

National Assembly for Wales

Summary of the legislative powers
gained by the National Assembly
since 2007

February 2011

Members'
Research
Service



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Introduction

At present, under Part 3 of the *Government of Wales Act 2006*¹ (“the 2006 Act”), the National Assembly can pass primary legislation, known as “Assembly Measures”, but only if it has received the necessary legislative powers to do so via “Matters” inserted, with the agreement of Parliament, within the 20 “Fields” in Schedule 5 to the 2006 Act.²

The 2006 Act currently allows the National Assembly to add to its legislative powers on a case by case basis through two different methods which are outlined below:

Legislative Competence Orders

Legislative Competence Orders (“Orders”) are requests for the transfer of specific legislative powers from the UK Parliament to the National Assembly and can be proposed by the Welsh Government, a Committee of the National Assembly or an individual Assembly Member. Each Order includes a Matter or a range of Matters which, once passed, will amend Schedule 5 to the 2006 Act and extend the legislative powers of the National Assembly in the areas specified by the Matter or Matters in question.

Once introduced, each Order is subject to pre-legislative scrutiny by a Committee in the National Assembly. Since 2007 it has been the practice of the Welsh Affairs Committee in the House of Commons to scrutinise Orders and the House of Lords, scrutiny has been undertaken by the Constitution Committee.³

¹ **Government of Wales Act 2006 (c.32)**

² A brief glossary of the terms used in this bulletin is available in the **MRS Quick Guide: A glossary**.

³ At Westminster, scrutiny arrangements for Legislative Competence Orders are a matter for individual committees to decide.

Following the publication of reports by each Committee, a draft Order is then laid before the National Assembly by Welsh Ministers where it requires the approval of a majority of Assembly Members. The same draft Order is also laid in the UK Parliament by the Secretary of State for Wales, where it requires the approval of both Houses. If passed, the Order becomes law after it has received Royal Approval.

Framework powers included in Acts of the UK Parliament

Framework powers included in Acts of the UK Parliament have exactly the same effect of amending Schedule 5 as Orders. Through this method Matters are inserted into the relevant Fields of Schedule 5 through specific Clauses in Acts, once they are passed by the UK Parliament and have received Royal Approval.

Although detailed scrutiny of each Bill takes place in both Houses of Parliament, the National Assembly has no formal role in requesting these powers or in scrutinising the powers conferred upon it by this method.

Since 2007, **84 Matters** have been inserted by Orders and by Clauses in Acts of the UK Parliament into **14 out of the 20 Fields included in Schedule 5** to the 2006 Act.

The six Fields which do not contain any Matters are:

- Economic Development (Field 4);
- Fire and rescue services and promotion of fire safety (Field 7);
- Food (Field 8);
- Public Administration (Field 14);
- Tourism (Field 17); and
- Water and flood defence (Field 19).

An Order **seeking legislative powers in connection with consent for organ donation** was introduced by the Welsh Government on 10 January 2011 and referred to the National Assembly and the UK Parliament for pre-legislative scrutiny.

An additional Order proposed by the National Assembly's Enterprise and Learning Committee **relating to the development and maintenance of networks of routes for pedestrians and cyclists** is currently subject to on-going discussions between the Welsh Government and Whitehall departments.

Further legislative powers for the National Assembly are also proposed in both the **Budget Responsibility and National Audit Bill** and the **Localism Bill**, which are currently being scrutinised by the UK Parliament.

As this paper only relates to the powers the National Assembly has already gained, information relating to the proposed legislative powers outlined above has not been included.

The purpose of this paper is to provide a summary of the legislative powers gained by the National Assembly since 2007 through Matters inserted into the Fields in Schedule 5 by both Orders and Acts of the UK Parliament.

Government-proposed Orders

Since June 2007, the National Assembly and the UK Parliament have passed 15 Orders proposed by the Welsh Government. Details relating to each Order, including the number and nature of the Matters inserted and information on any subsequent Measures introduced which relate to those Matters, are included below.

The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008

- **Date of introduction:**
11 June 2007
- **Date of Royal Approval:**
9 April 2008
- **Matter inserted:**
5.7 (Education and Training) (the Order also amends Matter 5.10)
- **Assembly Measures based on at least one of these Matters:**
Learning and Skills (Wales) Measure 2009 (along with the legislative powers conferred on the *National Assembly by The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007* and the *Further Education and Training Act 2007*)

This Order extends the legislative powers of the National Assembly to make laws in relation to education and training for persons who have a greater difficulty in learning than the majority of persons of the same age as those persons, and persons who have, or have had a physical or mental impairment, or a progressive health condition

(such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment.

This Order also amends Matter 5.10 (inserted by *The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007*) to cover travel connected to education and training to cover persons receiving nursery education not already included within primary education (children under two years of age).

The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008

- **Date of introduction:**
6 June 2007
- **Date of Royal Approval:**
9 July 2008
- **Matter inserted:**
15.1 (Social Welfare)
- **Assembly Measures based on this Matter:**
Social Care Charges (Wales) Measure 2009

This Order extends the legislative powers of the National Assembly to make laws in relation to charging for non-residential social care (otherwise known as Domiciliary Care).

The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008

- **Date of introduction:**
6 June 2007
- **Date of Royal Approval:**
10 December 2008
- **Matters inserted:**
5.18 (Education and Training), 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8 (Social Welfare) and 16.1 (Sports and Recreation)
- **Assembly Measures based on at least one of these Matters:**
Children and Families (Wales) Measure 2010 (along with the legislative powers conferred by *The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007*)

Proposed Rights of Children and Young People (Wales) Measure.

This Order extends the legislative powers of the National Assembly to make laws in relation to the following areas concerning vulnerable children and child poverty:

- Facilities for social or physical training and educational activities for children or young persons;
- Functions of public authorities relating to safeguarding children from harm and neglect, safeguarding and promoting the well-being of vulnerable children, and reducing inequalities in well-being between children or young persons;
- Adoption services and special guardianship support services;

- Fostering;
- Social care services for children, persons who care for children, young persons, and persons formerly looked after;
- Co-operation and arrangements to safeguard and promote the well-being of children and young persons;
- Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons;
- Continuing, dissolving or creating an office or body concerned with safeguarding and promoting the well-being of children or young persons; and
- The provision of recreational facilities and activities for children or young persons.

The National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008

- **Date of introduction:**
15 July 2008
- **Date of Royal Approval:**
8 July 2009
- **Matters inserted:**
1.1 (Agriculture, Fisheries, Forestry and Rural Development)
- **Assembly Measures based on this Matter:**
Red Meat (Wales) Measure 2010

This Order extends the legislative powers of the National Assembly to make laws in relation to the Welsh Red Meat Industry.

The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009

- **Date of introduction:**
8 December 2008
- **Date of Royal Approval:**
17 November 2009
- **Matters inserted:**
15.9 (Social Welfare)
- **Assembly Measures based on this Matter:**
Carers Strategies (Wales) Measure 2010

This Order extends the legislative powers of the National Assembly to make laws in relation to supporting the provision of care by carers and promoting the well-being of carers.

The National Assembly for Wales (Legislative Competence) (Exceptions to Matters) Order 2009

- **Date of introduction:**
16 June 2009
- **Date of Royal Approval:**
17 November 2009
(considered together with *The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009*)
- **Matters inserted:**
None (this Order only inserted exceptions, as opposed to Matters, into specified Fields in Schedule 5 to the 2006 Act)

Consideration by Legislation Committee No.3 of the National Assembly, the Welsh Affairs Committee of the House of Commons and the Constitution Committee of the House of Lords, led to the Welsh Government separating the original proposed Social Welfare Order into two with the laying of this separate Order which included only exceptions. As a result, this Order in effect constrains the National Assembly's legislative powers in certain Fields.

The National Assembly for Wales (Legislative Competence) (Environment) Order 2010

- **Date of introduction:**
6 June 2007 (revised version introduced on 19 May 2009)
- **Date of Royal Approval:**
10 February 2010
- **Matters inserted:**
6.1, 6.2, 6.3 and 6.4 (Environment)
- **Assembly Measures based on at least one of these Matters:**
Waste (Wales) Measure 2010

This Order extends the legislative powers of the National Assembly to make laws in relation to:

- Preventing, reducing, collecting, managing, treating or disposing of waste;
- Disposal of waste in the sea where the waste has been collected, managed or treated on land;
- Protecting or improving the environment in relation to pollution; and
- Protecting or improving the environment in relation to nuisances.⁴

⁴ All of the legislative powers included under this Order are subject to a number of constraints which appear under Matters 6.1, 6.2, 6.3 and 6.4 in **The National Assembly for Wales (Legislative Competence) (Environment) Order 2009**.

The National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2010

- **Date of introduction:**
2 February 2009
- **Date of Royal Approval:**
10 February 2010
- **Matters inserted:**
20.1 and 20.2 (Welsh Language)
- **Assembly Measures based on at least one of these Matters:**
Welsh Language (Wales) Measure 2011

This Order extends the legislative powers of the National Assembly to make laws in relation to:

- Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality⁵; and
- Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).

⁵ This legislative power is subject to a number of constraints which are included as exceptions to Matter 20.1 under Article 3 of **The National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009**.

The National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010

- **Date of introduction:**
15 July 2009
- **Date of Royal Approval:**
12 April 2010
- **Matters inserted:**
2.1 (Ancient Monuments and Historic Buildings), 3.1 (Culture) and 16.4 (Sport and Recreation)
- **Assembly Measures based on at least one of these Matters:**
None

This Order extends the legislative powers of the National Assembly to make laws in relation to the functions of local authorities in the support, improvement and promotion of:

- Archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks;
- Arts and crafts, museums and galleries, libraries, archives and historical records, and cultural activities and projects; and
- Sport and recreational activities.



The National Assembly for Wales (Legislative Competence) (Local Government) Order 2010

- **Date of introduction:**
13 July 2009
- **Date of Royal Approval:**
12 April 2010
- **Matters inserted:**
12.8, 12.9, 12.10, 12.11, 12.12, 12.13, 12.14, 12.15, 12.16 and 12.17 (Local Government)
- **Assembly Measures based on at least one of these Matters:**
Proposed Local Government (Wales) Measure (along with the legislative powers conferred by the *Local Government and Public Involvement in Health Act 2007*)

This Order extends the legislative powers of the National Assembly to make laws in relation to:

- Areas of communities and constitution, structure, and procedures of local government institutions for communities;
- Electoral arrangements for elected local government institutions for communities;
- Conferral of powers on local government institutions for communities;
- Grants from the Welsh Ministers to fund local government for communities;
- Relations between different communities and their local government institutions;

- Schemes for the accreditation of quality in local government for communities; and
- Public participation in local government for communities (apart from elections).

The National Assembly for Wales (Legislative Competence) (Education) Order 2010

- **Date of introduction:**
14 July 2009
- **Date of Royal Approval:**
12 April 2010
- **Matters inserted:**
5.2A, 5.2B and 5.2C (Education and Training)
- **Assembly Measures based on at least one of these Matters:**
Proposed Education (Wales) Measure

This Order extends the legislative powers of the National Assembly to make laws in relation to:

- The conduct and governance of schools maintained by local authorities;
- Securing collaboration between persons or bodies with functions relating to schools maintained by local authorities; and
- The establishment of and involvement with bodies to carry out activities relating to education and training and to exercise education functions on behalf of local authorities.

The National Assembly for Wales (Transport) (Wales) Order 2010

- **Date of introduction:**
7 December 2009
- **Date of Royal Approval:**
12 April 2010
- **Matters inserted:**
10.2 (Highways and Transport)
- **Assembly Measures based on this Matter:**
Proposed Safety on Learner Transport (Wales) Measure
(along with the legislative powers conferred by *The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007*)

This Order extends the legislative powers of the National Assembly to make laws in relation to concessionary travel on bus services and Welsh services provided under a franchise agreement to which the Welsh Ministers are party.

The Order also extends the National Assembly's legislative powers in relation learner travel by amending the exceptions in Matter 5.10 (Education and Training) which was originally inserted by *The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007*.

The National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010

- **Date of introduction:**
14 July 2009
- **Date of Royal Approval:**
21 July 2010
- **Matters inserted:**
11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8 (Housing) and 12.18 (Local Government)
- **Assembly Measures based on at least one of these Matters:**
Proposed Housing (Wales) Measure

This Order extends the legislative powers of the National Assembly to make laws in relation to:

- Social housing providers;
- Relevant social housing bodies;
- Tenure of rented social housing and other arrangements under which social housing is provided;
- Disposals of Social housing;
- Provision of advice and non-financial assistance to individuals in respect of their obtaining, and living in, housing;
- Provision by local authorities of caravan sites by Gypsies and Travellers; and
- Homelessness.

Assembly Member-proposed Orders

Standing Orders 22.38 to 22.45 and 22.46 to 22.54⁶ allows Orders to be proposed by individual Assembly Members and Committees of the National Assembly. To date, two Member-proposed Orders have inserted Matters into Schedule 5 to the 2006 Act following approval by the National Assembly and the UK Parliament.

The National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010

- **Date of introduction:**
18 February 2008
- **Date of Royal Approval:**
10 February 2010
- **Matters inserted:**
9.2 (Health and Health Services) and 15.10 (Social Welfare)
- **Assembly Measures based on at least one of these Matters:**
Mental Health (Wales) Measure 2010

This Order, introduced by **Jonathan Morgan AM**, extends the legislative powers of the National Assembly to make laws in relation to:

- The assessment of mental health and treatment of mental disorder; and
- Social Care services related to mental health.

⁶ National Assembly For Wales, *Standing Order of the National Assembly for Wales, May 2010* [Accessed 19 January 2011]

The National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010

- **Date of introduction:**
20 February 2008
- **Date of Royal Approval:**
12 April 2010
- **Matters inserted:**
11.1 (Housing)
- **Assembly Measures based on this Matter:**
Proposed Domestic Fire Safety (Wales) Measure

This Order, introduced by **Ann Jones AM**, extends the legislative powers of the National Assembly to make laws in relation to the provision of automatic fire suppression systems in new residential premises.

Framework powers

The National Assembly has also gained significant legislative powers via Clauses included in Acts of the UK Parliament. Since 2007, **37 Matters** have been inserted into Schedule 5 of the 2006 Act through this method. Details of the relevant Acts and information about the legislative powers conferred on the National Assembly by them are summarised below.

Government of Wales Act 2006

- **Date of introduction in the UK Parliament:**
1 March 2006
- **Date of Royal Approval:**
25 July 2006 (The Act did not however come into force until immediately after the Assembly Elections in May 2007)
- **Matter inserted:**
13.1, 13.2, 13.3, 13.4, 13.5 and 13.6 (National Assembly for Wales)
- **Assembly Measures based on at least one of these Matters:**
National Assembly for Wales Commissioner for Standards Measure 2009
National Assembly for Wales (Remuneration) Measure 2010

Matters relating to the National Assembly's processes and functions were already included in Field 13 (National Assembly for Wales) of Schedule 5 when the Act came into force.

These Matters provided legislative powers to the National Assembly in relation to:

- Investigating complaints about the conduct of Assembly Members;
- The exercise of the National Assembly's functions (including powers over property, staff and services);
- The payment of salaries, allowances, pensions and gratuities to Assembly Members and Welsh Ministers (including Deputy Ministers and the Counsel General);
- The creation and maintenance of a register of interests of Assembly Members and the Counsel General; and
- Powers in connection with the procedures for dealing with proposed private Assembly Measures.

The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007

- **Date made:**
21 March 2007
- **Date laid before the UK Parliament:**
28 March 2007
- **Matter inserted:**
5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10 (Education and Training) and 9.1 (Health and Health Services)
- **Assembly Measures based on at least one of these Matters:**
NHS Redress (Wales) Measure 2008

Learner Travel (Wales) Measure 2009

Learning and Skills (Wales) Measure 2009 (along with the legislative powers conferred on the National Assembly by the *Further Education and Training Act 2007*)

Healthy Eating in Schools (Wales) Measure 2009, Children and Families Measure 2010 (along with the legislative competence conferred by *The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008*)

Proposed Safety on Learner Transport (Wales) Measure (along with legislative powers conferred by *The National Assembly for Wales (Legislative Competence) (Transport) Order 2010*)

This Order provided the National Assembly with the legislative powers set out by clauses included in the *NHS Redress Act 2006*⁷ and the *Education and Inspections Act 2006*.⁸ As these Acts came into force before the implementation of the 2006 Act, this Order was required as a consequential provision to insert Matters directly into the Fields within Schedule 5 once the 2006 Act had commenced.

The Matters included in this Order provides legislative powers to the National Assembly in relation to:

- Categories of schools;
- Establishment and discontinuance of schools;
- Admission of pupils;
- Curriculum in schools;
- School attendance, behaviour of pupils, school discipline and pupil exclusion;
- Provision of education for persons of compulsory school age who have been excluded or who would not otherwise receive suitable education;
- Entitlement to primary, secondary, and further education and to training;
- Provision of services that are intended to encourage, enable or assist people to participate effectively in education, to take advantage of opportunities for employment, or to participate effectively in the life of their communities;
- Food and drink on school premises;

⁷ **NHS Redress Act 2006 (c.44)**

⁸ **Education and Inspections Act 2006 (c.40)**

- Travel of persons receiving primary, secondary, or further education or training to and from schools or other places where they receive it; and
- Provision of redress without recourse to civil proceedings in connection with the services provided as part of the health service in Wales.

Further Education and Training Act 2007

- **Date of introduction:**
20 November 2006
- **Date of Royal Approval:**
23 October 2007
- **Matter inserted:**
5.11, 5.12, 5.13, 5.14, 5.15 and 5.16 (Education and Training)
- **Assembly Measures based on at least one of these Matters:**
Learning and Skills (Wales) Measure 2007 (along with the legislative powers conferred on the National Assembly by *The National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007*)

The Matters contained in this Act provides legislative powers to the National Assembly in relation to:

- The facilities for post-16 education or training;
- Establishment and dissolution of institutions concerned with the provision of further education;
- Conduct and functions of such institutions (including property, rights, liabilities and the governance and staff);

- The securing of collaboration between bodies that provide further education or bodies that have functions in relation to education or training;
- Financial resources for and in connection with education and training;
- Inspection of schools and educational institutions concerned with the provision of further education; and
- Advice and information in connection with the carrying out of studies in relation to pre-16 education or training, post-16 education or training and the training of teachers and specialist training assistants.

Local Government and Public Involvement in Health Act 2007

- **Date of introduction:**
13 December 2006
- **Date of Royal Approval:**
30 October 2007
- **Matter inserted:**
12.1, 12.2, 12.3, 12.4, and 12.5 (Local Government)
- **Assembly Measures based on at least one of these Matters:**
Local Government (Wales) Measure 2009

Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010

Proposed Local Government (Wales) Measure (along with legislative powers conferred by *The National Assembly for Wales (Legislative Competence) (Local Government) Order 2010*)

The Matters contained in this Act provides legislative powers to the National Assembly in relation to:

- Constitution of new principal council areas and abolition or alteration of existing principal councils;
- Procedures for the making and coming into force of byelaws and the enforcement of byelaws;

- Principles which are to govern the conduct of members of relevant authorities, the codes of conduct for such members, the conferral on any person of functions relating to the promotion or maintenance of high standards of conduct, the making or handling of allegations, the investigation and adjudication of such allegations, the actions that may be taken where breaches are found and the codes of conduct for employees of relevant authorities;
- Strategies of county councils and county borough councils for promoting or improving the economic, social or environmental well-being of their areas or contributing to the achievement of sustainable development in the United Kingdom; and
- The making of arrangements to secure improvement in the way in which their functions are exercised, the making of arrangements for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.

Education and Skills Act 2008

- **Date of introduction:**
28 November 2007
- **Date of Royal Approval:**
26 November 2008
- **Matter inserted:**
5.4A (Education and Training)
- **Assembly Measures made under this Matter:**
None

The Matters contained in this Act provides legislative powers to the National Assembly in relation to the regulation of schools not maintained by local education authorities and independent educational institutions.

Local Transport Act 2008

- **Date of introduction:**
7 November 2007
- **Date of Royal Approval:**
26 November 2008
- **Matter inserted:**
10.1 (Highways and Transport)
- **Assembly Measures made under this Matter:**
None

The Matters contained in this Act provides legislative powers to the National Assembly in relation to:

- The making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads; and
- The application of the proceeds of charges imposed under such schemes towards purposes relating to transport.

Planning Act 2008

- **Date of introduction:**
27 November 2007
- **Date of Royal Approval:**
26 November 2008
- **Matter inserted:**
18.1, 18.2, and 18.3 (Town and Country Planning)
- **Assembly Measures based on at least one of these Matters:**
None

The Matters contained in this Act provides legislative powers to the National Assembly in relation to:

- Plans of the Welsh Ministers in relation to the development and use of land in Wales including the power to remove requirements for such plans;
- Reviews by local planning authorities of matters which may be expected to affect the development of the authorities' areas, or the planning of the development of the authorities' areas; and
- Plans of local planning authorities in relation to the development and use of land in their areas, including the power to remove requirements for any such plans.

Local Democracy, Economic Development and Construction Act 2009

- **Date of introduction:**
4 December 2008
- **Date of Royal Approval:**
12 November 2009
- **Matter inserted:**
12.6 and 12.7 (Local Government)
- **Assembly Measures based on at least one of these Matters:**
None

The Matters contained in this Act provides legislative powers to the National Assembly in relation to:

- Arrangements by principal councils with respect to the discharge of their functions, including executive arrangements; and
- Committees of principal councils with functions relating to review or scrutiny, or making reports or recommendations.

Marine and Coastal Access Act 2009

- **Date of introduction:**
4 December 2008
- **Date of Royal Approval:**
12 November 2009
- **Matter inserted:**
16.2 and 16.3 (Sport and Recreation)
- **Assembly Measures based on at least one of these Matters:**
None

The Matters contained in this Act provides legislative powers to the National Assembly in relation to:

- The establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys;
- The creation of new highways (whether under the Highways Act 1980 or otherwise); and
- Securing public access to relevant land for the purposes of open-air recreation.

Further information

For further information on Assembly legislation and constitutional issues, please contact:

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