



HANSARD  
SOCIETY

# HANSARD SOCIETY BRIEFING PAPER ISSUES IN LAW MAKING

## 9: Joint Committees

JUNE 2006

**1 Introduction:** Since 2003, the Hansard Society has been undertaking a review of its 1992 Commission report, *Making The Law*, in order to highlight critical issues in the legislative process, stimulate and promote debate and identify options for change.<sup>1</sup> Over the past three years, supported by DLA Piper, we have produced a series of 'Briefing Papers' which have examined a number of legislative issues. This is the ninth and final paper in the series. It looks at the role of joint committees in the parliamentary and legislative process and the various ways in which they are used. The prime focus is on the Westminster Parliament although references are also made to the use of joint committees in the devolved institutions and the European Parliament.

The paper provides a description and overview of the subject, including an outline of the many different types of joint committees. We look at a number of different models under the term 'joint committees'. These include committees formed on a permanent basis which consist of members of both Houses. The paper also covers temporary, or ad hoc, committees which bring together MPs and Peers to undertake certain specific functions. We also look at examples where select committees come together to carry out joint work. As will be described, joint committees can take on legislative functions as well as scrutiny and accountability work. We also consider the different ways that these committees work and conclude by looking at issues raised and options for change.

**2 Joint committees of both Houses:** Joint committees of both Houses have long been used in Westminster and provide an opportunity for Parliament to speak with one voice. The oldest of these is the Joint Committee on Consolidation, &c., Bills, which was established in 1894 with the narrow task of examining bills that attempt to consolidate the law. Another relatively long-standing example is the Joint

Committee on Statutory Instruments (which dates from 1972), and is responsible for scrutinising technical aspects of delegated legislation. A more recent example is the Tax Law Rewrite Committee which has a brief to modernise tax legislation without altering its substance. However, perhaps the most well known of the joint committees currently operating is that on Human Rights. The following sections describe the work of these Committees.

**(i) The Joint Committee on Human Rights (JCHR):** The JCHR was established in 2001, following the implementation of the Human Rights Act 1998 (HRA) in 2000. The Committee has 12 members, six from each House. While it has so far been chaired by a Labour MP (in the last Parliament Jean Corston, currently, Andrew Dismore), the arithmetic of the Lords representation means that the Government has not had an overall majority. Its terms of reference are to examine 'matters relating to human rights in the UK (excluding consideration of individual cases)', and it is also required to report on all 'remedial orders' made under the 1998 Act.

Most notably, the Committee chose in the 2001-05 Parliament to examine every bill to reach its own judgement as to whether the bill's provisions are compliant with the Convention rights defined in the HRA and other human rights standards, and reports its views to both Houses. Government bills are required to carry a 'section 19' statement on whether, in the opinion of the Minister who introduces the bill to Parliament, its provisions are human rights compliant. The Committee has been prepared to take issue with these judgements on a number of occasions,

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particularly in relation to bills concerning anti-terrorism legislation, immigration and asylum and other aspects of the criminal law. On a number of occasions the courts have subsequently sided with the view expressed by the Committee which has been ignored by the Government: on other occasions the Government has either voluntarily or under pressure amended bills to meet concerns expressed by the Committee.

The JCHR is also required by its terms of reference to consider proposals for remedial orders (an order made by a minister that amends primary legislation when that has been found incompatible with the HRA).<sup>2</sup> In practice, this has been a relatively uncontroversial aspect of its work, and only three such orders have been made since 2000. The Committee also looks at more general policy matters relating to human rights in the UK. Examples of this aspect of its work have been its report on the case for a Human Rights Commission in the UK (which was influential in the establishment of the Commission for Equality and Human Rights under the Equality Act 2006) and on deaths in custody. It also took on the courts interpretation of a key phrase in the Human Rights Act with its report in 2004 on the Meaning of 'Public Authority under the Human Rights Act'. It has also made a public commitment to examine regularly the UK's record of compliance with the main international human rights treaties, and has reported on the UN Convention on the Rights of the Child and the Convention on the Elimination of Racial Discrimination.<sup>3</sup>

Despite the fact that the issues dealt with by the JCHR are politically charged, it has successfully managed to develop a non-partisan ethos. In particular, the expertise and perspective from the two Houses is considered to have been a major factor in the Committee's ability to establish its reputation as swiftly as it has.<sup>4</sup> Now a permanent fixture in Westminster, this is a clear example of a highly successful joint committee, and one which represents a model for others.

**(ii) The Joint Committee on Statutory Instruments (JCSI):** is responsible for scrutinising all delegated (secondary) legislation. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are generally not. This

Committee is typical of most permanent joint committees in that its terms of reference confine it to a very narrow range of considerations. As described in the third paper in this series, *Delegated Legislation*, 'The Joint Committee on Statutory Instruments (JCSI), a Committee of both Houses, has helped to provide some level of sustained and detailed scrutiny of delegated legislation. It does this by ensuring that particular Statutory Instruments (SIs) are made within the powers delegated by the parent Act, as well as checking that the drafting is not defective and that an SI does not impose a charge on public revenues. However, the JCSI is expressly barred from considering the merits of any SI.'<sup>5</sup>

The Committee itself comprises 14 members, seven from each House, and is traditionally chaired by an opposition backbench MP. The JCSI has a significant but largely invisible impact: in guarding against the inappropriate or ineffectual use of the many powers granted to Ministers in Acts of Parliament to make delegated legislation with only cursory, or no, scrutiny by Parliament. The Committee may also require any government department to submit explanatory memoranda to explain particular SIs or to send witnesses.

**(iii) The Tax Law Rewrite Committee:** This Committee was set up in 2001 to consider bills prepared under the Tax Law Rewrite Project which aimed to modernise the wording of tax legislation without altering its effect. The Committee has seven members from each House and is an example of the use of an expedited procedure for uncontroversial bills, similar to that used for consolidation bills. After Second Reading, a tax simplification bill is committed to the joint committee. A recent example of the work of the Committee was its consideration of the Income Tax (Trading and Other Income) Bill, which received Royal Assent on 24 March 2005. Again, like most permanent joint committees, the powers of the committee are fairly narrowly defined, although it can, unusually, actually amend the legislation before it.

**(iv) The Joint Committee on Consolidation, &c., Bills:** This Committee also undertakes a very technical task on behalf of the two Houses, examining bills that attempt to consolidate the law, which have the effect of restating the law in a more coherent manner, and sometimes amending errors and ambiguities that it

may have previously incorporated, without actually making any change to its effect.<sup>6</sup> It also deals with bills that give effect to recommendations from the Law Commission to repeal Acts no longer of practical application; and similar matters relating to Northern Ireland. The committee has 24 members, 12 from each House and it is traditionally chaired by a Law Lord.<sup>7</sup>

**3 Statutory Joint Committees of Parliamentarians:** The Intelligence and Security Committee is another example of the work of a joint committee, although it is not a parliamentary committee but a statutory committee comprised of members of both Houses of Parliament. It was established by the Intelligence Services Act 1994 and provides parliamentary oversight of SIS (Secret Intelligence Service), GCHQ (Government Communications Headquarters) and the Security Service. The Committee examines the expenditure, administration and policy of the three agencies. Its cross-party membership of nine from both Houses is appointed by the Prime Minister after consultation with the Leader of the Opposition. The Committee is required to report annually to the Prime Minister on its work. These reports, after any deletions of sensitive material, are placed before Parliament by the Prime Minister. The Committee also provides ad hoc reports to the Prime Minister from time to time, for example, on the intelligence provided to underpin the decision to invade Iraq. The current Chairman of the Intelligence and Security Committee is the Labour MP Paul Murphy.

The Ecclesiastical Committee is established under the Church of England Assembly (Powers) Act 1919. It examines proposals for legislation affecting the Church which have been passed by the General Synod, and recommends whether or not each House should ask for the Royal Assent to be given to them. It is comprised of 15 members of each House.

**4 Joint Committees; Parliamentary and Constitutional Reform:** Joint committees are also established to deal with broader constitutional and parliamentary matters. For example, in 1997 a joint committee was established to examine the matter of parliamentary privilege. In 2002, a Joint Committee on Lords Reform was established to look at ways to progress reform of the second chamber. In both cases, however, the committees ran into difficulty.

The recommendations made by the Joint Committee on Parliamentary Privilege have yet to be acted upon, while all seven options for the composition of a reformed second chamber put forward by the Joint Committee on Lords Reform were rejected by the Commons. On these occasions, therefore, joint committees have failed to win political support in the Commons, though this should perhaps be taken more as a reflection of the fact that it is sometimes impossible to achieve political consensus in that House regardless of the mechanism used, rather than an indictment of joint committees. In 2006, a joint committee was established to look at the conventions underpinning the legislative supremacy of the Commons.

There has also been one interesting recent example of the two Houses working together in matters of administration and access to Parliament, a development arising from recommendations made by the Hansard Society Commission on the Communication of Parliamentary Democracy, chaired by Lord Puttnam.<sup>8</sup> In February 2006, the House of Commons Administration Committee approved moves for it to meet with the Lords Information Committee to consider jointly the subject of facilities for visitors to Parliament.

**5 Select committees; Joint Work:** In recent years, the Government has made increasing attempts to co-ordinate 'cross cutting' policy issues that engage the remits of several departments. The complex networks of government pose a challenge for parliamentary select committees, especially those in the Commons, which are designed to shadow the work of individual government departments. Joint working between select committees has been one important way by which Parliament has responded to this development. Amendments to the Standing Orders of the Commons have made it easier for this cross cutting work to happen, by giving select committees and sub-committees the power 'to communicate evidence to any other select committee or sub-committee of either House of Parliament or to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly or to any of their committees'. Select committees or sub-committees can meet together to take evidence and to consider a draft report.<sup>9</sup> The joint work of the Home Affairs and Work and Pensions

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Committees on the Draft Corporate Manslaughter Bill is a good example of the work that Standing Order 137A has enabled.<sup>10</sup> Such collaboration avoids unnecessary duplication of work and helps to make for more coherent scrutiny of government policy. However, joint work of this type by select committees is still rare.

An important exception to the general reluctance of Commons select committees to work collaboratively is the Quadripartite Committee, or to give it its official title ‘the Committees on Strategic Export Controls’. The ‘Quad’, as it is also known, was first established in 1999 to bring together the Defence, Foreign Affairs, International Development and Trade and Industry Select Committees to examine the Annual Reports on

Strategic Exports produced by the Government on the initiative of the then Foreign Secretary, Robin Cook, and the draft bill introduced in that year to replace the export control regime condemned by Lord Scott in his 1996 report on the events surrounding the trial of a number of people for the alleged attempt to export components of a ‘supergun’ to Iraq. The Committees have continued to produce at least annual reports on the operation of the export control regime and related matters.

The Quad theoretically comprises the more than 40 members of the four participating committees, but generally has had a core membership of around four from each. It is the most sustained example of co-operative work between select committees. But it is

## BOX A JOINT COMMITTEES; WESTMINSTER AND THE DEVOLVED LEGISLATURES:

In recent years there have been moves to encourage joint working between Westminster and the devolved legislatures. In 2002, the Commons standing orders were amended to allow co-operation between its select committees and their partner committees in the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales. This co-operation mainly related to the exchange of information, and fell short of permitting joint meetings.

**The Welsh Assembly:** The Welsh Affairs Committee of the Commons sought, and was granted (initially for an experimental period) power to hold joint meetings with Assembly Committees. The Assembly granted a mirroring power to its committees so that now the ‘host’ institution can hold ‘enlarged’ public and formal meetings of committees in which members of the other institution can participate, although they may not vote together. The committees of each institution could agree informally to produce reports with identical wording, but the reports would have to be agreed to and published as separate documents. These procedures, known locally as reciprocal enlargement, were made permanent in 2005. The Welsh Affairs Committee and the Assembly committees have used these powers to hold

joint inquiries on the draft Transport (Wales) Bill, the Public Services Ombudsman (Wales) Bill and the Ofcom review of public service broadcasting. More generally, the Welsh Affairs Committee liaises closely with National Assembly committees and the procedures are still evolving, with the committees looking for new and innovative ways of joint working.

**The Scottish Parliament:** As a unicameral institution the situation at Holyrood is different to that at Westminster. Where a matter falls within the remit of more than one committee, the committees concerned may, with the agreement of the Parliamentary Bureau, consider that matter jointly. The Parliamentary Bureau consults the Conveners’ Group before giving such agreement. It is also the case that any subsequent report resulting from the committee has to be produced jointly by the two convening committees.<sup>11</sup> Conversely, the Parliament’s Justice 1 Committee and the Justice 2 Committee share the same remit. There are two justice committees in order to deal with the high volume of work relating to justice and home affairs. In order to avoid duplication of activity and to balance the volume of work between the committees, future work programmes are discussed regularly between the committee conveners.

perhaps significant that this coherence is built around a relatively narrow scrutiny mechanism – that of looking at quite technical issues relating to the mass of data presented in the annual (now quarterly) reports on strategic exports. In this respect, the Committees can be seen to share some of the characteristics of a traditional joint committee in their approach to their task, but the institutional structure of the Quad provides an interesting model and precedent for future work on cross cutting matters.

**6 Pre-Legislative Scrutiny:** In recent years, a new role has begun to develop for select committees and joint committees in the pre-legislative scrutiny of bills in draft form. Since 1997 parliamentary scrutiny of draft bills has added an extra stage to the legislative process in a handful of cases each session. Initially, and especially during the period when Robin Cook was Leader of the House of Commons, joint committees appeared to be the favoured instrument. However, the way in which they conducted such scrutiny tends to differ from that undertaken by Commons select committees, being more detailed and more sustained. Whatever the causes, the use of joint committees for this type of work seems to have declined. One advantage (especially for the whips) remains that many ad hoc joint committees have to operate to a fairly strict deadline, whereas Commons select committees generally have more discretion over their timetable and ways of working.<sup>12</sup> The range of the areas covered by joint committees is shown by the different draft bills which have been considered in this way, including Draft Corporate Manslaughter Bill, Draft Children (Contact) & Adoption Bill, Draft Charities Bill, Civil Contingencies Bill, Draft Corruption Bill, Draft Disability Bill, Draft Gambling Bill, Draft Mental Incapacity Bill. In March 2005, the Government announced that the draft legislation on Legal Services Reform would be scrutinised by a joint committee, although this looks likely to be the only draft bill to receive scrutiny in this form in the 2005-06 session.

**7 Why Joint Committees Matter:** Even though joint committees are still quite rarely used outside narrowly technical areas of scrutiny, there is wide acceptance that they can bring a number of specific benefits. Perhaps the clearest benefit derives from the fact that Members of each House bring with them a range of different experiences, expertise and political (and

non-political) backgrounds. Even joint work by select committees of the same House brings together a variety of perspectives and different knowledge. This broader base is likely to enhance the work and inquiries carried out by the committees involved in this work.

Another potential advantage is that joint committees of both Houses can claim, with some justification, to speak with one voice on behalf of Parliament and thus provide it with greater weight in its dealings with government. It is the Hansard Society's contention that, in most respects, the relationship between government and Parliament is tilted too excessively in favour of the former. Any mechanism that helps to establish a more equitable relationship between government and Parliament is to be welcomed. Joint committees can play an important part in helping to achieve this.

Another advantage of joint committees of both Houses is that they tend to be characterised by a relative lack of partisanship. The Hansard Society has long identified select committees as the most effective model for holding government to account, and also for undertaking functions such as pre-legislative scrutiny. One of the main reasons for our support for select committees is that they are able to provide an institutional structure that allows MPs, in particular, to exercise a specifically parliamentary role (rather than a party political one). Select committees, with their emphasis on collegiality and consensus (where possible), tend not to be dominated by party issues and the whips take a relatively light touch. These advantages are likely to be magnified by the use of joint committees, especially where members of both Houses are involved. The Lords are subject to a much lower degree of partisan control (by the party business managers) than their Commons counterparts and the mixture of the cultures of the two Houses on a single committee makes it much more likely that a parliamentary perspective will develop, rather than simply one dominated by party political interest.

This lower degree of partisanship derives, at least in part, from the fact that members of the House of Lords do not have to seek election. This, of course, may change when the final settlement for Lords reform is implemented. There are also those who

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assert that, despite their valuable role and expertise, because members of the Lords are not elected, there are questions about accountability for their actions and decisions. From this viewpoint, these issues of accountability also apply to joint committees of both Houses.

**8 Issues and Concerns:** However, the most pressing concern with the operation of joint committees is that, as with so many aspects of parliamentary life, the government has a tight control over the process. The government decides whether a joint committee will be established to consider a draft bill. (Indeed, control over the operation of pre-legislative scrutiny as a whole lies firmly with the government.)

This lack of control extends to decisions over the scope and operation of inquiries by joint committees. For example, there are no established procedures to govern the amount of time that a committee can consider and report on a bill. The Joint Committee on the Draft Communications Bill explained the situation: ‘We recommend that, as a general rule, the government should propose to the Houses that the deadline for a report by a joint committee established to examine a draft bill be set at least one month after the deadline for submissions to government consultation exercises on the relevant draft bill.’<sup>13</sup> The issue of timing was also highlighted by the Joint Committee on the Financial Services and Markets Bill. This was given eight weeks in which to produce a report on the draft bill which was too little time, according to the members and those who submitted evidence to the Committee. One Joint Committee member described the time available as being ‘a joke’, an ‘enormous obstacle to doing a good job’, and ‘not a great vote of confidence that you have an enormous part to play’.<sup>14</sup> A further time-related difficulty relates to the duration it takes to secure the approval of both Houses to refer a bill to a joint committee, and the subsequent time to find Members from the two Houses to serve on such a committee. This is often a lengthy process, which is problematic given that time is often of the essence when dealing with draft bills.

However, these issues of timing are really symptomatic of a much wider concern about the limited nature of Parliament’s control over its own procedures. Many commentators, including the Hansard Society,

advocate that Parliament should have greater autonomy over its own business. While such fundamental reforms are beyond the scope of this paper, they clearly impact on the issues about who controls joint committees.

**9 Options for Reform:** In this section, we look at reform proposals relating to joint committees. The House of Lords Select Committee on the Constitution looked closely at the role of joint committees in pre-legislative scrutiny and noted in its report, *Parliament and the Legislative Process*:

Various witnesses have stressed the value of Joint Committees. A Joint Committee is especially useful where there is a large, complex and crosscutting bill, and one that relates to a subject on which Members of the House of Lords may have particular expertise. It may also serve, as Mark Fisher told us, to encourage both Houses to see their role of scrutiny and monitoring is common ‘and that we are one Parliament’. The value of Joint Committees is shown in the work that they have already done.<sup>15</sup>

However, the Constitution Committee also recognised that there are practical problems:

‘Referring a bill to a Joint Committee involves achieving the approval of both Houses, and approaching Members from the two Houses to serve. This takes time and in dealing with draft bills time is often of the essence. There is also a problem for Government in that it will not enjoy an automatic majority on a Joint Committee. There is a problem for opposition parties in the Commons in that, if it is a small committee, it may result in only one or two MPs from opposition parties being appointed to it.’

The Constitution Committee considered that the use of joint committees would expand as bills become more complex and the number of bills subject to pre-legislative scrutiny increases. Its report recommended that ‘although a draft bill should normally be considered by a departmental select committee, if such a committee declines to consider a bill, the Liaison Committee of the Commons should consider appointing a temporary committee. For big and complex bills

(as with the Financial Services and Markets Bill and the Communications Bill), and where there is particular expertise in the House of Lords, a Joint Committee should be considered. Where a bill cuts across several sectors, then a (sub) committee drawn from two or more Commons Select Committees, or a Joint Committee, may be appropriate.<sup>7</sup>

With joint committees becoming more common and utilised to a greater extent, proposals have now been put forward to develop the current system of European Scrutiny so that there will be a joint committee of the two Houses to play a part in this role. In March 2005, the Modernisation Committee published its report on scrutiny of European business, and largely endorsed the Government's proposals concerning the creation of the joint committee, which it suggested naming the 'Parliamentary European Committee' (PEC).<sup>16</sup> It recommended that Commissioners be invited to meetings of the PEC, which it believed would convene on average four times a year, and suggested that British MEPs be permitted to attend and to speak. The report concluded by commending the complementary aspects of the Commons and Lords processes which, facilitating rapid analysis on one hand and more detailed consideration on the other, together 'provide for a scrutiny of EU legislation which is both broad and deep'. However, the Commons European Scrutiny Committee has been very sparing in the use of its power to engage other select committees of that House in the scrutiny process, and co-operation between the European scrutiny committees of the two Houses is mostly conducted behind the scenes rather than through any formal collaboration. The Parliamentary European Committee, if established, will be a major step forward for the support of joint committees and their use within Westminster. At the time of writing, the Government is yet to make a formal response about taking forward this issue.<sup>17</sup>

**10 Conclusion:** Joint committees are an established and permanent feature of the political process in Westminster. They provide an opportunity for both the Commons and the Lords to voice their opinions on issues that affect them, or alternatively, for select committees to work together on issues that are cross cutting to their individual remits. However, it seems that there is a lack of enthusiasm in Government for extending their role beyond the rather technical

matters that most joint committees of the two Houses currently deal with. There is also a lack of energy on the part of the Commons select committees in using creatively the powers they have been given to work together. The movement towards more effective and innovative working should be seen as a constructive progression. The Hansard Society contends that joint committees and other forms of collaboration between select committees in each and in both Houses represent an important model for improving the work of Parliament and, where applicable, their use should be promoted and supported by Members and Peers.

## ENDNOTES AND REFERENCES

- <sup>1</sup> *Making The Law*, The report of the Hansard Society Commission on the Legislative Process, (1992), chaired by Rt Hon Lord Rippon of Hexham.
- <sup>2</sup> *How Parliament Works*, Rogers R & Walters R (2004, 5th edition), Chapter 7, Page 236.
- <sup>3</sup> *Ibid.* Chapter 11, Page 318.
- <sup>4</sup> For more information on the work of the JCHR, see Evans, P., *The Human Rights Act and Westminster's Legislative Process*, in Brazier, A., *Parliament, Politics and Law Making, Issues and Developments in the Legislative Process*, Hansard Society (2004).
- <sup>5</sup> Hansard Society Briefing Paper, *Issues in Law Making 3: Delegated Legislation*, (December 2003).
- <sup>6</sup> *How Parliament Works*, Rogers R & Walters R (2004, 5th edition), Chapter 11, Page 318.
- <sup>7</sup> *Parliament, Functions, Practice and Procedures*, Blackburn R & Kennon A (1997, 2nd edition), Page 614.
- <sup>8</sup> *Members Only? Parliament in the Public Eye*, Report of the Hansard Society Commission on the Communication of Parliamentary Democracy, Chair, Lord Puttnam, (2005).
- <sup>9</sup> Standing Order No.137A, *Select Committees: power to work with other committees*, Standing Orders of the House of Commons 2005.
- <sup>10</sup> Home Affairs and Work and Pensions Committees, *Draft Corporate Manslaughter Bill*, (2005-06), HC 540-1.
- <sup>11</sup> <http://www.scottish.parliament.uk>, Standing Orders of the Scottish Parliament, Chapter 5, Rule 6.14.
- <sup>12</sup> Hansard Society Briefing Paper, *Issues in Law Making 5: Pre-Legislative Scrutiny*, (July 2004).
- <sup>13</sup> Joint Committee on the Draft Communications Bill, (2001-02), HL 169 - I, HC 876 - I.
- <sup>14</sup> Smith Hughes, A., *Parliament, The City and Financial Regulation: A review of the passage of the Financial Services and Markets Act 2000*, Hansard Society, (October 2001), page 12.
- <sup>15</sup> *Parliament and the Legislative Process* (2003-04), House of Lords Constitution Committee (HL 173-I). Page 18.
- <sup>16</sup> Modernisation Committee (2004-05), *Scrutiny of European Business*, HC 465-1.
- <sup>17</sup> See Hansard Society Briefing Paper *Issues in Law Making 8, Scrutiny of European Business*, (February 2006).

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This paper was written and edited by Alex Brazier together with Declan McHugh and Sam Lovett, Hansard Society. The views expressed in this report are those of the authors. The Hansard Society, as an independent non-party organisation, is neither for nor against. The Society is, however, happy to publish these views and to invite analysis and discussion of them.

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