

Highgate Cemetery Bill

EXPLANATORY MEMORANDUM

This Bill is promoted by the Friends of Highgate Cemetery Trust (“the Trust”).

The purpose of this Bill is to authorise the Trust to extinguish rights of burial in grave spaces, and to disturb and reinter human remains in graves in order to increase the space for further interments in such graves and improve Highgate Cemetery (“the cemetery”), as well as powers to use appropriately or remove altogether from the cemetery any memorials on such graves. It would provide the Trust with equivalent powers to those that are already available to local authority run burial grounds and certain private burial authorities in London. The Bill also repeals outdated and redundant legislation applying to the cemetery, and confirms the Trust’s powers to operate and manage the cemetery following those repeals.

Clause 1 gives the short title of the Bill and provides for it to come into force 28 days after it is passed.

Clause 2 defines certain expressions used in the Bill.

The cemetery is currently operated under the London Cemetery Company Act 1836, London Cemetery Company Act 1843 and London Cemetery Company Act 1911, which provided for the laying out of the cemetery, and conferred various functions on the London Cemetery Company to manage the cemetery. As the London Cemetery Company has been dissolved, and the cemetery is now operated by the Trust, it is proposed to repeal the 1836, 1843 and 1911 Acts. *Clause 3* confirms the Trust’s powers to operate and manage the cemetery following those repeals. *Clause 3* is based substantially on Article 3 of the Local Authorities’ Cemeteries Order 1977.

Clause 4 provides the burial authority with the power to extinguish rights of burial in grave spaces in the cemetery where a right of burial has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space. *Clause 4* is substantially based on section 6 of the City of London (Various Powers) Act 1969, section 9 of the Greater London Council (General Powers) Act 1976 and section 3 of the New Southgate Cemetery Act 2017, which provide the equivalent powers in respect of publicly run burial grounds in London and the New Southgate Cemetery respectively.

Subsection (3) provides that the date of the grant of any burial right by the former London Cemetery Company for the purposes of *subsection (2)* is unaffected by *clause 10(3)*, which otherwise provides for things done by the London Cemetery Company to have effect as if they were done by the Trust. In effect *subsection (3)* makes clear historic burial rights granted by the London Cemetery Company are not deemed to have been granted on the passing of the Act as a result of the operation of *clause 10(3)* for the purposes of determining the 75 year period mentioned in *subsection (2)*.

Subsections (5) to (7) provide that at least six months’ notice of the proposal to extinguish such rights must be given by the burial authority concerned. If the registered owner objects to the proposal within that period, the right of burial may not be extinguished. If any other person objects, the right may only be extinguished by consent of the Secretary of State.

Subsection (8) provides that where a memorial is removed in connection with the extinguishment of burial rights it remains the property of the owner, but where it is not claimed within six months, the burial authority may put the memorial to another use or destroy it.

Subsections (9) and (10) provide a right of compensation to persons whose rights of burial are extinguished and for the amount of compensation to be determined by arbitration if it cannot be agreed. As an alternative to compensation, *subsection (9) (b)* allows the burial authority to provide confirmation that the burial right is to be revived, in which case, the burial right is deemed not to have been extinguished under *subsection (1)*. This enables the burial authority to deal with circumstances where the burial right owner does not respond to a notice of extinguishment within the specified period, but the burial authority is content for the right of burial to endure on a compensation claim being made under *subsection (9)*.

Clause 5 provides the burial authority with the power to disturb, or to authorise the disturbance of, human remains interred in the cemetery 75 or more years ago, for the purpose of increasing the space for new interments and improve the cemetery. The power may only be exercised in respect of graves where burial rights have been extinguished under *clause 4*, or where the grave is a public or common grave where no right of burial was granted provided it is not a protected grave pursuant to *clause 6(3)*. Any human remains disturbed must be reinterred in their original grave or another grave in the cemetery. *Clause 5* is substantially based on section 74 of the London Local Authorities Act 2007 and section 4 of the New Southgate Cemetery Act 2017, which provides the equivalent power in respect of publicly run burial grounds and New Southgate Cemetery respectively.

Subsections (5) to (8) provide that the burial authority concerned must give at least six months' notice of the proposal to disturb human remains. If the proposal is objected to by the registered owner of the extinguished burial right or tombstone, or a relative of the person whose remains are to be disturbed, the burial authority may not exercise the powers under *clause 5* for a period of 25 years.

Subsection (10) enables the Secretary of State to give the burial authority directions about the way in which it removes or reinters human remains. This power does not apply in relation to consecrated land, which is covered by *subsections (11) and (12)*. These subsections provide that a faculty from the consistory court of the diocese must first be obtained before disturbing any human remains in consecrated land.

Subsection (13) provides that section 25 of the Burial Act 1857, which requires the Secretary of State to license the removal of human remains, does not apply to removals that are carried out in accordance with this clause.

Clause 6 contains protection for graves and memorials that are the responsibility of the Commonwealth War Graves Commission and certain graves designated as protected graves by the burial authority. The powers in *clauses 4 and 5* only apply to these graves with the agreement of the Commission (in the case of Commonwealth War Graves) or the Historic Buildings and Monuments Commission for England and the London Borough of Camden (in the case of graves protected under *subsection (3)*).

Subsection (3) sets out the power for the burial authority to designate certain graves as protected graves following consultation with or at the request of the Historic Buildings and Monuments Commission for England and the London Borough of Camden.

Subsections (4) and (5) require the burial authority to maintain a public register of any protected grave designated under *subsection (3)*.

Clause 7(1) to (3) requires the Trust to maintain a register of burials in the cemetery and maintain a record of disturbance and reinternment under *clause 5*. *Subsection (4)* requires the burial authority to make a record of any memorial removed under this Act. The clause is based on section 5 of the New Southgate Cemetery Act 2017 but a provision to require the burial authority to maintain a register of burials has also been provided on the basis that the London Cemetery Company Act 1836, which originally made provision for the register of burials to be maintained, is being repealed. This section therefore ensures there is a statutory basis for the maintenance of the register of burials. The matters to be included in the register of burials mirrors the information required under section 5 of the New Southgate Cemetery Act 2017 in respect of the record of disturbances and reflects the existing register of burials.

Clause 8 substantially replicates provisions from article 18 of the Local Authorities' Cemeteries Order 1977 to make it an offence to cause a nuisance in the cemetery. The provision replaces similar, but out of date, provisions in the London Cemetery Company Act 1836.

Clause 9 provides the Trust with byelaw making powers in respect of the cemetery. The power is needed to enable the Trust effectively to regulate and manage the use of the cemetery. The power replaces and updates a similar provision in the London Cemetery Company Act 1836, and is similar in effect to byelaw-making powers for publicly-owned cemeteries.

Subsection (4) enables any byelaws made under this provision to make it an offence for any person to contravene or fail to comply with a byelaw to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Subsection (5) applies the confirmation procedure set out in section 236 of the Local Government Act 1972 to byelaws made under this clause, so that new byelaws do not have effect until confirmed by the Secretary of State.

Clause 10 makes provision for the repeal of the London Cemetery Company Act 1836, London Cemetery Company Act 1843 and the London Cemetery Company Act 1911, where they have been superseded by the provisions of this Bill, or are otherwise redundant primarily on the basis that the Trust now operates, and is the registered proprietor, of the cemetery.

Subsection (2) provides that the London Cemetery Company shall cease to be a body corporate and that all properties, rights, liabilities, etc., shall pass to the Trust. This is necessary on the basis the aforesaid Acts are proposed to be repealed. This provision is based on section 10 of the HBOS Reorganisation Act 2006 and section 3 of the St Austell Market Act 2008.

Subsection (3) provides that any act carried out by it which is required to be given effect insofar as related to the cemetery, shall be deemed to have effect as though the Trust carried out the act on the date which the London Cemetery Company carried it out. This is substantially based on regulation 4 of the Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015.

EUROPEAN CONVENTION ON HUMAN RIGHTS

In the view of the Friends of Highgate Cemetery Trust the provisions of the Highgate Cemetery Bill are compatible with the Convention Rights.

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CONTENTS

- 1 Citation and commencement
- 2 Interpretation
- 3 Power to operate and maintain the cemetery
- 4 Power to extinguish rights of burial
- 5 Power to disturb human remains
- 6 Further protection for certain graves
- 7 Register of burials and other records
- 8 Offences in the cemetery
- 9 Byelaws
- 10 Repeals and savings

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B I L L

To confer powers upon the Friends of Highgate Cemetery Trust to operate, maintain and improve Highgate Cemetery and to extinguish rights of burial and disturb human remains in Highgate Cemetery for the purpose of increasing the space for interments and the improvement of Highgate Cemetery; and for connected purposes.

WHEREAS—

- (1) The London Cemetery Company (“LCC”) was incorporated by the London Cemetery Company Act 1836 and, under the powers of that Act, purchased lands formerly in the urban district of Saint Pancras, in the county of Middlesex, and now in the London Borough of Camden (“the Borough”) and constructed a cemetery (“the cemetery”) on a portion of the said lands: 5
- (2) Further provisions were made with regard to the cemetery and further powers were conferred on LCC by the London Cemetery Company Act 1843 and the London Cemetery Company Act 1911:
- (3) The cemetery is situated on that portion of the lands purchased by LCC under the said Act of 1836 which lies on the east and west sides of Swains Lane in the Borough: 10
- (4) The Friends of Highgate Cemetery Trust (“the Trust”) is now the registered proprietor of the cemetery, and operates and manages the cemetery as a public burial ground in accordance with the Trust’s charitable objects:
- (5) In order that better use may be made of the land in the cemetery for burials, it is expedient that the Trust be authorised to extinguish certain rights of burial granted in graves in the cemetery and to disturb, or authorise the 15

disturbance of, human remains interred in such graves and also in graves where no rights of burial were granted, for the purpose of increasing the space for further interments in such graves and improving the cemetery and to use appropriately or remove altogether from the cemetery memorials on such graves: 5

- (6) It is expedient that the other provisions contained in this Act should be enacted:
- (7) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:— 10

1 Citation and commencement

This Act may be cited as the Highgate Cemetery Act 202[X] and comes into force at the end of 28 days beginning with the day on which this Act is passed. 15

2 Interpretation

In this Act—

- “burial” includes the interment of cremated remains and “right of burial” includes “right of interment” accordingly;
- “the burial authority” means the Trust or another person to whom any or all of the benefit of the provisions of this Act and such related statutory rights have been transferred; 20
- “the cemetery” means Highgate Cemetery referred to in the preamble to this Act, constructed under the London Cemetery Company Act 1836;
- “civil partner” includes former civil partner; 25
- “Commonwealth war burial” means a burial of any member of the armed forces of His Majesty who died in the war of 1914 to 1921 or in the war of 1939 to 1947 or of any other person for whose burial the Commonwealth War Graves Commission is responsible;
- “Commonwealth war memorial” means any memorial erected, owned or maintained by the Commonwealth War Graves Commission; 30
- “grave” includes any grave space and any crypt, vault, catacomb, arch, brick grave, mausoleum, columbarium or other place of interment;
- “the LCC” means the London Cemetery Company established under the London Cemetery Company Act 1836; 35
- “memorial” means any monument, headpiece, headstone, flatstone, slab, footstone, borderstone, kerbstone, tombstone or tablet, and includes any wall, kerb or railing protecting, enclosing or marking a grave or grave space or memorial (including any permanent covering thereon), or any other commemorative object placed in the cemetery including vases, flower containers or other similar objects; 40
- “public or common grave” means a grave in respect of which no right of burial has been acquired by or granted to, or is otherwise vested in, any individual or body other than a local authority or the burial authority;

“protected grave” means a grave designated as a protected grave by the burial authority under section 6(3);

“register of grants” means the register of grants of exclusive rights of burial, and of rights to erect or place memorials, maintained by the burial authority;

“registered address” means an address registered in the register of grants;

“registered number” means a number registered in the register of grants;

“registered owner”—

(a) in relation to any right of burial means the person at the time in question named as the owner in the register of grants; and

(b) in relation to any memorial means the person at the time in question named in the said register as the person to whom the right to erect or place that memorial has been granted, or, if no such person is named, the registered owner of the right of burial in the grave in or on which the memorial is erected or placed;

“relative”, in relation to any person, means any of the following—

(a) that person’s spouse;

(b) that person’s civil partner;

(c) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of that person or of that person’s spouse or civil partner;

“spouse” includes former spouse; and

“the Trust” means the Friends of Highgate Cemetery Trust, a charitable trust with the company number 03157806.

3 Power to operate and maintain the cemetery

The burial authority may do all such things as it considers necessary or desirable for the proper management, regulation and control of the cemetery.

4 Power to extinguish rights of burial

(1) Subject to subsection (2) and section 6, where in respect of any grave space in the cemetery a right of burial has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space, the burial authority may, in accordance with the provisions of this section, extinguish the right of burial in that grave space.

(2) No right of burial granted after the passing of this Act for any period longer than 75 years is to be extinguished under this section.

(3) For the purposes of subsection (2), any right of burial granted by the LCC having effect as if granted by the Trust under section 10 is not to be taken as having been granted after the passing of this Act.

(4) The power of the burial authority under subsection (1) to extinguish a right of burial in any grave space includes the power to remove any memorial in or on the grave space.

(5) Before extinguishing a right of burial or removing any memorial under the powers of this section, the burial authority must—

- (a) publish a notice in a newspaper of their intention to do so once in each of two successive weeks, with an interval between the dates of publication of not less than six clear days;
- (b) display such a notice in a conspicuous position at each of the principal entrances to the cemetery; and 5
- (c) serve such a notice upon—
- (i) the registered owner of the right of burial at that person's registered address;
- (ii) the Commonwealth War Graves Commission; and
- (iii) the Historic Buildings and Monuments Commission for England. 10
- (6) Each of the notices must—
- (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all grave spaces in respect of which it is proposed that rights of burial should be extinguished and stating whether it is proposed that any memorials should be removed; 15
- (b) specify the date on which it is intended that the rights should be extinguished and any memorial removed, which date must not be earlier than six months after the date of the later of the two publications, or the date on which notice is first displayed, or the date on which notice is served, whichever is the last; and 20
- (c) state the effect of subsections (7) to (10).
- (7) If notice of objection to the extinguishment of a right of burial in any grave space is given to the burial authority before the date specified under subsection (6)(b)— 25
- (a) by the registered owner of the right of burial and that objection is not withdrawn, the right of burial to which the objection relates must not be extinguished under this section, or
- (b) by any other person, and that objection is not withdrawn, any rights or memorial to which the objection relates must not be extinguished or removed unless the Secretary of State consents to the extinguishment. 30
- (8) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified under subsection (6)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may destroy it. 35
- (9) As compensation for any right of burial extinguished under this section, the burial authority must on a claim being made by the registered owner of the right of burial within six months from the extinguishment of that right either— 40
- (a) pay to the owner such sum representing the value of that right as may be agreed between the burial authority and the owner or, in default of agreement, determined by arbitration; or
- (b) confirm in writing to the owner that the right of burial extinguished is to be revived and, if confirmation is given under this paragraph, the right of burial is deemed not to have been extinguished under subsection (1). 45

- (10) In any arbitration under subsection (9)(a), the reference must be to a single arbitrator to be appointed by agreement between the parties or, in default of agreement, to be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party after giving notice in writing to the other party. 5

5 Power to disturb human remains

- (1) Subject to section 6, the burial authority may disturb or authorise the disturbance of human remains interred in a grave in the cemetery for the purpose of increasing the space for interments in the grave or improving the cemetery where— 10
- (a) the burial authority has extinguished rights of burial in the grave under section 4; or
 - (b) the grave is a public or common grave provided it is not a protected grave.
- (2) A person authorised by or under subsection (1)(b) to disturb human remains within a public or common grave may remove any memorial in or on the grave space relating to the person whose remains are proposed to be disturbed. 15
- (3) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years. 20
- (4) Any human remains disturbed under subsection (1) must be reinterred either in their original grave or in another grave within the cemetery.
- (5) Before disturbing any human remains, or removing any memorial, under this section the burial authority must—
- (a) publish a notice in a newspaper of their intention to do so once in each of two successive weeks, with an interval between the dates of publication of not less than six clear days; 25
 - (b) display such a notice in a conspicuous position at each of the principal entrances to the cemetery; and
 - (c) serve such a notice upon— 30
 - (i) any registered owner of the extinguished right of burial or the memorial proposed to be removed at that person's registered address;
 - (ii) the Commonwealth War Graves Commission; and
 - (iii) the Historic Buildings and Monuments Commission for England. 35
- (6) Each of the notices referred to in subsection (5) must—
- (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all graves in which it is proposed that the human remains are to be disturbed and stating whether it is proposed that any memorials should be removed; 40
 - (b) specify the date after which it is intended that the work should be undertaken, which must not be earlier than six months after the date of the later of the two publications, the date on which the notice is first displayed, or the date on which the notice is served, whichever is the last; and 45
 - (c) state the effect of subsection (8).

- (7) A single notice may be used for the purposes of this section and section 4.
- (8) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the date specified in subsection (6)(b) by—
- (a) the registered owner of the extinguished right of burial;
 - (b) the registered owner of a memorial erected or placed in or on any grave spaces specified under subsection (6)(a), whether or not the memorial itself is proposed to be disturbed;
 - (c) a relative of the person whose remains are proposed to be disturbed, and that objection is not withdrawn, the burial authority may not exercise its powers under this section for a period of 25 years, beginning with the date of the publication of the first notice under subsection (5)(a).
- (9) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified in subsection (6)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may destroy it.
- (10) A person authorised by or under subsection (1) to disturb human remains must comply with any directions given by the Secretary of State with respect to the removal and reinterment of any human remains in any case other than a case falling within subsection (12).
- (11) Subject to subsection (12), nothing in this section affects the jurisdiction of the consistory court of the diocese over consecrated land which is used, or is available for use, for the interment of human remains.
- (12) Where the burial authority proposes to disturb any human remains in consecrated land, the burial authority may not exercise its powers under this section without first obtaining a faculty, with or without conditions attached to it, from the consistory court of the diocese in which the land is situated, and any objection to the proposed disturbance of human remains from consecrated land by any person under subsection (8) must be heard and determined by that consistory court.
- (13) The provisions of section 25 of the Burial Act 1857 (offence of removal of body from burial ground) do not apply to a removal carried out in accordance with the provisions of this section.

6 Further protection for certain graves

- (1) The powers conferred by sections 4 and 5 must not, except with the prior written agreement of the Commonwealth War Graves Commission, be exercised by the burial authority in respect of—
- (a) any grave in which there is a Commonwealth war burial, or
 - (b) any grave space in or on which there is a Commonwealth war memorial.
- (2) No right of burial granted in respect of a grave which is designated under subsection (3) is to be extinguished under section 4 without the prior written agreement of the Historic Buildings and Monuments Commission for England and the London Borough of Camden.
- (3) The burial authority may from time to time, in consultation with or at the

request of the Historic Buildings and Monuments Commission for England and the London Borough of Camden, designate a grave as a protected grave.

- (4) The burial authority must maintain a record of any protected grave.
- (5) The record maintained under subsection (4) must at all reasonable times be available for consultation by any person free of charge. 5

7 Register of burials and other records

- (1) The burial authority must cause a register to be made of each burial in the cemetery.
- (2) The register maintained under subsection (1) shall include information as the burial authority sees fit and must include— 10
 - (a) the date of the burial;
 - (b) the registered number of the grave;
 - (c) the names, in full, and age of the person whose remains are buried;
 - (d) whether the burial space is consecrated;
 - (e) whether the grave is a public or common grave; 15
 - (f) the approximate location of the burial space in a manner that reasonably allows for its identification; and
 - (g) a record of any remains in the cemetery disturbed under the powers conferred by section 5, showing—
 - (i) the date of the disturbance; 20
 - (ii) the registered number of the grave;
 - (iii) the names, in full, of the person whose remains are disturbed;
 - (iv) the number of the entry;
 - (v) particulars of the authority for disturbance; and
 - (vi) the registered number of the grave in which the remains are 25
 - reinterred, its approximate location and the date of reinterment.
- (3) As soon as reasonably practicable after any burial or disturbance, the burial authority must complete the record as regards paragraphs (a) to (g) of subsection (2).
- (4) The burial authority must cause a record to be made of each memorial 30 removed under this Act containing—
 - (a) a copy of any legible inscription on it; and
 - (b) if it is intended to preserve the memorial, a statement showing where it has been taken,
 and the burial authority must deposit a copy of the record with the Registrar 35 General of England and Wales.
- (5) The register and record maintained under subsections (2) and (4) must at all reasonable times be available for consultation by any person free of charge.

8 Offences in the cemetery

- (1) No person shall— 40
 - (a) wilfully create any disturbance in the cemetery;
 - (b) commit any nuisance in the cemetery;

- (c) wilfully interfere with any burial taking place in the cemetery;
 - (d) wilfully interfere with any grave or vault, any tombstone or other memorial without authorisation from an officer of the burial authority; or
 - (e) play at any game or sport in the cemetery. 5
- (2) No person not being an officer or employee of the burial authority or another person so authorised by or on behalf of the burial authority shall enter or remain in the cemetery at any hour when it is closed to the public.
- (3) Any person who contravenes this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of a continuing offence to a fine not exceeding £10 for each day during which the offence continues after conviction therefor. 10

9 Byelaws

- (1) The Trust may make byelaws in relation to the operation and maintenance of the cemetery. 15
- (2) Without limiting the scope of subsection (1), the Trust may make byelaws for the purposes of regulating the use of the cemetery by members of the public and the conduct of burials in the cemetery.
- (3) Byelaws made under this section may make it an offence for any person to contravene, or fail to comply with, the provisions of the byelaws, and for such person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale. 20
- (4) In any proceedings for such an offence it shall be a defence for the person charged to prove—
- (a) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or 25
 - (b) that the person had a reasonable excuse for the action or failure to act.
- (5) Byelaws made by the Trust under this section do not have effect until they are confirmed by the Secretary of State, and section 236 of the Local Government Act 1972 (procedure for byelaws) applies to their confirmation, as if the Trust were a local authority. 30

10 Repeals and savings

- (1) The following enactments are repealed so far as they relate to the cemetery—
- (a) London Cemetery Company Act 1836 (1836 c. cxxxvi);
 - (b) London Cemetery Company Act 1843 (1843 c. xxxvi); and 35
 - (c) London Cemetery Company Act 1911 (1911 c. xvii).
- (2) The LCC shall cease to exist and all property and all rights, liabilities, interests, privileges and functions vested in the LCC in respect of the cemetery shall be vested in the Trust as if in all respects the Trust were the same person as the LCC. 40
- (3) Notwithstanding the repeals under subsection (1), anything done (or having effect as if done) by the LCC in connection with the operation, management

or improvement of the cemetery, including without limitation the grant of any burial rights, has effect, so far as necessary for continuing its effect after the commencement of this Act, as if done by the Trust on the date it was done by the LCC.

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SESSION 2019-20

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