ADMINISTRATIVE AND FINANCIAL PROVISIONS BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

- 1. This Explanatory and Financial memorandum has been prepared by the Department of Finance (DoF) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
- 2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

- 3. Financial Provisions Bills are normally brought forward at appropriate intervals to deal with routine financial matters that require amendments to governing legislation. In developing this Bill, Departments requested that several miscellaneous administrative matters also be included. Following consideration these requests were accommodated.
- 4. The Bill gives effect to the following policy proposals for each of these Departments;

Department for Agriculture, Environment and Rural Affairs ("DAERA")

5. To amend aspects of the Marine and Coastal Access Act 2009 providing DAERA with greater powers to charge fees for marine licensing activities.

Department for Communities ("DfC")

- 6. To enable the Housing Executive to undertake tenancy fraud investigations on behalf of the housing association sector. To be able to charge housing associations a fee for this service and to enable the housing associations to share data with the Housing Executive for the purposes of investigating tenancy fraud.
- 7. To transfer responsibility for setting the amount of the basic allowance to be paid to councillors from individual councils to DfC.

Department for the Economy ("DfE")

8. To enable DfE to provide financial assistance where it is likely to be in the interest of the economy, including grants, loans, guarantees, indemnities or the acquisition

of a right or interest or in any other form. Also to provide DfE the power to form limited companies.

- 9. To provide DfE the power to make loan funding available to the higher education sector.
- 10. To amend the Employment and Training Act (Northern Ireland) 1950 removing the requirement for DfE to require DoF approval for schemes which use this legislation.
- 11. To alter the ability of Tourism NI to charge fees and to provide DfE the power to exempt or remit certain fees. In addition, Tourism NI will be provided with the power to classify or grade tourist amenities.
- 12. To remove the requirement for separate mineral and petroleum cash accounts, the transactions of which are already included within the main DfE resource accounts.

Department of Education ("DE")

13. To allow DE to provide financial support in connection with post-graduate degrees in educational psychology.

Department of Finance ("DoF")

- 14. To amend the Audit (Northern Ireland) Order 1987 to transfer the responsibility for the appointment of the external auditor of the Northern Ireland Audit Office ("NIAO") from DoF to the NI Assembly Audit Committee.
- 15. To provide DoF with power to make loans for the purposes of an investment fund.
- 16. To increase the 2% limit on advances that can be taken from the Consolidated Fund to 4%.

Department for Infrastructure ("DfI")

17. To provide DfI with the power, exercisable through regulations, to charge a fee for the issue of a travel concession pass.

The Executive Office ("TEO")

- 18. TEO will be provided with a power to provide services to support the integration of refugees and asylum seekers. A further power will enable TEO to provide services to victims and survivors of abuse.
- 19. TEO will also be provided with a power to provide opportunities for people to acquire the skills or experience necessary for public appointments.
- 20. TEO will also be provided a power to undertake activity in respect of the Strategic Framework on Ending Violence Against Women and Girls.

21. The Bill will also amend the Historical Institutional Abuse (Northern Ireland) Act 2019, with regards to the length of time the Commissioner for Survivors of Institutional Childhood Abuse may be appointed for, this now being for a period not exceeding 5 years.

CONSULTATION

- 22. The Bill is technical and non-controversial in nature and therefore no consultation has been undertaken on the Bill in its entirety.
- 23. Several Departments, in developing their provisions, have undertaken public consultation on their aspects of the Bill:
 - DAERA: Consultation on Review of Marine Licensing Fees, July 2024
 - DfE: Consultation on Financial Provisions Bill, June 2024
 - DfI: Consultation on Changes to Concessionary Fares Scheme, June 2023
- 24. The details of these consultation exercises and supporting documents can be found on the Departmental websites. A link to each of these is provided in Annex A.

OPTIONS CONSIDERED

- 25. For each of the powers included in the Bill, it has been determined that action was necessary as each of the powers sought were required. Further consideration was given as to the best means to introduce these powers, be this through a separate Bill by each Department or some other suitable legislative vehicle. It was concluded that the provisions would not justify separate Bills and the most appropriate method of dealing with the provisions was through this Administrative and Financial Provisions Bill which is being promoted by DoF, likewise there were no other suitable legislative vehicles available.
- 26. It was also recognised that for Clauses 6, 7, 8 and 9 TEO were incurring expenditure and routinely relying on sole authority of the Budget Act as the legislative means to provide the powers to TEO to incur the necessary expenditure. This has been a concern raised by Assembly Members at various times. As the expenditure involved is significant and recurrent it is necessary to provide TEO these powers and thereby eliminate the reliance on sole authority of the Budget Act by TEO.

COMMENTARY ON CLAUSES

The Bill consists of 20 substantive clauses as well as clauses dealing with interpretation, commencement and the short title. In reading the Bill it is worth noting that clause 21 defines "data protection legislation" and "statutory provision" but otherwise these three clauses speak for themselves and no further explanation is given here. The following paragraphs provide details on each of the substantive clauses and do so in the order in which they are contained within the Bill. Next to each clause title is a note of the Department responsible for the policy.

POWERS: (Clauses 1-14)

Clause 1: Strategic investment funding (DoF)

In 2018, the Executive introduced the NI Investment Fund to provide a funding source for the purposes of stimulating the economy and delivering economic growth. The Investment Fund established as a private sector entity is funded via loan capital, namely Financial Transactions Capital ("FTC"). FTC is funding allocated to the Executive by the United Kingdom Government. The Executive has discretion over FTC allocation to projects. However, FTC can be deployed only as a loan or equity investment in a capital project delivered by a private sector entity. DoF was tasked by the Executive to oversee this fund.

When the Investment Fund was established, DoF did not have the legislative powers to issue loan funding. To facilitate the establishment of the Investment Fund, funding was distributed via the Strategic Investment Board ("SIB"), an arms' length body of TEO.

While these arrangements have been successful, in delivering the objectives of the Fund, it was always the intention that this would be a temporary arrangement, until such times as DoF obtained the necessary power, at which point the Investment Fund would transfer from TEO and SIB to DoF.

This Bill provides the first suitable opportunity to provide DoF with the necessary statutory power to issue loans to the Investment Fund. The introduction of this clause will improve accountability, regularity and propriety in the use of funding provided to the Investment Fund.

Clause 2: Economic support (DfE)

This clause will confer a power for DfE to provide financial assistance, including grants, loans, guarantees or indemnities, where it is likely to be in the interest of the economy.

During the Covid-19 pandemic, DfE found that its current legislative provisions were insufficient to provide financial assistance in an efficient and timely manner. These limitations on DfE's powers to act drew criticism from the NIAO. This clause seeks to rectify this position.

DfE does not seek to duplicate existing powers, rather the aim is to provide a safety net to allow DfE to provide access to financial assistance in the interest of the local economy, where others cannot provide such assistance, or in circumstances when others cannot act with sufficient speed. The exercise of such a power would be underpinned by a 'statement of general approach' or 'guiding statement' which would ensure a degree of consistency and predictability.

DfE also wish to utilise this clause to provide DfE loan-making power for FTC, thus supporting DfE to utilise FTC that may be available.

A further power DfE will be provided with is the power to form limited companies. Before the establishment of Invest NI, DfE's predecessors were able to avail themselves of the general powers in Article 8 of the Industrial Development (Northern Ireland) Order 1982,

which includes the power to establish a company. With the enactment of section 2 of the

Industrial Development Act (Northern Ireland) 2002 that power was lost.

There have been occasions where DfE has had to request that Invest NI forms a company as DfE no longer has the power to do so. The absence of this power has limited the delivery options available to DfE. This clause will enable DfE to have the power to form a company where this would benefit the economy. DfE considers that this would be a relatively little used power, but it may aid the delivery of policy objectives in the future.

Clause 3: Higher education funding (DfE)

Article 30(1) of the Education and Libraries (Northern Ireland) Order 1993 gives DfE power to provide grants to the higher education sector. But that provision does not confer power to provide loan funding to this sector. DfE is therefore in a similar position to DoF as noted above when it comes to utilising FTC in relation to capital projects in the higher education sector. As such DfE has also utilised TEO and SIB to provide loan funding to the sector for major capital projects. By providing this power to DfE, these arrangements will no longer be needed, thus improving accountability, regularity and propriety.

Clause 4: Support in relation to employment and training (DfE)

Skills funding initiatives often rely on older legislation, such as section 1 of the Employment and Training Act (Northern Ireland) 1950. This section allows DfE to make arrangements, in respect of the selection of, and training for, employment, including apprenticeships. Under this older legislation, advance approval from DoF is required irrespective of the funding involved.

This clause will amend section 1 so as to remove this requirement and the approval of schemes using this legislation will fall within the normal Departmental delegations for DoF approvals.

Clause 5: Classification or grading of tourist amenities (DfE)

Current legislation does not provide Tourism NI the legal power to operate its Visitor Experience Grading Scheme. This clause therefore amends the Tourism (Northern Ireland) Order 1992 to extend Tourism NI's powers to them to grade or classify tourist amenities, for example museums, tours, art venues, wildlife experiences, gardens, and visitor attractions/activities. This will be alongside their existing powers to grade or classify tourism establishments (i.e. accommodation providers).

Clause 6: Support services for victims and survivors (TEO)

Presently under the Victims and Survivors (Northern Ireland) Order 2006 TEO has the power to provide support services to victims and survivors of the Troubles/Conflict. TEO has done this via the Victims and Survivors Service ("VSS"). In recent years, as a result of the expertise developed, VSS on behalf of TEO, have started to provide services to victims and survivors of historical institutional abuse and Mother and Baby Institutions, Magdalene Laundries and Workhouses.

TEO has relied on the sole authority of the Budget Act giving TEO the power to arrange or facilitate victims support services directly for these additional groups. In addition, it confers a power by regulations to extend the power to other groups in order to ensure a rapid and flexible response as needed.

This clause in the Bill, will empower TEO to provide services to victims and survivors of forms of abuse including historical institutional abuse and Mother and Baby Institutions, Magdalene Laundries and Workhouses, thus ensuring that TEO has the necessary legislative powers to provide these services.

Clause 7: Asylum and immigration integration support services (TEO)

Immigration policy, which includes routes and decisions for those seeking refuge or asylum, is an excepted matter and is therefore administered by Westminster. TEO, however, has responsibility for co-ordinating services and support for those arriving to aid integration. This includes the implementation of resettlement and visa schemes locally and integration support for those seeking asylum. Examples of support include welcome arrangements, advice and signposting.

Despite receiving funding from Whitehall Departments to deliver these services, TEO does not have the legal authority for this expenditure and is thus relying on sole authority of the Budget Act. This clause seeks to amend this situation by providing TEO with the necessary power. Because the categories of individuals who these services are relevant for may change as a result of legislative or administrative action at United Kingdom level, the clause confers a power by regulations to modify the categories over time.

Clause 8: Public appointments: provision of development opportunities (TEO)

The Executive Office is responsible for public appointments policy across the Northern Ireland Civil Service, with individual appointment responsibility resting with the respective Minister.

This clause will provide TEO with power to provide, or arrange or facilitate, opportunities for people to acquire the skills or experience necessary for public appointments, as and when required. The aim of this is to encourage diversity in public appointments with the resulting positive impact on public sector board effectiveness, where boards are more representative of the communities they serve.

Clause 9: Ending violence against women and girls (TEO)

This clause will provide TEO with an express power to implement the Strategic Framework on Ending Violence Against Women and Girls 2024-31 and its successor strategies and to incur expenditure on this work, including on a grants fund.

The reference to the Strategic Framework's "aims (however described)" in subsection (1) refers to the six Outcomes in the current 2024-2031 Strategic Framework. The "aims (however described)" will also be taken to refer to any objective-related language that may be used in the Strategic Framework in the future, thus future-proofing the provision.

Only in exceptional circumstances would TEO exercise its general power in relation to the Strategic Framework on Ending Violence Against Women and Girls, to replace the funding stream of another Northern Ireland Department.

Clause 10: Section 9: supplementary (TEO)

This clause sets limits on TEO's use of its clause 9 power, for example where its powers are limited by another piece of legislation (such as freedom of information or data protection legislation) or using its clause 9 power would unreasonably duplicate the work of another Department and that Department does not give its consent to that action.

Clause 11: Postgraduate qualifications in educational psychology (DE)

This clause will provide DE with a specific power to make payments to both students and to higher education bodies in respect of a bespoke post-graduate course in Educational Psychology.

Currently DE provides funding to Queens University Belfast to fund the Doctorate in Education, Child and Adolescent Psychology. This course is the only realistic source of the educational psychologists that are required by the Education Authority in order to meet their statutory duties in relation to special educational needs. For this reason, DE supports financially both the provision of the course and students undertaking it.

The change is required as DE has become aware that the relevant power to make such awards in respect of post-graduate courses was transferred to DfE in 1999. This clause seeks to rectify this situation.

Clause 12: Investigation of housing association tenancy fraud (DfC)

This clause provides the NI Housing Executive ("NIHE") with the power to undertake tenancy fraud investigations on behalf of registered housing associations ("RHAs") and to charge RHAs for that service.

Although NIHE currently carries out tenancy fraud investigations for its own tenants, the current legislation does not enable the NIHE to undertake investigations on behalf of the RHA sector.

The provision is required to allow the NIHE to charge RHAs for investigation and related services. Related services could include for example, work involved for NIHE, if they were required to take an RHA fraud case to court. NIHE would not be able to fund this service at its own expense and so it needs to be able to charge the housing associations for investigating tenancy fraud on their behalf.

The intention is that RHAs will continue with their current investigating role, however they would also be able to request the expertise within the NIHE to progress tenancy fraud investigations for more complex cases.

The clause will also include provision for RHAs to disclose relevant information to the NIHE for the purposes of investigation and provision for the NIHE to report to the Association including any information that NIHE considers appropriate. To facilitate investigations, the

clause contains provision to enable data to be shared between RHAs and the NIHE for the purpose of investigating tenancy fraud.

The changes are required to meet longstanding recommendations made by both the NIAO and the Public Accounts Committee in 2014 to establishing a single tenancy fraud team to provide investigative services to both the NIHE and the RHA sector.

Clause 13: Setting of rate of basic allowance for councillors (DfC)

The purpose of this clause is to transfer responsibility for setting the amount of the basic allowance to be paid to councillors from individual councils to DfC.

Section 31(1) of the Local Government Finance Act (Northern Ireland) 2011 confers power on DfC to make regulations providing for the payment of allowances to councillors. Subsection (2) of that section provides that payments under the regulations are to be of such amounts as may be determined by the council, subject to a maximum set by DfC. Regulation 4 of the Local Government (Payments to Councillors) Regulations (Northern Ireland) 2019 permits councils to pay councillors a "basic allowance".

The effect of these provisions is that councillors are paid different levels of basic allowance depending on the council they serve.

This clause removes responsibility for setting the amount of the basic allowance to be paid to councillors from councils and will instead permit DfC in future to determine the actual amount of the basic allowance to be paid to all councillors.

Consequently, the clause also amends regulation 4 of the 2019 Regulations to require councils to pay a basic allowance to councillors.

Clause 14: Discretion as to a particular Commissioner's term of office.

This clause will amend the Historical Institutional Abuse (Northern Ireland) Act 2019. In doing so the Commissioner for Survivors of Institutional Childhood Abuse may now be appointed for "a period not exceeding" 5 years instead of "for a term of" 5 years.

This amendment has been sought to enable TEO to appoint a Commissioner for a period less than 5 years, if required.

FEES: (Clause 15-17)

Clause 15: Northern Ireland Tourist Board (DfE)

This clause amends the Tourism (Northern Ireland) Order 1992 in respect of some fees charged by Tourism NI, thus allowing DfE to exempt or remit certain fees in exceptional circumstances, and to also charge new fees.

Under the existing legislation Tourism NI can charge fees for certain activities, however, there is no legal power to exempt or remit (reduce) fees, even in exceptional circumstances such as the compulsory closure of parts of the sector as experienced in the recent pandemic.

The Bill proposes an amendment to the Order to give DfE powers to exempt or reduce fees in the future, via regulations.

This clause will allow Tourism NI to have the flexibility to introduce new fees where appropriate and to raise fees for services or events which encourage and improve tourism.

Clause 16: Marine licensing (DAERA)

This clause amends the Marine and Coastal Access Act 2009 to provide DAERA with greater powers to charge fees for activities for which a marine licence is required.

This clause increases DAERA's powers as the appropriate licensing authority for the Northern Ireland inshore region (0-12 nautical miles) by introducing powers to charge for pre-application advice and assistance services, monitoring compliance with the conditions of licences, and dealing with applications for the variation, suspension, transfer, etc. of licences.

This clause amends section 72A of the Marine and Coastal Access Act 2009, which sets out fee charging powers. In doing so it will enable DAERA to deliver a more effective marine licensing service by increasing DAERA's cost recovery rate for marine licensing services that DAERA currently provides.

Clause 17: Travel concession passes (DfI)

The purpose of this clause is to provide DfI with the power, exercisable through regulations, to impose a fee for the issue of a SmartPass or a duplicate SmartPass (in replacement of one lost, damaged or stolen) under the Concessionary Fares Scheme.

The Concessionary Fares Scheme was established to promote accessible public transport for members of the community who are most at risk of social exclusion by providing free and discounted fares on public transport for some groups of people.

In recent years the affordability of the Scheme has come under greater pressure, creating challenges for the continued delivery of the Scheme in its current form. It is anticipated that these costs will continue to rise due to a growing eligible population entitled to the agerelated concession and future fare increases.

By requiring applicants to pay a fee for a SmartPass DfI intends to reduce the costs of the Scheme, helping to maintain its long-term sustainability while ensuring it continues to be targeted on those who are most vulnerable, or liable, to social exclusion.

DfI will be permitted to set a fee at an amount that exceeds the administrative cost of issuing a SmartPass, however, when doing so DfI must aim to ensure that the total income from fees in a given financial year does not exceed the total costs arising from the issue of all SmartPasses in that financial year. This approach will allow DfI to introduce mitigations for section 75 groups, for example, by setting lower fees for some groups or exempting groups from having to pay fees, while still recovering the total administration costs in a given financial year.

Financial governance (Clauses 18-20)

Clause 18: Advances out of Consolidated Fund: increase in limit (DoF)

Article 6 of the Financial Provisions (Northern Ireland) Order 1998 allows DoF to make advances out of the Consolidated Fund for urgent services, for anticipated receipts or to any Department for the provision of working cash balances.

This power was provided to DoF to deal with situations whereby departments might have to incur sudden, unexpected, additional expenditure in the event of major incident, e.g. foot and mouth disease, COVID, etc.

The purpose of the power is to allow additional expenditure to take place quickly, without delay, to deal with an urgent incident or crisis, thereby allowing urgent expenditure to take place without having to wait for a Budget Bill to be taken through the Assembly. Currently the limit to such an advance is 2% of the authorised supply expenditure from the previous financial year.

This clause will increase this limit to 4%. This increase in the limit is being taken forward as it is seen as a prudent measure, given recent events notably the Covid Pandemic and the absence of an Executive. These incidents have demonstrated that the 2% limit to the contingency would be excessively limiting in terms of the funding DoF could provide to Departments if such an advance was required to maintain public services.

Clause 19: Petroleum and minerals: removal of requirement for separate accounts (DfE)

Under section 51 of the Mineral Development Act (Northern Ireland) 1969 and section 12 of the Petroleum (Production) Act (Northern) 1964, DfE is required to provide separate accounts showing the receipts and expenditure under those Acts in any given financial year.

For the purposes of efficiency, this clause removes the requirement for separate cash accounts under the Acts as the transactions are already included within the main DfE resource accounts.

Clause 20: Appointment of auditor for NI Audit Office (DoF)

This clause amends the Audit (Northern Ireland) Order 1987, transferring the responsibility for the appointment of the external auditor of the NIAO from DoF to the NI Assembly Audit Committee.

The appointment and duties of the Auditor of the NIAO are governed by the Audit (Northern Ireland) Order 1987, which provides that DoF appoint an external auditor for the NIAO. In essence this requirement means that DoF are required to run procurement exercises to appoint a suitable firm to act as external auditor for the NIAO.

However, under an extra statutory provision this appointment is made by DoF on the endorsement of the Audit Committee of the NI Assembly. With the exception of administratively running the auditor procurement competition after appointing the successful firm and advising the Audit Committee accordingly, DoF plays no further role in managing

the audit process. NIAO liaise on an operational basis with the appointed firm to ensure that their accounts are audited, while the NI Assembly Audit Committee may require the firm to attend one of their meetings to discuss the NIAO's annual audited accounts.

All parties (DoF, NIAO and the Assembly Audit Committee) have agreed that responsibility for the appointment of the external auditor to the NIAO should be transferred to the Assembly Audit Committee. This clause therefore seeks to action this change.

FINANCIAL EFFECTS OF THE BILL

27. The Bill only provides enabling powers to incur expenditure or to raise fees, and therefore in itself does not have any financial implications. Where new fees are to be introduced, these are being done to ensure public services can be maintained and delivered in a financially sustainable manner.

HUMAN RIGHTS ISSUES

28. The Bill is a technical one dealing with routine administrative and financial issues and therefore there are no human rights issues.

EQUALITY IMPACT ASSESSMENT

- 29. An EQIA screening assessment was completed following which it was recommended that a full EQIA was not necessary. DoF has engaged with counterparts in the other Departments and public consultation and equality impact assessments have been completed by the following Departments:
- DE: Postgraduate qualifications in educational psychology
- DfE: Legislation to resolve issues in regard to the Department's financial powers
- DfI: Changes to the Concessionary Fees Scheme
- 30. The details of these Screening Exercises and supporting documents can be found on the Departmental websites. A link to each of these is provided in Annex A.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

31. An RIA screening assessment was completed following which it was recommended that a full RIA was not necessary. DoF has engaged with counterparts in the other Departments, and it was deemed that the provisions have no regulatory impact.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

32. Both DfC and the NI Housing Executive have completed a full Data Protection Impact Assessment (DPIA) on Clause 12 (Investigation of housing association tenancy fraud).

RURAL NEEDS IMPACT ASSESSMENT

33. DoF has engaged with counterparts in the other Departments and public consultation and rural needs impact assessments have been completed by the following Departments:

• DAERA: Marine licensing fees

• DE: Postgraduate qualifications in educational psychology

• DfE: Financial Provisions Bill

• DfI: Changes to the Concessionary Fees Scheme

34. The details of these Screening Exercises and supporting documents can be found on the Departmental websites. A link to each of these is provided in Annex A.

LEGISLATIVE COMPETENCE

At Introduction the Minister of Finance had made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Administrative and Financial Provisions Bill would be within the legislative competence of the Northern Ireland Assembly."

SECRETARY OF STATE CONSENT

The Secretary of State's consent is required by section 8 of the Northern Ireland Act 1998 and a statement of such consent is required for the purpose of section 10 (3) (b) of that Act:

"The Secretary of State has consented to the Assembly considering this Bill"

Annex A

DAERA Consultation:

https://www.daera-ni.gov.uk/publications/marine-licensing-northern-ireland-application-fees-202425-consultation-responses

DfI Consultation:

<u>Summary of Responses - Consultation on changes to the Concessionary Fares Scheme | Department for Infrastructure</u>

DfE Consultation:

Response to consultation - A proposal for primary legislation to resolve issues in regard to the Department's financial powers | Department for the Economy

DE EQIA:

<u>Equality and Human Rights Screening - Financial Provisions Bill DECAP | Department of Education</u>

DfC EQIA:

<u>Proposals to allow the Northern Ireland Housing Executive NIHE) and the Registered</u> <u>Housing Associations (RHAs) to work better together on the investigation of tenancy fraud-screening | Department for Communities</u>

DfE EQIA:

Screening flowchart and template

DfI EOIA:

Draft Stage 6 report including updated Equality Impact Assessment

DAERA Rural Needs Assessment

Rural Needs Impact Assessment

DE Rural Needs Assessment:

DE Rural Needs Impact Assessment on Financial Provisions Bill DECAP | Department of Education

DfE Rural Needs Assessment

Financial Provisions legislation - consultation draft - RNIA - 29 May 2024.docx

DfI Rural Needs Assessment:

Rural Needs impact (proofing) Assessment template



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