



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART VIII

#### RESOLUTION OF DISPUTES RELATING TO EMPLOYMENT

##### *Industrial tribunals*

#### 128 Industrial tribunals.

- (1) The Secretary of State may by regulations make provision for the establishment of tribunals, to be known as industrial tribunals, to exercise the jurisdiction conferred on them by or under this Act or any other Act, whether passed before or after this Act.
- (2) Regulations made wholly or partly under section 12 of the <sup>M1</sup>Industrial Training Act 1964 and in force immediately before the date on which this section comes into force shall, so far as so made, continue to have effect as if they had been made under subsection (1), and tribunals established in accordance with such regulations shall continue to be known as industrial tribunals.
- (3) Schedule 9, which makes provision, among other things, with respect to proceedings before industrial tribunals, shall have effect.
- (4) Complaints, references [<sup>F1</sup>applications] and appeals to industrial tribunals shall be made in accordance with regulations made under paragraph 1 of Schedule 9.

#### Textual Amendments

**F1** Word inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 16](#)

#### Marginal Citations

**M1** [1964 c. 16.](#)

*Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Part VIII. (See end of Document for details)*

## **129 Remedy for infringement of certain rights under this Act.**

The remedy of an employee for infringement of any of the rights conferred on him by sections 8 and 53 and Parts II, III, V and VII shall, if provision is made for a complaint or for the reference of a question to an industrial tribunal, be by way of such complaint or reference and not otherwise.

### **Modifications etc. (not altering text)**

- C1** S. 129 extended by S.I. 1981/1794, regs. 11(9), 13  
 S. 129 extended (E.W.) (26.8.1994) by 1994 c. 20, s. 4, Sch. 4 para. 22; S.I. 1994/1841, art. 2  
 S. 129 extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 20, 82(2), Sch. 8 para. 22  
 S. 129 extended (*prosp.*) by 1995 c. 26, s. 46(4)(a), 180(1) (with s. 121(5))

## **130 Jurisdiction of referees to be exercised by tribunals.**

- (1) There shall be referred to and determined by an industrial tribunal any question which by any statutory provision is directed (in whatsoever terms) to be determined by a referee or board of referees constituted under any of the statutory provisions specified in Schedule 10 or which is so directed to be determined in the absence of agreement to the contrary.
- (2) The transfer of any jurisdiction by this section shall not affect the principles on which any question is to be determined or the persons on whom the determination is binding, or any provision which requires particular matters to be expressly dealt with or embodied in the determination, or which relates to evidence.

## **131 Power to confer jurisdiction on industrial tribunals in respect of damages, etc., for breach of contract of employment.**

- (1) The appropriate Minister may by order provide that on any claim to which this section applies or any such claim of a description specified in the order, being in either case a claim satisfying the relevant condition or conditions mentioned in subsection (3), proceedings for the recovery of damages or any other sum, except damages or a sum due in respect of personal injuries, may be brought before an industrial tribunal.
- (2) Subject to subsection (3), this section applies to any of the following claims, that is to say—
  - (a) a claim for damages for breach of a contract of employment or any other contract connected with employment;
  - (b) a claim for a sum due under such a contract;
  - (c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract;
 being in each case a claim such that a court in England and Wales or Scotland, as the case may be, would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim.
- (3) An order under this section may make provision with respect to any such claim only if it satisfies either of the following conditions, that is to say—
  - (a) it arises or is outstanding on the termination of the employee's employment; or

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- (b) it arises in circumstances which also give rise to proceedings already or simultaneously brought before an industrial tribunal otherwise than by virtue of this section;
- or, if the order so provides, it satisfies both those conditions.
- (4) Where on proceedings under this section an industrial tribunal finds that the whole or part of a sum claimed in the proceedings is due, the tribunal shall order the respondent to the proceedings to pay the amount which it finds due.
  - (5) Without prejudice to section 154(3), an order under this section may include provisions—
    - (a) as to the manner in which and time within which proceedings are to be brought by virtue of this section; and
    - (b) modifying any other enactment.
  - (6) Any jurisdiction conferred on an industrial tribunal by virtue of this section in respect of any claim shall be exercisable concurrently with any court in England and Wales or in Scotland, as the case may be, which has jurisdiction to hear and determine an action in respect of the claim.
  - (7) In this section—
    - “appropriate Minister”, as respects a claim in respect of which an action could be heard and determined in England and Wales, means the Lord Chancellor and, as respects a claim in respect of which an action could be heard and determined by a court in Scotland, means the Secretary of State;
    - “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;and any reference to breach of a contract includes a reference to breach of—
    - (a) a term implied in a contract by or under any enactment or otherwise;
    - (b) a term of a contract as modified by or under any enactment or otherwise; and
    - (c) a term which, although not contained in a contract, is incorporated in the contract by another term of the contract.
  - (8) No order shall be made under this section unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

#### *Recoupment of certain benefits*

### **132 Recoupment of unemployment benefit and supplementary benefit.**

- (1) This section applies to payments which are the subject of proceedings before industrial tribunals, and which are—
  - (a) payments of wages or compensation for loss of wages; or
  - (b) payments by employers to employees, under Part II<sup>F2</sup> or V or section 53 or in pursuance of an award under section 103 of the<sup>M2</sup> Employment Protection Act 1975; or
  - (c) payments by employers to employees, of a nature similar to, or for a purpose corresponding to the purpose of, such payments as are mentioned in paragraph (b);and to payments of remuneration in pursuance of a protective award under section 101 of the said Act of 1975.

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- (2) The Secretary of State may by regulations make provision with respect to payments to which this section applies for all or any of the following purposes—
- (a) enabling the Secretary of State to recover from an employer, by way of total or partial recoupment of unemployment benefit or [<sup>F3</sup>income support], a sum not exceeding the amount of the prescribed element of the monetary award or, in the case of a protective award, the amount of the remuneration;
  - (b) requiring or authorising the tribunal to order the payment of such a sum, by way of total or partial recoupment of either benefit, to the Secretary of State instead of to the employee;
  - (c) requiring the tribunal to order the payment to the employee of only the excess of the prescribed element of the monetary award over the amount of any unemployment benefit or [<sup>F3</sup>income support] shown to the tribunal to have been paid to the employee, and enabling the Secretary of State to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (3) Without prejudice to subsection (2), regulations under that subsection may—
- (a) be so framed as to apply to all payments to which this section applies or one or more classes of those payments, and so as to apply both to unemployment benefit and [<sup>F4</sup>income support] or only to one of those benefits;
  - (b) confer powers and impose duties on industrial tribunals, on [<sup>F5</sup>a benefit officer within the meaning of the <sup>M3</sup>Supplementary Benefits Act 1976] and on insurance officers and other persons;
  - (c) impose, on an employer to whom a monetary award or protective award relates, a duty to furnish particulars connected with the award and to suspend payments in pursuance of the award during any period prescribed by the regulations;
  - (d) provide for an employer who pays a sum to the Secretary of State in pursuance of this section to be relieved from any liability to pay the sum to another person;
  - (e) confer on an employee [<sup>F6</sup>a right of appeal to a social security appeal tribunal against any decision of an adjudication officer as to the total or partial recoupment of income support in pursuance of the regulations;]
  - (f) provide for the proof in proceedings before industrial tribunals (whether by certificate or in any other manner) of any amount of unemployment benefit or [<sup>F4</sup>income support] paid to an employee; and
  - (g) make different provision for different cases.
- (4) Where in pursuance of any regulations under subsection (2) a sum has been recovered by or paid to the Secretary of State by way of total or partial recoupment of unemployment benefit or [<sup>F7</sup>income support], no sum shall be recoverable under the Social Security Act 1986, and no abatement, payment or reduction shall be made by reference to the income support recouped.]
- (5) Any amount found to have been duly recovered by or paid to the Secretary of State in pursuance of regulations under subsection (2) by way of total or partial recoupment of unemployment benefit shall be paid into National Insurance Fund.
- (6) In this section—
- “monetary award” means the amount which is awarded, or ordered to be paid, to the employee by the tribunal or would be so awarded or ordered apart from any provision of regulations under this section;

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“the prescribed element”, in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under subsection (2);

<sup>F8c</sup>“unemployment benefit” means unemployment benefit under the <sup>M4</sup>Social Security Act 1975.

#### Textual Amendments

- F2** “, III” repealed by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(2), Sch. 11
- F3** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(a)
- F4** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(b)
- (i)
- F5** Words substituted by Social Security Act 1980 (c. 30, SIF 113:1), Sch. 4 para. 13(1)
- F6** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(b)
- (ii)
- F7** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 50(c)
- F8** Definition repealed by Social Security Act 1986 (c. 50 SIF 113:1), s. 86(2), Sch. 11

#### Marginal Citations

- M2** 1975 c. 71.
- M3** 1976 c. 71.
- M4** 1975 c. 14.

### Conciliation officers

#### 133 General provisions as to conciliation officers.

- (1) The provisions of subsections (2) to (6) shall have effect in relation to industrial tribunal proceedings, or claims which could be the subject of tribunal proceedings,—
- (a) arising out of a contravention, or alleged contravention, of any of the following provisions of this Act, that is to say, sections 8, 12, 19, 23, 27, 28, 29, 31, [<sup>F9</sup>31A] and 53; or
- (b) arising out of a contravention, or alleged contravention, of section 99 or 102 of the <sup>M5</sup>Employment Protection Act 1975 or of a provision of any other Act specified by an order under subsection (7) as one to which this paragraph applies; or
- (c) which are proceedings or claims in respect of which an industrial tribunal has jurisdiction by virtue of an order under section 131; [<sup>F10</sup>or
- (d) arising out of a contravention, or alleged contravention, of section 4 of the <sup>M6</sup>Employment Act 1980.][<sup>F11</sup>; or]
- [<sup>F12</sup>(e) arising out of a contravention, or alleged contravention, of section 1(1) or (2) or section 2(1) or 3(4) of the Wages Act 1986.][<sup>F13</sup>; or]
- [<sup>F14</sup>(f) arising out of an infringement, or alleged infringement, of the right conferred by section 3 of the Employment Act 1988.]
- [<sup>F15</sup>(g) under section 1 or 2 of the Employment Act 1990.]
- (2) Where a complaint has been presented to an industrial tribunal, and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
- (a) if he is requested to do so by the complainant and by the person against whom the complaint is presented, or

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- (b) if, in the absence of any such request, the conciliation officer considers that he could act under this subsection with a reasonable prospect of success, to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (3) Where at any time—
- (a) a person claims that action has been taken in respect of which a complaint could be presented by him to an industrial tribunal, but
- (b) before any complaint relating to that action has been presented by him, a request is made to a conciliation officer (whether by that person or by the person against whom the complaint could be made) to make his services available to them, the conciliation officer shall act in accordance with subsection (2) as if a complaint has been presented to an industrial tribunal.
- (4) Subsections (2) and (3) shall apply, with appropriate modifications, to the presentation of a claim and the reference of a question to an industrial tribunal as they apply to the presentation of a complaint.
- (5) In proceeding under subsection (2) or (3) a conciliation officer shall, where appropriate, have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (6) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.
- (7) The Secretary of State may by order—
- (a) direct that further provisions of this Act be added to the list in subsection (1)(a);
- (b) specify a provision of any other Act as one to which subsection (1)(b) applies.

#### Textual Amendments

- F9** Words inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 17**
- F10** [S. 133\(1\)\(d\)](#) inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **Sch. 1 para. 17**
- F11** “; or” inserted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(1), **Sch. 4 para. 9**
- F12** [S. 133\(1\)\(e\)](#) inserted by [Wages Act 1986 \(c. 48, SIF 43:2\)](#), s. 32(1), **Sch. 4 para. 9**
- F13** “; or” inserted by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33, **Sch. 3 para. 2(3)**
- F14** [S. 133\(1\)\(f\)](#) inserted by [Employment Act 1988 \(c. 19, SIF 43:5\)](#), s. 33, **Sch. 3 para. 2(3)**
- F15** [S. 133\(1\)\(g\)](#) inserted by [Employment Act 1990 \(c. 38, SIF 43:5\)](#), s. 3(5), [Sch. 1 paras. 1, 4](#) (with application in relation to a complaint under ss. 1 or 2 of that 1990 Act)

#### Modifications etc. (not altering text)

- C2** [S. 133](#) extended by [S.I. 1981/1794](#), **regs. 11(9), 13**

#### Marginal Citations

- M5** [1975 c. 71](#).
- M6** [1980 c. 42](#).

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### 134 Functions of conciliation officers on complaint under s. 67.

- (1) Where a complaint has been presented to an industrial tribunal under section 67 by a person (in this section referred to as the complainant) and a copy of it has been sent to a conciliation officer, it shall be the duty of the conciliation officer—
  - (a) if he is requested to do so by the complainant and by the employer against whom it was presented, or
  - (b) if, in the absence of any such request, the conciliation officer considers that he could act under this section with a reasonable prospect of success,to endeavour to promote a settlement of the complaint without its being determined by an industrial tribunal.
- (2) For the purpose of promoting such a settlement, in a case where the complainant has ceased to be employed by the employer against whom the complaint was made,—
  - (a) the conciliation officer shall in particular seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable; but
  - (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the conciliation officer to act under this section, he shall seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.
- [<sup>F16</sup>(3) Where—
  - (a) a person claims that action has been taken in respect of which a complaint could be presented by him under section 67, and
  - (b) before any complaint relating to that action has been so presented, a request is made to a conciliation officer (whether by that person or by the employer) to make his services available to them,the conciliation officer shall act in accordance with subsections (1) and (2) above as if a complaint had been presented.]
- (4) In proceeding under subsections (1) to (3), a conciliation officer shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (5) Anything communicated to a conciliation officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before an industrial tribunal, except with the consent of the person who communicated it to that officer.

#### Textual Amendments

**F16** S. 134(3) substituted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 1 para. 18](#)

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### *Employment Appeal Tribunal*

#### **135 Employment Appeal Tribunal.**

- (1) The Employment Appeal Tribunal established under section 87 of the <sup>M7</sup>Employment Protection Act 1975 shall continue in existence by that name <sup>F17</sup>
- (2) The Employment Appeal Tribunal (in this Act referred to as “the Appeal Tribunal”) shall consist of—
  - (a) such number of judges as may be nominated from time to time by the Lord Chancellor from among the judges (other than the Lord Chancellor) of the High Court and the Court of Appeal;
  - (b) at least one judge of the Court of Session nominated from time to time by the Lord President of that Court; and
  - (c) such number of other members as may be appointed from time to time by Her Majesty on the joint recommendation of the Lord Chancellor and the Secretary of State.
- (3) The members of the Appeal Tribunal appointed under subsection (2)(c) shall be persons who appear to the Lord Chancellor and the Secretary of State to have special knowledge or experience of industrial relations, either as representatives of employers or as representatives of workers (within the meaning of the <sup>M8</sup>Trade Union and Labour Relations Act 1974).
- (4) The Lord Chancellor shall, after consultation with the Lord President of the Court of Session, appoint one of the judges nominated under subsection (2) to be President of the Appeal Tribunal.
- (5) No judge shall be nominated a member of the Appeal Tribunal except with his consent.
- (6) The provisions of Schedule 11 shall have effect with respect to the Appeal Tribunal and proceedings before the Tribunal.

#### **Textual Amendments**

**F17** Words repealed by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), [Sch. 2](#)

#### **Marginal Citations**

**M7** 1975 c. 71.

**M8** 1974 c. 52.

#### **136 Appeals to Tribunal from industrial tribunals and Certification Officer.**

- (1) An appeal shall lie to the Appeal Tribunal on a question of law arising from any decision of, or arising in any proceedings before, an industrial tribunal under, or by virtue of, the following Acts—
  - (a) the <sup>M9</sup>Equal Pay Act 1970;
  - (b) the <sup>M10</sup>Sex Discrimination Act 1975;
  - (c) the <sup>M11</sup>Employment Protection Act 1975;
  - (d) the <sup>M12</sup>Race Relations Act 1976;
  - (e) this Act.
  - [<sup>F18</sup>(f) the Wages Act 1986.]



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[<sup>F19</sup>(g) the Employment Act 1990.]

- (2) The Appeal Tribunal shall hear appeals on questions of law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments—
- (a) sections 3, 4 and 5 of the <sup>M13</sup>Trade Union Act 1913;
  - (b) section 4 of the <sup>M14</sup>Trade Union (Amalgamations, etc.) Act 1964.
- (3) The Appeal Tribunal shall hear appeals on questions of fact or law arising in any proceedings before, or arising from any decision of, the Certification Officer under the following enactments—
- (a) section 8 of the Trade Union and Labour Relations Act 1974;
  - (b) section 8 of the Employment Protection Act 1975.
- (4) Without prejudice to section 13 of the <sup>M15</sup>Administration of Justice Act 1960 (appeal in case of contempt of court), an appeal shall lie on any question of law from any decision or order of the Appeal Tribunal with the leave of the Tribunal or of the Court of Appeal or, as the case may be, the Court of Session,—
- (a) in the case of proceedings in England and Wales, to the Court of Appeal;
  - (b) in the case of proceedings in Scotland, to the Court of Session.
- (5) No appeal shall lie except to the Appeal Tribunal from any decision of an industrial tribunal under the Acts listed in subsection (1) [<sup>F20</sup>or under section 2, 4 or 5 of the <sup>M16</sup>Employment Act 1980][<sup>F21</sup>or section 4 or 5 of the Employment Act 1988] or from any decision under the enactments listed in subsections (2) and (3) of the Certification Officer appointed under section 7 of the <sup>M17</sup>Employment Protection Act 1975.

#### Textual Amendments

- F18** S. 136(1)(f) inserted by Wages Act 1986 (c. 48, SIF 43:2), s. 32(1), **Sch. 4 para. 10**
- F19** S. 136(1)(g) inserted by Employment Act 1990 (c. 38, SIF 43:5), s. 3(5), Sch. 1 paras. 1, **8** (with application in relation to a complaint under ss. 1 or 2 of that 1990 Act)
- F20** Words inserted by Employment Act 1980 (c. 42 SIF 43:5), Sch. 1 para. 19
- F21** Words inserted by Employment Act 1988 (c. 19, SIF 43:5), s. 33(1), **Sch. 3 para. 2(4)**

#### Marginal Citations

- M9** 1970 c. 41.
- M10** 1975 c. 65.
- M11** 1975 c. 71.
- M12** 1976 c. 74.
- M13** 1913 c. 30 (2 & 3 Geo. 5).
- M14** 1964 c. 24.
- M15** 1960 c. 65.
- M16** 1980 c. 42.
- M17** 1975 c. 71.

VALID FROM 22/08/1996

<sup>F22</sup>**136A**.....

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### Textual Amendments

**F22** S. 136A repealed (22.8.1996) by 1996 c. 17, ss. 45, 46, **Sch. 3 Pt. 1** (with s. 38) and subject to an amendment (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2, **Sch. 1**

### [<sup>F23</sup>136A Restriction of vexatious proceedings. **E+W+S**

- (1) If, on an application made by the Attorney General or the Lord Advocate under this section, the Appeal Tribunal is satisfied that any person has habitually and persistently and without any reasonable ground—
  - (a) instituted vexatious proceedings, whether in an industrial tribunal or before the Appeal Tribunal, and whether against the same person or against different persons; or
  - (b) made vexatious applications in any proceedings, whether in an industrial tribunal or before the Appeal Tribunal,
 the Appeal Tribunal may, after hearing that person or giving him an opportunity of being heard, make a restriction of proceedings order.
- (2) A “restriction of proceedings order” is an order that—
  - (a) no proceedings shall without the leave of the Appeal Tribunal be instituted in any industrial tribunal or before the Appeal Tribunal by the person against whom the order is made;
  - (b) any proceedings instituted by him in any industrial tribunal or before the Appeal Tribunal before the making of the order shall not be continued by him without the leave of the Appeal Tribunal; and
  - (c) no application (other than one for leave under this section) shall be made by him in any proceedings in any industrial tribunal or in the Appeal Tribunal without the leave of the Appeal Tribunal.
- (3) A restriction of proceedings order may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (4) Leave for the institution or continuance of, or for the making of an application in, any proceedings in an industrial tribunal or before the Appeal Tribunal by a person who is the subject of a restricted proceedings order shall not be given unless the Appeal Tribunal is satisfied that the proceedings or application are not an abuse of the process of the tribunal in question and that there are reasonable grounds for the proceedings or application.
- (5) No appeal shall lie from a decision of the Appeal Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of a restriction of proceedings order.
- (6) A copy of a restriction of proceedings order shall be published in the London Gazette and in the Edinburgh Gazette.]

### Textual Amendments

**F23** S. 136A inserted (30.11.1993) by 1993 c. 19, s.42; S.I. 1993/2503, art. 2(2), **Sch.2**

**Status:**

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**Changes to legislation:**

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