



# Road Traffic Offenders Act 1988

## 1988 CHAPTER 53

### PART III

#### FIXED PENALTIES

<sup>F1</sup>*[Conditional offer of fixed penalty]*

#### Textual Amendments

**F1** Ss. 75-77 substituted (1.7.1992) by [Road Traffic Act 1991 \(c. 40, SIF 107:1\)](#), [s.34](#); [S.I. 1992/1286](#), [art. 2](#), Sch.

#### <sup>F2</sup> 75 Issue of conditional offer.

(1) Where in England and Wales—

- (a) a constable has reason to believe that a fixed penalty offence has been committed, and
- (b) no fixed penalty notice in respect of the offence has been given under section 54 of this Act or fixed to a vehicle under section 62 of this Act,

a notice under this section may be sent to the alleged offender by or on behalf of the chief officer of police <sup>F3</sup>or, if the constable is a member of the British Transport Police, by or on behalf of the chief constable of the British Transport Police.]

[ Where in England and Wales—

- <sup>F4</sup>(1A) (a) a vehicle examiner has reason to believe that a fixed penalty offence has been committed, and
- (b) no fixed penalty notice in respect of the offence has been given under section 54 of this Act or fixed to a vehicle under section 62 of this Act,
- a notice under this section may be sent to the alleged offender by the Secretary of State.]

(2) Where in Scotland a procurator fiscal receives a report that—

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- (a) an offence specified in Schedule 3 to this Act has been committed,
- (b) an offence specified in Schedule 5 to this Act has been committed,
- (c) an offence referred to in paragraph (a) or (b) above has been committed, being an offence of causing or permitting a vehicle to be used by another person in contravention of any provision made or any restriction or prohibition imposed by or under any enactment, or
- (d) an offence of aiding, abetting, counselling, procuring or inciting the commission of an offence referred to in this subsection, has been committed,

he may send a notice under this section to the alleged offender.

(3) Where in Scotland, a constable—

- (a) on any occasion has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence, he may hand to that person,

<sup>F5</sup> [ on any occasion has reason to believe that a person he finds has, within the period of 28 days before the day of that occasion, committed a Community drivers' hours offence, he may hand to that person,]

- (b) in any case has reason to believe that a fixed penalty offence has been committed, he or another person authorised in that respect by the chief constable may send to the alleged offender,

a notice under this section.

<sup>F6</sup> [ Where a constable is a constable of the British Transport Police Force subsection (3) (3A) shall have effect as if the reference to the chief constable were a reference to the chief constable of that force.]

[ Where in Scotland a vehicle examiner—

<sup>F7</sup>(3B) (a) on any occasion has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence, he may hand to that person,

<sup>F8</sup> [ on any occasion has reason to believe that a person he finds has, within the period of 28 days before the day of that occasion, committed a Community drivers' hours offence, he may hand to that person,]

- (b) in any case has reason to believe that a fixed penalty offence has been committed, he or another person authorised in that respect by the Secretary of State may send to the alleged offender,

a notice under this section.]

<sup>F9</sup> [ A constable or vehicle examiner may not hand a person a conditional offer under subsection (3) or (3B) for a Community drivers' hours offence where the constable or vehicle examiner has reason to believe that—

- (a) a fixed penalty notice has already been given to the person under section 54 of this Act in relation to the offence;
- (b) a conditional offer has already been issued to the person under this section in relation to the offence;
- (c) proceedings have already been initiated against the person for the offence; or
- (d) any other penalty has already been imposed on, or other proceedings have already been initiated against, the person in respect of the relevant breach in Northern Ireland [<sup>F10</sup>, an EU member State], [<sup>F11</sup> or in another contracting country].

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(3D) In subsection (3C)(d) “relevant breach” means the breach of the applicable Community rules which constitutes the Community drivers’ hours offence concerned.]

(4) Subsections (2) [F12 to (3B)] above shall not apply where a fixed penalty notice has been fixed to a vehicle under section 62 of this Act.

(5) A notice under this section is referred to in this section and sections 76 [F13 and 77A] as a “conditional offer”.

(6) Where a [F14 conditional offer is issued by a person under subsection (1), (2) or (3) above], he must notify the [F15 designated officer], or in Scotland clerk of court, specified in it of its issue and its terms; and [F16 he] is referred to in this section and sections 76 [F13 and 77A] as “the fixed penalty clerk”.

(7) A conditional offer must—

- (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence,
- (b) state the amount of the fixed penalty for that offence, and
- (c) state that proceedings against the alleged offender cannot be commenced in respect of that offence until the end of the period of twenty-eight days following the date on which the conditional offer was issued or such longer period as may be specified in the conditional offer.

F17(8) . . . . .

[ A conditional offer sent to an alleged offender F19 ... must indicate that if the following F18(8A) conditions are fulfilled, that is—

- (a) within the period of twenty-eight days following the date on which the offer was issued, or such longer period as may be specified in the offer, the alleged offender
  - [F20(i) makes payment of the fixed penalty to the appropriate person, and
  - (ii) where he is the holder of a licence and the offence to which the offer relates is an offence involving obligatory endorsement, at the same time delivers his licence to the appropriate person, and]
- (b) the appropriate person is satisfied, on accessing information held on the driving record of the alleged offender, that if he were convicted of the offence, he would not be liable to be disqualified under section 35 of this Act,

any liability to conviction of the offence shall be discharged.]

(9) For the purposes of the [F21 conditions] set out in subsection F22... [F23(8A)(b)] above, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.

(10) The Secretary of State may by order provide for offences to become or (as the case may be) to cease to be offences in respect of which a conditional offer may be sent under subsection (2)(b) above, and may make such modifications of the provisions of this Part of this Act as appear to him to be necessary for the purpose.

(11) An offence committed by aiding, abetting, counselling, procuring or inciting the commission of an offence which is an offence involving obligatory endorsement is itself an offence involving obligatory endorsement for the purposes of the application of this Part of this Act in Scotland.

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[ In this section and sections 76 <sup>F25</sup>and 77A] of this Act “the appropriate person”  
<sup>F24</sup>(11A) means—

- (a) where the conditional offer was issued under subsection (1), (2) or (3) above, the fixed penalty clerk, and
- (b) where the conditional offer was issued under subsection (1A) or (3B) above, the Secretary of State.]

<sup>F26</sup>(12) . . . . .]

### Textual Amendments

- F2** Ss. 75-77 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1), s. 34; S.I. 1992/1286, art. 2, Sch.
- F3** Words in s. 75((1) inserted (1.10.2002) by 2002 c. 30, s. 76(3); S.I. 2002/2306 art. 2(d)(vii)
- F4** S. 75(1A) inserted (31.3.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 1 para. 15(2); S.I. 2008/3164, art. 3(b)
- F5** S. 75(3)(aa) inserted (31.1.2018) by The Community Drivers Hours Offences (Enforcement) Regulations 2018 (S.I. 2018/24), regs. 1, 4(2) (with reg. 11)
- F6** S. 75(3A) inserted (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), s. 69(2); S.I. 2004/1572, art. 3(zz)
- F7** S. 75(3B) inserted (31.3.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 1 para. 15(3); S.I. 2008/3164, art. 3(b)
- F8** S. 75(3B)(aa) inserted (31.1.2018) by The Community Drivers Hours Offences (Enforcement) Regulations 2018 (S.I. 2018/24), regs. 1, 4(3) (with reg. 11)
- F9** S. 75(3C)(3D) inserted (31.1.2018) by The Community Drivers Hours Offences (Enforcement) Regulations 2018 (S.I. 2018/24), regs. 1, 4(4) (with reg. 11)
- F10** Words in s. 75(3C)(d) added (31.12.2020 immediately after the coming into force of S.I. 2019/453, Pts. 3, 4) by The Drivers’ Hours and Tachographs (Amendment) Regulations 2020 (S.I. 2020/1658), regs. 1(3), 5(3)
- F11** Words in s. 75(3C)(d) substituted (31.12.2020) by The Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/453), regs. 1(3), 43; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in s. 75(4) substituted (31.3.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 1 para. 15(4); S.I. 2008/3164, art. 3(b)
- F13** Words in s. 75(5)(6) substituted (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 51(2); S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F14** Words in s. 75(6) substituted (31.3.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 1 para. 15(5); S.I. 2008/3164, art. 3(b)
- F15** Words in s. 75(6) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 319; S.I. 2005/910, art. 3(y)
- F16** Words in s. 75(6) substituted (1.4.2001) by 1999 c. 22, s. 90, Sch. 13 para. 153(a)(b) (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, art. 2(a)(ii) (with Sch. 2 para. 2)
- F17** S. 75(8) repealed (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 51(3), Sch. 7(4); S.I. 2015/560, art. 3 (with arts. 4-9)
- F18** S. 75(8A) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 2 para. 24(5); S.I. 2008/3164, art. 4(b)
- F19** Words in s. 75(8A) repealed (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 51(4)(a), Sch. 7(4); S.I. 2015/560, art. 3 (with arts. 4-9)
- F20** Words in s. 75(8A)(a) substituted (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 51(4)(b); S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F21** Word in s. 75(9) substituted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 2 para. 24(6)(a); S.I. 2008/3164, art. 4(b)

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- F22** Words in s. 75(9) omitted (8.6.2015) by virtue of [The Road Safety Act 2006 \(Consequential Amendments\) Order 2015 \(S.I. 2015/583\)](#), art. 1(1), [Sch. 2 para. 3\(d\)](#)
- F23** Words in s. 75(9) inserted (1.4.2009) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), [Sch. 2 para. 24\(6\)\(b\)](#); [S.I. 2008/3164](#), art. 4(b)
- F24** S. 75(11A) inserted (31.3.2009) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), [Sch. 1 para. 15\(7\)](#); [S.I. 2008/3164](#), art. 3(b)
- F25** Words in s. 75(11A) substituted (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), [Sch. 3 para. 51\(5\)](#); [S.I. 2015/560](#), art. 3(a) (with arts. 4-9)
- F26** S. 75(12) repealed (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), [Sch. 3 para. 51\(6\)](#), [Sch. 7\(4\)](#); [S.I. 2015/560](#), art. 3 (with arts. 4-9)

## <sup>F27</sup>76 **Effect of offer and payment of penalty.**

(1) This section applies where a conditional offer has been [<sup>F28</sup>issued] to a person under section 75 of this Act.

[<sup>F29</sup>2] Where the alleged offender makes payment of the fixed penalty in accordance with the conditional offer, no proceedings shall be brought against him for the offence to which the offer relates unless subsection (3) below applies.

(3) This subsection applies where—

- (a) it appears to the appropriate person, on <sup>F30</sup>... [<sup>F31</sup>accessing information held on [<sup>F32</sup>the alleged offender's] driving record], that the alleged offender would be liable to be disqualified under section 35 of this Act if he were convicted of the offence to which the conditional offer relates,
- (b) the appropriate person returns the payment to the alleged offender together with [<sup>F33</sup>(where he is the holder of a licence)] his licence <sup>F34</sup>..., and
- (c) where the appropriate person is not the Secretary of State, the appropriate person gives notice that he has done so to the person required to be notified.

(4) Where the requirements specified in the conditional offer in accordance with subparagraphs (i) and (ii) of section [<sup>F35</sup>75(8A)(a)] of this Act have not been fulfilled, no proceedings shall be brought against the alleged offender for the offence to which the offer relates—

- (a) until the end of the period of twenty-eight days following the date on which the conditional offer was made, or such longer period as may be specified in the offer, and
- (b) where the appropriate person is not the Secretary of State, unless the appropriate person notifies the person required to be notified that proceedings may be brought by virtue of this subsection.

(5) In this section and section [<sup>F36</sup>77A] of this Act “ the person required to be notified ” means—

- (a) if the conditional offer was issued under subsection (1) of section 75 of this Act, the chief officer of police,
- (b) if it was issued under subsection (2) of that section, the procurator fiscal, and
- (c) if it was issued under subsection (3) of that section, the chief constable or (as the case may be) the chief constable of the British Transport Police Force.]

(6) In determining for the purposes of subsection [<sup>F37</sup>(3)(a)] above whether a person convicted of an offence would be liable to disqualification under section 35, it shall be assumed, in the case of an offence in relation to which a range of numbers is shown in

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the last column of Part I of Schedule 2 to this Act, that the number of penalty points to be attributed to the offence would be the lowest in the range.

(7) In any proceedings a certificate that by a date specified in the certificate payment of a fixed penalty was or was not received by [<sup>F38</sup>the appropriate person] shall, if the certificate purports to be signed by [<sup>F38</sup>the appropriate person], be evidence, or in Scotland sufficient evidence, of the facts stated.

<sup>F39</sup>(8) .....

(9) In Scotland, the Secretary of State may by regulations vary the provisions of subsection [<sup>F40</sup>(5)(b) or (c)] above.

**Textual Amendments**

- F27** Ss. 75-77 substituted (1.7.1992) by Road Traffic Act 1991 (c. 40, SIF 107:1) , s. 34 ; S.I. 1992/1286 , art. 2 , **Sch.**
- F28** Word in s. 76(1) substituted (31.3.2009) by Road Safety Act 2006 (c. 49) , s. 61(1)(10) , **Sch. 1 para. 16(2)** ; S.I. 2008/3164 , art. 3(b)
- F29** S. 76(2)-(5) substituted (31.3.2009) by Road Safety Act 2006 (c. 49) , s. 61(1)(10) , **Sch. 1 para. 16(3)** ; S.I. 2008/3164 , art. 3(b)
- F30** Words in s. 76(3)(a) repealed (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 52(2)(a), **Sch. 7(4)**; S.I. 2015/560, art. 3 (with arts. 4-9)
- F31** Words in s. 76(3)(a) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 25(2)(a)**; S.I. 2008/3164, art. 4(b)
- F32** Words in s. 76(3)(a) substituted (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 3 para. 52(2)(a)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F33** Words in s. 76(3)(b) inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 25(2)(b)**; S.I. 2008/3164, art. 4(b)
- F34** Words in s. 76(3)(b) repealed (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 52(2)(b), **Sch. 7(4)**; S.I. 2015/560, art. 3 (with arts. 4-9)
- F35** Word in s. 76(4) substituted (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 3 para. 52(3)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F36** Word in s. 76(5) substituted (8.6.2015) by The Road Safety Act 2006 (Consequential Amendments) Order 2015 (S.I. 2015/583), art. 1(1), **Sch. 2 para. 3(e)**
- F37** Word in s. 76(6) substituted (31.3.2009) by Road Safety Act 2006 (c. 49) , s. 61(1)(10) , **Sch. 1 para. 16(4)** ; S.I. 2008/3164 , art. 3(b)
- F38** Words in s. 76(7) substituted (31.3.2009) by Road Safety Act 2006 (c. 49) , s. 61(1)(10) , **Sch. 1 para. 16(5)** ; S.I. 2008/3164 , art. 3(b)
- F39** S. 76(8) repealed (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 52(4), **Sch. 7(4)**; S.I. 2015/560, art. 3 (with arts. 4-9)
- F40** Words in s. 76(9) substituted (31.3.2009) by Road Safety Act 2006 (c. 49) , s. 61(1)(10) , **Sch. 1 para. 16(7)** ; S.I. 2008/3164 , art. 3(b)

<sup>F42</sup>77 **Endorsement [<sup>F41</sup> of counterparts] where penalty paid.**

.....

**Textual Amendments**

- F41** Words in s. 77 heading inserted (1.4.2009) by Road Safety Act 2006 (c. 49), s. 61(1)(10), **Sch. 2 para. 26(3)**; S.I. 2008/3164, art. 4(b)

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**F42** S. 77 repealed (8.6.2015) by Road Safety Act 2006 (c. 49), s. 61(1)(10), Sch. 3 para. 53, **Sch. 7(4)**; S.I. 2015/560, art. 3 (with arts. 4-9)

## [<sup>F43</sup>77A Endorsement of driving records where penalty paid

- (1) Where—
  - (a) in pursuance of a conditional offer issued under subsection (1), (2) or (3) of section 75 of this Act a person <sup>F44</sup>... (referred to in this section as the “alleged offender”) makes payment of the fixed penalty to the fixed penalty clerk [<sup>F45</sup>and (if he is the holder of a licence) delivers his licence to the fixed penalty clerk], and
  - (b) proceedings against the alleged offender for the offence to which the conditional offer relates are excluded by section 76 of this Act,  
the fixed penalty clerk must forthwith send to the Secretary of State notice of the relevant particulars to be endorsed on the alleged offender's driving record [<sup>F46</sup>together with any licence delivered under paragraph (a) above].
- (2) The Secretary of State must endorse the relevant particulars on a person's driving record [<sup>F47</sup>and return any licence delivered to him under this section to the alleged offender]—
  - (a) on receiving notice under subsection (1) above, or
  - (b) if, in pursuance of a conditional offer issued under subsection (1A) or (3B) of section 75 of this Act, a person <sup>F48</sup>... (also referred to in this section as the “alleged offender”) makes payment of the fixed penalty to him [<sup>F49</sup>and (if he is the holder of a licence) delivers his licence to him,] and proceedings against the alleged offender are excluded by section 76 of this Act.
- (3) Where in Scotland the appropriate person is the fixed penalty clerk and it appears to him that there is an error in an endorsement made by virtue of this section on a person's driving record, he may send to the Secretary of State notice of the error.
- (4) Subject to subsection (5) below, where a cheque tendered in payment is subsequently dishonoured—
  - (a) any endorsement made by the Secretary of State under subsection (2) above remains effective notwithstanding that the alleged offender is still liable to prosecution in respect of the alleged offence to which the endorsement relates, and
  - (b) unless the appropriate person is the Secretary of State, the appropriate person must upon expiry of the period specified in the conditional offer or, if the period has expired, forthwith notify the person required to be notified that no payment has been made.
- (5) When proceedings are brought against an alleged offender where subsection (4) above applies, the court—
  - (a) must order the removal of the fixed penalty endorsement from the driving record of the alleged offender,
  - (b) may, on finding the alleged offender guilty, make any competent order of endorsement or disqualification and pass any competent sentence, and
  - (c) must send to the Secretary of State notice of any order made under paragraph (a) or (b) above.

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- (6) On receiving notice under subsection (3) above, the Secretary of State may correct the error in the endorsement on the driving record; and any endorsement corrected shall be treated for all purposes as if it had been correctly made on receipt of the fixed penalty.
- (7) On receiving a notice under subsection (5)(c) above, the Secretary of State must make any necessary adjustments to the endorsements on the alleged offender's driving record.
- (8) The references in subsection (1) and (2) above to the relevant particulars are to—
- (a) particulars of the offence, including the date when it was committed, and
  - (b) the number of penalty points to be attributed to the offence.
- (9) Where a person's driving record is endorsed under this section he shall be treated for the purposes of sections 13(4), 28, 29 and 45A of this Act and of the Rehabilitation of Offenders Act 1974 as if—
- (a) he had been convicted of the offence,
  - (b) the endorsement had been made in pursuance of an order made on his conviction by a court under section 44 of this Act, and
  - (c) the particulars of the offence endorsed by virtue of subsection (8)(a) above were particulars of his conviction of that offence.
- (10) In relation to any endorsement of a person's driving record under this section, the references in section 13(4) of this Act to any order made on a person's conviction are to be read as references to the endorsement itself.]

#### Textual Amendments

- F43** S. 77A inserted (1.4.2009) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), **Sch. 2 para. 27**; S.I. 2008/3164, art. 4(b)
- F44** Words in s. 77A(1) repealed (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), Sch. 3 para. 54(2)(a), **Sch. 7(4)**; S.I. 2015/560, art. 3 (with arts. 4-9)
- F45** Words in s. 77A(1) inserted (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), **Sch. 3 para. 54(2)(b)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F46** Words in s. 77A(1) inserted (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), **Sch. 3 para. 54(2)(c)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F47** Words in s. 77A(2) inserted (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), **Sch. 3 para. 54(3)(a)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)
- F48** Words in s. 77A(2) repealed (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), Sch. 3 para. 54(3)(b), **Sch. 7(4)**; S.I. 2015/560, art. 3 (with arts. 4-9)
- F49** Words in s. 77A(2) inserted (8.6.2015) by [Road Safety Act 2006 \(c. 49\)](#), s. 61(1)(10), **Sch. 3 para. 54(3)(c)**; S.I. 2015/560, art. 3(a) (with arts. 4-9)



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