

# **SENTENCE REVIEW COMMISSIONERS**

**Annual Report 2017/18**



# Sentence Review Commissioners Annual Report 2017/18

Presented to Parliament pursuant to paragraph 6 of Schedule 1 to the  
Northern Ireland (Sentences) Act 1998  
(For the year ended 31 March 2018)

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# SENTENCE REVIEW COMMISSIONERS

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**Ms. Clodach McGrory**

Rt Hon Karen Bradley MP  
Secretary of State for Northern Ireland  
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Dear Secretary of State

Sub-paragraph 6(1) of Schedule 1 to the Northern Ireland (Sentences) Act 1998 requires me, as Chairman of the Sentence Review Commissioners, to make a report to you, as soon as practicable after the end of the financial year, on the performance of the Sentence Review Commissioners' functions during the year. Annual Reports have accordingly been forwarded to you and your predecessors every year since the first in 1998/1999.

This, the twentieth report, covers the year ending 31 March 2018. The layout and the content of this report follow the line adopted in last year's report. It should be noted that all our previous reports are readily available on the Commissioners' website: [www.sentencereview.org.uk](http://www.sentencereview.org.uk).

Chapter One summarises the background to the Commissioners' role. Chapter Two describes some issues that were addressed during the year, including the considerable work done by the Commissioners in preparation for the anticipated introduction of the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED) in May 2018. Chapter Three gives details of the caseload processed throughout the year and Chapter Four deals with staff and resources.

The 2017/18 reporting year has brought changes within the body of Commissioners. On 31 July 2017 Dr Duncan Morrow took the option not to renew his contract as a Sentence Review Commissioner. I would like to take this opportunity, on behalf of myself and my Commissioner colleagues to record our appreciation to Dr Morrow for his exemplary hard work and dedication demonstrated throughout his 19 years of service. Dr Morrow's particular knowledge and experience has been invaluable to the process and contributed significantly to the resolution of many difficult issues in the important work that we do.

Finally, I would like to take this opportunity to acknowledge the commitment and dedication of my fellow Commissioners who serve in a part-time capacity and to thank Secretariat Staff for their administrative support during the year. I have no doubt that this support will carry through to the 2018/19 reporting period.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Clodach McGrory', followed by a small dot.

CLODACH MCGRORY  
Chairman

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# **Chapter 1**

## **Background**

The work of the Commissioners has its origins in the Agreement reached on Good Friday (10 April) 1998 between the participants in the multi-party negotiations, subsequently endorsed by referendum.

The part of the Agreement dealing with prisoners committed both Governments to putting in place mechanisms to provide for an accelerated programme for the release of prisoners convicted of scheduled offences in Northern Ireland or of similar offences elsewhere. The arrangements were to protect the rights of individual prisoners under national and international law.

Prisoners affiliated to organisations that had not established, or were not maintaining, complete and unequivocal ceasefires were to be excluded from benefiting from the arrangements.

## **The Act and Rules**

The Government gave effect to this commitment through the provisions of the Northern Ireland (Sentences) Act 1998 ('the Act') and through various pieces of subordinate legislation made under it, most particularly the Northern Ireland (Sentences) Act 1998 (Sentence Review Commissioners) Rules 1998 ('the Rules'). Both were passed by Parliament in late July 1998.

The Act provides for the appointment of Commissioners and sets out the criteria that must be met for a prisoner to be eligible for early release on licence. The Act also makes provision for the calculation of the appropriate release dates for qualifying prisoners, whether fixed term or life sentence prisoners.

The Rules set out in detail the procedures under which prisoners apply for early release and the Commissioners consider their applications. Within the terms of the Rules there

is provision for the views of the Secretary of State (represented by the Northern Ireland Office) to be made known and taken into account by the Commissioners. The Rules normally give both parties access to the same information. However, in certain circumstances information certified by the Secretary of State as 'damaging' may be withheld from the prisoner (and any representative nominated by the prisoner). If this happens, there is provision for the Attorney General to appoint a Special Advocate to represent the interests of the prisoner.

Rule 22(1) of the Sentence Reviews Commissioners' Rules applies where the Secretary of State (SoS) certifies as 'damaging information' (hereinafter 'DI') any information, document or evidence which, in his opinion, would if disclosed to the person concerned or any other person be likely to:

- a) Adversely affect the health, welfare or safety of the person concerned or any other person;
- b) Result in the commission of an offence;
- c) Facilitate an escape from lawful custody or the doing of any act prejudicial to the safe keeping of persons in such custody;
- d) Impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- e) Be contrary to the interests of national security; or
- f) Otherwise cause substantial harm to the public interest.

The papers submitted by the prisoner (known as the 'applicant') and the Secretary of State (known as the 'respondent') are considered by a panel of three Commissioners who give their initial view in writing in the form of a 'preliminary indication'. The Rules allow either party to challenge the preliminary indication and have the issues considered afresh at an oral hearing. If there is no such challenge, or after an oral hearing, the final decision of the Commissioners is given to both parties in the form of a 'substantive determination'. The Act makes provision for the Secretary of State to apply to the Commissioners to revoke a declaration that a prisoner is eligible for release, on certain grounds, at any time before the prisoner is released. Other than this the Commissioners have no power to reconsider a substantive determination, so the only way in which either party can challenge the outcome is by way of judicial review.

Prisoners who are successful in their applications are released on licence, the conditions of which are set out in the Act. The Act also makes provision for the suspension of a licence by the Secretary of State if she believes a person has broken or is likely to break a condition of his/her licence.

The Rules set out in detail the procedures to be followed in these circumstances.

## **Eligibility for Early Release**

The eligibility criteria laid down by the Act are that:

- the prisoner is serving a sentence of imprisonment in Northern Ireland;
- the sentence is one of imprisonment for life or for a term of at least five years;
- the offence was committed before 10 April 1998;
- if the sentence was passed in Northern Ireland, the offence:
  - was a scheduled offence; and
  - was not the subject of a certificate of the Attorney General that it was not to be treated as a scheduled offence;
- if the sentence was passed in Great Britain, the offence:
  - was committed in connection with terrorism and with the affairs of Northern Ireland; and
  - is certified as one that would have been scheduled, had it been committed in Northern Ireland;
- the prisoner is not a supporter of a specified organisation;
- if the prisoner were released immediately, he would not:
  - be likely to become a supporter of a specified organisation; or
  - be likely to become involved in acts of terrorism connected with the affairs of Northern Ireland; and
  - if a life sentence prisoner, be a danger to the public.

Scheduled offences are defined in successive Northern Ireland (Emergency Provisions) Acts and comprise those most likely to be committed by terrorists. They include murder and manslaughter, kidnapping, serious assaults and armed robbery, and a wide range of firearms and explosives offences.

It should be noted that the Act does not require offences in Northern Ireland to have been committed by or on behalf of a terrorist organisation but simply requires them to have been tried as scheduled offences.

## **The Specified Organisations**

The Act requires the Secretary of State to 'specify' by subordinate legislation any organisation believed to be concerned in terrorism connected with the affairs of Northern Ireland which has not established or is not maintaining a complete and unequivocal ceasefire. Specification of an organisation means that its supporters are not eligible to benefit from the early release arrangements.

The list of specified organisations referred to in Section 3(8) of the Northern Ireland (Sentences) Act 1998 are currently:

- The Continuity Irish Republican Army;
- The Loyalist Volunteer Force;
- Óglaigh na hEireann;
- The Orange Volunteers;
- The "Real" Irish Republican Army; and
- The Red Hand Defenders.

## **The Accelerated Release Date**

The Act provided that any prisoners given release dates after the second anniversary of the Act's commencement would be released by the Secretary of State on that day, or when they had served two years in prison, whichever is the latter.

It also provides that a prisoner cannot be released at any time before an application for revocation of the Commissioners' declaration has been finally determined.

The Secretary of State is empowered to vary these arrangements by subordinate legislation.

## **Licence Arrangements**

Each prisoner released early under the legislation is subject to the licence conditions:

- that he or she does not support a specified organisation;
- that he or she does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; and
- in the case of a life prisoner, that he or she does not become a danger to the public.

For a fixed term prisoner the licence remains in force until the date when he or she would otherwise have been entitled to be released from prison under the legislation in place at that time. For a life prisoner, the licence remains in force for the rest of his or her life.

The Secretary of State may suspend a licence if she believes the person concerned has broken or is likely to break a licence condition. Where a released prisoner is recalled by the Secretary of State, the Commissioners will consider his or her case. If they think that he or she has not broken, and is not likely to break, a condition of the licence, they are required to confirm the licence, in which case the prisoner will be released again.

Otherwise, they are required to revoke the licence, in which case the prisoner will lose entitlement to early release and will remain in prison until eligible for release under normal arrangements or subject to a further application from the prisoner.

The Rules make provision for successive applications to be made by any prisoners where circumstances have changed since the most recent decision of the Commissioners or it comes to light that there was some material information, document or evidence which was not placed before the Commissioners when the most recent decision was made.

## The Commissioners

The Sentence Review Commissioners are an independent body made up of a Chairman and five other Commissioners\* appointed by the Secretary of State. The following Commissioners served during the reporting period.

|  |   |
|--|---|
| <i>Ms Clodach McGrory<br/>Chairman</i> | Practiced at the Bar in Northern Ireland from 1990 to 1995 and subsequently worked at the Law Centre (NI). She was a member of the Standing Advisory Commission on Human Rights from 1998 to 1999 and served a term of office on the Irish Human Rights Commission from December 2000 until August 2006. She was a member of the Prison Review Team which was appointed by the Minister for Justice in June 2011 to conduct a comprehensive review of the Northern Ireland Prison Service and reported in October 2012. She is currently a part-time Chairman of Social Security Appeal Tribunals and has been a Life Sentence Review Commissioner/Parole Commissioner since 2001. Ms McGrory was appointed Chairman of the Sentence Review Commissioners on 21st January 2013. |
| <i>Dr Adrian Grounds</i>               | Was a University senior lecturer in forensic psychiatry at the Institute of Criminology, University of Cambridge, and an honorary consultant forensic psychiatrist in the Cambridgeshire and Peterborough NHS Foundation Trust, until retiring in 2010. He is now an honorary research fellow at the Institute of Criminology. He is also a Parole Commissioner for Northern Ireland, and a Medical Member of the First-tier Tribunal (Mental Health) in England.   |
| <i>Prof John Jackson</i>               | A Professor of Law at the University of Nottingham and a qualified barrister. He was previously Dean of the School of Law at University College Dublin and has taught at several other universities including Queen's University Belfast, the University of Sheffield, the City University, London and University College Cardiff. He has held visiting professorships at Hastings College of the Law, University of California and the Faculty of Law, University of New South Wales and was a Fernand Braudel Senior Fellow at the European University Institute in 2007 – 2008. From 1998 to 2000 he was an Independent Assessor for the Northern Ireland Criminal Justice Review and he has been a Life Sentence Review Commissioner/Parole Commissioner since 2002.        |
| <i>Mr Timothy Thorne</i>               | Tim qualified as a barrister in 1987. He practiced mainly in the fields of criminal defence and prosecution. He is a Deputy (part-time) Judge Advocate sitting in Courts Martial and a part-time judge in the First Tier Tribunal, dealing with asylum and immigration cases. He was also a past Deputy Chairperson of the National Health Service Tribunal and a consultant trainer to the Inns of Court School of Law in London. He is presently a non-Executive Director of a legal training company. Tim is also a Parole Commissioner for Northern Ireland.  |
| <i>Ms Anne Grimes</i>                  | Ms Anne Grimes qualified as a solicitor in 1990. She worked at Law Centre (NI) for 12 years. She was appointed as an Immigration Judge of the First-tier Tribunal in 2002 and also as a Deputy Judge of the Upper Tribunal in 2010. In 2007 she was appointed a part time Legal Chairman of the Northern Ireland Valuation Tribunal. Anne is also a Parole Commissioner for Northern Ireland.   |
| <i>Dr Micaela Greenwood</i>            | Dr Micaela Greenwood is an independent business psychologist and management consultant. Her previous positions include Principal Occupational Psychologist at the Police Service of Northern Ireland and Associate Director of the MSc in Occupational Psychology at Queen's University of Belfast. Micaela is also a Parole Commissioner for Northern Ireland.   |

\* All Commissioners are paid on a part-time per diem basis and the Chairman receives additional remuneration in respect of her duties as Chairman.



## **Chapter 2**

### **Approach**

The Commissioners are under a duty to implement one of the most sensitive parts of the Agreement, and their first priority continues to be the operation of fair, independent and efficient procedures giving effect to the Act and Rules.

During the year covered by this Report, the Commissioners held one plenary meeting at which they discussed in depth their approach with regard to aspects of their responsibilities that have either arisen for the first time or been brought into particular focus by experience relating to individual cases. Plenary meetings provide a valuable opportunity for ongoing training of Commissioners. The complex jurisdictional issues arising from the respective roles of the Sentence Review Commissioners and the Parole Commissioners for NI in relation to prisoners who have been released and recalled under the NI (Sentences) Act 1998 were a particular focus for training.

The development of policies and guidance documents was ongoing throughout the year of this report and the Commissioners have, in particular, done considerable work in preparation for the anticipated introduction of the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED) in May 2018.

In addition, the Commissioners have continued to keep under review the relevance of the procedural rules with reference to current casework and to make representations to the NIO as to potential amendments to the legislative framework which might assist the Commissioners in the exercise of their functions.

## **Chapter 3**

### **Casework**

The work of the Commissioners is mainly dependent on the number of prisoners who apply to them in accordance with the provisions of the Act and the review process initiated by the Northern Ireland Office. Cases processed by the Sentence Review Commissioners can raise new and complex issues and thus tend to be very time consuming. By way of example, during the period of this report, the Commissioners have been engaged in casework which presented complex jurisdictional issues arising from the recall of a prisoner who was remanded in custody in relation to criminal charges in the Republic of Ireland.

Whilst there has increasingly been reliance by the Secretary of State on 'Damaging Information' in cases before the Commissioners in previous reporting years, such evidence has not been presented in the cases considered during the period of this report. The Commissioners have nonetheless continued to keep under review their policy and procedures in relation to 'Damaging Information' in light of their obligations under section 6(1) of the Human Rights Act 1998.

### **Applications to the Sentence Review Commissioners**

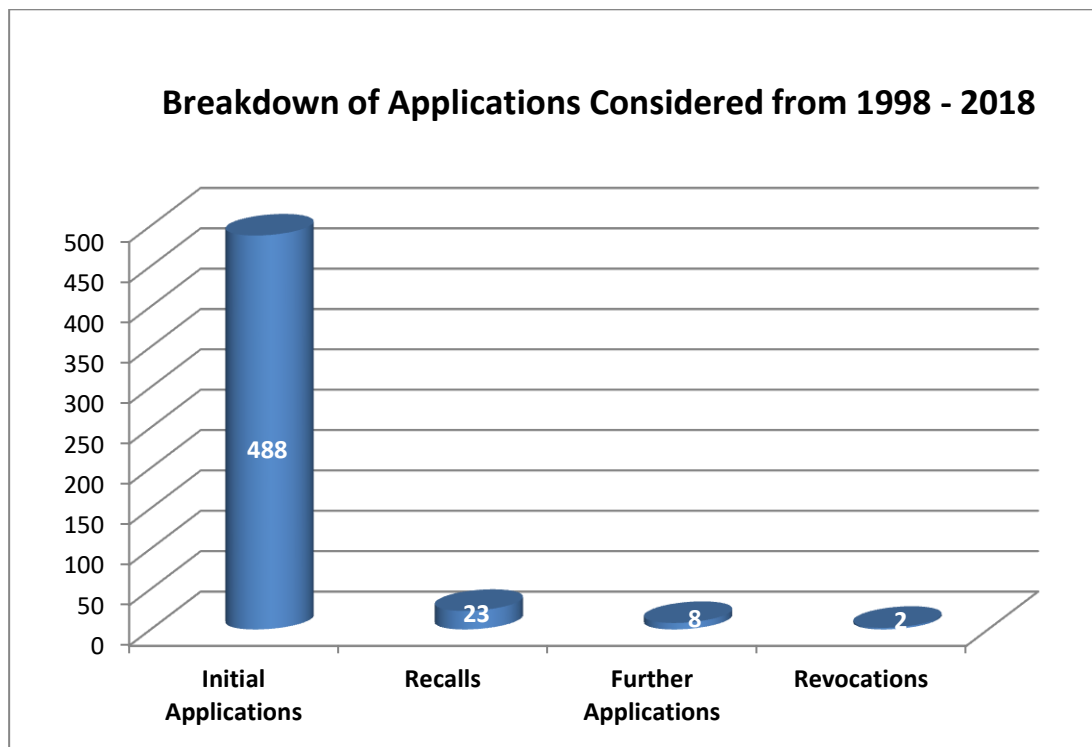
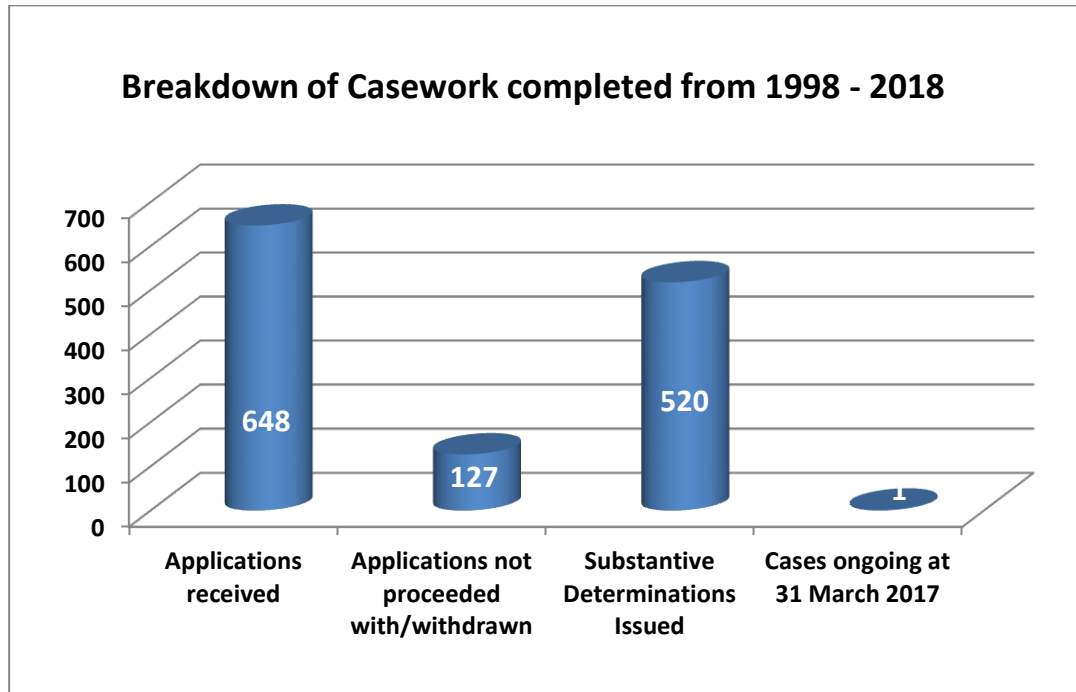
During the period of this report one initial application was received.

### **Preliminary Indications, Oral Hearings and Substantive Determinations**

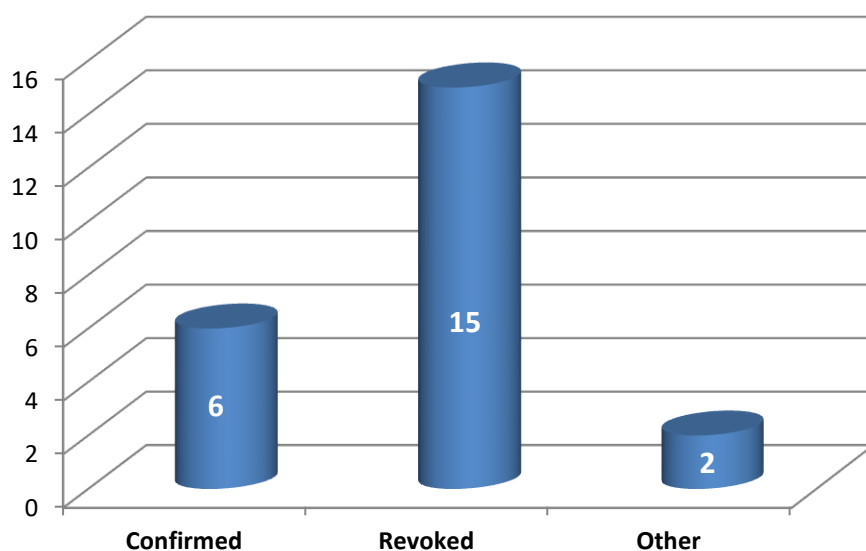
During this reporting period one Preliminary Indication and two Substantive Determinations were issued. At 31 March 2018 there is currently one case outstanding.

## Statistical Analysis

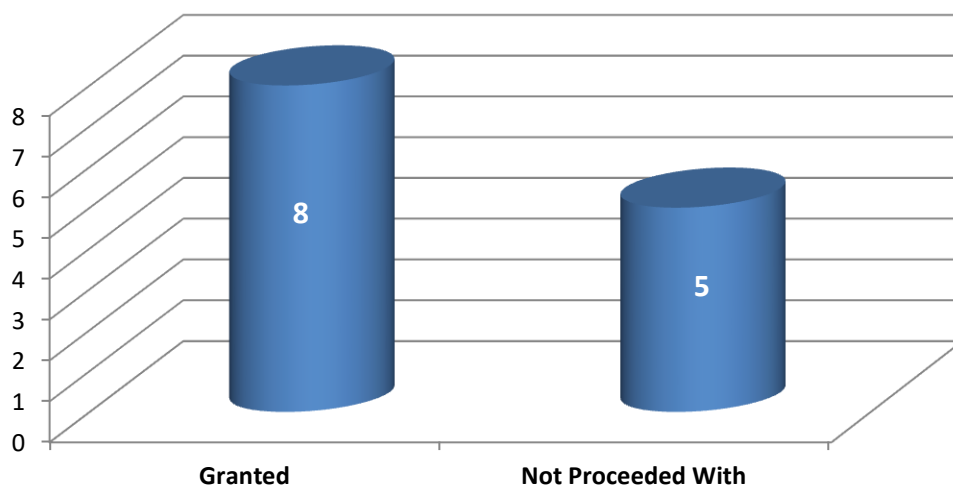
The following tables show the analysis of casework from 1998 - 2018



### Analysis of Recall applications from 1998 - 2018



### Breakdown of Further Applications from 1998 - 2018\*



***\* Of the eight Further Application which were granted - six were granted on the first further application and two were granted on subsequent***

## Chapter 4

### Staff and Resources

For the period covered by this report, the Commissioners have been supported and advised by a Secretariat comprising the Secretary to the Commissioners and one case manager. They occupy shared accommodation with the Parole Commissioners for Northern Ireland on the Mezzanine, Laganside Courts.

As per Section 20 of the Northern Ireland (Sentences) Act 1998, expenditure incurred by the Secretary of State by virtue of this Act shall be paid out of money provided by Parliament. Thus, expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2018 was:

#### Estimated Expenditure for 2017/18:

| Financial Year                                    | 2015/16<br>£000 | 2016/17<br>£000 | 2017/18<br>£000 |
|---|-----------------|-----------------|-----------------|
| Commissioners' Remuneration                       | 28              | 23              | 27              |
| Commissioners' Travel, Accommodation and Expenses | 1               | 1               | 1               |
| Legal Representation for Applicants               | 10              | 3               | 5               |
| Legal Costs                                       | 2               | 7               | 0               |
| General Administration                            | 1               | 1               | 0               |
|   |                 |                 |                 |
| <b>Running Costs:</b>                             |                 |                 |                 |
| Accommodation                                     | 19              | 20              | 26              |
| Staff Salaries                                    | 42              | 43              | 50              |
| <b>Total Budget Spend:</b>                        | <b>103</b>      | <b>98</b>       | <b>109</b>      |

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