



Equality in restructuring and redundancy

Equality impact assessments in higher education

Introduction

This briefing provides higher education institutions (HEIs) with a practical starting point for understanding how they will carry out equality impact assessments (EIAs) in relation to their restructuring or redundancy procedures. It is aimed at staff working in senior management roles, strategy teams, human resources departments and equality and diversity teams and has been prepared in response to requests that Equality Challenge Unit (ECU) has received through its advice service from staff in HEIs.

In the current economic situation, restructuring and other organisational changes are leading to voluntary or compulsory redundancies in the higher education sector. Some financial cuts will have obvious equality-related consequences, such as when cuts are made to services that are focused on promoting access and inclusion for staff and students. However, any financial cuts may ultimately impact on equality and raise compliance issues for an HEI.

ECU recognises that some HEIs are still in the process of developing their impact assessment procedures and that EIAs require a certain amount of staff time and other resources. However, HEIs should be able to embed EIAs into their existing restructuring and redundancy processes without too much difficulty. This document will assist HEIs in doing so.

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The Equality and Human Rights Commission (EHRC) has recently published a briefing note for higher and further education institutions on the need to conduct equality impact assessments for their restructuring and redundancy procedures. It may be useful to read the EHRC's briefing note alongside this briefing. www.equalityhumanrights.com/uploaded_files/briefing_fe_he_eng.pdf

What is an EIA?

The Higher Education Funding Council for England (HEFCE) describes an EIA as:

'...the thorough and systematic analysis of a policy or practice to determine whether it has a differential impact on a particular group. It can be seen as a quality control mechanism by which HEIs can evaluate their activities and best meet the needs of their stakeholders. This can lead to better value for money, increased productivity and maximisation of resources leading to a more efficient and effective working and learning environment.' www.hefce.ac.uk/pubs/hefce/2004/04_37

Essentially, EIAs are planning tools that enable HEIs to build equality into their mainstream mechanisms of policy-making, including change management proposals and processes. The former Department for Children Schools and Families produced an excellent summary of the background to the use of EIAs in the UK. This resource will be useful in explaining the concept of impact assessments to colleagues.

www.ecu.ac.uk/inclusive-practice/equality-impact-assessment

Why are EIAs necessary?

There are three main reasons for organisations to carry out equality impact assessments – to ensure fairness, ensure compliance with legislation, and improve organisational effectiveness.

Ensure fairness

EIAs can help to ensure that restructuring or redundancy procedures are implemented fairly. Particular groups of staff may experience barriers to participating in, and engaging with, a restructuring or redundancy procedure. For example, disabled staff or staff on maternity leave may



face particular practical issues in engaging with aspects of the process. An EIA will help an institution to think through potential barriers for staff and respond effectively to concerns raised in formal consultations.

Ensure compliance

Legislation

The Race Relations (Amendment) Act 2000, the Disability Discrimination Act 2005 and the Equality Act 2006 place requirements on HEIs and other public sector organisations through the Race Equality Duty 2001, the Disability Equality Duty 2006 and the Gender Equality Duty 2007 to eliminate discrimination and actively promote equality on the grounds of **race, disability** and **gender** (including **gender reassignment**). In order to help HEIs meet these requirements, specific duties were introduced in England, Scotland and Wales which include the obligations to publish equality schemes, monitor staff and student progression and conduct EIAs. There are no specific duties for **gender** in Wales; however, the Welsh assembly government recommends that Welsh HEIs observe the specific duties in place for England.

The requirement to conduct EIAs applies to all new policies, procedures and practices from the dates the duties came into force. HEIs are also required to prioritise existing policies for impact assessment.

The EHRC has significant powers to enforce HEI responsibilities under the race, disability and gender equality duties, including the ability to launch official inquiries and formal investigations.

The equality bill received royal assent on 8 April 2010, becoming the Equality Act 2010. The Act consolidates and streamlines current anti-discrimination legislation and includes a new public sector equality duty (PSED), which extends the scope of existing equalities legislation and will replace the existing race, disability and gender equality duties. The PSED is likely to be introduced in April 2011 and applies to England, Scotland and Wales; until this time, HEIs in England, Scotland and Wales should continue to conduct impact assessments in line with the requirements of the existing equality duties. Institutions may also wish to consider their preparedness for the introduction of the PSED.



The PSED covers eight of the nine protected characteristics within the Equality Act 2010:

- = **age**
- = **disability**
- = **gender reassignment**
- = **pregnancy and maternity**
- = **race**
- = **religion or belief**
- = **sex**
- = **sexual orientation**

The ninth protected characteristic, **marriage and civil partnership**, is not covered by the PSED.

Under this duty, HEIs are required to have due regard to:

- = eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- = advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
- = foster good relations between people who share a relevant protected characteristic and people who do not share it

Within the specific duties of the PSED, as proposed for England by the former government, HEIs are required to demonstrate how they have considered evidence of the impact that key policy and service delivery initiatives have on equality. They are also required to demonstrate the difference this consideration has made. If these proposals are passed by the new parliament, this means that HEIs will still need to conduct EIAs but they will no longer need to describe the process that they have in place for doing so. Instead they will need to place greater emphasis on demonstrating the outcomes of EIAs. Secondary legislation will also be introduced by the Welsh Assembly government and the Scottish parliament. At the time of writing the Welsh Assembly government and the Scottish parliament had not published their proposals for specific duties in Wales and Scotland.

www.ecu.ac.uk/subjects/equality-act-2010.



Case law

Two high court rulings have reinforced the need for and importance of EIAs, including:

- = R (Chavda and others) v London Borough of Harrow
- = R (Kaur and Shah) v London Borough of Ealing

The latter case emphasised the importance of carrying out an impact assessment before policy formulation. For further information, visit www.ecu.ac.uk/inclusive-practice/equality-impact-assessment.

Further information on the anti-discrimination legal framework, and the statutory and non-statutory guidance, can be found at www.equalityhumanrights.com. The ECU website also contains further information on anti-discrimination law, www.ecu.ac.uk/law.

Improve organisational effectiveness

Perhaps most pertinently, as noted by HEFCE (see above), EIAs 'lead to better value for money, increased productivity and maximisation of resources leading to a more efficient and effective working and learning environment'. They will, for example, ensure that new or revised policies are appropriate from the point of implementation, thereby reducing the need to respond to issues later on.

EIAs will inevitably require an initial investment of staff time to carry out data analysis, consultation exercises and so forth. However, they will reduce the long-term and more significant costs incurred in responding to difficulties, complaints of discrimination or legal challenges that may otherwise arise if equality issues are not properly considered in a redundancy or restructuring process.



EIAs: a brief guide

The EHRC has emphasised that ‘individual public bodies need to develop their own EIA methodology to fully reflect the precise nature of their business and ensure consistency’.

www.equalityhumanrights.com/uploaded_files/eiaguidance.pdf

The statutory codes of practice that accompany equality legislation make a number of recommendations about the process for conducting EIAs to ensure legislative compliance. Joint ECU and HEFCE guidance, *Conducting equality impact assessments in higher education*, includes a step-by-step process that HEIs can adapt to meet their own needs and incorporate into their existing mechanisms for quality control.

www.ecu.ac.uk/publications/equality-impact-assessment-in-he

Step 1: screening

Conduct an initial assessment of a policy’s likely impact on equality and prioritise it for impact assessment. Policies that are likely to have a high impact on equality should be given high priority. This process is also known as screening.

Given the potential impact of restructuring or redundancy procedures on an HEI’s ability to meet the general requirements of the race, disability and gender equality duties, HEIs are advised to skip this stage and prioritise restructuring and redundancy policies for a full and immediate EIA.

Step 2: collection and analysis of data

Collect and analyse quantitative and qualitative data to understand more about the impact of the policy on equality. For example, would the application of a particular redundancy selection criteria result in a high proportion of disabled staff being made redundant?

The data analysed should include information gathered during consultation and involvement exercises. Sometimes HEIs will not have sufficient data to identify the likely impact of a policy, in which case research and external data can be used. Where no information is available, HEIs should closely monitor the implementation of the policy. Further information on sources of external data is provided in the frequently asked questions section of this briefing.



Step 3: revision or justification

Where a policy is found to have either a positive or negative impact on a particular group it will need to be revised or justified within the permits of the law.

For example, would it be possible to use redundancy selection criteria that do not result in a high proportion of disabled staff being made redundant? If not, can the use of the original selection criteria and their impact on disabled staff be justified within the permits of the law?

Step 4: further consultation and involvement

Where policy revisions are proposed to enhance or mitigate impact, relevant groups will need to be consulted or involved to ensure that the revised policy is fit for purpose.

For example, if the HEI does not proceed with the original redundancy selection criteria, it will need to ensure that the application of the new criteria will not result in disabled staff or another group of staff being inadvertently discriminated against.

Step 5: publication of the EIA and action plan

The results of the impact assessment and an action plan will need to be made publicly available. This ensures transparency and enables public authorities to share their findings, which can reduce workload through shared learning.

The action plan should outline the actions that will be taken to mitigate adverse impact and state the staff members responsible for the implementation of actions. For example, if disabled staff members are to be redeployed, the HEI will need to ensure that existing reasonable adjustments are reviewed in relation to their new role.

Step 6: monitoring

Once the revised or new policy has been implemented, it should be monitored and periodically reviewed to ensure that it has the intended impact and is still appropriate.



Other organisations have also produced guidance and materials on impact assessment processes:

- = EHRC (2009) *Equality impact assessment guidance: a step-by-step guide to integrating equality impact assessment into policy making and review* www.equalityhumanrights.com/uploaded_files/eiaguidance.pdf
- = EHRC (2009) *Equality impact assessment quick-start guide: a step-by-step guide to integrating equality impact assessment into policy making and review* www.equalityhumanrights.com/uploaded_files/PSD/equality_impact_assessment_guidance_quick-start_guide.pdf
- = Scottish government *Equality and diversity impact assessment toolkit* www.scotland.gov.uk/Publications/2005/02/20687/52425
- = Welsh Assembly government (2010) *Inclusive policy making guidance* <http://wales.gov.uk/topics/equality/publications/ipmguide2/?lang=en>

The scope of an EIA

At a minimum, to ensure compliance with the equality duties, EIAs must cover:

- = **disability** including disabled people and their carers
- = **gender** including trans men and women and related issues of pregnancy and maternity and childcare, bearing in mind that women are more likely to work part-time than men
- = **race** including colour, nationality, national origin and ethnic origin

Many HEIs have also chosen to assess the impact of their policies, practices and procedures on **sexual orientation, religion and belief** and **age** to help them better meet the needs of their staff and students and to help them prepare for the introduction of the PSED.

It is important to note that the equality implications of a restructuring or redundancy procedure can stretch far beyond the staff members concerned. Such procedures will often have significant learning and teaching implications and in turn can impact upon the student experience, as well as visitors and alumni. For example, if staffing resources are reduced in student services, consideration will need to be given to the capacity of the department to respond effectively to the requirements of groups of students with specific information and support requirements such as



disabled students or students with childcare responsibilities. An EIA will need to consider these broader implications.

EIAs and restructuring processes

As each restructuring exercise will be different – HEIs may develop procedures for restructuring on an ad hoc basis, building on their experience of previous restructuring exercises – an EIA will need to be carried out during the development of each restructuring exercise. If an HEI has a procedure that it applies to all restructuring exercises, ECU recommends that an EIA is conducted on the procedure.

A restructuring EIA needs to explore the impact on an HEI's ability to meet the general requirements of the race, disability and gender equality duties in the event that any functional departments, such as estates, student services or library services, are restructured or closed. For example:

- = Will the support available to disabled staff or students be affected?
- = Will the number of nursery places available for staff and students change? If so, given that women are more likely to use childcare facilities, how will this affect staff and students on the grounds of **gender** and what alternative funding and local provision exists?
- = Will initiatives to encourage more black and minority ethnic (BME) staff and women into senior positions be able to continue?

In addition, workforce composition in the areas that are likely to be included in restructuring should be analysed to establish whether certain groups of staff will be disproportionately affected by the proposals and if so, whether alternative options are viable.

EIAs and redundancy procedures

Guidance on redundancy from the Advisory, Conciliation and Arbitration Service (ACAS), *Redundancy handling*, refers to three types of redundancy procedure that are normally used by employers; ad hoc arrangements, a formal policy or a formal agreement.

www.acas.org.uk/CHttpHandler.ashx?id=877&p=0

If an HEI has ad hoc arrangements for making staff redundant, ECU recommends that the HEI prepares a formal policy or agreement as ad hoc



arrangements are more likely to result in inadvertent discrimination and may require more EIAs. An impact assessment may need to be conducted on the procedure and the selection criteria each time a redundancy or set of redundancies are made.

In the event that an HEI does not have a formal policy or agreement in place, the institution will need to conduct an impact assessment during the development of the policy or agreement. If an HEI has a policy or agreement in place which has not undergone impact assessment, ECU recommends that an EIA is conducted before it is applied to further redundancy situations. Where a formal redundancy policy or agreement that has previously undergone an EIA is revised, the HEI can review the original EIA and, following consideration of current data and information, update the EIA report.

An EIA on a formal redundancy policy or agreement should include an analysis of the impact of the policy or agreement on the HEI's ability to meet the general requirements of the race, disability and gender equality duties. For example:

- = How will disabled staff, BME staff and men and women be represented or involved in the redundancy process through trade unions, staff networks or open consultation?
- = Will information on the redundancy process be available in accessible formats?
- = Is it clear that disabled staff who are redeployed will be entitled to different reasonable adjustments if required?
- = If different reasonable adjustments are required and the staff member concerned is on a trial period will the trial period be extended to enable them time to get used to the new adjustments?
- = How will staff on maternity leave be informed about and represented during the redundancy process?

Following the implementation of a redundancy procedure, an HEI will need to conduct a separate EIA on the selection criteria used for redundancy, whether voluntary or compulsory. This will assist HEIs in ensuring that the selection criteria do not unintentionally identify a disproportionate number of individuals with one or more protected characteristic. For example, if absence records were to be used as a selection criterion for redundancy, institutions would need to ensure that records clearly identify disability-



related absence and that redundancy decisions based on absence do not take disability-related absence into consideration.

It is important to include fixed-term staff in redundancy procedures. If an HEI decides that it will not renew fixed-term contracts, it will need to assess the equality impact of this decision to ensure that groups of staff are not inadvertently discriminated against and that a particular division or service is not unintentionally affected. For example, ECU's 2009 statistical report shows that BME staff members are more likely to be on fixed-term contracts than permanent contracts. In addition, BME staff members are most highly represented in the following occupational groups:

- = library assistants, clerks and general administrative assistants
- = laboratory, engineering, building, information technology and medical technicians (including nurses)

Involvement and consultation of staff and other groups

When 20 or more members of staff are made redundant within a period of 90 days or less, HEIs are required to consult recognised trade unions or elected employees on redundancies. This consultation can be used to inform EIAs. *Redundancy handling*, the ACAS booklet, provides further information on this topic. When developing consultation procedures for restructuring and redundancy exercises, HEIs will need to take into consideration the requirements of equalities legislation. In particular, HEIs need to be aware that:

- = when fewer than 20 staff are made redundant within a 90 day period, EIAs will need to be conducted on the redundancy procedure and the selection criteria adopted which will need to be informed by consultation and involvement
- = HEIs will need to consider whether it is appropriate to involve or consult other groups in addition to staff including students, visitors, alumni, applicants and community organisations when formulating policy



The requirement for consultation and involvement in equalities legislation varies as follows:

- = Race equality legislation contains a specific requirement to consult people on the impact of policies on race equality. This requirement is reinforced by the statutory race equality duty code of practice for England and Wales, which, like all statutory codes of practice, is admissible evidence in legal proceedings.
- = While a requirement to consult men and women, including trans men and women, in policy-making is not listed as a specific requirement under the gender equality duty, the gender equality duty statutory code of practice for England and Wales recommends that people are consulted on the gender impact of a policy, practice or procedure.
- = The disability equality duty emphasises the need to involve rather than simply consult disabled people. The statutory code of practice for England and Wales on the disability equality duty states that:

‘involvement of disabled people will be of great assistance in drawing up criteria for deciding whether or not to conduct a full impact assessment and in actually conducting a full impact assessment’ (section 3.38).

The scale of consultation and level of involvement required to inform EIAs will vary according to the importance of the policy, the scale of the policy concerned and the relevance of the policy to equality. Given the potential impact on an HEI's ability to meet its obligations under the race, disability and gender equality duties, HEIs are likely to need to involve and consult people during the development of a restructuring process or a redundancy policy or agreement. However, it may not be necessary to consult or involve people at every stage of the policy development process if an EIA has already been carried out on a similar policy, or if there is sufficient data to inform an accurate assessment of impact.

The level of consultation and involvement should also be proportionate to the scale of the policy concerned and its relevance to equality. For example, greater consultation and involvement will be required for a restructuring exercise which affects an HEI's entire administration than is required to determine redundancy selection criteria for up to 20 staff.



Subsequently, HEIs may find it helpful to develop institution-wide criteria and approaches for involving and consulting equality groups during policy development.

The EHRC has published guidance on involving people in decision- and policy-making. www.equalityhumanrights.com/uploaded_files/PSD/involvement_guidance_final_new.pdf

Positive and negative impacts

An EIA should help to identify positive and negative outcomes of a restructuring or redundancy procedure for a particular group of staff and other groups such as students and visitors. Most importantly, it can help to ascertain where outcomes can be prevented or justified within the permits of the law or where the impact is positive, extended to other staff.

Given their nature, restructuring and redundancy procedures are more likely to have negative rather than positive impacts on equality. For example, more men than women may come forward to request voluntary redundancy, or a compulsory redundancy process may result in a higher proportion of BME staff being made redundant than might be expected given the staff population of the area under review. In addition, planned closure of a loss-making academic department which typically attracts female academics may result in more women being affected by a restructuring exercise than men.

Where a particular policy or procedure is found to have a negative impact on race, disability or gender equality, HEIs are required to explore alternative procedures and ensure that there are no other steps that can be taken to mitigate the impact. For example, where a department is making a loss and its closure would result in a high proportion of women being made redundant, would other restructuring plans have a lesser impact on this department? Have alternative sources of funding been explored? If other restructuring plans and alternative funding are not feasible, what other steps, such as redeployment could be taken to reduce the number of women made redundant? Where changes are made to proposed policies or procedures, affected groups will need to be consulted or involved in informing the changes made to ensure that they are fit for purpose. If changes cannot be made to the policy, the decision to proceed will need to be justified within the permits of law.



HEIs need to record any steps that have been taken to change the policy or mitigate the impact to ensure that any negative impact does not constitute unlawful discrimination and can be justified to a third party. The justification for decisions, as well as any actions that will be taken to mitigate impact, would need to be recorded in the EIA report, which can assist HEIs in ensuring that actions are implemented. This evidence will be needed if a legal challenge is made.

The statutory codes of practice for England and Wales for the race, gender and disability equality duties contain information on what constitutes unlawful discrimination.

www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/codes-of-practice

Reporting EIA findings

Most EIA guidance includes example templates that HEIs can adapt to local circumstances to report the findings of EIAs. In relation to restructuring or redundancy procedures, an EIA report would normally be expected to include:

- = an analysis of the potential impact of the proposals from the perspectives of **disability**, **gender** (including **gender reassignment**) and **race** from information gathered during involvement and consultation exercises as well as available staff and student monitoring data
- = the steps that will be taken to change potentially discriminatory proposals, mitigate their impact or justify them where the law permits
- = an action plan, setting out the actions that will be taken to minimise the risk of negative impact on particular groups of people including clear lead responsibilities for implementation, agreed timescales and arrangements for ongoing monitoring and review of the action plan



Frequently asked questions

Who should be responsible for conducting EIAs?

While it may be useful to have an individual overseeing the EIA process, it is not recommended that responsibility for conducting an EIA rests solely with an individual. A range of skills is needed to conduct EIAs and so a team with the following qualities is best placed to fulfil this function:

- = knowledge and understanding of the policy to be impact assessed
- = knowledge and understanding of equality
- = an ability to be objective about the policy
- = an ability to analyse both qualitative and quantitative data

Some HEIs may use consultants or external agencies to conduct EIAs. However, the EHRC has advised that, while external support and expertise can be helpful in building capacity, EIAs should not routinely be conducted by external consultants. Where HEIs have joint consultative committees or other similarly representative bodies, an HEI may consider delegating the task to such a group, with involvement and advice of a person with the relevant knowledge and understanding of equality legislation and EIAs.

Resources for conducting EIAs

Given that restructuring and redundancy processes have significant scope for leading to discrimination and are key requirements of the race, gender and disability equality duties, HEIs will need to consider the resources required to conduct EIAs. EIAs will in most cases require data analysis, as well as staff time. Where consultation and involvement activities cannot be linked to existing initiatives they will require resources as could the actions that an HEI identifies to mitigate negative impacts.

If possible, EIAs can be conducted in coordination with existing quality assurance mechanisms such as processes to ensure compliance with employment law and to determine staff and student satisfaction. This will help to save resources and prevent consultation and involvement fatigue.



How detailed does an EIA need to be?

An EIA is not a simple five-minute 'tick box' exercise, or an exercise of going through the motions to claim that a particular policy or practice is nondiscriminatory without proper consideration of the issues involved.

An effective EIA should involve a meaningful assessment of the impact a policy or practice may have from an equality perspective. If an EIA does not involve proper consideration of the relevant evidence and data available and if it does not involve genuine reflection on possible ways to mitigate negative impacts the policy or practice in question may have on equality, then it is unlikely to stand up under scrutiny.

The more robust the process of conducting an EIA, the greater the legal cover afforded to the institution if the EIA is subsequently challenged or if the HEI seeks to rely on the EIA in a legal case.

Not all EIAs will require the same level of staff time and resources, and the scale of an EIA should be proportionate to the scale of the policy and its relevance to equality. For example, a proposal to reduce student numbers on an individual course would be likely to warrant a shorter and simpler EIA than a proposal to close a nursery or academic department.

Is training required for staff involved in the EIA and in restructuring and redundancy processes?

ECU recommends that staff responsible for conducting EIAs receive training on the purpose of EIAs as well as the HEI's processes for conducting, reviewing and monitoring EIAs. In addition, HEIs may want to ensure that staff responsible for implementing restructuring and redundancy procedures receive training to ensure that they are aware of the HEI's responsibilities under the race, disability and gender equality duties.



What national data is available for informing equality impact assessments?

In addition to qualitative and quantitative data held by HEIs, there is a range of other data sources to inform EIAs:

- = ECU publishes a range of resources and research reports about equality issues within higher education.
www.ecu.ac.uk/publications
- = The Higher Education Statistics Agency has recently launched **heidi equality**, which enables subscribing HEIs to access and analyse equality data covering staff and students. www.hesa.ac.uk
- = An ECU briefing provides institutions with an introduction to **heidi equality**. www.ecu.ac.uk/publications/introducing-heidi-equality
- = UCAS holds national data on student applications and admissions.
www.ucas.ac.uk

Data from external sources not specific to higher education can also be useful:

- = census data, held by the Office for National Statistics
www.statistics.gov.uk
- = statistical and research reports published by equality organisations:
 - EHRC, www.equalityhumanrights.com
 - Opportunity Now, www.opportunitynow.org.uk
 - Stonewall, www.stonewall.org.uk
 - Office for Disability Issues, www.officefordisability.gov.uk
- = local authorities may also have conducted impact assessments on similar policy areas or issues which are likely to be available on their website

Should EIAs be published?

The disability and race equality duties require HEIs to publish EIA reports and publication is recommended in the gender equality duty code of practice for England and Wales. The ongoing nature of EIAs should not prevent HEIs from making their findings and the actions that they are taking publicly available. Publication of the reports makes the EIA process more transparent and generates a greater understanding of the reasons for conducting EIAs. It also enables HEIs to easily share the outcome of their EIAs with other public sector organisations.



Publication is consistent with the fact that most EIA reports could be disclosed under the Freedom of Information Act 2000. However, some EIA reports may contain information which can identify individuals and therefore some parts of the report may need to remain confidential, to ensure compliance with the Data Protection Act 1998. For further information on freedom of information and data protection issues visit the Information Commissioner's Office. www.ico.gov.uk

Where is help available?

Your HEI's equality and diversity team will be able to guide you through the process of impact assessment and will be able to let you know about any training or materials that your HEI has available. Your institution may also have an officer specifically responsible for quality processes or impact assessment.

For further advice on conducting EIAs and other equality issues contact the ECU's advice service. www.ecu.ac.uk/your-questions/advice-service



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