

# NUCLEAR LAW

## Bulletin

S U P P L E M E N T T O N o 24

T H E N E T H E R L A N D S

ACT OF 17 MARCH 1979

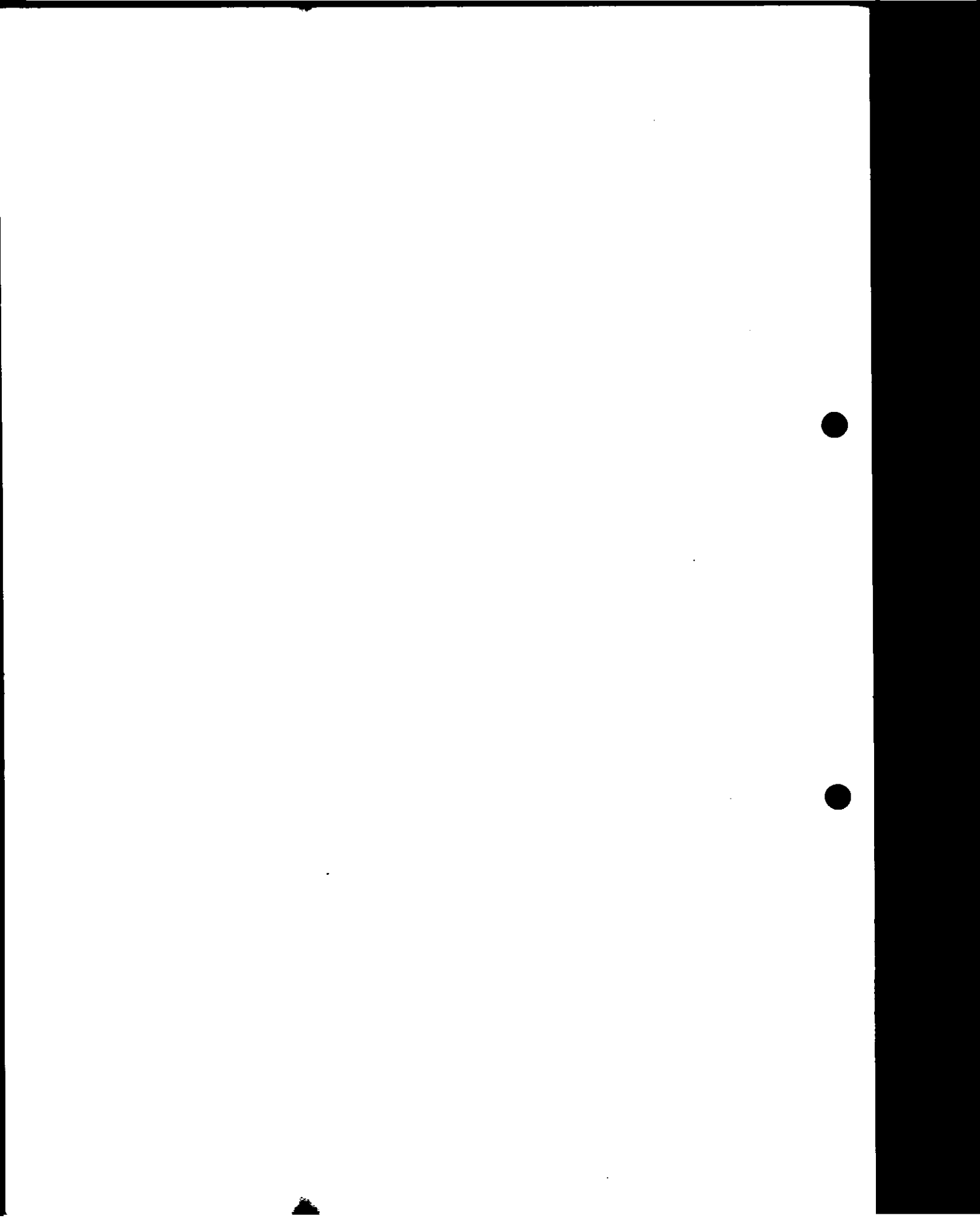
CONTAINING REGULATIONS CONCERNING THIRD PARTY LIABILITY

FOR DAMAGE CAUSED BY NUCLEAR INCIDENTS:

NUCLEAR INCIDENTS (THIRD PARTY LIABILITY) ACT

*supplement  
See supplement no 29*

December 1979



THE NETHERLANDS

ACT OF 17 MARCH 1979

CONTAINING REGULATIONS CONCERNING THIRD PARTY LIABILITY

FOR DAMAGE CAUSED BY NUCLEAR INCIDENTS:

NUCLEAR INCIDENTS (THIRD PARTY LIABILITY) ACT\*

(Official Gazette 1979, No. 225)

CHAPTER I

Definitions

Section 1

1. For the purposes of this Act and its implementation:

The "Paris Convention" shall mean the Convention on Third Party Liability in the Field of Nuclear Energy concluded in Paris on 29 July 1960 (Netherlands Treaty Series 1961, No. 27; 1962, No. 64), as amended by the Additional Protocol to that Convention concluded in Paris on 28 January 1964 (Netherlands Treaty Series 1964, No. 178);

The "Brussels Convention" shall mean the Convention concluded in Brussels on 31 January 1963 Supplementary to the Paris Convention (Netherlands Treaty Series 1963, No. 171) as amended by the Additional Protocol to that Convention concluded in Paris on 28 January 1964 (Netherlands Treaty Series 1964, No. 179);

"nuclear incident", "nuclear installation", "nuclear substances", "operator" and "damage" shall have the same definitions as in the Paris Convention.

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\* Translation by the Netherlands authorities.

2. For the purposes of applying the provisions of or by virtue of the Paris Convention, the Brussels Convention and the present Act, the operator of a nuclear installation situated in the Netherlands shall be deemed to be the duly authorised person who establishes, puts into operation or operates a nuclear installation in the Netherlands. Loss of such authority by revocation or suspension of the relevant licence or exemption shall not cause him to lose his status as an operator of a nuclear installation situated in the Netherlands as concerns liability for damage caused by a nuclear incident involving fissionable materials or radioactive products or waste in respect whereof he was liable at the time of losing his authority or would have become liable owing to commitments already undertaken at such time, until such time as his liability as an operator has been taken over by someone else.

## CHAPTER II

### Implementation of the Paris Convention

#### Section 2

Sections 1 to 17 of this Act shall be observed in implementing the Paris Convention.

#### Section 3

1. The maximum liability of the operator of a nuclear installation situated in the Netherlands shall be established, pursuant to Article 7(b) of the Paris Convention, at one hundred million guilders.
2. The maximum amount stated in sub-section 1 hereof may be increased by General Administrative Order, taking into account the possibilities of obtaining insurance.
3. The exception in Article 3(a)(ii)(2) of the Paris Convention shall not apply to the operator of a nuclear installation situated in the Netherlands, provided always that such operator shall be liable for damage to the means of transport only to such an extent that at least the amount stated in Article 7(c) of the Paris Convention remains available for compensation for the other damage out of the maximum amount stated in sub-section 1 hereof.

#### Section 4

The liability of the operator of a nuclear installation situated in the Netherlands shall include liability for damage which arises out of or results from ionizing radiations emitted by any source of radiation inside his installation other than those referred to in Article 3(a) of the Paris Convention.

#### Section 5

At the request of a carrier and with the consent of the operator of a nuclear installation situated in the Netherlands Our Minister of Finance may, provided the requirements of Article 10(a) of the Paris Convention have been fulfilled, decide that under such terms as he shall stipulate the carrier shall be liable in accordance with the Paris Convention and this Act in place of the operator.

## Section 6

Notwithstanding the period of limitation stated in Article 8 of the Paris Convention, the right of compensation shall be extinguished if an action is not brought within three years from the date at which the person suffering damage or, if he has a legal representative, such legal representative has knowledge of or ought reasonably to have known of both the damage and the operator liable. Article 2013 of the Civil Code shall apply in like manner.

## Section 7

1. The competent public authority referred to in Article 10(a) and (b) of the Paris Convention is Our Minister of Finance.
2. Our Minister of Finance may, in concurrence with Our other Ministers concerned, direct that two or more nuclear installations operated by one and the same operator at the same site are to be regarded as one nuclear installation for the purposes of the Paris Convention and this Act.

## Section 8

1. If in the opinion of Our Minister of Finance an operator of a nuclear installation situated in the Netherlands cannot obtain adequate financial security as referred to in Article 10(a) of the Paris Convention or if such financial security in the opinion of Our Minister of Finance is obtainable only for an unreasonable premium or other payment, Our aforesaid Minister may enter into insurance contracts on behalf of the State as insurer or provide other State guarantees on such terms and for such premiums or other payments as he may determine.
2. In cases in which he deems the risks involved to be so slight or of such a nature as to warrant this, Our Minister of Finance may direct that a proportion to be established by him of the financial security referred to in Article 10(a) of the Paris Convention shall consist of the public funds mentioned in Section 9, sub-section 1, of this Act.

## Section 9

1. To such extent as the funds becoming available from other financial security are insufficient to compensate for the damage for which the operator of a nuclear installation situated in the Netherlands is liable, the State shall make public funds available to such operator up to his maximum liability.
2. To such extent as the lack of the other financial security referred to in sub-section 1 hereof is the operator's own fault, the State shall have the right to recover from the operator the funds it has provided in connection therewith.
3. Up to the amount it has made available to the operator out of public funds pursuant to sub-section 1 hereof, the State shall hold the operator's right of recourse referred to in Article 6(f) of the Paris Convention. In the exercise of this right the State shall take priority over the insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention.

## Section 10

1. Recognition and payment of claims for compensation for damage caused by a nuclear incident and arrangements and amicable settlements of such claims may be made only with the approval or Our Minister of Finance.
2. Acts or transactions contrary to sub-section 1 hereof are legally void. They shall be pronounced as such by the court ex officio.

## Section 11

1. If it must reasonably be assumed that there is a possibility of the State having to make public funds available to compensate for damage caused by a nuclear incident, Our Minister of Finance may order that he will carry out on the operator's behalf all the operator's rights and obligations with respect to settlement of the claim or any of such rights and obligations as he may decide.

In so far as any contracts made between such operator and insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention are contrary thereto they shall be disregarded.

2. An order as referred to in sub-section 1 hereof shall be published in the Government Gazette. Such an order may contain further rules for filing claims for compensation for damage.

## Section 12

Acts or transactions by insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention contrary to the provisions of Article 10(b) of such Convention are legally void. They shall be pronounced as such by the Court ex officio.

## Section 13

The District Court at The Hague shall be the court of first instance in the Netherlands, competent in accordance with Article 13 of the Paris Convention, and also the Court referred to in this Act.

## Section 14

1. Upon application by a person concerned the Court may order that the insurers and other persons providing financial security as referred to in Article 10(a) of the Paris Convention shall pay the funds they have to provide in consequence thereof for the settlement of recognised or awarded claims for compensation direct to the claimants. Such an order may be revoked by the Court at any time.
2. The Court shall not decide on an application as referred to in sub-section 1 hereof until the applicant, Our Minister of Finance and the operator have been heard or summoned to attend the hearing.
3. The Court's order shall be pronounced at a public session and be published by the Clerk of the Court in the Government Gazette. The applicant may appeal against the order to the Court of Appeal within fourteen days of the date of the Government Gazette in which the order is published.

4. The Court of Appeal's order shall be pronounced at a public session and be published by the Clerk of the Court in the Government Gazette. The appellant may appeal to the Court of Cassation within three weeks of the date of the Government Gazette in which the order is published.

5. An order as referred to in the first sentence of sub-section 1 hereof shall be immediately enforceable. Even if it is set aside on appeal or cassation payments made in conformity with such order before the order setting it aside has become final shall remain valid and binding.

#### Section 15

1. If the aggregate of compensation required to be paid by the operator exceeds the maximum liability established pursuant to Article 7(b) of the Paris Convention, the claims to compensation shall be reduced proportionately.

2. In cases in which sub-section 1 hereof applies, regulations concerning the manner of settling the relevant claims for compensation may be made by General Administrative Order.

#### Section 16

1. If it must reasonably be assumed that there is a possibility of the case referred to in Section 15 occurring and the amount of each claim payable has not yet been established a person concerned may apply to the Court for an injunction against payment with respect to compensation for damage. The Clerk of the Court shall give notice of the filing of such application forthwith to the operator, Our Minister of Finance and the insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention.

2. The operator and the insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention may make no payments in respect of compensation for damage from the day on which they filed an application as referred to in sub-section 1 hereof or on which it came to their notice that such an application had been filed, as the case may be, until the day on which an order concerning the application has become final.

3. If the Court finds the application well-founded it shall make an injunction against payment as referred to in sub-section 1 hereof against the operator and the insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention. Section 14, sub-sections 2, 3 and 4 hereof shall apply in like manner to such order and also to any order declaring the application unfounded.

4. Acts or transactions contrary to the provisions of sub-section 2 hereof or an order as referred to in the first sentence of sub-section 3 hereof shall be legally void. They shall be pronounced as such by the Court ex officio.

5. The Court may terminate the injunction referred to in sub-section 3 hereof ex officio or upon application by a person concerned.

#### Section 17

During the time the injunction against payment referred to in Section 16 is in force claims for compensation recognised or awarded shall bear interest at a rate to be determined by Our Minister of Finance.

## CHAPTER III

### Implementation of the Brussels Convention

#### Section 18

Sections 1 and 18 to 25 of this Act shall be observed in implementing the Brussels Convention.

#### Section 19

To such extent as the maximum amount stated in Section 3 of this Act is insufficient to compensate for damage as referred to in Article 2 of the Brussels Convention for which the operator of a nuclear installation situated in the Netherlands is liable under the Paris Convention, the public funds referred to in Article 3(b)(ii) and (iii) and (f) of the Brussels Convention for compensation in respect of such damage shall be made available other than as cover for the liability of the operator.

#### Section 20

The public funds required to be made available pursuant to the Brussels Convention shall be disbursed to persons who have suffered damage as referred to in Article 2 of such Convention and who have a right to compensation for such damage under the Paris Convention as evidenced by a final judgment of the competent court or by a written acknowledgment by the operator, without embarking upon an assessment of the grounds for giving such judgment or acknowledgment.

#### Section 21

1. If it must reasonably be assumed that there is a possibility of the State having to make public funds available pursuant to the Brussels Convention, Our Minister of Finance shall announce this in the Government Gazette.
2. As from the day on which an announcement is made as referred to in sub-section 1 hereof, persons who can claim compensation for damage as referred to in Article 2 of the Brussels Convention may file an application to that effect with Our Minister of Finance.
3. An application as referred to in sub-section 2 hereof should contain:
  - (a) the applicant's name and address;
  - (b) a description of the circumstances by reason whereof the applicant believes he has a claim to compensation from public funds pursuant to the Brussels Convention.
4. The applicant should submit a certified copy of a final judgment by the competent court establishing the correctness of the claim filed against the operator and the amount of the damage or a written acknowledgment by the operator of the correctness of the claim and the amount of the damage.
5. Our Minister of Finance may make regulations for giving effect to this Section. Such regulations shall be published in the Government Gazette.

## Section 22

1. Should the aggregate damage exceed the amount stated in Article 3(a) of the Brussels Convention the claims to compensation pursuant to the Brussels Convention shall be reduced proportionately.

2. In cases in which sub-section 1 hereof applies regulations concerning the manner of settling the relevant claims for compensation may be made by General Administrative Order.

## Section 23

During the time an injunction against payment as referred to in Section 16 hereof is in force no disbursements pursuant to Section 20 may be made.

## Section 24

The States which have made public funds available pursuant to Article 3(b)(ii) and (iii) and (f) of the Brussels Convention shall hold the operator's right of recourse referred to in Article 6(f) of the Paris Convention up to the amount so made available. In the exercise of this right those States shall have priority over the insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention.

## Section 25

The State in whose territory the nuclear installation of the operator liable is situated shall at all times be deemed to be an interested party in joinder or intervention in court actions relating to claims for compensation for damage.

## CHAPTER IV

### Supplementary provisions

## Section 26

1. The limitations upon its application referred to in Article 2 of the Paris Convention shall not apply to the liability of the operator of a nuclear installation situated in the Netherlands for damage suffered on Netherlands territory or resulting from a nuclear incident occurring on that territory.

2. Exceptions to the provisions of Article 2 of the Paris Convention other than those referred to in sub-section 1 hereof may be made by General Administrative Order as far as concerns the liability of the operator of a nuclear installation situated in the Netherlands.

3. If within three months of the coming into force of a General Administrative Order as referred to in sub-section 2 hereof we have not presented a Bill to the States-General for amendment of this Act in conformity with such Order or if such Bill is withdrawn or rejected we shall cancel the said Order forthwith.

## Section 27

The Paris Convention and Sections 1 to 17 of this Act shall also apply to nuclear installations situated in the Netherlands that do not appear on the list established and kept up to date in accordance with the terms of Article 13 of the Brussels Convention, provided always that the maximum liability referred to in Section 3 of this Act shall be the amount stated in Article 3(a) of the Brussels Convention.

## Section 28

1. As regards a nuclear incident occurring on Netherlands territory the consignor and the carrier of the nuclear substances involved in the incident and also the person who held such substances at the time of the incident shall be deemed to be the operator of a nuclear installation situated in the Netherlands and as such be held jointly and severally liable for the damage thereby caused unless it is proved that some other person is liable therefor pursuant to the Paris Convention, provided always that their maximum joint liability shall be the amount stated in Article 3(a) of the Brussels Convention.
2. Article 6 of the Paris Convention and Sections 10, 11, 13 to 17 and 29, sub-section 1, of this Act shall also apply to liability pursuant to sub-section 1 hereof.
3. Sub-section 1 hereof shall not apply:
  - (a) with respect to a person who did not know of the nuclear nature of the substances involved nor ought reasonably to have known of it;
  - (b) with respect to a person who at the time of the nuclear incident was transporting the nuclear substances involved therein in compliance with a transport contract or had them in storage incidental thereto if he could reasonably assume:
    - (i) that some other person would be liable for the damage under the Paris Convention, or
    - (ii) that some other person would be liable for the damage pursuant to sub-section 1 hereof and that such person had an insurance or other financial security approved by Our Minister of Finance to cover his liability.

## Section 28a

1. If damage is suffered on Netherlands territory as a result of a nuclear incident for which compensation is payable pursuant to the Brussels Convention or this Act and the funds becoming available therefor from other sources are insufficient to compensate for such damage to an amount of one thousand million guilders, the State shall make available the public funds needed to compensate for the damage up to this amount.
2. The State shall have a right of recourse in respect of the disbursements and any costs relating thereto against the persons liable therefor pursuant to this Act.
3. Sections 21 to 25 hereof shall apply in like manner to the provision of public funds pursuant to sub-section 1 hereof.

4. The provisions of sub-section 1 hereof shall also apply to damage as referred to therein suffered in States which are parties to the Brussels Convention and in which regulations were in force at the time of the nuclear incident equivalent in their nature, area of application and amount to those in this Act.

5. Regulations may be made by or by virtue of a General Administrative Order regarding the provision of public funds in pursuance of sub-section 1 hereof.

#### Section 29

1. The operator of a nuclear installation situated in the Netherlands shall notify Our Minister of Finance forthwith of:

- (a) every nuclear incident which may have caused damage for which he is liable;
- (b) every presentation out of court of a claim for compensation for damage in connection with such nuclear incident;
- (c) every court action claiming compensation for damage in connection with such nuclear incident;
- (d) every payment of compensation for damage in connection with such nuclear incident.

2. Sub-section 1 hereof shall apply in like manner as regards the operator of a nuclear installation not situated in the Netherlands if the nuclear incident has occurred on Netherlands territory.

3. In so far as the State makes available or disburses public funds as referred to in Section 9, sub-section 1, and Sections 19 and 28a in compensation for damage in respect of which the obligation pursuant to sub-sections 1 or 2 hereof has not been complied with, the State shall have a right of recourse against the operator in respect of the amount so paid unless the operator can show that he was not reasonably in a position to comply with such obligation.

#### Section 30

If and in so far as the Netherlands social security legislation gives entitlement to benefits as compensation for the damage, the right to compensation therefor under the Paris and Brussels Convention and this Act shall accrue to whomsoever is chargeable for such benefits, provided always that in the case of periodic benefits the damage shall be deemed to be the capitalised value of the benefits due. Otherwise the provisions of the said legislation shall remain in force.

#### Section 31

1. Our Minister of Finance may make appropriate advance payments to persons who have suffered damage as a result of a nuclear incident.

2. Our Minister of Finance shall decide the amount of such advances having regard to the nature and extent of the damage, the benefit to which the person concerned will presumably be entitled and his personal circumstances.

3. Any advance payment will be deducted from the amount of compensation due to the person concerned.

4. Notwithstanding the provisions of Section 16, sub-sections 3 and 4, hereof, Our Minister of Finance may, whether or not during the time the injunction against payment is in force, demand of the insurers and other persons providing financial security as referred to in Article 10(a) of the Paris Convention that, as and when amounts are recognised or awarded as compensation for damage, they pay to him the funds referred to in such Article up to the amount of the advance payments made by him.

#### Section 32

Our Minister of Finance shall have authority to make contracts of insurance on behalf of the State as insurer or give other guarantees on behalf of the State not exceeding the sum of one thousand guilders per nuclear incident for the benefit of the operator of a nuclear installation situated in the Netherlands with respect to compensation for damage caused by a nuclear incident, otherwise than pursuant to the Paris Convention and this Act, on such terms and for such premiums or payments as he may decide.

### CHAPTER V

#### Final provisions

#### Section 33

1. The Act of 27 October 1965 containing regulations concerning Third Party Liability in the Field of Nuclear Energy (Bulletin of Acts, Orders and Decrees No. 546) is hereby revoked.

2. The Act referred to in sub-section 1 hereof shall continue to be applicable with respect to damage caused by a nuclear incident occurring prior to this Act coming into force.

3. The Royal Decree of 28 December 1965 (Bulletin of Acts, Orders and Decrees No. 647) to implement Section 2 of the Act referred to in sub-section 1 hereof and the Orders by Our Minister of Finance under Section 1, sub-section 2, and Section 10, sub-section 2 of that Act are deemed to have been made by reason of the corresponding provisions of this Act and shall remain in force until revoked or replaced.

#### Section 34

1. This Act may be cited as: The Nuclear Incidents (Third Party Liability) Act.

2. It shall come into force at a time to be decided by Us.\*

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\* Note by the Secretariat: This Act was published on 3rd May 1979; it entered into force on 28th December 1979.