

NUCLEAR LAW

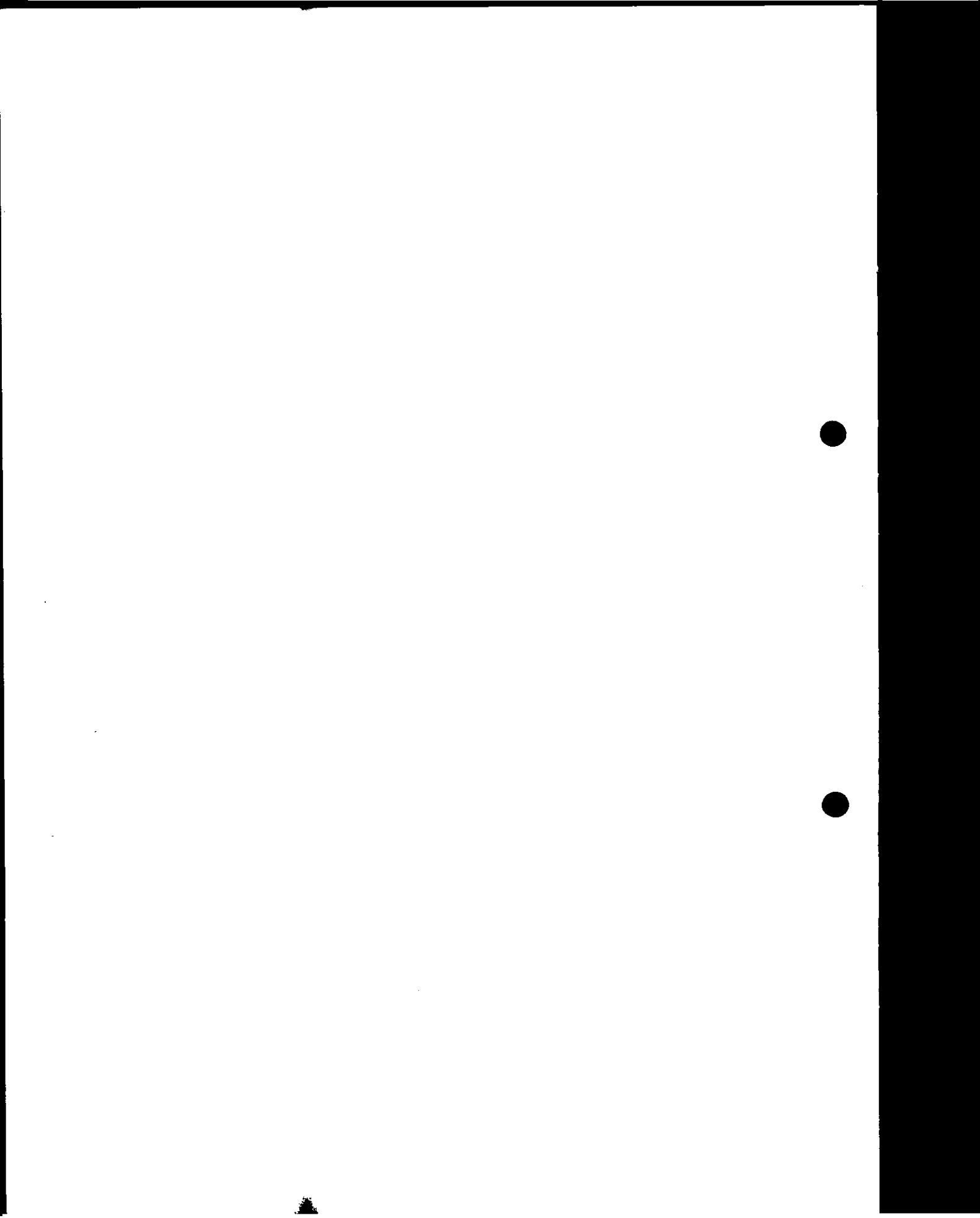
Bulletin

SUPPLEMENT TO No. 49

Netherlands

*Nuclear Third Party Liability Act of 1979
As Last Amended by the Act of Parliament of 26 June 1991*

June 1992



Netherlands

NUCLEAR THIRD PARTY LIABILITY ACT OF 17 MARCH 1979 AS LAST AMENDED BY THE ACT OF PARLIAMENT OF 26 JUNE 1991 (*Bulletin of Acts, Orders and Decrees, No. 373*)*

CHAPTER I *Definitions*

Section 1

1. For the purposes of applying the provisions laid down in or pursuant to this Act:

The "Paris Convention" means 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) and by the Protocol to that Convention concluded in Paris on 16 November 1982 (*Netherlands Treaty Series* 1983, No. 80);

The "Brussels Convention" means 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) and by the Protocol to that Convention concluded in Paris on 16 November 1982 (*Netherlands Treaty Series* 1983, No. 81);

The "Joint Protocol" means the Joint Protocol concluded in Vienna on 21 September 1988, on the Application of the Vienna Convention and the Paris Convention (*Netherlands Treaty Series*, 1988, No. 160);

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

2. For the purposes of applying the provisions laid down in or pursuant to 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

* Translation provided by the Netherlands authorities.

shall not cause him to lose his status as an operator of a nuclear installation situated in the Netherlands as regards liability for damage caused by a nuclear incident involving nuclear fuel 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 that 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

When the Paris Convention is applied, the provisions of this Act shall be observed.

Section 3

The exemption of liability for damage caused by a nuclear incident which is directly due to a grave natural disaster of an exceptional character as referred to in Article 9 of the Paris Convention shall not apply to the liability of the operator of a nuclear installation situated in the Netherlands.

Section 4

Any person who, in respect of damage caused by a nuclear incident for which the operator of a nuclear installation situated in the Netherlands is liable, has paid compensation under the provisions of an international agreement other than the Paris and Brussels Conventions or the legislation of other States, shall, up to the amount which he has paid, acquire the rights under this Act of the person suffering damage whom he has so compensated. Article 6(g) of the Paris Convention shall apply accordingly.

Section 5

1. The maximum liability of the operator of a nuclear installation situated in the Netherlands shall be established at 500 million guilders, pursuant to Article 7(b)(i) of the Paris Convention.
2. The maximum amount stated in subsection 1 may be changed by Royal Decree, the possibilities of obtaining insurance cover having been taken into account.
3. In the cases in which, in the opinion of Our Minister of Finance, the nature of the nuclear installation or nuclear substances concerned, and the likely consequences of an incident in which they are involved warrant it, he may, in agreement with Our Minister of

Justice, reduce the maximum amount of liability - as laid down in subsections 1 and 2 - of the operator concerned.

Section 6

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 7

1. Without prejudice to the extinction periods referred to in subsections 2, 4 and 5, the right to compensation shall be extinguished if an action is not brought within three years from the date on 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.

2. The right to compensation shall be extinguished:

- a) with respect to damage to persons, if an action has not been brought within thirty years from the date of the nuclear incident;
- b) with respect to all other damage, if an action has not been brought within ten years from the date of the nuclear incident.

3. The Minister of Finance shall enter into insurance contracts or provide other guarantees as referred to in Section 9 with respect to the liability of the operator in respect of all actions for compensation begun after the expiry of a period of ten years from the date of the nuclear incident, but before the expiry of a period of thirty years after the nuclear incident.

4. Actions for compensation begun after a period of ten years from the date of the nuclear incident shall not affect the right of compensation of any person who has brought an action within that period.

5. In the case of damage caused by a nuclear incident in which nuclear fuel or radioactive products or waste are involved which, at the time of the incident, have been stolen, lost, jettisoned or abandoned and not yet been recovered, the right to compensation shall be extinguished twenty years from the date of the theft, loss, jettison or abandonment.

Section 8

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

Section 9

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 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.

Section 10

1. In so far as the funds becoming available from the financial security referred to in Article 10(a) of the Paris Convention 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 the operator up to his maximum liability.
2. In so far as the lack of the financial security referred to in subsection 1 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. The State shall have the operator's right of recourse referred to in Article 6(f) of the Paris Convention up to the amount it has made available to the operator out of public funds pursuant to subsection 1. In the exercise of this right the State shall have priority over the insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention.

Section 11

Acts by insurers or other persons providing financial security as referred to in Article 10(a) of the Paris Convention which are contrary to the provisions of Article 10(b) of that Convention shall be void. They shall be declared void by the Court of its own accord.

CHAPTER III

Implementation of the Brussels Convention

Section 12

When the Brussels Convention is applied, the provisions of this Act shall be observed.

Section 13

In so far as the maximum amount referred to in Section 5 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 compensating such damage shall be made available other than as cover for the liability of the operator.

Section 14

The States which have made public funds available pursuant to Article 3(b)(ii) and (iii) and (f) of the Brussels Convention shall have the operator's right of recourse referred to in Article 6(f) of the Paris Convention up to the amount thus 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.

CHAPTER IV

Supplementary Provisions

Section 15

1. The limitations on the scope of the Paris Convention mentioned in Article 2 of the Convention do not apply to the liability of the nuclear operator of a nuclear installation situated in the Netherlands for damage:

- a) suffered on the territory of a State Party to the Paris Convention, regardless of where the incident occurred;
- b) suffered on the territory of a State, other than those referred to in subsection (a), but Party to the Joint Protocol, when it is the result of a nuclear incident that occurred on the territory of a State which is Party to the Joint Protocol; or

- c) **regardless where it was suffered, resulting from a nuclear incident that occurred on the territory of the Netherlands.**

2. Exceptions to the provisions of Article 2 of the Paris Convention other than those referred to in subsection 1 may be made by a Royal Decree as regards the liability of the operator of a nuclear installation situated in the Netherlands.

3. If within three months of the entry into force of a Royal Decree as referred to in subsection 2 We have not presented a Bill to Parliament for amendment of this Act in conformity with such Decree or if such Bill is withdrawn or rejected We shall cancel the said Decree forthwith.

Section 16

The Paris Convention and Chapters I, II and V of this Act shall also apply to nuclear installations situated in the Netherlands that do not appear on the list drawn up and kept up to date in accordance with Article 13 of the Brussels Convention, on the understanding that the maximum liability referred to in Section 5 of this Act shall be the amount stated in Article 3(a) of the Brussels Convention.

Section 17

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 pursuant to the Paris Convention or the Joint Protocol, provided that the maximum total amount of their liability shall not be higher than the amount stated in Article 3(a) of the Brussels Convention.

2. Article 6 of the Paris Convention and Chapter V of this Act shall also apply to liability pursuant to subsection 1.

3. Subsection 1 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 the Joint Protocol; or**

- ii) that some other person would be liable for the damage pursuant to subsection 1 and that such person had an insurance or other financial security approved by Our Minister of Finance to cover his liability.

Section 18

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 from other sources are insufficient to compensate for such damage, the State shall provide the public funds required to compensate for the damage to such an effect that a total amount of five thousand million guilders is available.

2. The State shall have a right of recourse in respect of the disbursements and any costs relating thereto against persons liable pursuant to this Act.

3. Section 14 shall apply in like manner to the provision of public funds pursuant to subsection 1.

4. The provisions of subsection 1 shall also apply to the damage concerned, suffered in States which are Parties to the Brussels Convention and which, at the time of the nuclear incident, have enacted provisions which are equivalent in their nature, scope, and in the extent of the compensation, to the provisions in this Act.

5. Rules may be made by or by virtue of a Royal Decree regarding the provision of public funds in pursuance of subsection 1.

Section 19

Our Minister of Finance may charge the operator an amount of money, which he shall determine, for the provision of public funds by the State pursuant to Sections 13 or 18.

Section 20

If and in so far as Netherlands social security legislation gives rise to an entitlement to benefits as compensation for the damage, any person who has to pay such benefits will have the right to compensation under the Paris and Brussels Conventions, the Joint Protocol and this Act on the understanding that in the case of payment in instalments the damage shall be deemed to be the capitalised value of the benefits due. In all other respects the provisions of the said legislation shall remain in force.

Section 21

Our Minister of Finance shall have authority to enter into contracts of insurance on behalf of the State as insurer or provide other guarantees on behalf of the State not exceeding the sum of five thousand million 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 other payments as he may decide.

CHAPTER V ***Procedural Law***

Section 22

1. The District Court at The Hague shall be the exclusively competent court of first instance.

2. Should there be a reasonable likelihood that the total amount of the claims submitted will exceed the maximum liability of the operator pursuant to Section 5 of this Act, the District Court at The Hague shall, at the request of an interested party and having heard the operator and Our Minister of Finance, impose a prohibition on the payment of damages, appoint an examining judge who shall be responsible for determining the statements of distribution of the amounts referred to in Section 27, subsection 1 (opening sentence) and shall also appoint a committee of liquidators (hereafter referred to as "the committee"). The Court may appoint more than one examining judge and replace an examining judge in the event of his or her resignation. It may alter the composition of the committee.

3. The Registrar shall immediately notify the operator and the insurers or other persons who have provided financial security as referred to in Article 10(a) of the Paris Convention and the persons who are to provide financial security on the basis of the Joint Protocol, as well as Our Minister of Finance, of the issuance of a prohibition order as referred to in subsection 2. The Registrar shall also immediately publish the order in the Government Gazette, and shall in doing so refer to the provisions of the second sentence of subsection 4.

4. Any payments made contrary to a prohibition order as referred to in subsection 2 shall be null and void as from the moment on which the person making the payments has been notified of the order. From that moment, all claims for the payment of damages shall be presented to the committee for verification by means of the submission of an invoice or other written statement in which the nature and amount of the claim are set out, together with documentary evidence in support of the claim or copies thereof. The committee shall immediately forward to the operator and Our Minister of Finance copies of all the documents submitted.

5. The operator and the insurers or other persons who have provided financial security as referred to in Article 10(a) of the Paris Convention and the persons who are to provide financial security on the basis of the Joint Protocol, as well as the State, shall be obliged to pay into an account designated by the committee, if ordered to do so by the examining judge, all amounts necessary to comply with the provisions of Section 29, with the proviso that the total amount to be paid by each of the said persons individually shall be reduced by the amount which such person has already paid for compensation of damage prior to the moment on which he or she was notified of the order as referred to in subsection 2.

6. The sums paid in pursuance of subsection 5 may not be made subject to seizure.

Section 23

1. The committee shall, either at the request of one of the persons who are obliged to make payments pursuant to Section 22, subsection 5, or of its own accord, consult with the interested parties in the event of a claim for damages being submitted.

2. The committee shall at all times be entitled to appoint and consult experts.

3. Whenever necessary, the examining judge, having heard the committee, shall set a date or dates, including a time and place, on which to verify the claims submitted.

4. The committee shall be entitled to demand of a creditor that he or she submit any missing documents and allow the committee to inspect original documentary evidence.

5. The committee shall draw up a list of the claims submitted, stating in brief the grounds on which it intends to contest a claim during a meeting as referred to in Section 24, subsection 1. This list shall be available at the Registry, during a period of at least three weeks prior to the date set for the verification, for inspection free of charge by any person.

Section 24

1. On the date or dates set in pursuance of Section 23, subsection 3, the examining judge shall hold one or more public meetings in the presence of the committee or one or more of its members.

2. All creditors, the persons who are obliged to make payments pursuant to Section 22, subsection 5, and the committee shall be entitled to contest a claim at the said meeting.

3. Where a claim is uncontested, the examining judge shall liquidate it, accepting the amount claimed as correct.

4. If a claim is contested, and the examining judge cannot reconcile the parties concerned, he shall refer them to one or more court sessions, as he thinks appropriate, for decision of the point at issue.

Section 25

1. If a creditor who has requested a verification fails to appear at the session to which the case has been referred in pursuance of Section 24, subsection 4, he shall be deemed to have withdrawn his claim, in so far as it has been contested.
2. If a person who has contested a claim fails to appear, he shall be deemed to have ceased contesting the claim in question.
3. The further procedure following such a referral shall be as laid down in Book 1 of the Code of Civil Procedure.

Section 26

1. After the sessions referred to in Section 24 have been held, or, in the event that these have led to the contestation of a claim, after an irrevocable judgment has been given on the point at issue, the committee shall draw up a statement of distribution which it shall submit to the examining judge for approval.
2. The statement of distribution shall specify with respect to each creditor the amount of interest due and the party who has the obligation of paying the costs.

Section 27

1. If the total amount of the claims submitted exceeds the maximum liability of the operator pursuant to Section 5 of this Act, the amount referred to in Article 3(a) of the Brussels Convention, or the amount referred to in Section 18, subsection 1 of this Act, the following rules shall apply to the claims in each case in so far as they can be met out of these amounts:
 - a) where the claims relate only to damage to persons, the claims shall be reduced proportionately;
 - b) where the claims relate only to damage other than that referred to in (a) above, the claims shall be reduced proportionately;
 - c) where the claims relate both to damage as referred to in (a) above and to damage as referred to in (b) above, two-thirds of the amount in question shall be allocated solely for the payment of the claims as referred to in (a) above (which claims shall, if necessary, be reduced proportionately), while the remainder shall be allocated for the payment of the claims as referred to in (b) above and of the claims as referred to in (a) above, in so far as the latter claims would otherwise not be paid. In the event of an amount remaining, in accordance with the provisions of the preceding sentence, after payment of the claims as referred to in (a) above, the amount thus remaining shall be allocated for the payment of the claims referred to in (b) above, in so far as the said claims would not otherwise be paid.

2. Where Section 18 is applied, the compensation available in respect of claims relating to damage to persons which are submitted at least ten years after the date on which the nuclear incident in question occurred shall not be less than ten per cent of the amount made available by the State.

Section 28

1. The statement of distribution established by the examining judge shall be available at the Registry of the Court for inspection free of charge by the parties during a period of three months. The parties may, at any time within the said period, appeal to the Court against the statement of distribution by lodging a reasoned notice of objection with the Registry.

2. At the end of the said period, the Court shall pass judgment after it has heard the parties or duly summoned them to appear before it.

Section 29

Once a statement of distribution has been established by the examining judge, or, should an appeal have been lodged in good time, by the Court, the committee shall pay the claimants the amounts due to them.

Section 30

1. The examining judge may, during the period prior to the adoption of the statement of distribution, make advance payments, at the suggestion of the committee, to those persons who have suffered damage as a result of a nuclear incident. Section 22, subsection 5, shall apply accordingly.

2. During the period referred to in subsection 1, the examining judge may also draw up a provisional statement of distribution. In such an event, Section 22, subsection 5, and Sections 26 to 29 shall apply accordingly.

3. The examining judge may rule that claimants to whom a payment is to be made in pursuance of the provisions of subsections 1 and 2 should provide security of a nature which he shall determine.

Section 31

1. The orders issued by the examining judge, the order issued by the Court granting a request as referred to in Section 22, subsection 2, and the order issued by the Court pursuant to Section 28, subsection 2, may not be appealed.

2. The manner and place in which claims are submitted to the committee, the orders issued by the examining judge and the order issued by the Court pursuant to Section 28,

subsection 2, and all documents deposited shall be brought to the notice of interested parties in a manner determined by the examining judge.

3. Subject to the application of Sections 56, 57 and 58 of the Code of Civil Procedure, the expenses arising from the application of the present Chapter shall be borne by those persons who are obliged to make payments in pursuance of Section 22, subsection 5, in proportion to the sum owed by each of them.

Section 32

Sections 429a to 429r of the Code of Civil Procedure shall apply to a request in pursuance of Section 22, subsection 2, in so far as this Act does not provide otherwise.

CHAPTER VI

Final Provisions

Section 33

1. The Act of 27 October 1965 containing rules 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 subsection 1 shall continue to be applicable with respect to damage caused by a nuclear incident occurring prior to this Act entering into force.

3. The Royal Decree of 28 December 1965 (*Bulletin of Acts, Orders and Decrees*, No. 647) implementing Section 2 of the Act referred to in subsection 1 and the Decrees by Our Minister of Finance under Section 1, subsection 2, and Section 10, subsection 2 of that Act are deemed to be based on 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 Third Party Liability Act.

2. It shall enter into force on a date to be determined by Us.*

* Note by Secretariat: This Act was published on 3 May 1979 and entered into force on 28 December 1979. The Act of 26 June 1991 amending that Act entered into force on 1 August 1991.