protected characteristics.

Some organisations have previously set 'outcomes' which are more process focussed, but perhaps have supporting information or 'sub-outcomes' which set out more detail on outcomes for people. This is not an advisable approach, as the outcome itself must be legally compliant and will be the focus of progress measurement in the future.

Our research into public sector equality duty performance has consistently shown that many organisations adopt a blanket approach, trying to cover as many equality issues and protected characteristics as possible within a single outcome. This inevitably leads to a lack of clarity about how the outcome can be achieved and measured.

Outcomes designed to improve things 'for everyone' often risk non-compliance, as they don't link closely enough to evidence of inequality for specific protected characteristic groups and often lack the specificity needed to allow measurement of progress.

A range of common difficulties in outcomes setting can be avoided through effective structuring and wording:

- Focus clearly and exclusively on the most significant inequalities, gaps or issues you've identified through evidence gathering

¹⁵ Equality and Human Rights Commission (2016). [Involvement and the Public Sector Equality Duty: A guide for Public Authorities, Scotland](#)

- Remember that equality outcomes should not set out everything you want to do on equality – the mainstreaming report allows you to detail processes, policies, practices and organisational ambitions
- Be honest, realistic and transparent about what you need to achieve
- Word your outcomes to describe the change you want to see in the lives and experiences of people with protected characteristics
 - Check that your outcomes are not technically actions or outputs
- Ensure that each outcome relates clearly to specific protected characteristics and specific needs of the general equality duty
- The number of protected characteristics and needs which each outcome aims to address should be realistic and evidence based

It's also important to remember that the regulations require you to explain any gaps within your outcome set; if you don't set an outcome that seeks to further the 'needs' of the general duty for one or more of the protected characteristics, you must provide evidence to justify this.

You may find it useful to use the Equality and Rights Commission's [self-assessment tool](#) to assist in setting robust equality outcomes.

Previous rounds of equality outcome setting have often seen organisations revise certain outcomes mid-way through the cycle. Whilst revising equality outcomes early is permissible, it creates a degree of complexity, particularly in progress reporting. The requirement to report on progress every two years and revise outcomes every four years is most easily met by having consistent publication dates across all of the outcomes.

To avoid varying requirements for reporting progress, it is recommended that organisations ensure the outcomes set are robust enough to remain consistent over the whole cycle. Effective progress reporting is vital to demonstrating meaningful change.

To achieve this, it's important to ensure that the outcomes you set are linked to evidence sources which can be used as indicators for monitoring and evaluation, in line with the biennial duty to report progress towards achieving equality outcomes. However, there is a balance to be struck between measurability and the need to focus on the inequalities which need to be addressed, even where the available measurements may be less tangible.

Where quantitative evidence is lacking, qualitative evidence can often be used to demonstrate progress while approaches to gather quantitative information are being developed.

To ensure that your new outcomes can be monitored and reported on in future, consider:

- Concentrating on the type of indicators which show the difference your actions have made to people's lives and experiences, rather than simply confirming that a process or output has been accomplished
- Planning ahead by mapping existing indicators (e.g. sources of data or annual surveys) and when information on these becomes available, and aiming to fill any gaps through new ways of measuring progress
- Explaining any challenges you might face in measuring progress on particular outcomes, and how you intend to mitigate them

It's also important to consider how you can ensure progress is sustained on the outcomes set in 2017 which are not being carried forward into the new cycle. In some cases, it will be possible to detail work around these outcomes in future mainstreaming reporting. For clarity, however, it is recommended that organisations include a section in their 2021 outcomes report explaining the future position of each of the previous outcomes; whether they have been embedded into mainstreaming work, carried forward into the new set of outcomes, completed or dropped (and if so, why).

Gender pay gap

Two of the Scottish specific equality duties relate specifically to pay inequality; the duty to publish gender pay gap information and the duty to publish an equal pay statement (including occupational segregation information).

In 2015, the Equality and Human Rights Commission's Measuring Up? research showed that 95% of relevant authorities had published gender pay gap information.¹⁶ This was unchanged from the proportion reporting on the gender pay gap in 2013.¹⁷ However, at the end of the four-year cycle, it proved difficult to identify change in the gender pay gap for most organisations. This was partly due to reporting styles that were not comparable over time and organisations using the wrong calculation. In 2017, we found that of the 148 organisations publishing the gender pay gap throughout the first cycle, less than half could track progress over time.¹⁸

Some key points to consider in meeting the pay gap duty include:

- Ensure that your calculation is legally compliant
 - Publish a gender pay gap figure encompassing staff at all levels, giving the percentage difference between men's average hourly pay (excluding overtime) and women's average hourly pay (excluding overtime)
- Be aware that over-representation of men in senior grades is an integral part of the pay gap and should not be treated as a skewing factor
- For good practice, provide breakdowns of pay gaps for different grades, departments or occupational groups in addition to the overall figure
- Although organisations are not required to report specific pay gap figures for race and disability, doing so would make development of the equal pay statement content much easier and also improve transparency

¹⁶ Equality and Human Rights Commission (2015). Measuring Up? [Report 4: Performance.](#)

¹⁷ Equality and Human Rights Commission (2013). Measuring Up? [Report 1: Performance.](#)

¹⁸ CRER / Equality and Human Rights Commission (2018). [Effectiveness of the PSED Specific Duties in Scotland.](#)

Equal pay statement and occupational segregation information

The 2021 reporting cycle will be the third time that publication of an equal pay statement and occupational segregation information has been required for gender, and the second time for race and disability.

Equality and Human Rights Commission research has shown that whilst most authorities have been publishing an equal pay statement since the first cycle, publication of the required occupational segregation information is less regular.¹⁹

In relation to this element of the duties, you may want to consider:

- Demonstrating that evidence on the causes of any pay gap have been considered when developing the equal pay policy
- Using job evaluation and equal pay audit to analyse pay equality issues
- Ensuring that you include information on both horizontal and vertical occupational segregation, as required by the duty – the concentration of women and men, persons who are disabled and persons who are not, and persons who fall into a ‘minority racial group’ and persons who do not, in particular grades and in particular occupations

In identifying which ethnicity categories would constitute a ‘minority racial group’, the legislation itself explains the nature of a racial group but not how to identify which groups fall into the ‘minority’ category. As the requirement is to contrast majority and minority groups, CRER would recommend categorising these using white majority, white minority and non-white minority ethnic groups as a minimum. Where small numbers of staff make a three way comparison impractical, it may be possible to contrast white and non-white groups, as evidence on pay and occupational segregation largely demonstrates inequalities for non-white groups. However, care should be taken to explore any implications for white minority groups that may arise at organisational level. It is not advisable to amalgamate white and non-white minority ethnic ethnicity categories into one single ‘minority’ category, as this makes it impossible to consider the position of racialised groups. Wherever possible, analysis should compare the position of individual ethnic groups, as this may vary widely and have specific implications for policy.

¹⁹ Equality and Human Rights Commission (2013). [Measuring Up? Report 1: Performance.](#)

Conclusion

The 2021 PSED publication round provides a great opportunity for organisations to consolidate their learning over the past eight years and ensure that equality work meets the very best standards. In particular, you may wish to aim towards releasing publications which are:

- Based on strong evidence, including evidence from effective involvement
- Addressing issues of inequality and discrimination for protected characteristic groups confidently and clearly
- Presented in a format that is user friendly, concise, comprehensive and transparent
- Setting out information on mainstreaming activity across all of your functions, demonstrating how this activity helps you to meet the three needs of the general equality duty
- Detailing ambitious, targeted, practical and achievable outcomes for 2021-2025
- Reporting concrete progress on the 2017-2021 set of outcomes
- Demonstrating the change equality work makes in the lives of people with protected characteristics, including staff and service users

CRER plans to continue its research and guidance development work on PSED following the 2021 publication round. We would be interested to hear examples of innovative practice and effective work; please get in touch and let us know how your practice is developing.

To discuss how your organisation can best use this policy briefing, please contact:

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