



Energy Act 2023

2023 CHAPTER 52

PART 1

LICENSING OF CARBON DIOXIDE TRANSPORT AND STORAGE

CHAPTER 1

LICENSING OF ACTIVITIES

Grant and conditions of licences

7 Power to grant licences

- (1) The economic regulator may grant a licence authorising a person to carry on—
 - (a) activities falling within [section 2\(2\)\(a\)](#);
 - (b) activities falling within [section 2\(2\)\(b\)](#).
- (2) A licence—
 - (a) must be in writing;
 - (b) is to continue in force for such period as may be specified in or determined by or under the licence, unless previously revoked in accordance with any term of the licence.

Commencement Information

- II** [S. 7](#) in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

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Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Cross Heading: Grant and conditions of licences. (See end of Document for details)

8 Power to create licence types

- (1) The Secretary of State may by regulations provide that different types of licence may be granted under [section 7\(1\)](#) in respect of different descriptions of activity falling within [section 2\(2\)](#).
- (2) Regulations under this section may make consequential, transitional, incidental or supplementary provision including—
 - (a) amendments (or repeals or revocations) in any provision of this Act or any other enactment, and
 - (b) provision modifying any standard conditions of licences or provision determining the conditions which are to be standard conditions for the purposes of new types of licences.
- (3) Before making regulations under this section containing provision within devolved competence, the Secretary of State must give notice to each relevant devolved authority—
 - (a) stating that the Secretary of State proposes to make regulations under this section, and
 - (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to the provision within the relevant devolved competence,
 and must consider any representations duly made and not withdrawn.
- (4) For the purposes of this section “relevant devolved authority” means—
 - (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;
 - (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence;
 and “the relevant devolved competence”, in relation to a relevant devolved authority, is to be construed accordingly.
- (5) For the purposes of this section, provision—
 - (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) is within Welsh devolved competence if it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (c) is within Northern Ireland devolved competence if it—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998;
 and references to provision being within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.
- (6) Regulations under this section are subject to the affirmative procedure.

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Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Cross Heading: Grant and conditions of licences. (See end of Document for details)

Commencement Information

I2 S. 8 in force at 26.12.2023, see s. 334(3)(a)

9 Procedure for licence applications

- (1) The Secretary of State, or the economic regulator with the approval of the Secretary of State, may by regulations—
 - (a) make provision about the form and manner in which an application for a licence must be made;
 - (b) authorise the grantor to require that an application is accompanied by a fee for processing the application of an amount determined in accordance with the regulations.
- (2) The Secretary of State may by regulations make provision about the procedure for applications for a licence (in addition to any provision that may be made under [subsection \(1\)](#)) including, for example, provision—
 - (a) requiring that a decision to refuse a licence must be accompanied by reasons for the decision;
 - (b) imposing requirements with regard to the publication of decisions to refuse a licence.
- (3) Before making regulations under [subsection \(2\)](#) or [\(7\)](#) the Secretary of State must—
 - (a) consult the economic regulator and the appropriate devolved authorities, and
 - (b) specify a period of not less than 28 days within which representations or objections with respect to the proposed regulations may be made,and the Secretary of State must consider any representations or objections which are duly made and not withdrawn.
- (4) Before granting a licence the economic regulator must give notice—
 - (a) stating that the economic regulator proposes to grant the licence,
 - (b) stating the reasons why the economic regulator proposes to grant the licence, and
 - (c) specifying the time (which must not be less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,and must consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under [subsection \(4\)](#) must be given by—
 - (a) publishing the notice in such manner as the economic regulator considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence, and
 - (b) sending a copy of the notice to—
 - (i) the Scottish Ministers, if an activity that would be authorised by the proposed licence is within Scottish devolved competence;
 - (ii) the Welsh Ministers, if an activity that would be authorised by the licence is within Welsh devolved competence;

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- (iii) the Department for the Economy in Northern Ireland, if an activity that would be authorised by the licence is within Northern Ireland devolved competence.
- (6) Section 17(4) (activities authorised by a licence: devolved competence) applies for the purposes of subsection (5)(b) of this section as it applies for the purposes of section 17.
- (7) The Secretary of State may by regulations make provision, in relation to licences, about the matters to be taken into account in determining whether an applicant for a licence should be granted the licence.
- (8) Regulations under this section are subject to the negative procedure.
- (9) Consultation before the passing of this Act is as effective for the purposes of subsections (3) and (4) as consultation after that time.
- (10) In this Part “grantor”, in relation to a licence or an application for a licence, means the person who grants or, as the case may be, has power to grant, the licence.
- (11) For the purposes of this section “appropriate devolved authority”, in relation to regulations, means—
- (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;
 - (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence.
- (12) For the purposes of this section, provision—
- (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) is within Welsh devolved competence if it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (c) is within Northern Ireland devolved competence if it—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- (13) The Statutory Instruments Act 1946 applies in relation to the power of the economic regulator to make regulations under subsection (1) as if the economic regulator were a Minister of the Crown.
- (14) Any sums received by the economic regulator or the Secretary of State by virtue of this section must be paid into the Consolidated Fund.

Commencement Information

I3 S. 9 in force at 26.12.2023, see s. 334(3)(a)

Status: Point in time view as at 26/12/2023.

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10 Competitive tenders for licences

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom a licence is to be granted.
- (2) That provision may include—
 - (a) provision, in prescribed cases, for the publication of a proposal to grant a licence;
 - (b) provision for the inclusion in such a proposal of an invitation to apply for a licence;
 - (c) provision restricting the making of applications for a licence and imposing requirements as to the period within which they must be made;
 - (d) provision for regulating the manner in which applications are considered and determined;
 - (e) provision authorising the Secretary of State to direct, in relation to a particular competition, that specified functions which would, apart from the direction, be exercisable by the economic regulator are, so far as they relate to that competition, to be exercised instead by a specified person.
- (3) Before making regulations under [subsection \(1\)](#) the Secretary of State must give notice to the economic regulator and the appropriate devolved authorities—
 - (a) stating that the Secretary of State proposes to make regulations under this section, and
 - (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations must be made with respect to the proposed provisions,and must consider any representations duly made and not withdrawn.
- (4) Regulations under [subsection \(1\)](#)—
 - (a) may make provision by reference to a determination by the economic regulator or to the opinion of the economic regulator as to any matter;
 - (b) may dispense with or supplement provision made in relation to applications for licences under [section 9](#).
- (5) Regulations under [subsection \(1\)](#) are subject to the affirmative procedure.
- (6) For the purposes of [subsection \(3\)](#) the “appropriate devolved authorities” are—
 - (a) the Scottish Ministers, if the regulations contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) the Welsh Ministers, if the regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision that—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

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(7) In this section—

- “competition” means a determination such as is mentioned in [subsection \(1\)](#);
- “prescribed” means prescribed in, or determined under, regulations under [subsection \(1\)](#);
- “specified”, in relation to a direction under [subsection \(2\)\(e\)](#), means specified in the direction.

Commencement Information

I4 [S. 10](#) in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

11 Conditions of licences: general

(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by [section 1](#) (principal objectives of Secretary of State and economic regulator), and
- (b) conditions requiring the making to the economic regulator of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (a) of [subsection \(1\)](#), conditions included in a licence by virtue of that paragraph may require the licence holder—

- (a) to comply with any direction given by the economic regulator or the Secretary of State as to such matters as are specified in the licence or are of a description so specified,
- (b) to consent to the disclosure of information provided in accordance with a direction given to the licence holder,
- (c) except in so far as the economic regulator or Secretary of State consents to the licence holder’s doing (or not doing) them, not to do (or to do) such things as are specified in the licence or are of a description so specified,
- (d) to refer for determination by the economic regulator or Secretary of State such questions arising under the licence, or under any document referred to in the licence, as are specified in the licence or are of a description so specified, and
- (e) to refer for approval by the economic regulator or the Secretary of State such things as are (or may be) required to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.

(3) Without prejudice to the generality of paragraph (a) of [subsection \(1\)](#), conditions in a licence may also include—

- (a) provision about the revenue that the licence holder may receive in respect of its activities (the licence holder’s “allowed revenue”);
- (b) provision about how the licence holder’s allowed revenue is to be calculated.

(4) In [subsection \(3\)](#) the reference to revenue that the licence holder may receive in respect of its activities includes revenue that is calculated by reference to estimates of the

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licence holder’s decommissioning costs, as defined in [section 92](#) (financing of costs of decommissioning etc).

- (5) Without prejudice to the generality of paragraph (a) of [subsection \(1\)](#), conditions which are described in [subsection \(6\)](#) may be included in a licence by virtue of that paragraph, in respect of circumstances where a person (“the licence holder”) holds such a licence, and another person (“the candidate”)—
- (a) has applied or is considering whether to apply for a licence, or
 - (b) is considering whether to apply for financial support for carbon capture activities.
- (6) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the economic regulator or the Secretary of State requiring the licence holder to provide to the candidate—
- (a) information in relation to the activities authorised by the licence, and
 - (b) any other assistance the candidate may reasonably require, for the purpose of determining whether to—
 - (i) apply for a licence, or
 - (ii) (as the case may be) apply for financial support for carbon capture activities.
- (7) Conditions included in a licence may contain provision for the conditions—
- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions, or
 - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.
- (8) Any provision included by virtue of [subsection \(7\)](#) in a licence is to have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- (9) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.
- (10) Any sums received by the economic regulator in consequence of the provisions of any condition of a licence must be paid into the Consolidated Fund.

Commencement Information

I5 [S. 11](#) in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

12 Standard conditions of licences

- (1) The Secretary of State may determine the conditions that are to be the standard conditions of licences.
- (2) The Secretary of State must publish any standard conditions determined under [subsection \(1\)](#) in whatever manner the Secretary of State considers appropriate.
- (3) Subject to subsections (4) and (5), each condition which is a standard condition is to be incorporated by reference in each licence.

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- (4) Subsection (3) does not apply to a licence granted before the publication of the standard condition.
- (5) Subject to the following provisions of this section, the grantor of a licence in which standard conditions would, but for this subsection, be incorporated in accordance with subsection (3) may exclude or modify any of those standard conditions, to such extent as the grantor may consider requisite to meet the circumstances of a particular case.
- (6) Before excluding any standard conditions or making any modifications under subsection (5), the grantor must give notice—
- (a) stating that the grantor proposes to exclude the conditions or make the modifications and setting out the effect of so doing,
 - (b) stating the reasons why the grantor proposes to exclude the conditions or make the modifications, and
 - (c) specifying the time (which must not be less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,
- and must consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (6) must be given—
- (a) by publishing the notice in whatever manner the grantor considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications, and
 - (b) by sending a copy of the notice to the appropriate devolved authorities (if any) and the Secretary of State.
- (8) The grantor must not exclude any conditions, or make any modifications, under subsection (5) unless the grantor is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences, and
 - (b) no other holder of a licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).
- (9) If, within the time specified in the notice under subsection (6), the Secretary of State (after consulting the appropriate devolved authorities (if any)) directs the grantor not to exclude or modify any standard condition, the grantor must comply with the direction.
- (10) The modification under subsection (5) of part of a standard condition does not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Part.
- (11) Where, in granting a licence, the grantor excludes or modifies any standard conditions under subsection (5), the grantor must publish a notice setting out—
- (a) each exclusion or modification,
 - (b) their effects, and the reason for adopting them, and
 - (c) how the grantor has taken account of any representations or objections made in accordance with subsection (6).
- (12) For the purposes of this section the “appropriate devolved authorities” are—

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- (a) the Welsh Ministers, if provision making the exclusions and modifications proposed in the notice under [subsection \(6\)](#) would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
- (b) the Scottish Ministers, if provision making the exclusions and modifications proposed in that notice would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
- (c) the Department for the Economy in Northern Ireland, if provision making the exclusions and modifications proposed in that notice—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

Commencement Information

I6 [S. 12](#) in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

13 Modification of conditions of licences

- (1) The economic regulator may make modifications of—
 - (a) the conditions of a particular licence;
 - (b) the standard conditions of licences.
- (2) Before making any modifications under this section, the economic regulator must give notice—
 - (a) stating that it proposes to make modifications,
 - (b) setting out the proposed modifications and their effect,
 - (c) stating the reasons why it proposes to make the modifications, and
 - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (3) The time specified by virtue of [subsection \(2\)\(d\)](#) may not be less than 28 days from the date of the publication of the notice.
- (4) A notice under [subsection \(2\)](#) must be given—
 - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
 - (b) by sending a copy of the notice to—
 - (i) each relevant licence holder,
 - (ii) the Secretary of State, and
 - (iii) the appropriate devolved authorities (if any).
- (5) The economic regulator must consider any representations which are duly made.
- (6) If, within the time specified by virtue of [subsection \(2\)\(d\)](#), the Secretary of State directs the economic regulator not to make any modification, the economic regulator must comply with the direction.

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- (7) Subsections (8) to (10) apply where, having complied with subsections (2) to (5), the economic regulator decides to proceed with the making of modifications of the conditions of any licence under this section.
- (8) The economic regulator must—
- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
 - (b) state the effect of the modifications,
 - (c) state how it has taken account of any representations duly made, and
 - (d) state the reason for any differences between the modifications and those set out in the notice by virtue of [subsection \(2\)\(b\)](#).
- (9) Each modification has effect from the date specified by the economic regulator in relation to that modification (subject to the giving of a direction under [paragraph 2 of Schedule 2](#)).
- (10) The date specified by virtue of [subsection \(9\)](#) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.
- (11) In this section “relevant licence holder”—
- (a) in relation to the modification of standard conditions, means the holder of a licence—
 - (i) which is to be modified by the inclusion of any new standard condition, or
 - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of [subsection \(2\)\(d\)](#), or
 - (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.
- (12) For the purposes of this section the “appropriate devolved authorities” are—
- (a) the Welsh Ministers, if provision making the modifications proposed in the notice under [subsection \(2\)](#) would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (b) the Scottish Ministers, if provision making the modifications proposed in that notice would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (c) the Department for the Economy in Northern Ireland, if provision making the modifications proposed in that notice—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

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Commencement Information

17 S. 13 in force at 26.12.2023, see s. 334(3)(a)

14 Modification of conditions under [section 13](#): supplementary

- (1) Subsections (2) and (3) apply where at any time the economic regulator modifies the conditions of licences under [section 13](#).
- (2) If the conditions modified are standard conditions, the economic regulator must—
 - (a) also make (as nearly as possible) the same modifications of those conditions for the purposes of their incorporation in licences granted after that time, and
 - (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The economic regulator may make such incidental or consequential modifications of any conditions of licences as it considers necessary or expedient.
- (4) The modification of part of a standard condition of a particular licence under [section 13](#) does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under [paragraph 2](#) of [Schedule 2](#) in relation to the decision to which the modification relates.

Commencement Information

18 S. 14 in force at 26.12.2023, see s. 334(3)(a)

15 Modification by order under other enactments

- (1) Where the CMA or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of—
 - (a) the conditions of a particular licence, or
 - (b) the standard conditions of licences,to such extent as may appear to the relevant authority to be necessary or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In [subsection \(1\)](#) “relevant order” means—
 - (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence, or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence, or

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- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market or markets in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a licence.
- (3) The modification under [subsection \(1\)\(a\)](#) of part of a standard condition of a particular licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (4) Where at any time the relevant authority modifies under [subsection \(1\)\(b\)](#) the standard conditions of licences, the relevant authority—
 - (a) must also make (as nearly as possible) the same modifications of those conditions for the purposes of their incorporation in licences granted after that time, and
 - (b) may, after consultation with the economic regulator, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences under that provision granted before that time.
- (5) Where at any time the relevant authority modifies standard conditions under [subsection \(4\)\(a\)](#) for the purposes of their incorporation in licences granted after that time, the relevant authority must publish those modifications in such manner as the relevant authority considers appropriate.
- (6) Expressions used in [subsection \(2\)](#) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.

Commencement Information

19 [S. 15](#) in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

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