



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART I

#### TRADE UNIONS

#### CHAPTER V

##### RIGHTS OF TRADE UNION MEMBERS

##### *Right to a ballot before industrial action*

#### **62 Right to a ballot before industrial action.**

- (1) A member of a trade union who claims that members of the union, including himself, are likely to be or have been induced by the union to take part or to continue to take part in industrial action which does not have the support of a ballot may apply to the court for an order under this section.

[<sup>F1</sup>In this section “the relevant time” means the time when the application is made.]

- (2) For this purpose industrial action shall be regarded as having the support of a ballot only if—

[<sup>F2F3</sup>(a) the union has held a ballot in respect of the action—

- (i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,
- (ii) in relation to which the requirements of sections 227 to 231 were satisfied, and
- (iii) in which the majority voting in the ballot answered “Yes” to the question applicable in accordance with section 229(2) to industrial

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action of the kind which the applicant has been or is likely to be induced to take part in;

- (b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—
  - (i) section 226B so far as applicable after the holding of the ballot, and
  - (ii) section 231B; <sup>F4</sup> . . .
- [ section 232A does not prevent the industrial action from being regarded as <sup>F2</sup>(bb) having the support of the ballot; and]
- (c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disappplied or modified by section 232 has effect subject to that section.]

- (3) Where on an application under this section the court is satisfied that the claim is well-founded, it shall make such order as it considers appropriate for requiring the union to take steps for ensuring—
  - (a) that there is no, or no further, inducement of members of the union to take part or to continue to take part in the industrial action to which the application relates, and
  - (b) that no member engages in conduct after the making of the order by virtue of having been induced before the making of the order to take part or continue to take part in the action.
- (4) Without prejudice to any other power of the court, the court may on an application under this section grant such interlocutory relief (in Scotland, such interim order) as it considers appropriate.
- (5) For the purposes of this section an act shall be taken to be done by a trade union if it is authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purpose of determining whether an act is to be taken to be so authorised or endorsed.

Those provisions also apply in relation to proceedings for failure to comply with an order under this section as they apply in relation to the original proceedings.

- (6) In this section—
  - “inducement” includes an inducement which is or would be ineffective, whether because of the member’s unwillingness to be influenced by it or for any other reason; and
  - “industrial action” means a strike or other industrial action by persons employed under contracts of employment.
- (7) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between that person and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.
- (8) References in this section to a contract of employment include any contract under which one person personally does work or performs services for another; and related expressions shall be construed accordingly.
- (9) Nothing in this section shall be construed as requiring a trade union to hold separate ballots for the purposes of this section and sections 226 to 234 (requirement of ballot before action by trade union).

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### Textual Amendments

- F1** Words in s. 62(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 47(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F2** S. 62(2)(bb) inserted (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 24(2)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)
- F3** S. 62(2)(a)-(c) and proviso substituted (30.8.1993) for 62(2)(a)-(c) by 1993 c. 19, s. 49(2), **Sch. 8 para. 47(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F4** Word in s. 62(2)(b) repealed (6.4.2005) by Employment Relations Act 2004 (c. 24), **ss. 24(2)**, 57(2), 59(2)-(4), **Sch. 2**; S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

### *Right not to be denied access to the courts*

## **63 Right not to be denied access to the courts.**

- (1) This section applies where a matter is under the rules of a trade union required or allowed to be submitted for determination or conciliation in accordance with the rules of the union, but a provision of the rules purporting to provide for that to be a person's only remedy has no effect (or would have no effect if there were one).
- (2) Notwithstanding anything in the rules of the union or in the practice of any court, if a member or former member of the union begins proceedings in a court with respect to a matter to which this section applies, then if—
  - (a) he has previously made a valid application to the union for the matter to be submitted for determination or conciliation in accordance with the union's rules, and
  - (b) the court proceedings are begun after the end of the period of six months beginning with the day on which the union received the application,
 the rules requiring or allowing the matter to be so submitted, and the fact that any relevant steps remain to be taken under the rules, shall be regarded for all purposes as irrelevant to any question whether the court proceedings should be dismissed, stayed or sisted, or adjourned.
- (3) An application shall be deemed to be valid for the purposes of subsection (2)(a) unless the union informed the applicant, before the end of the period of 28 days beginning with the date on which the union received the application, of the respects in which the application contravened the requirements of the rules.
- (4) If the court is satisfied that any delay in the taking of relevant steps under the rules is attributable to unreasonable conduct of the person who commenced the proceedings, it may treat the period specified in subsection (2)(b) as extended by such further period as it considers appropriate.
- (5) In this section—
  - (a) references to the rules of a trade union include any arbitration or other agreement entered into in pursuance of a requirement imposed by or under the rules; and
  - (b) references to the relevant steps under the rules, in relation to any matter, include any steps falling to be taken in accordance with the rules for the purposes of or in connection with the determination or conciliation of the

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matter, or any appeal, review or reconsideration of any determination or award.

- (6) This section does not affect any enactment or rule of law by virtue of which a court would apart from this section disregard any such rules of a trade union or any such fact as is mentioned in subsection (2).

*Right not to be unjustifiably disciplined*

**64 Right not to be unjustifiably disciplined.**

- (1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.
- (2) For this purpose an individual is “disciplined” by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—
- (a) he should be expelled from the union or a branch or section of the union,
  - (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
  - (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
  - (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
  - (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or
  - (f) he should be subjected to some other detriment;
- and whether an individual is “unjustifiably disciplined” shall be determined in accordance with section 65.
- (3) Where a determination made in infringement of an individual’s right under this section requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.
- (4) Subject to that, the remedies for infringement of the right conferred by this section are as provided by sections 66 and 67, and not otherwise.
- (5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this section; <sup>F5</sup>and, subject to section 66(4), nothing] in this section or sections 65 to 67 affects any remedy for infringement of any such right.

**Textual Amendments**

**F5** Words in s. 64(5) substituted (30.11.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para.48**; S.I. 1993/1908, art. 2(2), **Sch. 2**

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## 65 Meaning of “unjustifiably disciplined”.

- (1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—
- (a) conduct to which this section applies, or
  - (b) something which is believed by the union to amount to such conduct;
- but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).
- (2) This section applies to conduct which consists in—
- (a) failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or indicating opposition to or a lack of support for such action;
  - (b) failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;
  - (c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law;
  - (d) encouraging or assisting a person—
    - (i) to perform an obligation imposed on him by a contract of employment, or
    - (ii) to make or attempt to vindicate any such assertion as is mentioned in paragraph (c);<sup>F6</sup> . . .
  - (e) contravening a requirement imposed by or in consequence of a determination which infringes the individual’s or another individual’s right not to be unjustifiably disciplined.
  - [<sup>F7</sup>(f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership,
  - (g) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union,
  - (h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union,
  - (i) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union, or
  - (j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.]
- (3) This section applies to conduct which involves<sup>F8</sup> . . . the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in subsection (2)(c) above.
- (4) This section also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within subsection (2) or (3).

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- (5) This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct within subsection (2) or (3) above.
- (6) An individual is not unjustifiably disciplined if it is shown—
- (a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in subsection (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,
  - (b) that the assertion was false, and
  - (c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith,
- and that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated as unjustifiably disciplined.
- (7) In this section—
- “conduct” includes statements, acts and omissions;
- “contract of employment”, in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works; <sup>F9</sup> . . . [<sup>F10</sup>, “employer” includes such a person and related expressions shall be construed accordingly;]
- “representative”, in relation to a union, means a person acting or purporting to act—
- (a) in his capacity as a member of the union, or
  - (b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.
- [<sup>F11</sup>“require” (on the part of an individual) includes request or apply for, and “requisition” shall be construed accordingly][<sup>F12</sup>and].
- [<sup>F12</sup>“wages” shall be construed in accordance with the definitions of “contract of employment”, “employer” and related expressions.]
- (8) Where a person holds any office or employment under the Crown on terms which do not constitute a contract of employment between him and the Crown, those terms shall nevertheless be deemed to constitute such a contract for the purposes of this section.

#### Textual Amendments

- F6** Word in s. 65(2) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F7** S. 65(2)(f)-(j) inserted (30.8.1993) by 1993 c. 19, s. 16(1); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F8** Words in s. 65(3) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(6)**; S.I. 1999/2830, **art. 2(3) Sch. 2 Pt. 1** (with **Sch. 3 para. 4**)
- F9** Word in s. 65(7) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F10** S. 65(7) definition amended (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F11** S. 65(7) definition inserted (30.8.1993) by 1993 c. 19, s. 16(2); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F12** S. 65(7) definition and word preceding it inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 49(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

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## 66 Complaint of infringement of right.

- (1) An individual who claims that he has been unjustifiably disciplined by a trade union may present a complaint against the union to an <sup>F13</sup>employment tribunal].
- (2) The tribunal shall not entertain such a complaint unless it is presented—
  - (a) before the end of the period of three months beginning with the date of the making of the determination claimed to infringe the right, or
  - (b) where the tribunal is satisfied—
    - (i) that it was not reasonably practicable for the complaint to be presented before the end of that period, or
    - (ii) that any delay in making the complaint is wholly or partly attributable to a reasonable attempt to appeal against the determination or to have it reconsidered or reviewed,within such further period as the tribunal considers reasonable.
- (3) Where the tribunal finds the complaint well-founded, it shall make a declaration to that effect.
- <sup>F14</sup>(4) Where a complaint relating to an expulsion which is presented under this section is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 174 (right not to be excluded or expelled from trade union).]

### Textual Amendments

- F13** Words in s. 66(1) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F14** S. 66(4) substituted (30.11.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 50; S.I. 1993/1908, art. 2(2), Sch. 2

## 67 Further remedies for infringement of right.

- (1) An individual whose complaint under section 66 has been declared to be well-founded may make an application <sup>F15</sup>to an employment tribunal] for one or both of the following—
  - (a) an award of compensation to be paid to him by the union;
  - (b) an order that the union pay him an amount equal to any sum which he has paid in pursuance of any such determination as is mentioned in section 64(2)(b).
- (2) <sup>F16</sup>.....
- (3) An application under this section shall not be entertained if made before the end of the period of four weeks beginning with the date of the declaration or after the end of the period of six months beginning with that date.
- (4) <sup>F16</sup>.....
- (5) The amount of compensation awarded shall, subject to the following provisions, be such as the <sup>F17</sup>... <sup>F18</sup>employment tribunal] considers just and equitable in all the circumstances.

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- (6) In determining the amount of compensation to be awarded, the same rule shall be applied concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law in England and Wales or Scotland.
- (7) Where the <sup>F17</sup> . . . [<sup>F18</sup>employment tribunal] finds that the infringement complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.
- (8) The amount of compensation [<sup>F19</sup>calculated in accordance with subsections (5) to (7)] shall not exceed the aggregate of—
- (a) an amount equal to 30 times the limit for the time being imposed by [<sup>F20</sup>section 227(1)(a) of the Employment Rights Act 1996] (maximum amount of a week's pay for basic award in unfair dismissal cases), and
  - (b) an amount equal to the limit for the time being imposed by [<sup>F21</sup>section 124(1)] of that Act (maximum compensatory award in such cases);
- <sup>F22</sup> . . . .
- [<sup>F23</sup>(8A) If on the date on which the application was made—
- (a) the determination infringing the applicant's right not to be unjustifiably disciplined has not been revoked, or
  - (b) the union has failed to take all the steps necessary for securing the reversal of anything done for the purpose of giving effect to the determination,
- the amount of compensation shall be not less than the amount for the time being specified in section 176(6A).]
- <sup>F24</sup>(9) . . . . .

#### Textual Amendments

- F15** Words in s. 67(1) inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(2), 59(2)-(4); S.I. 2004/3342, art. 4 (with arts. 6-12)
- F16** S. 67(2)(4) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(3), 57(2), 59(2)-(4), Sch. 2; S.I. 2004/3342, art. 4 (with arts. 6-12)
- F17** Words in s. 67(5)(7) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(4), 57(2), 59(2)-(4), Sch. 2; S.I. 2004/3342, art. 4 (with arts. 6-12)
- F18** Words in s. 67 substituted (1.8.1998) by 1998 c. 8, s. 1(2) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F19** Words in s. 67(8) substituted (30.11.1993) by 1993 c. 19, s. 49(2), Sch. 8 para. 51(a)(i); S.I. 1993/1908, art. 2(2), Sch. 2
- F20** Words in s. 67(8)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 56(2)(a) (with ss. 191-195, 202)
- F21** Words in s. 67(8)(b) substituted (22.8.1996) by 1996 c. 18, ss. 230, 243, Sch. 1 para. 56(2)(b) (with ss. 191-195, 202)
- F22** Words in s. 67(8) repealed (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(4), 57(2), 59(2)-(4), Sch. 2; S.I. 2004/3342, art. 4 (with arts. 6-12)
- F23** S. 67(8A) inserted (31.12.2004) by Employment Relations Act 2004 (c. 24), ss. 34(6), 59(2)-(4); S.I. 2004/3342, art. 4 (with arts. 6-12)
- F24** S. 67(9) repealed (30.11.1993) by 1993 c. 19, ss. 49(2), 51, Sch. 8 para. 51(b), Sch. 10; S.I. 1993/1908, art. 2(2), Sch. 2



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**[<sup>F25</sup>Right not to suffer deduction of unauthorised or excessive union subscriptions]**

**Textual Amendments**

**F25** Heading substituted (30.8.1993) by 1993 c. 19, s.15, **Sch. 9 para. 2**; S.I. 1993/1908, art. 2(1), **Sch.1**

**[<sup>F26</sup>68 Right not to suffer deduction of unauthorised subscriptions**

- (1) Where arrangements (“subscription deduction arrangements”) exist between the employer of a worker and a trade union relating to the making from workers’ wages of deductions representing payments to the union in respect of the workers’ membership of the union (“subscription deductions”), the employer shall ensure that no subscription deduction is made from wages payable to the worker on any day unless—
  - (a) the worker has authorised in writing the making from his wages of subscription deductions; and
  - (b) the worker has not withdrawn the authorisation.
- (2) A worker withdraws an authorisation given for the purposes of subsection (1), in relation to a subscription deduction which falls to be made from wages payable to him on any day, if a written notice withdrawing the authorisation has been received by the employer in time for it to be reasonably practicable for the employer to secure that no such deduction is made.
- (3) A worker’s authorisation of the making of subscription deductions from his wages shall not give rise to any obligation on the part of the employer to the worker to maintain or continue to maintain subscription deduction arrangements.
- (4) In this section and section 68A, “employer”, “wages” and “worker” have the same meanings as in the Employment Rights Act 1996.]

**Textual Amendments**

**F26** S. 68 substituted (23.6.1998) by S.I. 1998/1529, **arts. 2(2), 3**

**[<sup>F27</sup>68A Complaint of infringement of rights.**

- (1) A worker may present a complaint to an [<sup>F28</sup>employment tribunal] that his employer has made a deduction from his wages in contravention of section 68—
  - (a) within the period of three months beginning with the date of the payment of the wages from which the deduction, or (if the complaint relates to more than one deduction) the last of the deductions, was made, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that period, within such further period as the tribunal considers reasonable.

[ Where a tribunal finds that a complaint under this section is well founded, it shall <sup>F29</sup>(2) make a declaration to that effect and shall order the employer to pay to the worker the whole amount of the deduction, less any such part of the amount as has already been paid to the worker by the employer.]

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- (3) Where the making of a deduction from the wages of a worker both contravenes section 68(1) and involves one or more of the contraventions specified in subsection (4) of this section, the aggregate amount which may be ordered by an [<sup>F28</sup>employment tribunal] or court (whether on the same occasion or on different occasions) to be paid in respect of the contraventions shall not exceed the amount, or (where different amounts may be ordered to be paid in respect of different contraventions) the greatest amount, which may be ordered to be paid in respect of any one of them.
- (4) The contraventions referred to in subsection (3) are—
- (a) a contravention of the requirement not to make a deduction without having given the particulars required by section 8 (itemised pay statements) or 9(1) (standing statements of fixed deductions) of [<sup>F30</sup>the Employment Rights Act 1996],
  - (b) a contravention of [<sup>F31</sup>section 13 of that Act] (requirement not to make unauthorised deductions), and
  - (c) a contravention of section 86(1) or 90(1) of this Act (requirements not to make deductions of political fund contributions in certain circumstances).]

#### Textual Amendments

- F27** Ss. 68, 68A substituted (30.8.1993) for s. 68 by 1993 c. 19, s. 15, **Sch. 9 para. 2**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F28** Words in s. 68A(1)(3) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F29** S. 68A(2) substituted (23.6.1998) by S.I. 1998/1529, **arts. 2(2), 3**
- F30** Words in s. 68A(4)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(4)(a)** (with ss. 191-195, 202)
- F31** Words in s. 68A(4)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 56(4)(b)** (with ss. 191-195, 202)

#### *Right to terminate membership of union*

### **69 Right to terminate membership of union.**

In every contract of membership of a trade union, whether made before or after the passing of this Act, a term conferring a right on the member, on giving reasonable notice and complying with any reasonable conditions, to terminate his membership of the union shall be implied.

#### *Supplementary*

### **70 Membership of constituent or affiliated organisation.**

In this Chapter “member”, in relation to a trade union consisting wholly or partly of, or of representatives of, constituent or affiliated organisations, includes a member of any of the constituent or affiliated organisations.

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

Trade Union and Labour Relations (Consolidation) Act 1992, Chapter V is up to date with all changes known to be in force on or before 03 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.