

2007 No. 307

SEA FISHERIES

**The European Fisheries Fund (Grants) (Scotland)
Regulations 2007**

<i>Made</i> - - - -	<i>5th June 2007</i>
<i>Laid before the Scottish Parliament</i>	<i>6th June 2007</i>
<i>Coming into force</i> - -	<i>28th June 2007</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(b) and it appears to the Scottish Ministers that it is expedient for any reference to Council Regulation 1198/2006 and Commission Regulation 498/2007 to be construed as a reference to those Regulations as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the European Fisheries Fund (Grants) (Scotland) Regulations 2007 and shall come into force on 28th June 2007.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“application” means an application for payment of financial assistance under regulation 3(1), and “applicant” shall be construed accordingly;

“approval” means an approval granted under regulation 5 and includes the terms and conditions subject to which such approval has been given, and “approve” and “approved” shall be construed accordingly;

“approved operation” means a relevant operation which the Scottish Ministers have approved;

“authorised officer” means a person authorised in writing to be an officer—

- (a) for the purposes of these Regulations, by the Scottish Ministers; or
- (b) for the purposes of exercising any functions which the Authority is required under regulation 11 to exercise, by the Authority,

(a) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
(b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

and includes any duly appointed official of the Commission who accompanies such person;

“the Authority” means the Sea Fish Industry Authority constituted under section 1 of the Fisheries Act 1981(a);

“beneficiaries” means applicants whose applications have been approved, and a “beneficiary” shall be construed accordingly;

“the Commission” means the Commission of the European Communities;

“Community aid” means aid towards eligible expenditure available from the European Fisheries Fund and payable in accordance with Council Regulation 1198/2006 and Commission Regulation 498/2007;

“Community fishing vessel” means a fishing boat flying the flag of and registered in a Member State of the European Community;

“Council Regulation 1198/2006” means Council Regulation (EC) No. 1198/2006 of 27th July 2006 on the European Fisheries Fund(b);

“Commission Regulation 498/2007” means Commission Regulation (EC) No. 498/2007 of 26th March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No. 1198/2006 on the European Fisheries Fund(c);

“eligible expenditure” means expenditure which is incurred or to be incurred in connection with an approved operation and which the Scottish Ministers have approved for the purpose of receiving financial assistance under regulation 5;

“financial assistance” means any amount by way of grant or Community aid;

“grant” means a grant towards eligible expenditure payable under these Regulations in addition to any Community aid;

“LIBOR”, in relation to any particular day of the month, means the rate of interest per centum notified to the Scottish Ministers by the Bank of England on the first working day of that month, rounded if necessary to two decimal places;

“relevant conditions” means any conditions relating to the approval of an application or the making of a payment of any financial assistance which have been notified to a beneficiary under regulations 5(3)(b) or 7;

“relevant documents” means any invoice, account, drawing, plan, technical specification or other document relating to the approved operation;

“relevant equipment” means any plant, machinery or other equipment for which financial assistance has been claimed or paid;

“relevant operation” means an investment, project or action which is eligible for Community aid; and

“works” means any construction, harbour or other building works, whether completed or not, for which financial assistance has been claimed or paid.

(2) Expressions used in these Regulations which appear or are referred to in Council Regulation 1198/2006 or Commission Regulation 498/2007 and which are not defined in this regulation have, unless the context otherwise requires, the same meaning in these Regulations as in that legislation.

(3) Any reference in these Regulations to Council Regulation 1198/2006 or Commission Regulation 498/2007 is a reference to those Regulations as amended from time to time.

(4) Any reference in these Regulations to a numbered regulation shall, unless the context otherwise requires, be construed as a reference to the regulation so numbered in these Regulations.

(5) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(d), which has been recorded and is consequently capable of being reproduced.

(a) 1981 c.29.

(b) O.J. No. L 223,15.8.06, p.1.

(c) O.J. No. L 120, 10.5.07, p.1.

(d) 2000 c.7.

Financial assistance

3.—(1) Subject to the provisions of Council Regulation 1198/2006, Commission Regulation 498/2007 and to these Regulations, the Scottish Ministers may pay Community aid and, if they so determine, a grant to any person—

- (a) who has applied, in accordance with regulation 4, for the purpose of obtaining such financial assistance, for approval under regulation 5 of—
 - (i) a relevant operation; and
 - (ii) expenditure incurred or to be incurred in connection with that operation; and
 - (b) whose application they have approved.
- (2) In determining under paragraph (1)—
- (a) whether to pay a grant in addition to Community aid; and
 - (b) the amount of any such grant,

the Scottish Ministers shall have regard to the requirements of Council Regulation 1198/2006 and Commission Regulation 498/2007 and, in particular, the limits on total State financial participation (national, regional and other) as set out in Annex II to Council Regulation 1198/2006.

Applications

- 4.—(1) Applications shall—
- (i) be made in such form and manner;
 - (ii) be made at such time;
 - (iii) include such information; and
 - (iv) be delivered to such address,

as the Scottish Ministers may from time to time require.

(2) Applicants shall furnish further information and documents relating to the application as the Scottish Ministers may require.

Determination of applications

5.—(1) Subject to Council Regulation 1198/2006 and Commission Regulation 498/2007 the Scottish Ministers may—

- (a) refuse to approve an application for financial assistance; or
- (b) approve it in whole or in part, either unconditionally or subject to such conditions as they may determine.

(2) The Scottish Ministers may at any time vary an approval by amending any conditions to which it has been made subject, or by adding conditions.

(3) The Scottish Ministers shall notify—

- (a) applicants in writing of their decision in respect of that application;
- (b) beneficiaries of any conditions to which their approval has been made subject or which have been varied under this regulation.

(4) Where the Scottish Ministers notify an applicant that they have refused to approve an application, or a beneficiary that they have granted an approval subject to conditions, or have varied the terms of an existing approval, they shall give such applicant or beneficiary—

- (a) written reasons for their decision; and
- (b) an opportunity to make representations in relation to that decision within such reasonable time as is notified to the applicant or beneficiary by the Scottish Ministers.

- (5) The Scottish Ministers shall—
- (a) consider any representations received under paragraph (4);
 - (b) make a decision which shall either confirm their decision under paragraph (4) or substitute a different decision; and
 - (c) notify the applicant or beneficiary in writing accordingly.

Eligibility and claims for payment of financial assistance

6.—(1) Subject to paragraph (2) and to regulation 15, a beneficiary shall be eligible for payment of financial assistance.

(2) No financial assistance shall be paid in respect of an approved application unless the Scottish Ministers have been supplied with—

- (a) satisfactory evidence that the amount of expenditure for which financial assistance is claimed has been incurred by the beneficiary, including details of any discount received by the beneficiary; and
- (b) satisfactory evidence that the approved operation to which the application relates has been properly executed.

Method of payment of financial assistance

7. Payments by way of financial assistance may be made—

- (a) at such time, or by such instalments at such intervals or time; and
- (b) subject to such conditions,

as the Scottish Ministers may reasonably determine, and any conditions in relation to any payment shall be notified to the beneficiary in writing.

Undertakings

8. A beneficiary shall give the Scottish Ministers such undertakings as the Scottish Ministers consider appropriate for the purposes of these Regulations.

Information

9.—(1) A beneficiary shall supply the Scottish Ministers with such information in relation to an approved operation as the Scottish Ministers may from time to time reasonably require.

(2) Where the Scottish Ministers require information under paragraph (1), the beneficiary shall supply them with that information within such period as the Scottish Ministers may reasonably determine.

Records

10.—(1) A beneficiary shall—

- (a) keep a record of all expenditure incurred in connection with an approved operation; and
- (b) during the carrying out and after completion of the approved operation for the duration of the control period, retain such record together with any relevant documents, except to the extent that an authorised officer has removed and retained any of the same under regulation 13(6).

(2) Subject to paragraph (3), “the control period” is—

- (a) the period of six years commencing with the last payment of financial assistance in respect of the approved operation; or

- (b) such further period beyond the end of that six year period as has been notified in writing by the Scottish Ministers to the beneficiary at any time before the expiry of that six year period.

(3) In determining in any case the date on which the control period expires, no account shall be taken of any time between the commencement and final determination of any proceedings brought under regulation 14 for the recovery of any financial assistance paid in respect of that approved operation.

Exercise of functions by the Sea Fish Industry Authority

11.—(1) Any function of the Scottish Ministers under these Regulations either generally or in relation to financial assistance in connection with particular categories of relevant operation which the Authority has been required to exercise pursuant to section 2(5) of the Fisheries Act 1981^(a) shall be discharged on behalf of the Authority by members of the Authority appointed in accordance with section 1(3) of the Fisheries Act 1981 to the exclusion of the other members.

(2) The Scottish Ministers may from time to time issue directions as to the manner in which the functions referred to in paragraph (1) may be exercised.

(3) The Authority shall, in accordance with directions which may be given by the Scottish Ministers—

- (a) keep accounts with respect to any payments made by or to it in exercise of functions under these Regulations; and
- (b) prepare, in respect of each financial year, a statement of the accounts.

(4) The accounts for each financial year shall be audited by the persons appointed in respect of that year to audit the other accounts of the Authority in accordance with a scheme of audit approved by the Scottish Ministers.

(5) The Authority shall provide the persons referred to in paragraph (4) with copies of the statement of accounts.

(6) The auditors shall complete the audit of the accounts and shall send the Scottish Ministers copies of—

- (a) the statement of accounts; and
- (b) their report on the accounts and the statement of accounts,

as soon as possible after the end of the financial year to which they relate, and in any event not later than 30th September following the end of that year.

(7) The Scottish Ministers and the Auditor General for Scotland shall be entitled to inspect all books, papers and other records of the Authority relating to, or to matters dealt with in, the accounts required to be kept under this regulation.

Assistance to authorised officers

12. Any beneficiary and any employee, servant or agent of a beneficiary shall give to an authorised officer such assistance as the officer may reasonably require to exercise any power conferred on the officer by regulation 13.

Powers of authorised officers

13.—(1) An authorised officer may at all reasonable hours and on producing, if requested to do so, a duly authenticated document showing the authority of the officer, exercise the powers specified in this regulation for the purposes of—

- (a) verifying the accuracy of any information or evidence contained in or included with an application or supplied under regulation 6;

(a) 1981 c.29. Section 2(5) was amended by the Scotland Act (Cross Border Public Authorities) (Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747) Schedule 23, paragraph 3(3).

- (b) ascertaining whether and to what extent any expenditure for which financial assistance is claimed should be approved;
- (c) ascertaining whether and to what extent any undertaking given by a beneficiary under regulation 8 or any relevant condition has been complied with;
- (d) ascertaining whether or to what extent any amount of financial assistance is payable, or should be reduced, withheld or recovered under regulation 14;
- (e) ascertaining whether an offence under regulation 16 has been or is being committed; or
- (f) otherwise ascertaining, pursuant to Article 57 of Council Regulation 1198/2006, whether Community aid is being properly managed and controlled;

and such powers shall be exercisable for those purposes on a random, spot-check or sample basis as well as by reference to the particular circumstances or suspected circumstances of individual cases.

(2) Subject to paragraph (3), an authorised officer may enter upon any premises which are, or which such officer has reasonable cause to believe are, relevant premises.

(3) The power conferred by paragraph (2) may be exercised in relation to premises used as a dwelling house only where reasonable notice of the intended exercise of the power has been given to all residents of that dwelling house.

(4) Any authorised officer who has entered any premises in accordance with paragraph (2) may inspect—

- (a) those premises;
- (b) any equipment which is, or which such officer has reasonable cause to believe is, relevant equipment; and
- (c) any documents on those premises which are, or which such officer has reasonable cause to believe are, relevant documents.

(5) An authorised officer entering any premises by virtue of this regulation may be accompanied by such other person as the officer considers necessary, and paragraphs (2), (4), (6) and (7) and regulation 12 shall apply in relation to such other person when acting under the instructions of the officer as if they were authorised officers.

(6) An authorised officer may—

- (a) require any beneficiary or an employee, servant or agent of a beneficiary to produce any relevant documents and to supply such additional information in the possession of that person or under their control relating to an application or an approved operation as the officer may reasonably request;
- (b) inspect any such documents and, where any such documents are kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with those documents;
- (c) require that copies of, or extracts from, any relevant documents be produced; or
- (d) remove and retain for a reasonable period any such relevant document which the officer has reason to believe may be required as evidence in proceedings under these Regulations or which the Scottish Ministers may be required to make available to the Commission pursuant to Article 87 of Regulation 1198/2006 ; and, where any such document is kept by means of a computer, require it to be produced in a form in which it may be taken away and in which it is visible and legible.

(7) An authorised officer shall not be liable in any proceedings for anything done in purported exercise of the powers conferred on an authorised officer by these Regulations if the court hearing such proceedings is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

(8) In this regulation—

“premises” includes any vessel or other vehicle; and

“relevant premises” means any premises to which an approved operation relates or in which relevant documents or relevant equipment are retained or in which an authorised officer has reasonable grounds to believe such documents or equipment may be retained.

Reduction, withholding and recovery of financial assistance

14.—(1) Subject to the provisions of this regulation if, at any time after the Scottish Ministers have approved an application, it appears to them that—

- (a) any relevant condition has not been complied with in whole or in part;
- (b) the application so approved or any part of it was not an application which the beneficiary was eligible to make;
- (c) the beneficiary or an employee, servant or agent of a beneficiary—
 - (i) has failed to comply with regulation 9, 10, 12 or 13(6);
 - (ii) has intentionally obstructed any authorised officer in the exercise of their powers under regulation 13; or
 - (iii) has given information on any matter relevant to the giving of the approval or the making of a payment relevant to the approval which is false or misleading in a material respect;
- (d) the approved operation was commenced before the date on which the Scottish Ministers gave written permission to do so;
- (e) the approved operation for which the expenditure was incurred has not been carried out or has not been carried out properly or in accordance with the approval;
- (f) the approved operation has been or is being unreasonably delayed beyond the time limit set out in the notification of approval or is unlikely to be completed;
- (g) any undertaking given by the beneficiary under regulation 8 has not been complied with;
- (h) the Commission has decided pursuant to Article 89 of Council Regulation 1198/2006 to suspend Community aid;
- (i) in any case of financial assistance for the construction or modernisation of a fishing vessel, any of the events specified in paragraph (2) has occurred before ten years have elapsed from the date of completion of the construction, or five years have elapsed from the date of completion of modernisation, of the vessel; or
- (j) in any case of financial assistance for any relevant operation other than for the construction or modernisation of a fishing vessel, any of the events specified in paragraph (3) has occurred before six years have elapsed from the date of purchase of the relevant equipment, or ten years have elapsed from the date of purchase of the premises or the completion of the works,

the Scottish Ministers may revoke the approval in whole or in part or reduce or withhold any financial assistance in respect of the approved operation and, where any such financial assistance has been paid, may recover on demand as a debt an amount equal to the financial assistance which has been so paid or such part of it as they determine.

(2) The events referred to in paragraph (1)(i) are—

- (a) the total loss of the vessel;
- (b) the damage or destruction of any relevant equipment resulting in payment under an insurance policy or by way of compensation or damages;
- (c) a mortgage of the vessel (other than a mortgage created for the raising of money applied to the cost of construction or modernisation of the vessel, being a mortgage approved by the Scottish Ministers before it was made);

- (d) the use of the vessel primarily for purposes other than those for which financial assistance was approved;
 - (e) a disposal whether by sale or otherwise of the vessel or any part of it, its engine or any part of it or any relevant equipment or other equipment or apparatus used on or in connection with the vessel; or
 - (f) the vessel ceasing to be a Community fishing vessel.
- (3) The events referred to in paragraph (1)(j) are–
- (a) the total loss of the relevant equipment;
 - (b) the damage or destruction of any relevant equipment, premises, or works resulting in payment under an insurance policy or by way of compensation or damages;
 - (c) the creation of a right in security over the relevant equipment, premises, or works (other than a right in security created for the raising of money applied to the cost of construction or modernisation of the relevant equipment, premises, or works, being a right in security approved by the Scottish Ministers before it was made);
 - (d) the use of the relevant equipment, premises, or works primarily for purposes other than those in respect of which financial assistance was approved; or
 - (e) a disposal whether by sale or otherwise of the relevant equipment, premises, or works or any part of them.

(4) Where paragraph (1)(i) or (j) applies and none of the other sub-paragraphs of paragraph (1) apply, the maximum amount which the Scottish Ministers may recover from a beneficiary under this regulation shall be that proportion of the total payment of financial assistance which the unexpired part of the ten, or as the case may be, five or six year period bears to that period together with interest thereon under regulation 15.

(5) Before revoking an approval in whole or in part or reducing or withholding any financial assistance or making a demand under paragraph (1), the Scottish Ministers shall–

- (a) give the beneficiary a written explanation of the reasons for the step proposed to be taken;
- (b) afford the beneficiary the opportunity of making written representations within a reasonable time; and
- (c) consider any representations.

Interest

15.—(1) Where the Scottish Ministers intend to recover on demand financial assistance in whole or in part in accordance with regulation 14, they may, in addition, recover interest on that amount at a rate of 1 per cent above LIBOR calculated on a daily basis for the period from–

- (a) in any case to which regulation 14(4) applies, the date when the event in question occurred until the date of recovery; or
- (b) in any other case, the date of payment of the financial assistance until the date of recovery.

(2) In any proceedings for recovery under these Regulations, a certificate issued by the Scottish Ministers showing the rate or rates of interest, the amount of such interest recoverable and the period for which interest is calculated shall, unless the contrary is shown, be conclusive of those matters.

Offences and penalties

16.—(1) Any person, who for the purposes of obtaining financial assistance for themselves or any other person–

- (a) in furnishing any information in purported compliance with a requirement imposed by or under regulation 4 or 13(6)(a), knowingly or recklessly makes a statement which is false or misleading in a material particular; or

- (b) in purported compliance with a requirement imposed under regulation 4(2), or 13(6)(a) or (c), knowingly or recklessly produces a document which is false or misleading in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person who—

- (a) fails to comply with regulations 9, 10 or 12; or
- (b) intentionally refuses to supply any information, make any return, or produce any document when required to do so by, or otherwise intentionally obstructs, an authorised officer (or a person accompanying and acting on the instructions of the officer) acting in exercise of a power conferred by regulation 13,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Proceedings for an offence under these Regulations may, subject to paragraph (4), be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(4) No proceedings for an offence under these Regulations shall be commenced more than 5 years after commission of the offence.

(5) Section 136(3) of the Criminal Procedure (Scotland) Act 1995(a) (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

(6) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor stating the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact; and
- (b) a certificate stating that matter purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

Offences by bodies corporate

17.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any person to whom this paragraph applies, that person as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Paragraph (1) applies to any director, manager, secretary or other similar officer of the body corporate and to any person who was purporting to act in any such capacity.

(3) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the functions of management of the member as if the member were a director of the body corporate.

(a) 1995 c.46.

(4) Where an offence under these Regulations has been committed by a Scottish partnership and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any act on the part of, a partner, that partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
5th June 2007

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, supplement Council Regulation 1198/2006 on the European Fisheries Fund (“the Council Regulation”) and Commission Regulation 498/2007 laying down detailed rules for the implementation of the Council Regulation (“the Commission Regulation”). In exercise of powers introduced by the Legislative and Regulatory Reform Act 2006, references to the Council and Commission Regulations are to these instruments as they may be amended from time to time.

The Council Regulation provides for assistance (“Community aid”) to be paid from the European Fisheries Fund established by the European Community in respect of certain categories of investments, projects and actions (“relevant operations”) in the fisheries and aquaculture sector and in the industry sector processing and marketing its products.

These Regulations provide for and regulate the payment of Community aid and grants in addition to that aid by the Scottish Ministers towards expenditure on operations which the Scottish Ministers have approved in accordance with these Regulations, the Council Regulation and the Commission Regulation.

The Regulations (regulations 3, 4 and 5) lay down a procedure for applications for the approval of relevant operations and expenditure to be made and approved for the purpose of the payment of Community aid and, if the Scottish Ministers so determine, grant in addition to that aid. Such aid and grant together is referred to as “financial assistance”. In determining whether to pay grant in addition to Community aid and, if they determine to pay such grant, the amount of the grant, the Scottish Ministers are required to have regard to the requirements of the Council Regulation and the Commission Regulation (regulation 3). Among other things the Council Regulation requires a certain level of financial participation by Member States to enable relevant operations to qualify for Community aid, the requisite levels of participation being set out in Annex II to the Council Regulation.

Payment of financial assistance is dependent on the provision of satisfactory evidence of the expenditure incurred and of the proper execution of the relevant operation (regulation 6).

Provision is made concerning the method of payment of financial assistance (regulation 7). The Scottish Ministers may require undertakings to be given by a person whose application is approved (regulation 8).

Provision is made (regulation 9) for persons whose applications for financial assistance have been approved to supply to the Scottish Ministers such information as the Scottish Ministers may from time to time reasonably require and (under regulation 10) for them to retain certain records for a period of six years. That period may be extended by the Scottish Ministers.

Provision is made in relation to the keeping of accounts and records by the Sea Fish Industry Authority (the “Authority”) where it has made or received payments in the exercise of any functions under these Regulations which the Authority has been required by the Scottish Ministers under section 2(5) of the Fisheries Act 1981 to exercise for the Scottish Ministers (regulation 11).

Applicants are required, on request, to give assistance to authorised officers, who are given power of entry and inspection for specified purposes (regulations 12 and 13). Provision is made for the reduction, withholding and recovery, in certain circumstances, of financial assistance (regulation 14) and for the payment of interest on amounts recovered (regulation 15).

The Regulations create offences and provide penalties in respect of false statements made to obtain financial assistance, failure to keep records or provide information reasonably requested by the Scottish Ministers, failure to comply with requests made by authorised officers in exercise of their powers of entry and inspection and the obstruction of such officers in the exercise of those powers (regulation 16). They also make provision in relation to offences committed by bodies corporate and Scottish partnerships (regulation 17).

No Regulatory Impact Assessment has been prepared in respect of these Regulations.

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