

UC: CHANGES TO LCW ELEMENT AND WORK-RELATED REQUIREMENTS

Contents	Paragraphs
Introduction	1 - 3
Removal of the LCW element	
UC claimants	4
Transition from ESA IB, IS, SDA and NI credits to UC	5
Savings	
Introduction	6 - 7
Claimant entitled to LCW element before 3.4.17	8 - 13
Claimant entitled to LCWRA element before 3.4.17	14
Claimants awaiting the WCA	15
ESA decision changed on revision or appeal	16
Claimants entitled to ESA before 3.4.17	17
Credits only claimants	18
Claimants entitled to IB, IS, SDA or NI Credits	19
Consequential changes	
IS & JSA housing costs	20
SPC housing costs	21
ESA housing costs	22
SF Cold Weather Payments	23
Work-related requirements	
Conditionality and responsible carers	24
The earnings threshold and responsible carers	25 - 26
Annotations	
Contacts	

INTRODUCTION

- 1 This memo gives guidance on changes to the LCW element and work-related requirements made by
 1. the Welfare Reform and Work Act 2016¹ **and**
 2. the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regs 2017²

which come into force on 3.4.17.

1 WR & W Act 16, s 16 & 17; 2 ESA & UC (Misc Amdt etc.) Regs, SI 2017 No. 204

- 2 The legislation
 1. removes the power to prescribe amounts where the claimant has LCW¹ **and**
 2. removes the LCW element from UC legislation² **and**
 3. makes provisions for the removal of the LCW element not to apply in specified cases³
 4. makes consequential provisions, including impacts on other benefits⁴ **and**
 5. makes changes to the work-related requirements for claimants who are responsible carers of children⁵.

1 WR & W Act 16, s 16 & 34(1); 2; ESA & UC (Misc Amdt etc.) Regs, reg 4; UC Regs, reg 2, 23, 27 - 29 & 36; 3 ESA & UC (Misc Amdt etc.) Regs, Sch 1, Part 2; 4 WR Act 12, s 42(3)(a); ESA & UC (Misc Amdt etc.) Regs, Sch 2, Part 2; 5 WR & W Act 16, s 17; UC Regs, reg 88, 91 & 91A; ESA & UC (Misc Amdt etc.) Regs, reg 6

- 3 This memo should be read with [\[Memo ADM 8/17\]](#) which gives guidance on the equivalent removal of the WRAC for new style ESA, and [\[Memo DMG 6/17\]](#) for old style ESA.

REMOVAL OF THE LCW ELEMENT

UC claimants

- 4 From 3.4.17 where it is determined that a UC claimant has, or is treated as having, LCW, their award of UC cannot include the LCW element¹. But see paragraphs 7 and 9 - 20 for exceptions where the removal of the LCW element does not apply.

Note: A determination that the claimant has LCW continues to be relevant for the purposes of work-related requirements and income and work allowance deductions – see [G2004](#).

1 WR Act 12, s 12(2); UC Regs, reg 23(2)(a), 27 - 29 & 36

Example

Jessie has been entitled to UC since 2015, and is in the all work-related requirements group. On 2.5.17 she sends in a fit note, and following the WCA it is determined that she has LCW. Jessie is moved to the work preparation requirements group, and has the LCW related work allowance, but the LCW element is not included in her award.

Transition from ESA, IB, IS, SDA and NI credits to UC

- 5 Guidance on transition from old style ESA, IB, IS, SDA and NI Credits to UC is at [M4130](#) et seq and [M6190](#) et seq. This includes the circumstances where the LCW element is included in the UC award. From 3.4.17, all references to awards of the WRAC, the support component, and the LCW element are removed¹, and replaced with references to the claimant having, or being treated as having, LCW or LCWRA as appropriate. This mirrors the changes to UC, so that from 3.4.17 the LCW element is not included in a UC award even if a claimant has, or is treated as having, LCW on transition to UC.

Note: This does not apply where **continuous** entitlement to old style ESA, IB, IS, SDA and NI credits began **before** 3.4.17. See paragraphs 18 - 19 for further details.

1 UC (TP) Regs, reg 19 – 21

Example

Molly claims and is awarded old style ESA from 5.4.17. The DM determines that she has LCW after application of the WCA, but as her claim was made after 3.4.17, she is not entitled to the WRAC. Molly is also entitled to HB. On 20.7.17, Molly moves to a Full Service area and claims UC, as she is precluded from claiming HB. Her awards of ESA and HB terminate. Molly is treated as having LCW for the purposes of work-related requirements, but her UC award does not include the LCW element.

SAVINGS

Introduction

- 6 The removal of the LCW element as in paragraphs 4 - 5 does not apply where

1. an award of UC is made to a claimant in the circumstances in paragraphs 8 and 14 - 19 **and**
2. the claimant continues
 - 2.1 to be entitled to UC **and**
 - 2.2 to have LCW¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, Part 2, para 8(1)

Meaning of continuous entitlement to UC

- 7 In paragraph 6 **2.1**, continuous entitlement to UC includes where¹
1. an award of UC is terminated **and**
 2. a further award is made **and**
 - 2.1 immediately before the further award begins, the previous award ended on formation or separation of a couple **or**
 - 2.2 within the six months before the further award begins, the previous award ended because the claimant or joint claimants failed to satisfy the income condition of entitlement².

Note: See ADM [Chapter A2](#) (Claims) for detailed guidance on the date a claim for UC is made or treated as made³.

*1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 8(2); 2 WR Act 12, s 5(1)(b) & (2)(b);
3 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 8(4); UC, PIP, JSA & ESA (C&P) Regs*

Example 1

Bella and Peter are single claimants who both have awards of UC including the LCW element. Bella's award included the LCW element from March 2016, and Peter's award included the LCW element from June 2016. They move in together, and their awards of UC as single claimants end on 26.5.17. Their new award of UC from 27.5.17 as joint claimants includes one LCW element for Bella.

Example 2

Rosie and Geoff are UC joint claimants. The DM determines that Rosie has LCW and the LCW element is included in their award from February 2016. Geoff is found to have LCW in December 2016, but their award already includes the LCW element, so no further LCW element can be included.

In May 2017, Rosie and Geoff separate, and both claimants are entitled to UC as single claimants from the day after their joint UC award ended. Rosie's award includes the LCW element, but Geoff's does not, because the previous UC award did not include the LCW element in respect of him.

Example 3

Catherine lives in a Live Service area, and has been entitled to UC since 14.6.16. She sends in fit notes from 24.1.17, and on 3.5.17 the DM determines that Catherine has LCW. The LCW element is included in her award from 14.5.17.

On 7.2.18 Catherine finds work, and her earnings after application of the work allowance and taper exceed her UC entitlement, so that her award terminates from 14.1.18. The job ends on 6.7.18, and Catherine is awarded UC from 14.6.18 without being required to claim it. She sends in fit notes with a different health condition, and after the WCA outcome, the DM determines that Catherine has LCW. Catherine's UC award includes the LCW element from 14.6.18.

Claimant entitled to LCW element before 3.4.17

- 8 The removal of the LCW element does not apply where the LCW element
1. was included in the claimant's UC award immediately before 3.4.17 **or**
 2. has not been included because¹
 - 2.1 the relevant period has not yet ended **or**
 - 2.2 the relevant period has ended, but the next assessment period has not started.

Note: See ADM [Chapter F5](#) (Work capability elements) for further guidance on the relevant period.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 9; UC Regs, reg 28(1)

Example

Leon has been entitled to UC since 16.7.15. On 4.1.17 Leon starts sending in fit notes, and he is referred for the WCA on 1.2.17. On 29.3.17 the DM determines that Leon has LCW. The relevant period is 4.1.17 – 3.4.17. Leon's award includes the LCW element from 16.4.17, the beginning of the assessment period after the assessment period in which the relevant period ended.

Claimant has LCW but LCW element is not included - award of carer element

9 Currently, where a claimant satisfies the conditions for the carer element and either the LCW element or the LCWRA element, only one element is included in the UC award¹. If the claimant has

1. LCW, only the carer element is included **or**
2. LCWRA, only the LCWRA element is included.

From 3.4.17, as the LCW element cannot be included, the condition in **1.** only needs to be considered for claimants who would otherwise continue to satisfy the conditions for the LCW element as in paragraphs 8 and 14 - 19².

1 UC Regs, reg 29(4); 2 ESA & UC (Misc Amdt etc.) Regs, reg 4(6) & Sch 2, Part 2

Example

Russell has been entitled to UC and CA since October 2015 while he cares for his brother Robert. Russell has LCWRA, and the LCWRA element is included in his award from February 2016.

Russell's health condition improves, and he is referred for a further WCA in June 2017. The DM determines that Russell has LCW. Under the savings provisions, the removal of the LCW element does not apply. However, as Russell is still caring for his brother, the carer element is included in his UC award, rather than the LCW element

If Russell stops caring for his brother and the carer element is no longer included in the award, the LCW element cannot be included (see paragraph 10).

10 Where

1. the claimant's award did not include the LCW element immediately before 3.4.17 because they were entitled to the carer element **and**
2. entitlement to the carer element ends on or after 3.4.17 **and**
3. the claimant has had LCW since the day before 3.4.17

the LCW element cannot be included in the award after entitlement to the carer element ends.

Example

Toni claimed UC in March 2015 while she was caring for her severely disabled father, and it was determined that she had LCW following the WCA outcome in September 2015. The LCW element was not included in her award, as the carer element was

included. Toni's father moves into a nursing home on 13.4.17, and Toni is unable to continue caring for him. Entitlement to the carer element ends, but although Toni continues to have LCW, the LCW element is not included in her UC award.

Claimant has LCW but LCW element is not included - joint claimants

- 11 Currently, for claims made before 3.4.17, an award of UC to joint claimants may include
1. one LCW element where one or both claimants have LCW **or**
 2. the LCWRA element where one claimant has LCWRA and the other has LCW **or**
 3. one LCWRA element where both claimants have LCWRA¹.

1 UC Regs, reg 27(4)

- 12 From 3.4.17, the LCW element cannot be included in the award unless any of the exceptions in paragraphs 8 and 14 - 19 apply. If both claimants have LCWRA, only one LCWRA element is included¹.

1 UC Regs, reg 27(4)

- 13 Where
1. before 3.4.17 the LCW or LCWRA element is included in an award to joint claimants as in paragraph 11 **and**
 2. on or after 3.4.17 there is a change of circumstances for either of the claimants

the DM should consider whether the LCW element can be included in the UC award as in paragraphs 8 and 14 - 19.

Note: See paragraph 7 for guidance where a further award of UC is made after formation or separation of a couple.

Example 1

Lesley and Dave are UC joint claimants. Lesley has LCW, and Dave has LCWRA. Their UC award includes only the LCWRA element from December 2016. Dave is referred for a further WCA, and is found not to have LCW or LCWRA from May 2017. Although Lesley still has LCW, the LCW element is not included in the award when entitlement to the LCWRA element ends, because it was not included for her on 3.4.17.

Example 2

Huan and Mei are UC joint claimants. Their award includes the LCW element from 2015 when the DM determines that Mei has LCW. Later it is determined that Huan also has LCW, but as the UC award already includes the LCW element, no further LCW element is included. In June 2017 Mei's health condition improves and the DM determines that Mei no longer has LCW. The UC award is superseded to remove the LCW element. Although Huan continues to have LCW, the LCW element cannot be included, because it was not included for him on 3.4.17.

Claimant entitled to LCWRA element before 3.4.17

14 Where

1. the claimant's award included the LCWRA element immediately before 3.4.17 **and**
2. on or after that date, it is determined that the claimant has LCW **and**
3. the claimant had LCWRA until it is determined that the claimant has LCW

the claimant's award of UC can include the LCW element¹.

Note: This does not apply if the claimant also satisfies the condition of entitlement to the carer element – see [F5022](#)².

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 10; 2 UC Regs, reg 29(4)(b)

Example 1

Ray's award of UC began on 4.11.16, and has included the LCWRA element since 19.1.17. On 26.5.17 following a repeat WCA, the DM determines that he has LCW. Ray's award is superseded to include the LCW element instead of the LCWRA element from 4.5.17.

Example 2

Sibyl's award of UC has included the LCWRA element since 8.2.17, due to pregnancy complications. Sibyl's baby is born on 7.6.17, and on 22.6.17 the DM determines that Sibyl does not have LCW or LCWRA. The LCWRA element is removed from her award from the date of decision. On 13.9.17 Sibyl sends in a fit note, and after the WCA, it is determined that she has LCW. Sibyl's award cannot include the LCW element, as she has not had LCWRA up to the date of the LCW determination.

Claimants awaiting the WCA

- 15 The removal of the LCW element does not apply where¹
1. immediately before 3.4.17 the claimant
 - 1.1 is awaiting referral for the WCA, or the outcome of the WCA² **and**
 - 1.2 has provided evidence of LCW³ **and**
 2. on or after 3.4.17 following the WCA, it is determined that the claimant has LCW.

Note: The guidance at 2. includes where a determination that the claimant does not have LCW is reversed on revision⁴ or appeal to the effect that the claimant does have LCW.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 11; 2 UC Regs, Part 5; 3 SS (Med Ev) Regs;

4 SS Act 98, s 9

Example

Tilda has been entitled to UC since 9.5.16. She sends in a fit note on 20.10.16, but on 1.2.17 the DM determines that Tilda does not have LCW. The decision refusing to include the LCW element in the UC award is not revised following mandatory reconsideration, and a subsequent appeal to the FtT is dismissed on 15.8.17. Tilda is granted permission to appeal to the UT, and the UT Judge sets aside the FtT decision, remitting the appeal for rehearing. The appeal is reheard on 1.11.18, and the FtT determines that Tilda has LCW. Tilda's UC award includes the LCW element from 9.2.17.

ESA decision changed on revision or appeal

- 16 The removal of the LCW element does not apply where¹
1. a UC claimant lodges an appeal or requests a mandatory reconsideration of a decision about entitlement to ESA, where the ESA claim was made before 3.4.17 **and**
 2. on or after 3.4.17 the DM revises the decision awarding UC to include the LCW element².

Note: See ADM [Chapter M4](#) (Effects of transition to UC – Gateway conditions) and [M6](#) (Effects of transition to UC – Digital service area) for guidance on revising UC

awards following a request for revision of or an appeal against a decision on entitlement to ESA.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 12; 2 WR Act 12 (Commencement No. 9 etc.) Order, art 24

Example 1

Steve's award of ESA(IR) from 12.9.16 is terminated on 22.2.17 after the DM determines that Steve does not have LCW. He claims and is awarded UC from 23.2.17. Steve then decides to dispute the ESA disallowance. The decision is not revised following a mandatory reconsideration, and Steve appeals to the FtT. The FtT allows the appeal on 10.11.17, finding that Steve has LCW. Steve is awarded arrears of the ESA WRAC up to 22.2.17, and the UC awarding decision is revised to include the LCW element from the first day of the UC award, 23.2.17.

Example 2

Connie is awarded ESA(IR) from 12.4.17, but the award is terminated from 7.8.17 when the DM determines that she does not have LCW. Connie claims UC from 22.8.17, and in the meantime disputes the ESA disallowance. On 8.11.17 the ESA disallowance is revised following mandatory reconsideration, and Connie is found to have LCW. Connie is paid ESA(IR) up to 21.8.17, but this does not include the WRAC as the ESA claim was made after 3.4.17. The UC award cannot be revised to include the LCW element.

Claimants entitled to ESA before 3.4.17

- 17 The removal of the LCW element does not apply where the claimant
1. was entitled to ESA immediately before 3.4.17 **and**
 2. remains entitled to ESA throughout the period beginning on 3.4.17 and ending on the date on which the UC claim is made or treated as made¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 13

Note: See ADM [Chapters M4](#) (Effects of transition to UC – Gateway conditions) and [M6](#) (Effects of transition to UC – Digital Service area) for detailed guidance on transition to UC from ESA to UC where the claimant has LCW.

Example 1

Geoffrey has been entitled to old style ESA since 8.9.16, and his award includes the WRAC. On 16.5.17 he joins his partner Arthur who has been entitled to UC as a single

unemployed claimant since 2.7.15. Geoffrey and Arthur are awarded UC from 2.5.17 including the LCW element. Geoffrey's award of old style ESA is terminated from 2.5.17, and is taken into account as unearned income for the UC award.

Example 2

Billy's award of old style ESA from 4.1.17 was terminated from 21.3.17 when he failed without good cause to return the questionnaire. He claims and is awarded ESA(IR) from 18.4.17, sending the questionnaire in with his repeat claim. After the WCA, the DM determines that Billy has LCW, but not LCWRA. Billy's award of ESA includes the WRAC from 3.5.17 under the ESA savings rules where linked periods of LCW begin before 3.4.17.

On 14.8.17 Billy moves in with his partner Tricia, who has been entitled to UC as a single unemployed claimant since 9.3.17. Although Billy is treated as having LCW under transition rules (see [M4132](#) - [M4133](#) and [M6192](#) - [M6193](#)) for the purposes of work-related requirements, Tricia and Billy's award of UC from 9.8.17 does not include the LCW element. This is because Billy was not entitled to ESA immediately before 3.4.17, and unlike ESA, UC does not have linked periods of LCW rules.

Credits only claimants

18 The removal of the LCW element does not apply where¹

1. immediately before 3.4.17, the UC claimant
 - 1.1 was entitled to be awarded NI credits on the basis that they had, or would have had, LCW² **and**
 - 1.2 was not entitled to old style ESA **and**
2. the entitlement to credits in 1.1 continues to apply for each week for the period beginning with 3.4.17 and ending on the date on which the UC claim is made or treated as made.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 14; 2 SS (Credits) Regs, reg 8B(2)(a)(iv), (iva) & (v)

Example

Philip is awarded old style ESA(Cont) and following the WCA, it is determined that he has LCW but not LCWRA. His award ends on 28.2.17 as he has been entitled for 365 days and he is not a member of the support group. He is not entitled to ESA(IR) as his wife Helena is in F/T employment, but he remains entitled to NI credits. Helena is made redundant from 1.11.18, and she and Philip claim UC as joint claimants who live

in a Full Service area. Philip is treated as having LCW under transition rules (see [M4132 - M4133](#) and [M6192 - M6193](#)), and the award of UC from 8.11.18 includes the LCW element from the beginning of the first assessment period.

Claimants entitled to IB, IS, SDA or NI Credits

19 The removal of the LCW element does not apply to a UC claimant who, throughout the period beginning immediately before 3.4.17 and ending on the date the UC claim was made or treated as made, was entitled to¹

1. IS on the grounds of incapacity for work or disability **or**
2. IB **or**
3. SDA **or**
4. NI credits on the basis of IfW.

Note: See ADM [Chapters M4](#) (Effects of transition to UC – Gateway conditions) and [M6](#) (Effects of transition to UC – Digital Service area) for detailed guidance on the consequences for UC claimants who are entitled as in **1. - 4.**

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 15; UC (TP) Regs, reg 22 - 24 & 26 - 27

Example

Tom is entitled to NI Credits and is incapable of work. He is also entitled to the lowest rate care and lower rate mobility components of DLA. His partner Alice takes voluntary redundancy, and three months later the couple claim UC on 24.8.17. Tom will reach pensionable age on 22.11.17. Tom is treated as having LCW, and the LCW element is included in Tom and Alice's UC award from the beginning of the first assessment period starting on 31.8.17.

CONSEQUENTIAL CHANGES

IS & JSA housing costs

20 The description of a disabled person at [DMG 23410](#) is amended to remove any reference to amounts for LCW or LCWRA. From 3.4.17 a disabled person is described as a person who, among the other conditions, is entitled to UC and has LCW or LCWRA¹.

1 IS Gen Regs, Sch 3, para 1(3)(e); JSA Regs, Sch 2, para 1(3)(f); UC Regs, reg 39 & 40

SPC housing costs

- 21 The description of a disabled person at DMG 78186 is amended to remove any reference to the WRAC. From 3.4.17 a disabled person is described as a person who, among the other conditions, is entitled to UC and has LCW or LCWRA¹.

1 SPC Regs, Sch II, para 1(2)(a)(iii)(ff); UC Regs, reg 39 & 40

ESA housing costs

- 22 The description of a disabled person at DMG 44210 is amended to remove any reference to the WRAC. From 3.4.17 a disabled person is described as a person who, among the other conditions, is entitled to UC and has LCW or LCWRA¹.

1 ESA Regs, Sch 6, para 1(3)(e); UC Regs, reg 39 & 40

SF Cold Weather Payments

- 23 L4092 is amended to read that where the claimant has been awarded UC, the second condition¹ is that, in respect of the day to which L4091 relates,

1. the award includes an amount for a child or qualifying young person who is disabled² **or**
2. the claimant has LCW or LCWRA³.

1 SFCWP (Gen) Regs, reg 1A(3); 2 WR Act 12, s 10(2); 3 UC Regs, regs 39 & 40

WORK-RELATED REQUIREMENTS

Conditionality and responsible carers

- 24 From 3.4.17 the conditionality requirements for claimants who also are the responsible carer of a child (usually the youngest child in the UC award) in certain age groups will change. A claimant who is the responsible carer of a child

1. aged 1 may be required to undertake a work-focused interview requirement only **or**
2. aged 2 may be required to undertake a work-focused interview requirement and a work preparation requirement **or**
3. aged 3 or 4 is subject to all work-related requirements.

1 WR Act 12, s20; 2 WR Act 12, s21; 3 WR Act 12 s22

The earnings threshold and responsible carers

- 25 Work-related requirements do not apply to claimants where their monthly earnings are equal to, or exceed their individual threshold¹ (commonly referred to as the conditionality earnings threshold). The individual threshold for claimants in the work-focused interview group or subject to work preparation requirements only is 16 hours per week². For claimants subject to all work-related requirements, the individual threshold³ is determined by calculating the monthly amount that a worker of the same age would be paid at the appropriate NMW rate multiplied by their expected number of hours⁴ per week.

1 UC Regs, reg 90(1); 2 reg 90(2)(a); 3 reg 90(2)(b); 4 reg 88(1)

- 26 The regulations amend the expected hours for those claimants who are a responsible carer of child¹ under compulsory school age. From 3.4.17, the expected number of hours for a claimant who is the responsible carer of a child under compulsory school age are the number of hours that the Secretary of State considers compatible with their caring responsibilities¹. Compulsory school age generally begins in the school term following the child's 5th birthday. Where the child is over compulsory school age but under the age of 13, the expected hours are those hours less than 35 that the Secretary of State considers is compatible with the child's normal school hours (including the time it takes the child to travel to and from school)³.

1 UC Regs, reg 4; 2 reg 88(2)(aa); 3 reg 88(2)(b)

Example

Richard is a 27 year old single parent and is the responsible carer for his three year old son, Cassius. It has been agreed with Richard's adviser at the UC outlet that his expected hours of work should be 16 hours per week because this fits in with his caring responsibilities for Cassius. Richard does not have to show he has reasonable prospects of obtaining paid work.

When working out Richard's earnings threshold, the calculation is the NMW rate appropriate to Richard multiplied by 16 and converted to a monthly amount - £7.20 x 16 = £115 x 52 ÷ 12 = £499. Therefore for conditionality purposes, Richard's monthly earnings threshold is £499.

ANNOTATIONS

Please annotate the number of this memo (Memo ADM 7/17) against the following DMG and ADM paragraphs:

DMG [23410](#), [44210](#), [78186](#)

ADM [F5010](#), [F5020 heading](#), [F5022](#), [F6014 heading](#), [J2085 heading](#), [J2086](#), [J2103 heading](#), [J2110 heading](#), [J3055 heading](#), [J3053 heading](#), [J3055](#), [G1002](#), [G2004](#), [L4092](#), [M4130 heading](#), [M6190 heading](#)

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: April 2017

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