

# **1Amendment of the Nuclear Energy Act in connection with the setting-up of the**

## **2Nuclear Safety and Radiation Protection Authority**

### **3II. Notes on individual sections (25 June 2014)**

4

#### **5Section I**

6

7C

8

#### *9Section 3*

10Subsection 1 deals with the setting-up of the NSRPA. Subsection 2 emphasizes the  
11independent position of the NSRPA. This provision is in line with Article 5 (2, first  
12sentence) of the nuclear safety amending directive. The need for an independent position  
13and its stipulation in law has already been explained in the general part of this  
14Memorandum. Subsection 3 enumerates the NSRPA's duties. The duties entrusted to it lie  
15in the area of nuclear safety and radiation protection, and the associated security and  
16crisis preparation, and safeguards.

17

18The NSRPA is to contribute to crisis response by implementing and maintaining the  
19arrangements referred to in Section 40 (1), currently laid down in the National Nuclear  
20Emergency Plan.<sup>1</sup> The role of the NSRPA remains consistent with the general system of  
21crisis management as set out in the National Crisis Management Manual.

22The NSRPA is to maintain close ties with Ministries such as Security & Justice (National  
23Crisis Coordinator, Security Regions) and Health, Welfare & Sport (health care,  
24distribution of iodine prophylaxis). The NSRPA is to ensure the availability and training of  
25experts who are or can be deployed in the crisis organization. The NSRPA, in  
26collaboration with RIVM (the National Institute for Public Health and the Environment), is  
27to maintain an expertise and monitoring system that can be deployed in the event of a  
28crisis and scaled up if necessary. As a result of the pooling, the NSRPA has sufficient  
29critical mass to contribute to national crisis decision-making with its special expertise.

30

31The duties entrusted to the NSRPA on the basis of the legislation and regulations are set  
32out in item (a). This includes granting licences, exemptions and approvals under the  
33Nuclear Energy Act and the rules and regulations based upon it. The NSRPA is to carry  
34out safety assessments of nuclear facilities, without prejudice to the licensee's primary  
35responsibility for safety. Licence applicants or licensees are required to prove by means  
36of safety analysis reports and other documents that the plant meets the safety  
37requirements drawn up by the NSRPA throughout its entire life cycle. The NSRPA will

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<sup>1</sup> A revised plan, the National Radiation Incidents Crisis Plan, is currently in preparation.

38check and assess whether the documents submitted by the licence applicant or licensee  
39adequately demonstrate the safety of the plant. This power to check and assess  
40documentation required from the licensee or licence applicant applies on the basis of the  
41power to grant licences under or pursuant to the law.

42

43The NSRPA has a pivotal role in the enforcement of the requirements under the Nuclear  
44Energy Act and rules and regulations based upon it in the area of nuclear safety and  
45radiation protection, and the associated security (item b). Other regulators remain  
46responsible for specific areas under Section I (O) of this Act (Nuclear Energy Act, Section  
4758 (1)(b) (new)).

48

49The NSRPA will prepare legislation and regulations and policy for the responsible Minister,  
50advise the responsible Minister and evaluate legislation and regulations and policy (item  
51c) in the area of nuclear safety and radiation protection, and the associated security and  
52crisis preparation, and safeguards. The NSRPA will e.g. prepare the technical aspects of  
53legislation and regulations on matters such as radiation protection, nuclear safety,  
54radioactive waste and decommissioning, nuclear crisis management and nuclear security.  
55The NSRPA will advise the responsible Minister e.g. on the rationale for the nuclear safety  
56rules and the method for calculating doses of radioactive materials. The NSRPA may  
57organize a periodic review of policy, legislation and regulations and decisions taken such  
58as licences and approvals, for example a self-assessment in preparation for an IAEA  
59Integrated Regulatory Review Service mission. The NSRPA can consult interested parties  
60in the context of its role in the preparation of policy, legislation and regulations and  
61licensing, e.g. by means of hearings, workshops with experts.

62

63Informing e.g. the public and licensees on nuclear safety and radiation protection is also  
64one of the duties of the NSRPA (item d).

65This includes such things as:

66- informing about the possible radiation risks of operations involving fuels or radioactive  
67materials or about nuclear facilities, and

68- providing information on the nuclear safety and radiation protection requirements,  
69decisions and opinions of the NSRPA and how to deal with radiation incidents.

70

71The duty to participate in activities of international organizations is laid down in item (e).  
72This includes e.g. sitting on the expert committees referred to in the Euratom Treaty,  
73such as the committees under Articles 31 and 37 of the Treaty, on behalf of the  
74Netherlands.

75

76The NSRPA forms part of an international network of European and international  
77regulatory bodies (item f), in which it will maintain relations with similar authorities of  
78signatories in the IAEA and EU member states, make recommendations to international  
79forums and participate in IAEA and European Union missions (peer reviews). This  
80includes e.g. drawing up reports required by the IAEA or the European Union, such as the  
81three-yearly report under the Nuclear Safety Convention. The NSRPA will also maintain  
82relations with national and international organizations in the area of nuclear safety and  
83radiation protection, and the associated security and crisis preparation. This provision is  
84included in implementation of Article 8 (3) of the nuclear safety amending directive.  
85This provision is also mentioned in the general part of this Memorandum, in Chapter 4  
86under Additions.

87

88The NSRPA, as an expert administrative authority, will support other national  
89organizations with knowledge on nuclear safety, radiation protection and the associated  
90security and crisis preparation.

91

92In order to carry out its duties properly and stay abreast of new developments the NSRPA  
93may do research for the exercise of its duties and powers (item h). This includes the  
94development of knowledge and carrying-out of research by third parties for the NSRPA,  
95e.g. research in support of nuclear safety requirements. It also includes taking initiatives  
96to improve the knowledge structure regarding nuclear safety and radiation protection in  
97the Netherlands, as the NSRPA is dependent in the exercise of its duties on the  
98availability of adequate scientific knowledge in its area.

99

#### 100Section 4

101This section provides the option of giving the NSRPA the power, by or pursuant to  
102administrative order, to lay down further rules within its area of expertise and knowledge.  
103This duty has already been explained in Chapter 5 b. of the general part of this  
104Memorandum.

105

106Subsection 2 ensures that notification of a proposed NSRPA regulation is given in a  
107suitable way, for example by means of an internet consultation or by publishing the draft  
108in the Government Gazette. There will be a period of at least four weeks for anyone to  
109lodge an objection so that the public have sufficient time to react to a draft NSRPA  
110regulation.

111

#### 112Section 5

113The NSRPA will comprise three members, who will be appointed for a period of five years.  
114Appointments will be based on expertise or experience needed for the exercise of the  
115NSRPA's duties. Members can be reappointed once. The chair can be appointed by  
116reappointing an 'ordinary' member.

117

118In order to avoid a situation in which the NSRPA is no longer able to take decisions  
119because there is a vacancy that leaves fewer than three members, it has been laid down  
120that in this case the remaining members will constitute the NSRPA, with the powers of  
121the full NSRPA. This provision guarantees the continuity of the board.

122

123Specifically as regards subsection 5 it should be noted that, with a view to independent  
124judgment on the part of the NSRPA, the members of the NSRPA are required, without  
125prejudice to Section 13 (1) of the IAAs Enabling Act regarding additional posts, not to  
126have any financial or other interests in e.g. companies or organizations that could  
127jeopardize their impartiality. This provision is in line with Article 5 (2, first sentence) of  
128the nuclear safety amending directive. This addition to the IAAs Enabling Act has already  
129been explained in Chapter 4 of the Memorandum under the heading Additions.

130

131Subsection 6 supplements Section 9 of the IAAs Enabling Act by laying down that a  
132member must not be an official subordinate to one of Our Ministers. For the purpose of  
133the IAAs Enabling Act it is assumed that one Minister will be involved with the  
134independent administrative authority. This addition is necessary because the NSRPA's  
135area of operation extends to matters affecting various Ministers.

136Subsection 7 designates the post of member of the NSRPA as a position of trust in the  
137meaning of the Security Screening Act. This subsection provides the basis for the NSRPA  
138to carry out security screening of its members.

139

#### 140Section 6

141Subsection 1 lays down that the Minister of Infrastructure and the Environment is  
142authorized to appoint and dismiss members of the NSRPA as referred to in Section 12 of  
143the IAAs Enabling Act, as the NSRPA is placed under the Minister of Infrastructure and  
144the Environment. Subsection 2 is designed to further guarantee the NSRPA's  
145independence. In order to ensure that a member is only dismissed on account of  
146requirements laid down in law, it is proposed that the reasons for dismissal will be  
147published if the person dismissed so requests. It does in fact follow from Sections 3:42  
148(1) and 3:46ff. of the General Administrative Law Act that the person concerned must be  
149notified of a dismissal decision at the time of dismissal and reasons must be given for the  
150decision, but without the element of announcement in the Government Gazette.

151

152 *Section 7*

153 This section lays down that the Minister of Infrastructure and the Environment will set the  
154 remuneration or compensation of members of the NSRPA, as the NSRPA is placed under  
155 the Minister of Infrastructure and the Environment.

156

157 *Section 8*

158 This provision requires the NSRPA to lay down procedures for the resolution or prevention  
159 of conflicts of interest and is included in implementation of Article 5 (2)(e) of the nuclear  
160 safety amending directive. These procedures can relate to both the board and the staff  
161 of the NSRPA. This provision is also mentioned in the general part of this Memorandum,  
162 in Chapter 4 under Additions.

163

164 *Section 9*

165 This section lays down that the Minister of Infrastructure and the Environment must  
166 make sufficient funding available to the NSRPA. The NSRPA will use this funding for the  
167 exercise of its duties. As the NSRPA will be dependent on the funding allocated by the  
168 Minister of Infrastructure and the Environment, this ensures that the Minister explains  
169 the size of the budget and gives reasons for any departures from the draft budget  
170 submitted by the NSRPA. This provision is included in implementation of Article 5 (2)(c)  
171 of the nuclear safety amending directive. This provision is also mentioned in the general  
172 part of this Memorandum, in Chapter 4 under Additions.

173

174 *Section 10*

175 Section 10 ensures that Our Minister of Infrastructure and the Environment will make  
176 sufficient qualified staff available to the NSRPA. The staff of the NSRPA will consist of civil  
177 servants, but under Section 16 of the IAAs Enabling Act they will be under the authority  
178 of the NSRPA and will account for their activities solely to the NSRPA, i.e. not to the  
179 responsible Minister. This provision is included in implementation of Article 5 (2)(d, first  
180 sentence) of the nuclear safety amending directive. This provision is also mentioned in  
181 the general part of this Memorandum, in Chapter 4 under Additions.

182

183 *Section 11*

184 In accordance with Section 18 (2) of the IAAs Enabling Act the NSRPA will draw up a  
185 report of its activities and findings in the previous year annually before 15 March. This  
186 report will describe the conduct of its duties and its policy. The NSRPA will also report on  
187 quality assurance. In this context the NSRPA can describe e.g. how it has implemented  
188 the process requirements laid down in Section 19 of the IAAs Enabling Act. The annual

189report will be sent to the Minister of Infrastructure and the Environment and the House of  
190Representatives and the Senate. Supplementary to Section 18 (2) of the IAAs Enabling  
191Act the annual report will also be sent to the Ministers of Economic Affairs, Social Affairs  
192& Employment and Health, Welfare & Sport, as the NSRPA also carries out duties and has  
193expertise of importance to these Ministers.

194

#### 195Section 12

196This Section fleshes out Section 20 (1) of the IAAs Enabling Act by laying down to which  
197Ministers the NSRPA is to furnish on request any information needed for the exercise of  
198their duties. The NSRPA is to furnish information to the Ministers of Infrastructure & the  
199Environment, Economic Affairs, Social Affairs & Employment and Health, Welfare & Sport,  
200as the NSRPA also carries out duties and has expertise of importance to these Ministers.

201

202Subsection 3 provides the basis for the Ministers of Infrastructure & the Environment,  
203Economic Affairs, Social Affairs & Employment and Health, Welfare & Sport to lay down  
204rules on the exchange of information between the Ministers on the one hand and the  
205NSRPA on the other. This means among other things that the NSRPA is only required to  
206furnish information requested by a Minister if that Minister needs the information for the  
207exercise of his duties.

208

#### 209Section 12a

210Section 12a stipulates that the Minister of Infrastructure and the Environment cannot lay  
211down any policy rules. This provision ensures that the NSRPA can take decisions  
212concerning the duties entrusted to it by or pursuant to the law without pressure from  
213interests that could conflict with nuclear safety or radiation protection.

214

215This provision is in line with the requirement of independence as referred to in the  
216general part of this Memorandum.

217

#### 218Section 12b

219This Section stipulates that the NSRPA must lay down management regulations. Section  
22011 of the IAAs Enabling Act lays down that any management regulations that are  
221statutorily required must also be approved. In view of the international and European  
222obligations requiring the independent exercise of the NSRPA's duties it is important to  
223guarantee that this is not affected by any power of approval. The management  
224regulations cannot therefore contain any rules on its modus operandi insofar as they  
225relate to the independent exercise of duties. The management regulations can however  
226lay down rules on the method of decision-making, financial management, administrative

227organization, replacement of members, power of representation and procedures with a  
228view to the proper and meticulous exercise of the NSRPA's duties. Section 12b (3) gives  
229an exhaustive list of these matters.

230The management regulations are to be published in the Government Gazette (General  
231Administrative Law Act, Section 3:42). Subsection 4 lays down that the management  
232regulations are to be published following their approval by the Minister of Infrastructure  
233and the Environment.

234

235*Section 12c*

236Section 12c stipulates that the Minister of Infrastructure and the Environment can only  
237annul decisions of the NSRPA that are incompatible with the law. Unauthorized decisions  
238of the NSRPA can be annulled under this provision. This provision derogates from Section  
23922 (1) of the IAAs Enabling Act (annulment on account of conflict with the public interest  
240is not permitted) because the NSRPA must be able to carry out its duties without  
241pressure or coercion from outside that could negate its decisions in the public interest.

242

243*Section 12d*

244Section 23 (1) of the IAAs Enabling Act is supplemented with an obligation upon the  
245Minister of Infrastructure and the Environment to consult with the Ministers of Economic  
246Affairs, Social Affairs & Employment and Health, Welfare & Sport on taking measures in  
247the event of neglect of duties, as the NSRPA also carries out duties and has expertise of  
248importance to these Ministers. This provision has already been explained in the general  
249part of this Memorandum, in Chapter 4 under Additions.

250

251*Section 12e*

252Section 39 of the IAAs Enabling Act requires the efficient and effective functioning of an  
253independent administrative authority to be evaluated every five years. On this subject  
254Section 12e stipulates that the Minister of Infrastructure and the Environment will draw  
255up the evaluation report following consultation with the Ministers of Economic Affairs,  
256Social Affairs & Employment and Health, Welfare & Sport, as the NSRPA also carries out  
257duties and has expertise of importance to these Ministers. This addition to the IAAs  
258Enabling Act has already been explained in Chapter 4 of the Memorandum under the  
259heading Additions. The resulting report will then be sent, in accordance with Section 39  
260of the IAAs Enabling Act, by the Minister of Infrastructure and the Environment to both  
261Houses of the States General.

262

263(D)-(R)

264Section I (D)–(R) enumerates the powers and duties transferred to the NSRPA as a result  
265of the amendment. These duties and powers are explained in Chapter 5 b. of the general  
266part of this Memorandum.

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268[*Transitional arrangements and entry into force*]

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