

# NUCLEAR LAW

## Bulletin

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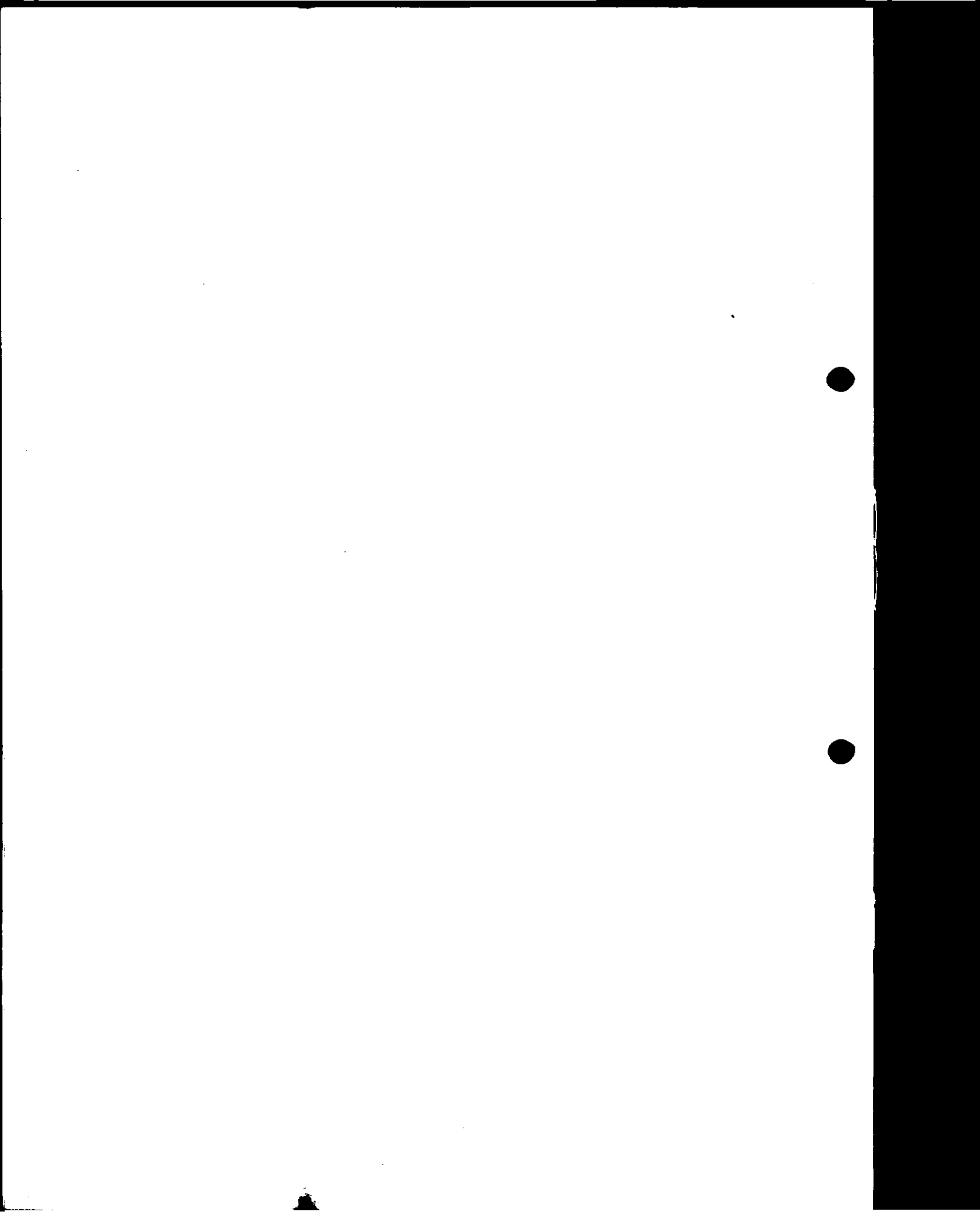
G E R M A N Y

ACT ON THE PEACEFUL USES OF ATOMIC ENERGY  
AND PROTECTION AGAINST ITS HAZARDS  
(ATOMIC ENERGY ACT)

*Superseded see  
Supplement to No 36*

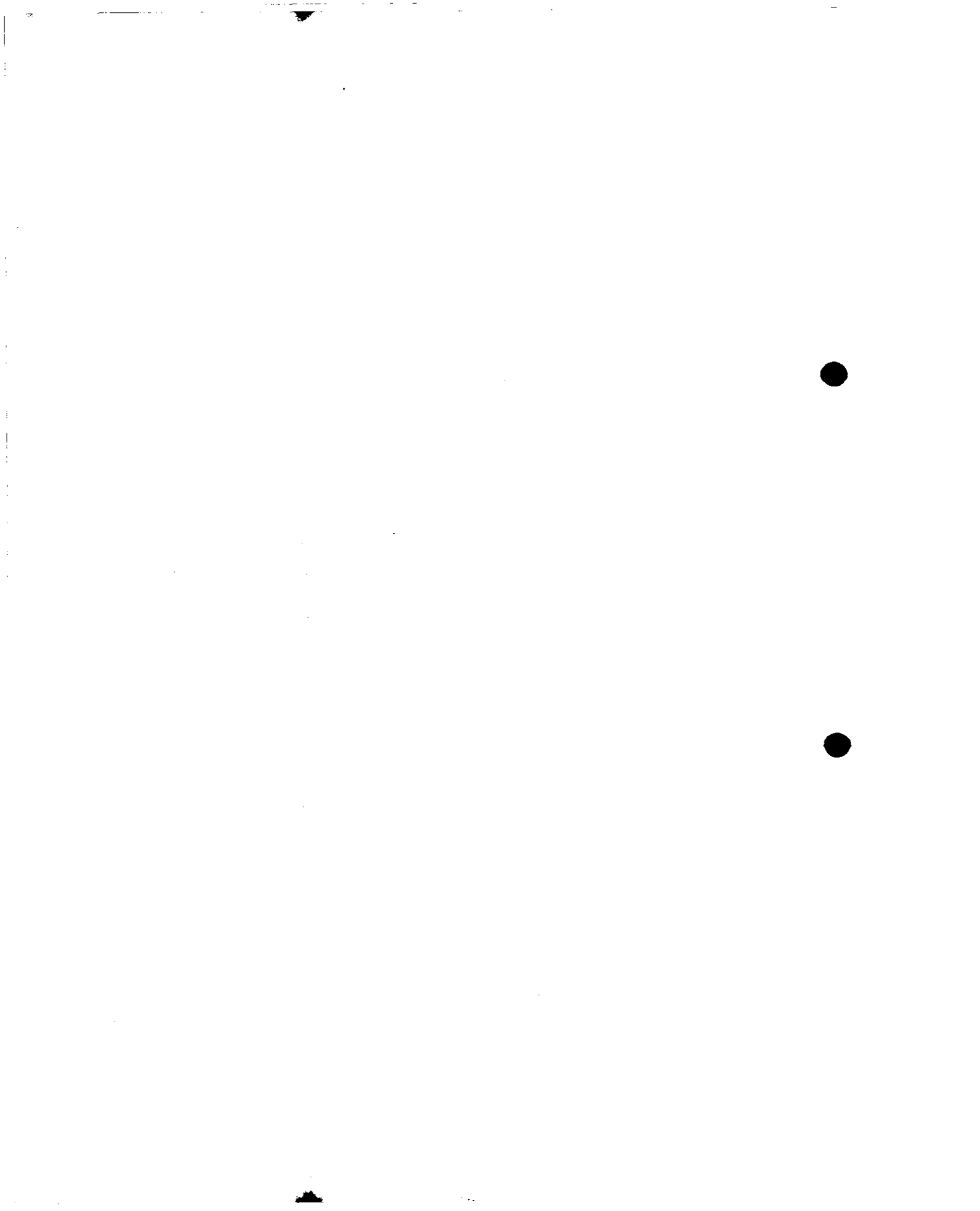
Revised as of 1st October 1975

July 1975



N O T E

Article 3 of the Third Act Amending the Atomic Energy Act, which will enter into force on 1st October 1975, authorises the Federal Minister of the Interior to publish a revised text of the Atomic Energy Act of 23rd December 1959 (Bundesgesetzblatt I, page 814). The draft of this revised text, unofficially translated by the Secretariat of the OECD Nuclear Energy Agency, incorporates all amendments to the Atomic Energy Act up to 1st October 1975, and notably those introduced by the Third Act Amending the Atomic Energy Act. The asterisks, unless otherwise indicated, refer to notes by the Secretariat.



G E R M A N Y

ACT ON THE PEACEFUL USES OF ATOMIC ENERGY  
AND PROTECTION AGAINST ITS HAZARDS (ATOMIC ENERGY ACT)

Revised as of 1st October 1975

C H A P T E R I

GENERAL

Section 1 - Purpose of the Act

It is the purpose of this Act:

1. To further nuclear research and development and the use of nuclear energy for peaceful purposes;
2. To protect life, health, and property from the hazards of nuclear energy and from the harmful effects of ionizing radiation, and to provide compensation for damage caused by nuclear energy or ionizing radiation;
3. To prevent danger to the internal or external security of the Federal Republic arising from the use or the release of nuclear energy;
4. To enable the Federal Republic to meet its international obligations in the field of nuclear energy and protection against radiation.

Section 2 - Definitions

(1) "Radioactive substances" within the meaning of this Act mean:

1. special fissionable material (nuclear fuel) in the form of
  - (a) plutonium 239 and plutonium 241;
  - (b) uranium 233;
  - (c) uranium enriched in the isotopes 235 or 233;
  - (d) any substance containing one or more of the aforesaid substances;
  - (e) uranium and substances containing uranium of the natural isotopic mixture of such purity as to enable a continuous self-sustaining chain reaction to be maintained in a suitable installation (reactor).

The term "uranium enriched in the isotopes 235 or 233" means uranium containing the isotopes 235 or 233 or both in such quantity that the ratio of the sum of these two isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

2. Substances which, without being nuclear fuel, emit ionizing radiation spontaneously (other radioactive substances).
- (2) For the application of the provisions on liability and financial security, the terms "nuclear incident", "nuclear installation", "operator of a nuclear installation", "nuclear substances" and "units of account" shall have the meaning given to them in Annex 1 of this Act.
- (3) "Paris Convention" means the Convention of 29th July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 29th January 1964 (Bundesgesetzblatt\* 1975 II, pages 957, 959, 1007).
- (4) "Brussels Supplementary Convention" means the Convention of 31st January 1963 Supplementary to the Paris Convention as amended by the Additional Protocol of 28th January 1964 (BGB1. 1975 II, pages 957,992, 1021).

## C H A P T E R    I I

### C O N T R O L

#### Section 3 - Import and export

- (1) Any person who imports or exports nuclear fuel shall require a licence.
- (2) An import licence shall be granted, provided that
  1. there are no known facts giving rise to any doubts as to the reliability of the importer, and
  2. it is ensured that the nuclear fuel to be imported will be used in conformity with the provisions of this Act, the statutory ordinances made thereunder, and the international obligations of the Federal Republic in the field of nuclear energy.
- (3) An export licence shall be granted, provided that
  1. there are no known facts giving rise to any doubts as to the reliability of the exporter, and
  2. it is ensured that the nuclear fuel to be exported will not be used in such a way as to jeopardise the international obligations of the Federal Republic in the field of nuclear energy, or the internal or external security of the Federal Republic.

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\* Bundesgesetzblatt (BGB1.): Federal Gazette.

- (4) Nothing herein contained shall affect any other legal provisions on import or export.
- (5) Any other conveyance into or out of the realm of this Act shall be deemed to be import or export within the meaning of this Act.

Section 4 - Carriage of nuclear fuel

- (1) The carriage of nuclear fuel outside an enclosed area where nuclear fuel is kept in Government custody or where activities licensed under Sections 6, 7 and 9 are being carried out, shall require a licence. Such licence shall be granted to the consignor or the person undertaking the consignment or carriage of the nuclear fuel.
- (2) A licence shall be granted, provided that
  1. there are no known facts giving rise to any doubts as to the reliability of the applicant, the carrier and the persons actually effecting the carriage,
  2. it is ensured that such carriage is effected by persons who, with respect to the planned carriage of nuclear fuel, possess the requisite knowledge of the possible radiation hazards and the safety measures to be applied,
  3. it is ensured that the nuclear fuel will be carried in conformity with such legal provisions on the carriage of dangerous goods as are applicable to the particular carrier concerned or, in the absence of such provisions, that otherwise every precaution which is necessary in the light of existing scientific knowledge and technology has been taken in order to prevent damage resulting from the carriage of nuclear fuel,
  4. the necessary financial security has been provided to cover all legal liability to pay compensation for damage (sub-section 5 of Section 13),
  5. all necessary protection is provided against disturbance or other interference by third persons,
  6. the choice of the mode, time and route of the carriage are not contrary to overriding public interests.
- (3) Financial security to cover all legal liability to pay compensation for damage required pursuant to sub-section 2, no. 4 shall not be necessary for carriage of the nuclear fuel specified in Annex 2 to this Act.
- (4) The licence shall be granted separately for each carriage; a general licence may be granted to an applicant for a period not exceeding three years, provided that this is not contrary to the purposes specified in nos. 2 to 4 of Section 1.

- (5) A duplicate or a certified copy of the licence shall be available during carriage. Furthermore, the carrier shall carry a certificate which meets the requirements of Article 4(c) of the Paris Convention unless, pursuant to sub-section 3, financial security is not required for the carriage in question. The licence and the certificate shall be produced, on request, to the competent control authority and its duly authorised agents.
- (6) The first sentence of sub-section 5 shall not apply to the carriage by rail by an operator of a railway. Otherwise nothing contained herein shall affect any legal provisions applicable to carriers and relating to the carriage of dangerous goods.

Section 4a - Financial security in cases of international carriage

- (1) Subject to sub-sections 3 and 4, the financial security required pursuant to no. 4 of sub-section 2 of Section 4 shall be considered as provided in the case of international carriage, if the certificate required under Article 4(c) of the Paris Convention relates to an operator of a nuclear installation situated in a Contracting State to the Paris Convention.
- (2) "Insurer" within the meaning of Article 4(c) of the Paris Convention means:
1. an insurer licensed to carry out his business within the realm of this Act;
  2. an insurer licensed outside the realm of this Act, provided that an insurer licensed within the realm of this Act or an association of such insurers undertakes jointly to assume the obligations of a third party liability insurer.

Some other form of financial security may be permitted in lieu of insurance if it is guaranteed that the person required to provide security is in a position to meet his legal obligation to pay compensation for damage within the determined amount of security for as long as it is to be expected that claims may be raised against him.

- (3) If the Brussels Supplementary Convention is not yet in force for a Contracting State to the Paris Convention, the granting of a licence pursuant to Section 4 for the transit of nuclear fuel may be made subject to the condition that the maximum amount of liability of the operator of a nuclear installation provided for in such Contracting State may be increased to DM 50 million with respect to nuclear incidents occurring during carriage within the realm of this Act, if this is necessary in view of the amount and nature of the nuclear fuel and the safety measures applied. The operator of the nuclear installation shall be required to furnish proof of the financial security thus increased by producing a certificate issued by the competent authority of such Contracting State.

- (4) In case of import or export of nuclear fuel into or from another Contracting State to the Paris Convention for which the Brussels Supplementary Convention is not in force, the licence pursuant to Section 4 may be made subject to the condition that the operator of the nuclear installation situated in the realm of this Act to whom or from whom the nuclear fuel is to be carried undertakes to assume liability, in accordance with the provisions of this Act, for nuclear incidents occurring during carriage within the realm of this Act, if the maximum amount of liability provided in the other Contracting State to the Paris Convention is not adequate in view of the amount and nature of the nuclear fuel and the safety measures applied.

Section 4b - Transport of nuclear substances in special cases

- (1) Any person who carries nuclear substances without requiring a licence pursuant to Section 4, shall furnish proof to the competent authority, before commencement of the carriage, that the financial security required to cover legal liability to pay compensation has been obtained. If such financial security offered is insufficient, the authority shall determine the necessary amount according to the principles laid down in no. 1 of sub-section 2 of Section 13. The second and third sentences of sub-section 5 of Section 4, and Section 4a shall apply.
- (2) Sub-section 1 shall not be applied in the case of carriage of nuclear substances which are specified in Annex 2 to this Act.

Section 5 - Custody, possession and surrender of nuclear fuel

- (1) Nuclear fuel shall be kept in Government custody. Such precautions as are necessary in the light of existing scientific knowledge and technology shall be taken to prevent damage resulting from such keeping in custody, and the necessary protection shall be provided against disturbance or other interference by third persons.
- (2) No persons shall be permitted to have nuclear fuel in his immediate possession outside Government custody, unless he
1. stores nuclear fuel by virtue of a licence granted under Section 6,
  2. treats, processes or otherwise uses nuclear fuel in an installation licensed under Section 7 or by virtue of a licence granted under Section 9,
  3. is entitled to carry nuclear fuel by virtue of Section 4.

- (3) Any person who is in immediate possession of nuclear fuel, without being authorised under sub-section 2, shall surrender it to the custodial authority without delay.
- (4) The obligation to surrender nuclear fuel shall cease to apply if the fuel is transferred to a carrier licensed under Section 4,
  1. for the purpose of export licensed under Section 3, or
  2. for the purpose of delivery to a consignee licensed under no. 1 or 2 of sub-section 2.
- (5) Nuclear fuel in Government custody under sub-section 1, or in licensed storage under Section 6 shall be delivered only if
  1. the consignee is authorised to have nuclear fuel in his possession under no. 1 or 2 of sub-section 2,
  2. nuclear fuel is to be carried, for the purpose of export, under a licence pursuant to Section 4.

#### Section 6 - Licences for the storage of nuclear fuel

- (1) Any person who stores nuclear fuel outside Government custody shall require a licence.
- (2) A licence shall be granted if there is need for such storage, provided
  1. there are no known facts giving rise to any doubts as to the reliability of the applicant or of the persons responsible for administration and control of the storage, and such latter persons possess the requisite competence,
  2. every necessary precaution has been taken in the light of existing scientific knowledge and technology to prevent damage resulting from such storage,
  3. the necessary financial security has been provided to cover all legal liability to pay compensation for damage,
  4. all necessary protection is provided against disturbance or other interference by third persons.

#### Section 7 - Licences for installations

- (1) Any person who constructs, operates or otherwise holds a stationary installation for the production, treatment, processing or fission of nuclear fuel, or for the reprocessing of irradiated nuclear fuel, or who materially alters such installation, or its operation, shall require a licence.

- (2) A licence may be granted only if
1. there are no known facts giving rise to any doubts as to the reliability of the applicant and of the persons responsible for the construction and management of the installation and the control of its operation and such latter persons possess the requisite competence,
  - 1a. it is ensured that the persons who are otherwise engaged in the operation of the installation possess the necessary knowledge concerning the safe operation of the installation, the possible hazards and the safety measures to be applied,
  2. every necessary precaution has been taken in the light of existing scientific knowledge and technology to prevent damage resulting from construction and operation of the installation,
  3. the necessary financial security has been provided to cover all legal liability to pay compensation for damage,
  4. all necessary protection is provided against disturbance or other interference by third persons,
  5. the choice of the site of the installation, in particular with respect to non-contamination of water, air and soil, is not contrary to overriding public interests.
- (3) All authorities of the Bund,\* the Länder,\* the communities and other regional authorities whose jurisdiction is involved, shall take part in the licensing procedure. In case of a difference of opinion between the licensing authority and any federal authority concerned, the licensing authority shall obtain instructions from the Federal Minister competent for nuclear safety and radiation protection. In all other respects, the licensing procedure shall be governed by statutory ordinance in accordance with the principles laid down in Section 8, sub-sections 1 to 4 and 6 to 8 of Section 10, and Section 18 of the Federal Act on Protection Against Nuisances of 15th March 1974 (BGBl. I, page 721).\*\*
- (4) Sub-sections 1 to 3 shall apply analogously to non-stationary installations. However, the statutory ordinance referred to in the third sentence of sub-section 3 may provide that the project shall not be publicly announced and the documents shall not be laid open for public inspection and that in such case objections shall not be heard orally.

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\* "Bund": The federal State; "Länder" (singular "Land"): States forming the Federal Republic of Germany.

\*\* Gesetz zum Schutz vor schädlichen Umwelteinwirkungen durch Luftverunreinigungen, Geräusche, Erschütterungen und ähnliche Vorgänge (Bundes-Immissionsschutzgesetz).

- (5) Section 14 of the Federal Act on the Protection Against Nuisances shall apply analogously if other premises are affected by a licensed installation.

Section 7a - Provisional decision

- (1) Upon application, a provisional decision may be rendered with respect to separate questions which are conditional for the granting of a licence for an installation pursuant to Section 7, in particular with respect to the choice of the site. The provisional decision shall become invalid if the applicant does not apply for the licence within two years from the date at which such decision has become final; upon application, this period may be extended for up to a further two years.
- (2) Sub-sections 3 and 4 of Section 7 and Sections 17 and 18 shall apply accordingly.

Section 7b - Public announcement: interventions by third parties

- (1) After a procedure pursuant to Section 7 or Section 7a, including public announcement of the project and public inspection of documents, has been completed, a certified copy of the decision rendered, together with an instruction as to the right of appeal, shall be laid open for public inspection during a period of two weeks; the period and place of public inspection shall be announced in the same way as the project itself. With the expiry of this period, the decision shall be considered as having been served on third parties who have not intervened in the procedure; this shall equally be announced.
- (2) To the extent that a decision rendered in a procedure covering a partial licence or a provisional decision pursuant to Section 7 or Section 7a has become final, third parties shall be precluded, in any further licensing procedure, from intervening on the basis of facts which had already been presented or which such parties could have presented in view of the document or the decision laid open for public inspection.

Section 8 - Relation to the Federal Act on Protection Against Nuisances and the Trading and Industrial Code\*

- (1) The provisions of the Federal Act on the Protection Against Nuisances concerning installations requiring a licence and the prohibition of the further operation of such installations, shall not apply to installations requiring a licence pursuant to Section 7 as regards protection against the hazards of nuclear energy and the harmful effects of ionizing radiation.

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\* Gewerbeordnung.

- (1a) If an installation requires a licence pursuant to Section 4 of the Federal Act on the Protection Against Nuisances as well as pursuant to Section 7 of this Act, the latter licence shall include the former. The nuclear licensing authority shall take its decision in accordance with the authority of the Land competent for protection against nuisances and in compliance with the provisions of the Federal Act on the Protection Against Nuisances and the statutory ordinances issued thereunder.
- (2) With respect to installations subject to control under Section 24 of the Trading and Industrial Code which are used in installations requiring a licence under Section 7, the licensing authority may grant exemption, on a case-by-case basis, from the legal provisions issued under Section 24 of the Trading and Industrial Code, if such exemption is warranted by the special technical character of the installation subject to Section 7.

Section 9 - Treatment, processing and other uses of nuclear fuel outside of installations requiring a licence

- (1) Any person who treats, processes or otherwise uses nuclear fuel outside of installations specified in Section 7 shall require a licence. Furthermore, a licence shall be required by any person who applies a method of treating, processing or otherwise using nuclear fuel in a way materially different from that specified in the licence, or who materially alters the installation or its location as specified in the licence.
- (2) A licence may be granted only if
1. there are no known facts giving rise to any doubts as to the reliability of the applicant or of the persons responsible for the administration and control of the use of nuclear fuel, and such latter persons possess the requisite competence,
  2. it is ensured that the persons otherwise engaged in the intended use of nuclear fuel dispose of the requisite knowledge of the possible hazards and the safety measures to be applied,
  3. every necessary precaution has been taken in the light of existing scientific knowledge and technology to prevent damage resulting from the use of nuclear energy,
  4. the necessary financial security has been provided to cover all legal liability to pay compensation for damage,
  5. all necessary protection is provided against disturbance or other interference by third persons,
  6. the choice of the place where the nuclear fuel is to be used is not contrary to overriding public interests, in particular with respect to non-contamination of water, air and soil.

## Section 10

Exemptions from the provisions of Sections 3 to 7 and 9 may be granted by statutory ordinance, provided that only such quantities or types of nuclear fuel are involved or that such protective measures or equipment are applied which make it unlikely that damage will be caused by a self-sustaining chain reaction or the effects of ionizing radiation, and provided further that such exemptions are not contrary to the purposes stated in nos. 3 and 4 of Section 1.

## Section 11 - Enabling provisions (licences, notifications, general permits)

- (1) Unless special provision for nuclear fuel and installations within the meaning of Section 7 has been made under this Act, it may be provided by statutory ordinance with a view to achieving the purposes specified in Section 1
  1. that prospecting for or handling of radioactive substances (extraction, production, storage, treatment, processing or any other use or disposal), transactions in radioactive substances (acquisition, or delivery to others), the carriage and import or export of such substances shall require a licence or notification,
  2. that the construction or operation of an installation for the production of ionizing radiation shall require a licence or notification,
  3. that a general permit may be issued for installations, apparatus and equipment containing radioactive substances or producing ionizing radiation after their design and construction have been examined by an authority to be specified in such statutory ordinance, which shall also specify the notifications to be made by the operators of such installation, apparatus and equipment,
  4. that radioactive substances shall not be used in certain ways, to the extent that such prohibition is required for the enforcement of decisions by international organisations of which the Federal Republic of Germany is a member.
- (2) The statutory ordinance may make the granting of licences and general permits subject to personal and objective requirements within the purposes of this Act, and may regulate the procedure for such licences and general permits.

## Section 12 - Enabling provisions (safety measures)

- (1) To achieve the purposes specified in Section 1, the following may be provided by statutory ordinance
  1. the precautionary and control measures to be taken for the protection of individuals and of the general public in regard to the handling of and transactions in radioactive substances, the construction, operation and possession of

installations as specified in Section 7 and no. 2 of sub-section 1 of Section 11, the handling of and transactions in installations, apparatus and equipment as specified in no. 3 of sub-section 1 of Section 11,

2. the precautions to be taken in order to ensure that specified radiation doses and concentrations of radioactive substances in air and water are not exceeded,
3. that no person shall be employed in areas exposed to radiation hazards unless he produces a certificate issued by a specially authorised medical practitioner, and that if any objections be raised to such employment for reasons of health, the supervisory authority shall decide after consulting medical experts,
4. that persons who stay or have been staying in areas exposed to radiation hazards shall be under obligation, the extent to be specified, to have the radiation doses at their bodies measured, to undergo medical examination and, insofar as the protection of other individuals or the general public so requires, to undergo medical treatment, such examination or treatment being applied by specially authorised medical practitioners,
5. that, as to be specified, records shall be kept and reports submitted on the production, extraction, acquisition, possession, delivery and location of radioactive substances, as well as on the measurement of doses and dose rates of ionizing radiation,
6. that reports shall be submitted to the supervisory authority on any accident or harmful occurrence during the handling of radioactive substances, during the operation of an installation as specified in Section 7 and no. 2 of sub-section 1 of Section 11, during the handling of installations, apparatus and equipment as specified in no. 3 of sub-section 1 of Section 11,
7. that, as to be specified, radioactive substances which are no longer in use shall be stored, surrendered, disposed of or be secured by the appropriate authority,
8. the manner in which radioactive substances and installations within the meaning of Section 7 and no. 2 of sub-section 1 of Section 11, shall be protected against disturbance or other interference by third persons,
9. that the supervisory authority may issue directions for the implementation of any provisions made under nos. 1 to 8.

Nos. 1 and 6 of the first sentence shall apply analogously to the carriage of radioactive substances to the extent that the purposes stated in Section 1 nos. 1, 3 and 4 are to be achieved.

- (2) The fundamental right to physical inviolability (first sentence of Section (2) of Article 2 of the Basic Law\*) shall be restricted under the terms of no. 4 of sub-section 1.

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\* Grundgesetz (Constitution of the Federal Republic of Germany).

Section 12a - Enabling provision (Decision of the Steering Committee)

The Federal Government is authorised, with the consent of the Federal Council, to put into force by statutory ordinance decisions of the Steering Committee of the European Nuclear Energy Agency, or its successor, pursuant to Article 1(a)(ii) and (iii) and Article 1(b) of the Paris Convention, as well as to amend or repeal nos 2 and 3 of sub-section 1 of Annex 1, and Annex 2 of this Act, if this is necessary to fulfill the purposes stated in Section 1 of this Act.

Section 13 - Financial security to cover legal liability to pay compensation for damage

- (1) In the licensing procedure, the public authority shall determine the type, terms and amount of financial security to be provided by the applicant to cover his legal liability to pay compensation for damage. Such determination shall be renewed every two years and in the event of any material change in circumstances; the public authority shall prescribe an appropriate time-limit within which the person under obligation to provide financial security must furnish proof that he has done so.
- (2) The financial security to be provided pursuant to sub-section 1 shall
  1. in the case of installations and activities involving liability under the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25, under Section 25a or under an international agreement referred to in sub-section 2 of Section 25a, be in due proportion to the hazards of the installation or activities; as a general rule it shall not fall short of the maximum insurance cover obtainable on the insurance market at reasonable conditions but may not exceed the amount of DM 500 million; in case of carriage of nuclear substances, the financial security may not be fixed above DM 50 million,
  2. in case of other activities requiring a licence pursuant to this Act or a statutory ordinance issued thereunder, ensure fulfillment of the legal liability to pay compensation for damage to the extent appropriate to the circumstances.
- (3) Within the limits laid down by sub-section 2, and in order to achieve the purposes specified in Section 1, more detailed provisions may be made by statutory ordinance concerning financial security to cover legal liability to pay compensation for damage.
- (4) The Bund (with the exception of the Federal German Railways\* in the case of carriage in public transport) and the Länder shall not be required to provide financial security. Insofar as a Land may be held liable under the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25, under Section 25a or under an international agreement referred to in sub-section 2 of Section 25a, the licensing authority, in analogously applying

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\* Deutsche Bundesbahn.

sub-sections 1 and 2 and the statutory ordinance issued under sub-section 3, shall determine to what extent and amount the Land shall guarantee, by means of indemnification pursuant to Section 34, to compensate damage not covered by financial security. In applying this Act, such guarantee shall be equal to financial security.

- (5) For the purposes of this Act legal liability to pay compensation shall mean the liability to pay compensation for damage as laid down in private law. This term shall not include obligations of the nature specified in Sections 640, 641 of the Insurance Code\*, and shall include obligations to hold harmless pursuant to sub-section 5 of Section 7 of this Act in conjunction with Section 14 of the Federal Act on Protection Against Nuisances, as well as similar obligations to pay indemnities or compensation only insofar as the damage or impairment has been caused by an accident.

Section 14 - Third party liability insurance and other forms of financial security

- (1) Where, in the case of installations and activities involving liability under the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25, under Section 25a or under an international agreement referred to in sub-section 2 of Section 25a, financial security is provided by third party liability insurance, Sections 158c to 158h of the Insurance Contracts Act\*\* shall apply as appropriate provided that the period of sub-section 2 of Section 158c of the latter Act shall be two months and its expiry shall be delayed, in case of liability for the carriage of nuclear substances, for the duration of the carriage; if sub-section 4 of Section 158c of the Insurance Contracts Act is applied, indemnification by the Bund pursuant to Section 34 shall not be taken into account. Sub-section 3 of Section 156 of the Insurance Contracts Act shall not be applicable.
- (2) Where financial security is not provided in the form of third party liability insurance, but by indemnification or guarantee of a third person, sub-section 1 shall apply analogously.

Section 15 - Rank of satisfaction of claims through financial security

- (1) If the operator of a nuclear installation obliged to provide financial security and a person suffering damage are, at the time of the nuclear incident, combined enterprises within the meaning of Section 18 of the Stock Corporation Act\*\*\*, the operator's financial security may be used to satisfy legal claims for compensation of that person only on condition that the satisfaction of claims of other victims is not thereby prejudiced. Nuclear installations within the meaning of the foregoing sentence shall include reactors comprised in a means of transport.

\* Reichsversicherungsordnung.  
\*\* Gesetz über den Versicherungsvertrag.  
\*\*\* Aktiengesetz.

- (2) If damage was caused to an industrial installation in the vicinity of the nuclear installation, the first sentence of sub-section 1 shall apply accordingly if the site of the industrial installation serves to utilise energy originating from the nuclear installation for production processes.
- (3) Claims having a lower rank under sub-sections 1 and 2 shall rank equally amongst each other.

Section 16 - Repealed

Section 17 - Restrictions, conditions, revocation, designation as operator of a nuclear installation

- (1) Licences and general permits granted under this Act or under a statutory ordinance made thereunder shall be issued in writing. They may contain restrictions, and may be subject to certain conditions, with a view to achieving the purposes specified in Section 1. Conditions may subsequently be imposed so far as may be necessary to achieve the purposes specified in nos. 2 and 3 of Section 1. Licences, other than those issued under Section 7, and general permits may be granted for a fixed period of time.
- (2) Licences and general permits may be withdrawn if one of their conditions had not been complied with at the time of granting.
- (3) Licences and general permits may be revoked if
1. they have not been used within a period of two years, unless otherwise provided in the licence or general permit,
  2. one of their conditions has subsequently ceased to exist, and no remedial action has been taken within a reasonable period, or
  3. the provisions of this Act or statutory ordinances made thereunder, orders or directions issued by the supervisory authorities, or the terms and conditions contained in the licence or general permit, have been seriously or repeatedly violated, or a condition subsequently imposed has not been complied with and no remedial action has been taken within a reasonable period.
- (4) Licences shall be revoked if the financial security provided does not comply with the determination made under sub-section 1 of Section 13, and the person liable for financial security fails to furnish proof, within a reasonable period to be fixed by the public authority, that he has complied with such determination.

- (5) Licences or general permits shall also be revoked whenever such revocation is necessary to avoid substantial risks to employees, third persons or the general public, and conditions subsequently imposed cannot provide a remedy within a reasonable period.
- (6) When activities are licensed which authorise the operation of a nuclear installation, the licensee shall be expressly designated as operator of a nuclear installation in the licence.

#### Section 18 - Reparation

- (1) If a licence or general permit granted under this Act or a statutory ordinance issued thereunder is withdrawn or revoked, appropriate reparation shall be paid to the licensee. If the withdrawal or revocation is effected by a federal authority, the Bund shall be liable for the reparation; if effected by an authority of a Land, the Land concerned shall be liable. The amount of reparation shall be determined with due regard to the public interest and that of the persons concerned, and shall take into account the reasons which have led to such withdrawal or revocation. The reparation shall be limited to the expense incurred by the person concerned and in the case of an installation to its current value. In the event of dispute as to the amount of reparation, recourse may be had to the civil courts.
- (2) There shall be no liability to pay reparation if
  1. the holder of the licence or general permit has obtained such licence or general permit by making substantially incorrect or incomplete statements,
  2. the holder of the licence or general permit, or persons carrying out activities in his interest thereunder, have by their conduct given cause for revocation of the licence or general permit, in particular by serious and repeated violation of the provisions of this Act, or of statutory ordinances made thereunder, or of orders and directions issued by the supervisory authority, or of the terms and conditions of the licence or general permit, or by non-compliance with conditions subsequently imposed,
  3. the revocation had to be ordered because employees, third persons or the general public were subsequently exposed to serious hazards arising from the licensed installation or activity.
- (3) Sub-sections 1 and 2 shall apply correspondingly to conditions subsequently imposed under the third sentence of sub-section 1 of Section 17.

- (4) If a Land is liable for reparation, the Bund or another Land shall be obliged to contribute thereto, according to their overall interests in the withdrawal or revocation. The same shall apply if the Bund is liable for reparation.

Section 19 - Government supervision

- (1) Any handling of or transactions in radioactive substances, the construction, operation and possession of installations of the type specified in Section 7 and no. 2 of sub-section 1 of Section 11, any handling of or transactions in installations, apparatus and equipment of the type specified in no. 3 of sub-section 1 of Section 11, as well as the carriage of such substances, installations, apparatus and equipment, shall be subject to Government supervision. In particular, the supervisory authorities shall ensure compliance with the provisions of this Act and of statutory ordinances made thereunder, with such orders and directions as are issued by the supervisory authorities pursuant thereto, and with the terms and conditions of the licence or general permit, as well as with any conditions subsequently imposed. The provisions of Section 139b of the Trading and Industrial Code shall apply correspondingly to the powers and duties of the supervisory authorities.
- (2) Any person commissioned by the supervisory authority, and any expert called in by the said authority pursuant to Section 20, or any person commissioned by other authorities called in, shall at all times have access to places where there are radioactive substances, installations of the type specified in Section 7 and no. 2 of sub-section 1 of Section 11, or installations, apparatus or equipment of the type specified in no. 3 of sub-section 1 of Section 11, or to places where there is radiation originating therefrom, and to places where there is reason to believe that such conditions exist; and such persons shall have authority to carry out at such places all examinations necessary for the performance of their duties. They may request the persons in charge, or employees of such places, to provide them with any information that they may require in the course of such examination. Otherwise, Section 24b of the Trading and Industrial Code shall apply correspondingly. The fundamental right to inviolability of domicile as laid down in Article 13 of the Basic Law, shall be restricted so far as may be necessary for the exercise of these powers.
- (3) The supervisory authority may order that a situation be discontinued which is contrary to the provisions of this Act or to statutory ordinances issued thereunder, to the terms and conditions of the licence or general permit, or to any condition subsequently imposed, or which might endanger life, health or property through the effects of ionizing radiation. In particular, the supervisory authority may order that
1. safety measures shall be taken, and may specify such measures,

2. radioactive substances shall be stored, or kept in custody, in a place designated by it,
  3. the handling of radioactive substances, the construction or operation of installations of the type specified in Section 7 and no. 2 of sub-section 1 of Section 11, or the handling of installations, apparatus or equipment of the type specified in no. 3 of sub-section 1 of Section 11 shall be suspended temporarily, or permanently, if the requisite licence has not been granted or finally been revoked.
- (4) Nothing herein contained shall affect the supervisory powers conferred by other legal provisions, or such general powers as result from the legislation of the Länder.

#### Section 20 - Experts

Experts may be consulted by the competent authorities in the licensing and control procedure under this Act and any statutory ordinances issued thereunder. Section 24b of the Trading and Industrial Code shall apply correspondingly.

#### Section 21 - Costs

- (1) Costs (fees and expenses) shall be charged for licences under Sections 4, 6, 7 and 9, for the provisional decision under Section 7a and for Government custody of nuclear fuel (sub-section 1 of Section 5).
- (2) The following fees shall be charged:
  1. for the licence to construct and operate an installation within the meaning of Section 7, 1.5 per thousand of the costs of the construction;
  2. for any other licence under Section 7 or a provisional decision under Section 7a, DM 100 to 20,000;
  3. for licences under Sections 4, 6 and 9, as well as for licences implementing statutory ordinances issued under Sections 10 to 12 of this Act, DM 10 to 10,000;
  4. for Government custody of nuclear fuel, 0.2 per thousand of the value of the nuclear fuel for each begun month of custody; in the case of irradiated nuclear fuel, 0.2 per thousand up to 10 per thousand of the value which the nuclear fuel had before irradiation.

If the construction costs of the installation exceed DM 10 million, the fees under no. 1 above shall be reduced to one fifth for the amount exceeding DM 10 million and to one tenth for the amount exceeding DM 100 million.

- (3) In case of Government supervision those expenses shall be reimbursed which are due to the consultation of experts pursuant to Section 20 or to extraordinary measures taken by the supervisory authority if the person concerned has caused such measures to be taken.
- (4) Experts' fees shall be reimbursed if limited to amounts constituting appropriate consideration for the experts' activity, taking into account his requisite expert knowledge and any particular complexity of his opinion.
- (5) Details shall be determined by statutory ordinance in accordance with the principles of the Act on Administrative Costs\* of 23rd June 1970 (BGBl. I, page 121). Such statutory ordinance may provide that certain expenditures shall not be considered as construction costs of the installation (no. 1 of sub-section 2).
- (6) To the extent that the authorities of the Länder carry out statutory ordinances issued under Sections 10 to 12 of this Act, the regulations concerning costs of the Länder shall apply, subject to sub-sections 3 and 4.
- (7) Expenditures for safety measures and medical examinations carried out pursuant to this Act or a statutory ordinance issued thereunder, shall be borne by the person requiring a licence under this Act or a statutory ordinance issued thereunder for the activity which makes such safety measure or medical examination necessary.

### C H A P T E R    I I I

#### PUBLIC AUTHORITIES

##### Section 22 - Competence for import and expert licences, import and export control

- (1) The Federal Office for Trade and Industry\*\* shall decide on applications for licences under Section 3, and on the revocation of licences already issued. The same shall apply where statutory ordinances issued under Section 11 provide for import and export licences.

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\* Verwaltungskostengesetz.

\*\* Bundesamt für gewerbliche Wirtschaft.

- (2) The Federal Minister of Finance\*, or the customs authorities designated by him, and in the free port of Hamburg the Free Port Authority of the Free and Hanseatic City of Hamburg\*\*, shall be responsible for import and export control.
- (3) Insofar as the Federal Office for Trade and Industry makes any decisions by virtue of sub-section 1, it shall be bound by the technical instructions issued by the Federal Minister competent for nuclear safety and radiation protection, notwithstanding its subordination to the Federal Minister of Economics\*\*\* and his powers to issue instructions based on other legal provisions.

Section 23 - Competence for custody and for carriage and storage licences

The Federal Institute of Physics and Technology\*\*\*\* shall be competent for Government custody of nuclear fuel, for the issue of licences for the carriage of nuclear fuel and large sources, for the issue of licences for storage of nuclear fuel other than in Government custody, and for the revocation of such licences; large sources shall mean radioactive substances whose activity per consignment or package exceeds the values set forth in marginal 2450(5) of Annex A to the European Agreement of 30th September 1957 concerning the International Carriage of Dangerous Goods by Road (ADR), BGBl. 1969 II, page 1491. In carrying out these functions, the Institute shall act in accordance with the technical instructions of the Federal Minister competent for nuclear safety and radiation protection.

Section 24 - Competence of the authorities of the Länder

- (1) All other administrative functions under Chapter II and any statutory ordinances made thereunder shall be discharged by the Länder on behalf of the Bund. Control of any carriage of radioactive substances by rail and by ship which is effected by the German Federal Railways shall, however, be exercised by such bodies of the German Federal Railways as have been designated by the Federal Minister of Transport\*\*\*\*\*.
- (2) The supreme authorities of the Länder designated by their governments shall be competent to grant, withdraw and revoke licences under Sections 7, 7a and 9. These authorities shall exercise control over installations coming under Section 7, and over the use of nuclear fuel outside such installations. In particular cases, they may delegate their functions to subordinate authorities. Any complaints against their orders shall be decided upon by the supreme Länder authorities. Insofar as provisions other than those laid down in this Act confer supervisory powers on any other authorities, their competence shall not be affected.

\* Bundesminister der Finanzen.  
 \*\* Freihafenamt der Freien und Hansestadt Hamburg.  
 \*\*\* Bundesminister für Wirtschaft.  
 \*\*\*\* Physikalisch-Technische Bundesanstalt.  
 \*\*\*\*\* Bundesminister für Verkehr.

- (3) In matters related to the service of the Federal Armed Forces\*, the Federal Minister of Defence\*\*, or the offices designated by him, shall discharge the functions referred to in sub-sections 1 and 2, in agreement with the Federal Minister competent for nuclear safety and radiation protection.

## C H A P T E R   I V

### LIABILITY

#### Section 25 - Liability for installations

- (1) If damage is caused by a nuclear incident originating from a nuclear installation, the liability of the operator of a nuclear installation shall be governed by the provisions of the Paris Convention as supplemented by the provisions of this Act. The same shall apply if damage arises out of or results from ionizing radiations emitted by any other source of radiation inside the nuclear installation.
- (2) Where in case of carriage of nuclear substances, including storage incidental thereto, the carrier has assumed liability by contract in place of the operator of a nuclear installation situated in the realm of this Act, such carrier shall be considered as operator of a nuclear installation from the moment at which he has assumed liability. The contract shall be made in writing. Such assumption of liability shall be valid only if it has been authorised, upon application of the carrier, by the authority competent under Section 4 before commencement of the carriage of nuclear substances or any storage incidental thereto. Such authorisation may be granted only if the carrier has been licensed as such or has his main place of business within the realm of this Act and the operator of the nuclear installation has declared his consent to the authority.
- (3) The provisions of Article 3(a)(ii)2 of the Paris Convention concerning the exoneration of the operator for damage to the means of transport shall not apply.
- (4) The provisions of Article 9 of the Paris Convention concerning the exoneration for damage caused by nuclear incidents directly due to an act of armed conflict, hostilities, civil war, insurrection, or a grave natural disaster of an exceptional character, shall not be applicable. If the damage is suffered in another State, the first sentence shall apply only to the extent that the other State, at the time of the nuclear incident, has provided a system of compensation in relation to the Federal Republic of Germany which is equivalent as to its nature, extent and amount.

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\* Bundeswehr .

\*\* Bundesminister für Verteidigung .

- (5) The operator of a nuclear installation shall be liable without the territorial restrictions provided for in Article 2 of the Paris Convention.
- (6) The operator of a nuclear installation shall not be liable under the Paris Convention if the damage has been caused by a nuclear incident involving nuclear substances specified in Annex 2 to this Act.

Section 25a - Liability for nuclear ships

- (1) The provisions of this Chapter shall apply to the liability of an operator of a nuclear ship with the following modifications:
  1. The provisions of the Paris Convention shall be replaced by the corresponding provisions of the Brussels Convention on the Liability of Operators of Nuclear Ships.
  2. If the damage is suffered in another State, the first sentence of sub-section 1 of Section 31 shall be applicable as regards the amount exceeding the maximum amount of liability under the Brussels Convention on the Liability of Operators of Nuclear Ships, only to the extent that the legislation of that State provides, at the time of the nuclear incident, for a third party liability regime for operators of nuclear ships which is applicable in relation to the Federal Republic of Germany and is equivalent as to its nature, extent and amount. The second and third sentences of sub-section 1 of Section 31, Section 36, sub-section 1 of Section 38 and Section 40 shall not be applied.
  3. Section 34 shall apply only to nuclear ships authorised to sail under the flag of the Federal Republic of Germany. If, within the realm of this Act, a nuclear ship is built or equipped with a reactor for another State, or persons of another State, Section 34 shall apply until the nuclear ship is registered in the other State or acquires the right to sail under the flag of another State. 75 per cent of the indemnification pursuant to Section 34 shall be borne by the Bund and the remainder by the Land competent for the licensing of the nuclear ship under Section 7.
  4. In the case of nuclear ships which are not entitled to sail under the flag of the Federal Republic, this Chapter shall apply only if the nuclear damage caused by the nuclear ship has been suffered within the realm of this Act.
  5. The courts of the State under whose flag the nuclear ship is entitled to sail shall have jurisdiction over actions for compensation; in the case referred to in no. 4, the court of the place within the realm of this Act where the nuclear damage was suffered shall equally have jurisdiction.

- (2) To the extent that international agreements on the liability for nuclear ships contain mandatory provisions derogating from this Act, such provisions shall take precedence over the provisions of this Act.

Section 26 - Liability in other cases

- (1) Where, in cases other than those specified by the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25, loss of life, personal injury, or deterioration of health was caused to any person or damage was caused to property through the effects of any nuclear fission process or radiation from radioactive substances or the effects originating from an accelerator, the holder of the substances affected by the nuclear fission, of the radioactive substances or of the accelerator shall be liable to pay compensation for damage in accordance with Sections 27 to 30, sub-section 2 of Section 31, sub-sections 1, 4 and 5 of Section 32 and Section 34. There shall be no liability to pay compensation if the damage was caused by an event which the holder and such persons as are acting for him in connection with such possession could not avoid, even by taking every reasonable precaution, and which is due neither to a defective condition of the safety devices nor to any failure in their performance.
- (2) Sub-section 1 shall apply correspondingly where damage of the nature specified in sub-section 1 was caused by the effects of nuclear fusion.
- (3) Any person who has lost possession of the substances, without having transferred them to a person entitled to such possession in accordance with this Act or any statutory ordinance made thereunder, shall be liable as if he were the holder.
- (4) The provisions of sub-sections 1 to 3 shall not apply
1. where the radioactive substances or the accelerators have been applied to the injured person by a physician or a dentist, or under the supervision of a physician or a dentist, in the course of medical treatment, and the substances and accelerators used and the necessary measuring apparatus have complied with the current state of science and technology and the damage is not due to the fact that such substances, accelerators or measuring apparatus have not been sufficiently maintained,
  2. where a legal relationship exists between the holder and the injured person under which the latter has accepted the risk associated with the substances.
- (5) Whoever carries substances on behalf of a third party shall not be liable to pay compensation under the provisions of sub-sections 1 to 3. As long as the consignee has not taken charge of the substances, the consignor shall remain liable under the aforementioned provisions, regardless of whether or not he is the holder of such substances.

- (6) Within the scope of application of the first sentence of sub-section 1, no legal provisions shall be affected pursuant to which the holder referred to in sub-section 1 and any person regarded as the holder under sub-section 3, are liable to a greater extent than under the provisions of this Act or pursuant to which another person is liable for the damage.

Section 27 - Contributory fault of the injured person

Where a fault of the injured person has contributed to the injury sustained, Section 254 of the Civil Code\* shall apply; in the event of damage to property, the fault of the person in actual control thereof shall be deemed to be that of the injured person.

Section 28 - Extent of compensation in case of death

- (1) In the event of death, compensation shall be provided for the costs of any attempted cure as well as for the pecuniary loss sustained by the deceased during his illness by reason of loss or reduction of his earning capacity, increase of his needs or handicap in regard to his career. In addition, the person liable shall refund funeral costs to the person who is under obligation to bear such costs.
- (2) If, at the time of the injury, the deceased was, or might have been, under legal obligation to provide maintenance for a third person who loses such maintenance as a result of the decease, the person liable shall pay compensation to such third person, to the extent of the maintenance for which the deceased would have been liable during his expected life. Such liability shall also exist where, at the time of the injury, the third person was conceived but not yet born.

Section 29 - Extent of compensation in case of personal injury

- (1) In the event of personal injury or damage to health, compensation shall comprise the costs of the cure and the pecuniary loss sustained by the injured person by reason of temporary or permanent loss or reduction of his earning capacity, increase of his needs or handicap in regard to his career as a result of the injury.
- (2) In case of personal injury or damage to health, the injured person may claim adequate compensation also for pain and suffering, if the damage has been caused wilfully or by negligence. Such claims shall not be transferable and inheritable except if acknowledged by contract or subject to an action pending.

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\* Bürgerliches Gesetzbuch.

### Section 30 - Annuity

- (1) Compensation for any loss or reduction of earning capacity, any increase of needs or any handicap in regard to the career of the injured person, and any compensation due to a third person under sub-section 2 of Section 28, shall be provided by means of an annuity.
- (2) The provisions of sub-sections 2 to 4 of Section 843 of the Civil Code, and of no. 6 of Section 708 of the Code of Civil Procedure\* shall apply correspondingly.
- (3) Where the court awarding an annuity has not required a security from the defendant, the plaintiff shall nevertheless be entitled to demand security, if the financial situation of the person liable has considerably deteriorated; accordingly, the plaintiff shall also be entitled to demand an increase in the amount of any security fixed by the judgment.

### Section 31 - Maximum amount of liability

- (1) The liability of an operator of a nuclear installation under the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25 shall be limited to DM one thousand million per nuclear incident. If the damage is suffered in a Contracting State to the Paris Convention for which the Brussels Supplementary Convention is in force, the first sentence shall apply as regards the maximum amount exceeding 120 million units of account only to the extent that such Contracting State has, at the time of the nuclear incident, provided for a system of compensation in relation to the Federal Republic of Germany which is equivalent as to its nature, extent and amount. If the damage is suffered in any other State, the second sentence shall apply accordingly, provided that the amount of 120 million units of account is replaced by 50 million units of account.
- (2) The person liable under the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25, or under Section 26, shall be liable in case of damage to property only up to the ordinary value of the damaged property, plus the cost of protection against radiation hazards originating therefrom. In case of liability under the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25, compensation for damage to the means of transport upon which the nuclear substances involved were at the time of the nuclear incident shall be paid only if satisfaction of other claims out of the maximum amount of liability has been secured.

### Section 32 - Periods of limitation

- (1) Claims for compensation under this Chapter shall become barred by limitation after three years from the date at which the person entitled to compensation had knowledge or from the date

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\* Zivilprozessordnung.

at which he ought reasonably to have known of both the damage and the person liable, and irrespective thereof after 30 years from the date of the event which caused the damage.

- (2) In the cases specified in Article 8(b) of the Paris Convention, the period of limitation of 30 years established under sub-section 1 shall be replaced by a period of limitation of 20 years from the date of theft, loss, jettison or abandonment.
- (3) Actions for death and personal injury under the Paris Convention which are brought before the court against the operator of a nuclear installation within 10 years after the nuclear incident, shall have precedence over actions instituted after expiry of this period.
- (4) Where negotiations concerning compensation are pending between the person liable and the person entitled to compensation, the lapse of the limitation period shall be suspended until such time as either party refuses to continue such negotiations.
- (5) In all other respects, the provisions of the Civil Code concerning periods of limitation shall apply.

#### Section 33 - Several persons liable

- (1) If several persons are legally liable to pay compensation for damage caused by a nuclear incident or otherwise by the effects of nuclear fission, or radiation emitted by radioactive substances, or the effects of ionizing radiation emitted by an accelerator, they shall be jointly and severally liable, except as otherwise provided in Article 5(d) of the Paris Convention.
- (2) In the case of sub-section 1, the amount of compensation due from each of the persons liable shall be apportioned between them according to the circumstances and the extent to which the damage was caused by one or the other, except as otherwise provided in Article 5(d) of the Paris Convention. However, the operator of a nuclear installation shall not be required to pay compensation exceeding the maximum amounts established pursuant to sub-section 1 of Section 31.

#### Section 34 - Indemnification

- (1) Where the operator of a nuclear installation situated in the realm of this Act is legally liable to pay compensation for damage caused by a nuclear incident under the provisions of the Paris Convention in conjunction with sub-sections 1 to 5 of Section 25, or under a foreign law applicable to the incident, the operator shall be indemnified against liability to pay compensation to the extent that such liability is not covered by or cannot be satisfied out of his financial security. The

obligation to indemnify the operator shall be restricted to the amounts referred to in sub-section 1 of Section 31, less the amount which is covered and can be met by the financial security.

- (2) If, after a nuclear incident has occurred, it is to be expected that indemnification will be necessary, the operator of the nuclear installation shall be required
1. to notify this without delay to the Federal Minister designated by the Federal Government and to the authorities of the Länder designated by their Governments,
  2. to inform without delay the competent Federal Minister and the competent authorities of the Länder of any claims for compensation raised or of any enquiry instituted against him, as well as to provide on request all information which is necessary to examine the circumstances of the case and their legal appreciation,
  3. to comply, in the case of negotiations for the settlement of claims for compensation inside or outside of court, with the instructions of the competent authorities of the Länder,
  4. to refrain from acknowledging or satisfying any claim for compensation without the consent of the competent authorities of the Länder except if such acknowledgement or satisfaction cannot be refused without obvious inequity.
- (3) In all other respects Sections 62 and 67 as well as the provisions of Title 6 of Chapter 2 of the Insurance Contracts Act, except Section 152, shall apply analogously to the obligation to indemnify.

#### Section 35 - Apportionment

- (1) Where legal liability to pay compensation for damage caused by an incident is expected to exceed the amounts referred to in sub-section 1 of Section 31, the apportionment of the sums available as compensation for damage and the procedure to be observed shall be governed by an Act and, pending enactment, by statutory ordinance.
- (2) The statutory ordinance referred to in sub-section 1 may only make such stipulations regarding apportionment of the sums available as compensation for damage as are required to avert hardship. Such statutory ordinance shall ensure that satisfaction of the claims of all injured persons will not be unduly prejudiced by the satisfaction of individual claims.

Section 36 - Distribution of the indemnification between the Bund and the Länder

The Bund shall bear 75 per cent of the amount of the indemnification pursuant to Section 34. The remainder shall be borne by the Land where the nuclear installation at the origin of the nuclear incident is situated.

Section 37 - Recourse in the case of indemnification

If the operator of a nuclear installation has been indemnified in accordance with Section 34, recourse may be had against him to the extent that compensation has been paid, if

1. the operator has violated his obligations under sub-sections 2 or 3 of Section 34; however, recourse shall be excluded to the extent that such violations have not influenced the determination of the damage nor the extent of the compensation paid,
2. the operator or, if he is a legal person, his legal representative has, in the discharge of his functions, caused the damage wilfully or by gross negligence,
3. compensation has been paid because the extent and amount of the financial security available have not corresponded to the determination by the competent authority.

Section 38 - Compensation from the Bund

- (1) If a person having suffered nuclear damage within the realm of this Act cannot obtain compensation pursuant to the law of another Contracting State to the Paris Convention applicable to the incident because
  1. the nuclear incident occurred in the territory of a non-Contracting State to the Paris Convention,
  2. the damage was caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, insurrection or a grave natural disaster of an exceptional character,
  3. the applicable law excludes liability for damage to the means of transport upon which the nuclear substances involved were at the time of the nuclear incident,
  4. the applicable law does not provide for the operator's liability for damage caused by ionizing radiation emitted by another source of radiation inside the nuclear installation,
  5. the applicable law provides for a shorter period of limitation or extinction than this Act, or

6. the total sum available for compensation falls short of the amount under the first sentence of sub-section 1 of Section 31 of this Act,

the Bund shall grant compensation up to the amount referred to in the first sentence of sub-section 1 of Section 31.

- (2) The Bund shall further grant compensation up to the amount referred to in the first sentence of sub-section 1 of Section 31, if the foreign law or the provisions of an international agreement applicable to damage suffered within the realm of this Act provide for compensation to the injured person which as to its nature, extent and amount, falls considerably short of the compensation which the injured person would have obtained had this Act been applied.
- (3) Sub-sections 1 and 2 shall not apply to injured persons who are not Germans within the meaning of sub-section 1 of Article 116 of the Basic Law and who do not have their habitual residence within the realm of this Act unless their mother country has provided, at the time of the nuclear incident, a system of compensation which in relation to the Federal Republic of Germany is equivalent as to its nature, extent and amount.
- (4) Actions under sub-sections 1 and 2 shall be brought before the Federal Agency for Administration\*. They shall be extinguished within three years of the date at which the decision on compensation rendered under foreign or international law has become final.

Section 39 - Exemptions of the Bund and the Länder from the obligation to indemnify

- (1) In the case of indemnification under Section 34 and compensation under Section 38, those claims for compensation shall not be taken into account which have been accorded a subsidiary rank under sub-sections 1 and 2 of Section 15.
- (2) Compensation under sub-section 2 of Section 29 shall be subject to indemnification under Section 34 and compensation under Section 38 only if the granting of such compensation is necessary to avoid serious inequity because of the particular gravity of the injury.

Section 40 - Actions against the operator of a nuclear installation situated in another Contracting State

- (1) If under the provisions of the Paris Convention, a court within the realm of this Act has jurisdiction over actions for compensation against the operator of a nuclear installation situated in another Contracting State to the Paris Convention,

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\* Bundesverwaltungsamt.

the liability of the operator shall be governed by the provisions of this Act.

- (2) Contrary to sub-section 1, the following shall be governed by the law of the Contracting State in which the nuclear installation is situated:
1. who is to be considered as operator,
  2. whether the operator's liability extends to damage suffered in a non-Contracting State to the Paris Convention,
  3. whether the operator's liability extends to nuclear damage caused by ionizing radiation emitted by another source of radiation inside a nuclear installation,
  4. whether and to what extent the operator's liability extends to damage to the means of transport upon which the nuclear substances involved were at the time of the nuclear incident,
  5. up to what maximum amount the operator is liable,
  6. after what period claims against the operator will become barred by limitation or be extinguished,
  7. whether and to what extent nuclear damage is compensated in the cases enumerated in Article 9 of the Paris Convention.

## C H A P T E R   V

### PENALTIES AND FINES

Sections 40 to 44 - Repealed

Section 45 - Punishable handling of nuclear fuel and ionizing radiation

- (1) Any person who, without such licence as is required under this Act
1. imports, exports or otherwise conveys nuclear fuel into or out of the realm of this Act,
  2. carries nuclear fuel,
  3. stores nuclear fuel outside Government custody,
  4. constructs, operates or otherwise holds an installation for the production or fission of nuclear fuel, or for the reprocessing of irradiated nuclear fuel, or materially

alters the installation or its operation,

5. treats, processes or otherwise uses nuclear fuel outside an installation for the production or fission of nuclear fuel, or for the reprocessing of irradiated nuclear fuel, or who materially deviates from the procedure laid down in a licence issued under sub-section 1 of Section 9 for the treatment, processing or other use, or who materially alters the installation or its location as specified in the licence,

shall be liable to imprisonment for a term of up to five years or a fine.

- (2) The same penalties shall be incurred by any person who
  1. fails to surrender nuclear fuel without delay, in contravention of sub-sections 3 and 4 of Section 5,
  2. delivers nuclear fuel to unauthorised persons, in contravention of sub-section 5 of Section 5.
- (3) Any person who, by an act specified in sub-section 1 or 2, knowingly endangers, through nuclear fission or ionizing radiation, the life or health of another person, or property of considerable value belonging to another person, shall be liable to imprisonment for a term running between three months and five years.
- (4) Any person who, through negligence, commits one of the acts specified in sub-sections 1 and 2 shall be liable to imprisonment for a term not exceeding two years or a fine.

#### Section 46 - Statutory offences

- (1) Any person shall be guilty of a statutory offence who wilfully or negligently
  1. carries nuclear substances without having procured the financial security required under sentences 1 or 2 of sub-section 1 of Section 4b,
  2. contravenes a determination under sub-section 1 of Section 13, an enforceable condition imposed under the first and third sentences of sub-section 1 of Section 17 or an enforceable order under sub-section 3 of Section 19,
  3. contravenes a statutory ordinance issued under sub-section 1 of Section 11 or sub-section 1 of Section 12, or an enforceable order under a statutory ordinance issued pursuant to no. 9 of sub-section 1 of Section 12, provided that such statutory ordinance refers to this Section with respect to a defined act,

4. does not carry the licence contrary to the first sentence of sub-section 5 of Section 4, or does not carry the certificate referred to in the second sentence of sub-section 5 of Section 4, or does not produce on request such licence or certificate contrary to the third sentence of sub-section 5 of Section 4.
- (2) The statutory offence shall be punishable with a fine of up to DM one hundred thousand in the cases given in nos. 1, 2 and 3 of sub-section 1 and up to DM one thousand in the case given in no. 4 of sub-section 1.
- (3) Administrative authority within the meaning of no. 1 of sub-section 1 of Section 36 of the Act on Statutory Offences\* shall be the Federal Office for Trade and Industry as concerns failure to obtain a licence or to notify in the case of import or export of other radioactive substances pursuant to no. 1 of sub-section 11, or to comply with a condition imposed in connection therewith pursuant to sentences 2 and 3 of sub-section 1 of Section 17.

Section 47 - Punishable violation of safety regulations, conditions and orders

Any person who, by a wilful act as specified in nos. 1 to 3 of sub-section 1 of Section 46, wilfully or negligently endangers, through nuclear fission or ionizing radiation, the life or health of another person, or property of considerable value belonging to another person, shall be liable to imprisonment of up to five years or to a fine. Where the offender caused the danger knowingly, the penalty shall be imprisonment for a term of not less than three months and up to five years.

Section 48 - Violation of obligations concerning production and supply

- (1) Any person who knowingly produces or supplies defective installations for the production or fission of nuclear fuel, or for the reprocessing of irradiated nuclear fuel, or who produces or supplies defective objects intended for the construction or operation of such installation, and thereby knowingly endangers the life or health of another person, or property of considerable value belonging to another person, such danger being connected with the effects of a nuclear fission process or radiation from a radioactive substance, shall be liable to imprisonment for a term of not less than six months and up to five years.
- (2) The attempt shall be punishable.
- (3) In particularly grave cases the penalty shall be imprisonment for a term of one to ten years.

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\* Gesetz über Ordnungswidrigkeiten.

- (4) Any person who, not knowingly, but wilfully or negligently, causes danger in the cases specified in sub-section 1, shall be liable to imprisonment of up to five years or a fine.

Section 49 - Confiscation

Where an offence punishable under sub-sections 1 to 3 of Section 45, Section 47 or Section 48 has been committed,

1. any object produced by such act or which was used or intended for the commission of such act, and
2. any object relating to an offence

may be confiscated. Where a statutory offence under nos. 1 to 3 of sub-section 1 of Section 46 has been committed wilfully, the provisions of no. 2 of the first sentence hereof shall apply accordingly.

Sections 50 to 52 - Repealed

C H A P T E R VI

FINAL PROVISIONS

Section 53 - Registration of damage due to unknown causes

Damage which, in the light of existing scientific knowledge, has been caused by the effects of radiation from radioactive substances but cannot be traced to any particular person, shall be registered with and investigated by the Federal Minister competent for nuclear safety and radiation protection.

Section 54 - Issue of statutory ordinances

- (1) Statutory ordinances under Sections 11, 12, 13 and sub-section 5 of Section 21, shall be issued by the Federal Government. The same shall apply to statutory ordinances issued under Section 10, insofar as exemptions are granted from the requirement of a licence under Section 7. All other statutory ordinances provided for under this Act shall be issued by the Federal Minister competent for nuclear safety and radiation protection.
- (2) Such statutory ordinances shall require the consent of the Federal Council. This shall not apply to statutory ordinances limited to replacing physical, technical and radiation biology standards laid down in statutory ordinances pursuant to Sections 11 and 12.

- (3) The Federal Government may, by statutory ordinance, wholly or partly delegate its powers specified in Sections 11 and 12 to the Federal Minister competent for nuclear safety and radiation protection.

Section 55 - Repeal of legal provisions  
(not newly published, as obsolete)

Section 56 - Licences issued under Land legislation

- (1) Any licences, exemptions or approvals granted under Land legislation for the construction and operation of installations within the meaning of Section 7, shall continue to have effect. They shall be deemed equivalent to licences granted under Section 7, and the conditions attaching to them shall be equivalent to such conditions as are imposed under sub-section 1 of Section 17. Insofar as a licence issued under Land legislation includes stipulations concerning the provisions of financial security by the operator of the installation to cover legal liability to pay compensation for damage, such stipulations shall, subject to the provisions of sub-section 2, be considered a determination within the meaning of sub-section 1 of Section 13.
- (2) Within three months after the coming into force of this Act, the public authority (sub-section 2 of Section 24) shall determine the amount which the operator of the installation must provide as financial security. The latter half of the second sentence of sub-section 1 of Section 13 shall apply correspondingly. Where a guarantee is determined pursuant to sub-section 4 of Section 13, such guarantee shall be retroactive as from the date of the coming into force of this Act.

Section 57 - Exclusion of certain legal provisions

Sections 1 to 4 of the Act on the Criminal Use of Explosives Constituting a Public Hazard of 9th June 1884\* (Reichsgesetzblatt, page 61), as amended by the Ordinance of 8th August 1941 (Reichsgesetzblatt 1, page 531), and such legal provisions as are made under the said Act, as well as legal provisions of the Länder concerning explosives, shall not apply to any handling of nuclear fuel.

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\* Gesetz gegen den verbrecherischen und gemeingefährlichen Gebrauch von Sprengstoffen.

Section 58 - Application in Berlin

In accordance with sub-section 1 of Section 13 of the Third Transition Act\* of 4th January 1952 (BGBl. I, page 1), this Act shall also be applied in the Land Berlin. Statutory Ordinances made under this Act shall apply to the Land Berlin in accordance with Section 14 of the Third Transition Act.

Section 59 - Entry into force\*\*

This Act shall come into force on the day following its promulgation; Sections 40 to 52 shall not come into force in the Land Berlin, however, until the day after promulgation of the Application Act\*\*\* in the Official Gazette of Berlin.

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\* Drittes Überleitungsgesetz.

\*\* Section 59 deals with the entry into force of the original Act. The dates of entry into force of the subsequent amendments are fixed by the Amending Acts (official note).

\*\*\* Übernahmegesetz.

Definitions pursuant to sub-section 2  
of Section 2

(1) The terms set forth below shall have the following meaning:

1. "Nuclear incident": Any occurrence or succession of occurrences having the same origin which causes damage, provided that such occurrence or succession of occurrences, or any of the damage caused, arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive, or other hazardous properties of nuclear fuel or radioactive products or waste or with any of them;
2. "Nuclear installation": Reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; a nuclear installation may consist of several installations referred to above if these are operated by the same person or persons and are located at the same site;
3. "Nuclear fuel": Fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound;
4. "Radioactive products or waste": Any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilising nuclear fuel, but does not include
  - (a) nuclear fuel
  - (b) radioisotopesoutside a nuclear installation which are used or intended to be used for any industrial, commercial, agricultural, medical or scientific purpose;
5. "Nuclear substances": Nuclear fuel (other than natural uranium and other than depleted uranium) and radioactive products or waste;

6. "Operator of a nuclear installation": The person designated or recognised by the competent public authority as the operator of that installation.

(2) Units of account within the meaning of this Act shall mean units of account of the European Monetary Agreement of 5th August 1955 (BGBl. 1959 II, page 294) as defined at the date of signature of the Paris Convention.

Exempted Substances

Nuclear substances within the meaning of sub-section 3 of Section 4, sub-section 2 of Section 4b and sub-section 6 of Section 25, shall mean nuclear substances the activity or quantity of which do not exceed by a factor of  $10^5$  the exemption limits within a single installation or an independent subsidiary thereof or, in the case of person not carrying out a business, at the place where the applicant carries out his activities. Exemption limit shall mean the activity or quantity of nuclear substances for the handling of which a licence is not required under this Act or a statutory ordinance issued thereunder.