Draft Order laid before Parliament under section 44(3) of the Countryside and Rights of Way Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

COUNTRYSIDE, ENGLAND

The Access to the Countryside (Coastal Margin) (England) Order 2010

Made - - - -	***
Coming into force - -	***

The Secretary of State makes the following Order in exercise of the powers conferred by section 3A of the Countryside and Rights of Way Act 2000(**a**).

In accordance with section 44(3) of that Act(**b**), a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Preliminary

Citation, commencement and application

1.—(1) This Order may be cited as the Access to the Countryside (Coastal Margin) (England) Order 2010.

(2) This Order comes into force on 6th April 2010.

(3) This Order applies in relation to England only.

General interpretation

2. In this Order—

"alternative route strip", in relation to an official alternative route, means the land which becomes coastal margin during the operation of that route;

"approved section of the English coastal route" means a route in relevant approved proposals (other than an official alternative route);

"the CROW Act" means the Countryside and Rights of Way Act 2000;

"relevant coastal margin", in relation to relevant approved proposals, means the land which becomes coastal margin by virtue of article 3(2) or (3) as a result of the proposals being approved;

(**a**) 2000 c.37. Section 3A was inserted by section 303(5) of the Marine and Coastal Access Act 2009 (c. 23) ("the 2009 Act").
(**b**) Section 44 is amended by section 303(8) of the 2009 Act.

"temporary route" means a route for the time being having effect by virtue of a direction under section 55I of the 1949 Act(**a**).

Descriptions of land

Descriptions of coastal margin

3.—(1) Land in England is coastal margin for the purposes of Part 1 of the CROW Act (access to the countryside) if it falls within one or more of the following descriptions.

(2) The first description of land is—

(a) land over which the line of an approved section of the English coastal route passes,

(b) land which is adjacent to and within 2 metres either side of that line, and

(c) land which is seaward of the line of an approved section of the English coastal route and lies between land within sub-paragraph (b) in relation to that approved section and the seaward extremity of the foreshore,

if the land within sub-paragraphs (a) to (c), taken as a whole, is coastal land.

(3) The second description of land is land which—

(a) is landward of the line of an approved section of the English coastal route,

(b) is—

(i) foreshore, cliff, bank, barrier, dune, beach or flat, or

(ii) land of any other kind, which is treated by section 15(1) as being accessible to the public apart from the CROW Act, and

(c) when taken together with land within the first description in relation to the approved section, is coastal land.

(4) The third description of land is—

(a) land over which the line of an official alternative route which is for the time being in operation passes, and

(b) land which is adjacent to and within 2 metres either side of that line.

(5) The fourth description of land is—

(a) land over which the line of a temporary route passes, and

(b) land which is adjacent to and within 2 metres either side of that line,

to the extent that the land is within section 55I(4)(d) of the 1949 Act(**b**) (land over which the owner has agreed the temporary route may pass).

Cases where route determined in accordance with provision in the proposals

4.—(1) This article applies where relevant approved proposals contain a proposal of the kind mentioned in section 55B of the 1949 Act(**c**) (power to determine the route in accordance with provision made in the report) in relation to an approved section of the English coastal route or part of an approved section.

(2) In article 3(2) the references to the line of an approved section of the English coastal route are, in relation to that section or part, references to the line of the section or part as it has effect from time to time in accordance with the relevant approved proposals.

(**a**) Section 55I was inserted by section 302 of the 2009 Act. For the definition of "the 1949 Act" see section 3A(10) of the CROW Act.

(**b**) Section 55I was inserted by section 302 of the 2009 Act.

(**c**) Section 55B was inserted by section 302 of the 2009 Act.

Cases where landward boundary of coastal margin to coincide with physical feature

5.—(1) This article applies where relevant approved proposals contain a proposal under section 55D(2)(a) of the 1949 Act(**a**) for the landward boundary of the relevant coastal margin, or any part of that boundary, to coincide with a physical feature identified in the proposal.

(2) The landward boundary of the relevant coastal margin or part is (despite article 3(2) and (3)) to coincide with that feature.

(3) It is immaterial whether the effect of this article is—

(a) to include land as coastal margin, or

(b) to exclude part of an area of coastal land from being coastal margin.

Cases where official alternative route determined in accordance with provision in the proposals

6.—(1) This article applies where, by virtue of section 55C(6) of the 1949 Act(**b**) (application to alternative routes of power conferred by section 55B etc), relevant approved proposals contain a proposal of the kind mentioned in section 55B of that Act(**c**) in relation to an official alternative route or part of an official alternative route.

(2) In article 3(4), the references to the line of an official alternative route are, in relation to that official alternative route or part, references to the line of the route or part as it has effect from time to time in accordance with the relevant approved proposals.

Cases where landward or seaward boundary of alternative route strip to coincide with physical feature

7.—(1) This article applies where relevant approved proposals contain a proposal under section 55D(2)(b) of the 1949 Act(**d**) for the landward or seaward boundary of an alternative route strip in relation to an official alternative route, or any part of such a boundary, to coincide with a physical feature identified in the proposal.

(2) The boundary in question is (despite article 3(4)) to coincide with that feature.

Modifications of Part 1 of the CROW Act

Modifications of Part 1 of the CROW Act

8. The Schedule contains amendments of Part 1 of the CROW Act (access to the countryside) which modify the way in which that Part applies in relation to land which is coastal margin.

In the Schedule—

Part 1 contains amendments of Schedule 1 to that Act (excepted land for purposes of Part 1),

Part 2 contains amendments of Schedule 2 to that Act (restrictions to be observed by persons exercising right of access),

Part 3 contains amendments of Chapter 2 of Part 1 of that Act (exclusion or restriction of access), and

Part 4 contains other amendments of that Part.

(**a**) Section 55D was inserted by section 302 of the 2009 Act.
(**b**) Section 55C was inserted by section 302 of the 2009 Act
(**c**) Section 55B was inserted by section 302 of the 2009 Act.
(**d**) Section 55D was inserted by section 302 of the 2009 Act.

Signed by authority of the Secretary of State

Name
Address — Parliamentary Under Secretary of State
Date — Department for Environment, Food and Rural Affairs

SCHEDULE 1

Article 8

Amendments of Part 1 of the CROW Act

PART 1

Excepted land for purposes of Part 1 of the CROW Act

1. Schedule 1 to the CROW Act is amended as follows.

2. In paragraph 1 (land on which soil has been disturbed by ploughing etc), at the end add "(other than land which is coastal margin and is, or forms part of, a coastal route strip)".

3. In paragraph 3 (land within 20 metres of a dwelling), after "Land" insert "(other than coastal margin)".

4. In paragraph 7 (land used for the purposes of a golf course, racecourse or aerodrome), at the end add "(other than, in the case of land used for the purposes of a golf course, land which is coastal margin and is, or forms part of, a coastal route strip)".

5. For paragraph 8(**a**) (land covered by works used for the purposes of a statutory undertaking etc) substitute—

"**8.** Land which does not fall within any of the preceding paragraphs and is covered by—

(a) works used for the purposes of a statutory undertaking (other than flood defence works, or sea defence works, on land which is coastal margin), or

(b) works used for the purposes of an electronic communications code network,

or the curtilage of any such land.".

6. In paragraph 10 (land within 20 metres of building for housing livestock), after "Land" insert "(other than coastal margin)".

7. In paragraph 12 (land habitually used for training of racehorses), after "Land" insert "(other than coastal margin)".

8. After paragraph 13 insert—

"**13A.** Land which is coastal margin and is, or forms part of, a regulated caravan or camping site (other than land which is, or forms part of, a coastal route strip).

13B. Land which is coastal margin and is, or forms part of, a highway (within the meaning of the Highways Act 1980(**b**)).

(**a**) Paragraph 8 was amended by the Communications Act 2004, section 406(1) and Schedule 17, paragraph 165(1) and (3).
(**b**) 1980 c. 66.

13C. Land which is coastal margin and is, or forms part of, a burial ground (other than land which is, or forms part of, a coastal route strip).

13D. Land which is coastal margin and—

(a) is or forms part of a school playing field, or

(b) is land otherwise occupied by a school and used for the purposes of that school.".

9. In paragraph 14—

(a) renumber the existing provision as sub-paragraph (1),

(b) before the definition of "building" insert—

"approved section of the English coastal route" means a route in relevant approved proposals, other than an official alternative route,

(c) for the definition of "building" substitute—

""building"—

(a) includes any structure or erection and any part of a building as so defined, but

(b) does not include any fence or wall, anything which is a means of access as defined by section 34 or, in the case of land which is coastal margin, any slipway, hard or quay;

and for this purpose "structure" includes any tent, caravan or other temporary or moveable structure;",

(d) after that definition insert—

""burial ground" means a place which, for the time being, is set apart as a churchyard, cemetery or other ground (whether or not consecrated) in which bodies are interred;

"coastal route strip" means—

(a) land over which the line of an approved section of the English coastal route, or an official alternative route, passes, and

(b) subject to sub-paragraph (2), land which is adjacent to and within 2 metres either side of such a line;",

(e) after the definition of "development" and "minerals" insert—

""official alternative route" has the same meaning as in section 3A;",

(f) after the definition of "ploughing" and "drilling" insert—

""regulated caravan or camping site" means—

(a) land which is used for the purposes of a caravan site (within the meaning of section 1(4) of the Caravan Sites and Control of Development Act 1960(**a**)) by virtue of–

(i) a site licence issued under Part 1 of that Act (caravan site licences),

(ii) a certificate issued under paragraph 5 of Schedule 1 to that Act (sites approved by exempted organisations), or

(iii) paragraph 11 of that Schedule (land occupied by a local authority as a caravan site), or

(b) land which is used for the purposes of a site for tents or other moveable dwellings (within the meaning of section 269 of the Public Health Act 1936(**b**)) by virtue of a licence issued under subsection (1)(i) of that section (disregarding any certificate under subsection (6) of that section which has the effect of a licence);

"relevant approved proposals" has the same meaning as in section 3A;", and

(g) after sub-paragraph (1) add—

(**a**) 1960 c. 62.
(**b**) 1936 c. 49.

"(2) Where relevant approved proposals contain a proposal under section 55D(2)(c) of the National Parks and Access to the Countryside Act 1949(**a**) for the landward or seaward boundary of any part of a coastal route strip excluded from a description of excepted land by paragraph 1, 7, 13A or 13C to coincide with a physical feature identified in the proposal, the boundary in question is to coincide with that feature.".

10. After that paragraph insert—

"**14A.** In paragraph 5, the reference to the getting of minerals by surface working does not include the removal by any person of sand or shingle from an area of foreshore or beach which is coastal margin, in pursuance of a right which is enjoyed by the person under any grant or reservation, local or personal Act, Royal charter or letters patent or by prescription. ".

PART 2

Restrictions to be observed by persons exercising right of access

11. Schedule 2 to the CROW Act is amended as follows.

12. In paragraph 1—

(a) renumber the existing provision as sub-paragraph (1),

(b) for "Section 2(1)" substitute "Subject to sub-paragraph (2), section 2(1)", and

(c) after that sub-paragraph add—

"(2) Nothing in sub-paragraph (1)(f) or (j) affects a person's entitlement by virtue of section 2(1) to be on any land which is coastal margin if the person's conduct (to the extent that it falls within sub-paragraph (1)(f) or (j)) is limited to permitted fishing-related conduct.

(3) In sub-paragraph (2) the reference to permitted fishing-related conduct is a reference to the person—

(a) having a fishing rod or line, or

(b) engaging in any activities which—

(i) are connected with, or ancillary to, fishing with a rod and line, or with a line only, in the exercise of a right to fish, and

(ii) take place on land other than land used for grazing or other agricultural purposes.".

13. In paragraph 4 (dogs to be kept on a short lead between 1st March and 31st July), renumber the existing provision as sub-paragraph (1), and after that sub-paragraph add—

"(2) Sub-paragraph (1) does not apply in relation to land which is coastal margin.".

14. After paragraph 6 insert—

"**6A.**—(1) Whatever the time of year, section 2(1) does not entitle a person to be on any land which is coastal margin at any time if—

(a) that person has taken onto the land, or allowed to enter or remain on the land, any dog, and

(b) at that time, the dog is not under the effective control of that person or another person.

(2) For this purpose a dog is under the effective control of a person if the following conditions are met.

(**a**) Section 55D was inserted by section 302 of the 2009 Act.

(3) The first condition is that—

(a) the dog is on a lead, or

(b) the dog is within sight of the person and the person remains aware of the dog's actions and has reason to be confident that the dog will return to the person reliably and promptly on the person's command.

(4) The second condition is that the dog remains—

(a) on access land, or

(b) on other land to which that person has a right of access.

(5) For the purposes of sub-paragraph (4), a dog which is in tidal waters is to be regarded as remaining on access land.

6B.—(1) Section 2(1) does not entitle a person to be on any land which is coastal margin if, on that land, the person obstructs any person passing, or attempting to pass, on foot along any part of the English coastal route, any official alternative route or any relevant temporary route.

(2) In this paragraph—

"the English coastal route" means the route secured pursuant to the coastal access duty (within the meaning of section 296 of the Marine and Coastal Access Act 2009(**a**));

"official alternative route" has the meaning given by section 55J of the National Parks and Access to the Countryside Act 1949(**b**);

"relevant temporary route" means a route for the time being having effect by virtue of a direction under section 55I of that Act(**c**) to the extent that the line of the route passes over coastal margin.".

PART 3

Exclusion or restriction of access

15.—(1) In section 21 of the CROW Act (interpretation of Chapter 2)—

(a) in subsection (5)—

(i) before paragraph (a) insert—

"(za) in relation to any land which is coastal margin, means Natural England,",

(ii) in that paragraph, after "land" insert "(other than coastal margin)",

(b) in subsection (6)(a), after "section 16" insert "(other than land which is coastal margin)", and

(c) after subsection (7) add—

"(8) Where there is access to an area of coastal margin by virtue of section 2(1), Natural England may—

(a) if the land is in a National Park, authorise the National Park authority, or

(b) if the land consists wholly or predominantly of woodland, authorise the Forestry Commissioners,

to exercise in relation to the land such of Natural England's functions under this Chapter as Natural England may specify.

(9) An authorisation given for the purposes of subsection (8) may be—

(a) for a period specified in the authorisation, or

(**a**) 2009 c. 23.
(**b**) Section 55J was inserted by section 302 of the 2009 Act.
(**c**) Section 55I was inserted by section 302 of the 2009 Act.

(b) for an indefinite period,

and may be revoked at any time by Natural England.".

16. In section 22 of that Act (exclusion or restriction at discretion of owner and others), after subsection (8) add—

"(9) Nothing in this section applies in relation to land which is coastal margin.".

17. In section 23 of that Act (restrictions on dogs at discretion of owner), after subsection (5) add—

"(6) Nothing in this section applies in relation to land which is coastal margin.".

18.—(1) Section 24 of that Act (land management) is amended as follows.

(2) For subsection (1) substitute—

"(1) The relevant authority may make a land management direction in relation to any land ("the designated land").

(1A) The relevant authority may exercise their powers under subsection (1)—

(a) in any case, on the application of any person interested in the designated land, and

(b) if the designated land is coastal margin, without any such application having been made.

(1B) A land management direction is a direction which—

(a) where the designated land is coastal margin—

(i) excludes or restricts access to the designated land during a specified period, or

(ii) authorises a specified person to exclude or restrict in the manner specified in the direction access to the designated land, or to such part or parts of that land as the specified person may determine in accordance with the direction, during a specified period, and

(b) in any other case, excludes or restricts access to the designated land during a specified period.

(1C) The relevant authority may not make a land management direction unless—

(a) in the case of a direction within subsection (1B)(a), they are satisfied that the exclusion or restriction under this section of access to the designated land to the extent provided for in or by the direction is necessary for the purposes of the management of the designated land or any adjoining land;

(b) in the case of a direction within subsection (1B)(b), they are satisfied that the exclusion or restriction under this section of access to the designated land to the extent provided by the direction is necessary for the purposes of the management of the land by the applicant.

(1D) Before making a land management direction under subsection (1B)(a) in a case where an application has not been made under subsection (1A)(a), the relevant authority must take reasonable steps to consult any person who—

(a) holds an estate in fee simple absolute in possession in the designated land (or any part of it),

(b) holds a term of years absolute in that land (or any part of it), or

(c) is in lawful occupation of that land (or any part of it).

(1E) Subsection (1D) does not apply if the direction is made in accordance with section 55F(2) of the National Parks and Access to the Countryside Act 1949(**a**) (directions set out in report approving proposals for English coastal route).

(1F) The reference in subsection (1B)(a) to a specified period includes a reference to—

(**a**) 1949 c.97. Section 55F was inserted by section 302 of the 2009 Act.

(a) a specified period in every calendar year;

(b) a period which is to be determined by the relevant authority in accordance with the direction;

(c) a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction;

(d) an indefinite period.".

(3) In subsection (2) for "subsection (1)" substitute "subsection (1B)(b)".

(4) After subsection (4) add—

"(5) Subsections (3) and (4) do not apply in relation to land management directions under subsection (1B)(a).

(6) In this section references to access to land are to access by virtue of section 2(1).".

19. In section 25 of that Act (avoidance or risk of fire or of danger to the public)—

(a) after subsection (1) insert—

"(1A) Subsection (1)(a) does not apply in relation to land which is coastal margin if it is—

(a) land over which the line of an approved section of the English coastal route, an official alternative route or a temporary route passes, or

(b) land which is adjacent to and within 2 metres either side of such a line.",

(b) in subsection (2), after paragraph (b) add—

", and

(c) in the case of a direction relating to land which is coastal margin, a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction.", and

(c) after subsection (5) add—

"(6) Nothing in subsection (4) or (5) applies in relation to land which is coastal margin.

(7) In this section—

"approved section of the English coastal route" means a route (other than an official alternative route) in relevant approved proposals (within the meaning of section 3A);

"official alternative route" has the meaning given by section 55J of the National Parks and Access to the Countryside Act 1949(**a**);

"temporary route" means a route for the time being having effect by virtue of a direction under section 55I of that Act(**b**)".

20. After section 25 of that Act insert—

"Salt marshes and flats

25A.—(1) The relevant authority may by direction exclude or restrict access to any land which is coastal margin consisting of salt marsh or flat if the authority are satisfied that the exclusion or restriction under this section of access to the land to the extent provided by the direction is necessary because the land, or any part of the land, is unsuitable for public access.

(2) A direction under subsection (1) may be expressed to have effect—

(a) during a period specified in the direction,

(**a**) 1949 c. 97. Section 55J was inserted by section 302 of the 2009 Act.
(**b**) Section 55I was inserted by section 302 of the 2009 Act.

(b) during a specified period in every calendar year,

(c) during a period which is to be determined by the relevant authority in accordance with the direction,

(d) during a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction, or

(e) indefinitely.

(3) In this section a reference to "access" to land means access by virtue of section 2(1).".

21.—(1) Section 26 of that Act (nature conservation and heritage preservation) is amended as follows.

(2) In subsection (2), omit "or" at the end of paragraph (c) and after that paragraph insert—

"(ca) in the case of land which is coastal margin, during a period which is to be determined by a specified person in accordance with the direction and, where the direction so requires, notified to the relevant authority by the specified person in accordance with the direction, or".

(3) After subsection (4) insert—

"(4A) Subsection (4) does not apply if the direction is made in accordance with section 55F(2) of the National Parks and Access to the Countryside Act 1949(**a**) (directions set out in report approving proposals for English coastal route).".

22.—(1) Section 27 of that Act (directions by relevant authority: general) is amended as follows.

(2) In subsections (1), (2) and (3) after "25" insert ", 25A".

(3) After subsection (6) add—

"(7) Subsection (1) does not apply if the direction is made in accordance with section 55F(2) of the National Parks and Access to the Countryside Act 1949(**b**) (directions set out in report approving proposals for English coastal route).

(8) Nothing in subsection (5) or (6) has effect in relation to a direction ceasing to have effect by virtue of section 3A(7) (pre-existing directions ceasing to have effect at end of access preparation period for coastal margin).".

23.—(1) Section 31 of that Act (exclusion or restriction of access in case of emergency) is amended as follows.

(2) For subsection (1) substitute—

"(1) Regulations may make provision enabling the relevant authority—

(a) where the authority are satisfied that an emergency has arisen which makes the exclusion or restriction of access by virtue of section 2(1) necessary for any of the purposes specified in section 24(1C)(b), 25(1) or 26(3), by direction to exclude or restrict such access, in respect of any land, for a period not exceeding three months, or

(b) where the authority are satisfied that an emergency has arisen which makes the exclusion or restriction of access by virtue of section 2(1) necessary for any of the purposes specified in section 24(1C)(a), by direction to exclude or restrict such access, in respect of any land which is coastal margin, for a period not exceeding three months.".

(3) After that subsection insert—

"(1A) Nothing in subsection (1) authorises regulations to make provision which enables the relevant authority to exclude or restrict access, for the purposes specified in subsection

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(**a**) 1949 c. 97.
(**b**) 1949 c. 97. Section 55F was inserted by section 302 of the 2009 Act.

(1)(a) of section 25, in respect of any land which is coastal margin and is within subsection (1A)(a) or (b) of that section.".

PART 4

Other amendments of Part 1

24.—(1) In section 1 of the CROW Act (principal definitions for Part 1)(**a**)—

(a) in subsection (2), in the definition of "open country", in paragraph (b) after "margin" insert "or land dedicated as coastal margin for the purposes of this Part under section 16", and

(b) in subsection (3) (definition of "registered common land"), in paragraph (a) (as substituted by paragraph 7(2) of Schedule 5 to the Commons Act 2006(**b**)), after "margin" insert "or land dedicated as coastal margin for the purposes of this Part under section 16".

(2) Until such time as paragraph 7(2) of Schedule 5 to the Commons Act 2006 comes into force, section 1(3) of the CROW Act has effect as if after paragraph (b) there were added—

"but does not include land which is coastal margin or land which is dedicated as coastal margin for the purposes of this Part under section 16.".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 3A of the Countryside and Rights of Way Act 2000 (c. 37) ("the CROW Act"). It applies in relation to land in England only.

The Order sets out descriptions of land which are coastal margin for the purposes of Part 1 of the CROW Act (*article 3*). It also makes provision for cases where relevant approved proposals (as defined in section 3A(10)) contain—

(a) a proposal for any part of the English coastal route referred to in section 296 of the Marine and Coastal Access Act 2009 (c. 23) to be determined in accordance with provision made in the report prepared by Natural England, or

(b) a proposal for the landward boundary of land which is to become coastal margin to coincide with a physical feature identified in the proposal (*articles 4 to 7*).

The Schedule to the Order modifies the way in which Part 1 of the CROW Act applies in relation to land which is coastal margin in four ways:

(c) it amends Schedule 1 to the CROW Act (excepted land for the purposes of Part 1 of the CROW Act), which makes provision for certain categories of land to be excepted from the right of access under section 2(1) of that Act (*Part 1 of the Schedule*);

(d) it amends Schedule 2 to the CROW Act (restrictions to be observed by persons exercising right of access), which makes provision preventing that right of access from being exercisable by persons who fail to observe certain restrictions (*Part 2 of the Schedule*);

(e) it amends Chapter 2 of Part 1 of the CROW Act (exclusion or restriction of access) which makes provision for that right of access to be excluded or restricted in certain circumstances, including by means of a direction given by "the relevant authority" (as defined in section 21(5)) (*Part 3 of the Schedule*);

(**a**) Section 1 of the CROW Act was amended by section 303(1) and (2) of the 2009 Act.
(**b**) 2006 c. 26.

(f) it amends section 1 of the CROW Act which sets out definitions used in Part 1 of that Act to make provision about land which is coastal margin by virtue of this Order and land which dedicated as coastal margin under section 16 of the Act (*Part 4 of the Schedule*).

A separate Impact Assessment has not been prepared in respect of this Order because the Impact Assessment which was prepared for the Marine and Coastal Access Act 2009 included assumptions which are reflected in the Order.

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ISBN 978-0-11-149124-9

£5.50

E5808 1/2010 105808T 19585

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