

Offshore Wind Energy Act
Effective from 1 January 2017

[Amendments in accordance with the proposal of Act
\(21-02-2018\)](#)

PART 1: DEFINITIONS AND SCOPE

Section 1

For the purposes of this Act and the provisions based upon it the following terms are defined as follows:

[connection point](#): point at which a connection is connected to a grid or installation

site: Location for a wind farm

wind farm site decision: Decision designating a site and a route for a connection

grid: a grid as referred to in Section 1.1.i of the Electricity Act 1998

Our Minister: Our Minister of Economic Affairs

permit: a permit as referred to in Section 12

[wind energy](#): energy source created by converting wind

wind farm: a set of facilities for producing ~~electricity from~~ wind ~~power~~[energy](#), where 'set of facilities' means all the resources present (eg balance of plant) that are interconnected for the production of ~~electricity from~~ wind [energy](#).

Section 2

This Act shall also apply in the Exclusive Economic Zone of the Netherlands.

PART 2: WIND FARM SITE DECISION

Section 3

1 Our Minister, in agreement with Our Minister of [the Interior and Kingdom Relations, Our Minister of Infrastructure and Water Management and Our Minister of Agriculture, Nature and Food QualityInfrastructure and the Environment](#), may issue a wind farm site decision.

2 A site may only be designated within areas designated as areas suitable for wind energy in the National Water Plan referred to in Section 4.1 of the Water Act. The route for the connection between the wind farm and the connection point ~~to a grid~~ shall not be designated beyond the low water line referred to in Sections 1.2 and 2.1 of the Netherlands Territorial Sea (Demarcation) Act.

3 When deciding to issue a wind farm site decision, Our Minister shall take into consideration:

- any pollution of marine social functions, including the importance of efficient use of marine space;
- any consequences of a designation on third parties;
- the environmental interests, including ecological interests, with due observance of the provisions of or pursuant to Sections 5 and 7;
- the cost of building a wind farm in the area;
- the importance of an efficient connection of a wind farm to a ~~connection point~~[grid](#).

4 The preparation of a wind farm site decision shall be subject to Chapter 3.4 of the General Administrative Law Act, subject to the proviso that anyone may lodge objections.

Section 4

1 Our Minister shall attach to a wind farm site decision rules and regulations relating at least to:

- the rights and other interests of third parties in relation to the site;
- the conditions for protecting the environment;
- the conditions and restrictions ensuring that the natural assets of Natura 2000 sites will not be affected and, if necessary, the regulation requiring compensatory measures to be taken as referred to in Section 2.8.7 of the Nature Conservation Act;
- the conditions and restrictions under which Our Minister shall grant an exemption as referred to in Section 7;
- the importance of efficient use of space by a wind farm;
- the period for which the permit is granted;
- financial conditions as referred to in Sections ~~s-10 and~~ 28.

2 Our Minister shall include the following in a wind farm site decision:

- a. a description of the measures to be taken to reverse, limit or offset the consequences of the building and operation of a wind farm;
- b. a description of the temporary measures and temporary facilities required to realise the wind farm;
- c. an indication on one or more topographical or geographical maps of the geographical extent of the site and the location of the route of the connection;
- d. the results of the research into meteorological conditions, soil conditions, currents and wave heights, environmental soil analysis, archaeological research and other environmental research;
- e. the time limit within which Our Minister shall investigate the consequences of commissioning a site and particulars of the environmental aspects to be examined in this connection.

3 A wind farm site decision may derogate from the rules laid down under Section 6.6 of the Water Act concerning the use of the North Sea water management structure for the installation of systems or cables.

4 It is unlawful to act in contravention of the wind farm site decision and the rules and regulations attached thereto.

Section 5

Sections 2.7.2 of the Nature Conservation Act shall not apply to projects or other acts to which the wind farm site decision relates. If such projects or other acts could adversely affect the quality of the natural habitats and the habitats of species in a Natura 2000 site as referred to in that Act, or could cause significant disturbance to the species for which the site is designated, having regard to the maintenance targets for that site, Section 2.8 of that Act and the provisions pursuant to Section 2.8.7 of that Act shall apply mutatis mutandis to the issue of a wind farm site decision.

Section 6 [lapsed as from 1 January 2017]

Section 7

1 In the wind farm site decision, Our Minister may grant exemption from the provisions of Section 3.1.1, [3.1.2 and 3.1.4-4](#), ~~Section 3.2.1 and 3.2.6~~, Section 3.5.1-5, ~~Section 3.6.1-2~~ and Section 3.10.1 of the Nature Conservation Act.

2 An exemption from the provisions as referred to in Section [3.1.1, 3.1.2 or 3.1.43.1.1-4](#), ~~Section 3.2.1 or 3.2.6~~ of the Nature Conservation Act shall only be granted if the conditions referred to in Section 3.3.4 of that Act are met and if provisions are included in the wind farm site decision as referred to in Section 3.3.5 of that Act.

3 An exemption from the provisions as referred to in Section 3.5.1-5 ~~or Section 3.6.1-2~~ of the Nature Conservation Act shall only be granted if the conditions referred to in Section 3.8.5 of that Act are met.

4 An exemption from the provisions as referred to in Section 3.10.1 of the Nature Conservation Act shall only be granted if the conditions referred to in Section 3.10.2 in conjunction with Section 3.8.5 of that Act are met.

5 In the Wind Farm Site Decision, regulations may be attached to an exemption as referred to in part 1 above, without prejudice to the provisions of part 2. An exemption may be granted subject to restrictions.

Section 8

Part 1, Chapter 2 of the Crisis and Recovery Act shall apply mutatis mutandis to a wind farm site decision.

Section 9

1 To prevent a location for which a wind farm site decision is in preparation becoming less suitable for the realisation of wind farms, Our Minister, in agreement with Our Minister of [of the Interior and Kingdom Relations](#)~~Infrastructure and the Environment~~, may issue a preparatory decision for that location.

2 The preparatory decision may lay down that it is unlawful in designated cases:

- a. to carry out works or activities or

b. to change the use of works.

3 The preparatory decision shall lose its validity if a draft wind farm site decision has not been deposited for inspection within one year of its entry into force.

4 It is unlawful to act in contravention of a preparatory decision.

Section 10

1 Costs associated with carrying out work as referred to in Sections 3, 4, 5 and 7 may be charged to the person to whom the permit is granted.

2 Rules on recoverable cost categories may be laid down by Ministerial Order.

3 The amount of charges for costs shall be laid down [by Ministerial Order](#)~~in the wind farm site decision~~.

Section 11

1 Our Minister, in agreement with Our Minister of [the Interior and Kingdom Relations, Our Minister of Infrastructure and Water Management and Our Minister of Agriculture, Nature and Food Quality](#)~~Infrastructure and the Environment~~, may amend a wind farm site decision or rescind it in whole or in part if:

a. no permit is granted for the site for three consecutive years from the date on which a wind farm site decision becomes irrevocable;

b. ~~if~~ circumstances or facts arise that make the act or acts for which the wind farm site decision was issued no longer permissible in view of the objectives and interests referred to in Section 3;

c. ~~if~~ a treaty or decision of an international organisation that is binding on the Netherlands, or a statutory regulation implementing it, so requires;

[d. no application has yet been submitted for the site and the amendment is of a subordinate nature;](#)

[e. the period referred to in Section 15.1 is extended.-](#)

2. Sections 3.4, 4.1, 5 and 7 shall apply mutatis mutandis to any amendment to a wind farm site decision.

3. A wind farm site decision shall not be rescinded insofar as an amendment or addition to the rules and regulations attached to the Decision will suffice.

PART 3: PERMIT

§3.1 General provisions

Section 12

It is unlawful to build or operate a wind farm in Dutch territorial waters or the exclusive economic zone of the Netherlands without a permit from Our Minister.

[Section 12a](#)

[1 A permit application shall be submitted using a means provided by Our Minister.](#)

[2 A permit application shall be submitted within the application period laid down by Ministerial Order.](#)

[3 Two or more sites for which a joint application may be submitted may be designated by Ministerial Order.](#)

[4 An application shall include at least:](#)

[a. a design for the wind farm;](#)

[b. a timetable for the building and operation of the wind farm;](#)

[c. an estimate of the costs and returns;](#)

[d. a list of the parties involved in the building and operation of the wind farm;](#)

[e. a description of the knowledge and experience of the parties involved.](#)

[5 More detailed rules on how an application is to be submitted and the information and documents to be furnished with the application may be laid down by Ministerial Order.](#)

[6 The applicant shall be charged for the handling of an application for a permit. Our Minister shall specify the amount of the charge by Ministerial Order.](#)

Section 13

Our Minister shall not grant a permit for:

- a. an area outside a site and the route for the connection designated under Section 3.1; or
- b. a site for which a permit has already been granted.

Section 14

1 A permit can only be granted if the application satisfactorily demonstrates that the building and operation of the wind farm:

- a. is practicable;
- b. is technically feasible;
- c. is financially viable;
- d. can be commenced within [a period laid down by Ministerial Order](#)~~four years of the date on which the permit becomes irrevocable~~;
- e. is economically viable within the period laid down in the permit;
- f. complies with the wind farm site decision.

2 Rules concerning the assessment criteria referred to in part 1 above may be laid down by Ministerial Order.

[3 Our Minister may reject an application if the application does not comply with the provisions of or pursuant to part 1 or Sections 12a and 14a.](#)

Section 14a

[1 A permit shall be granted through the application of the:](#)

- [a. procedure for grant funding;](#)
- [b. procedure for a comparative assessment;](#)
- [c. procedure for a comparative assessment with financial bid; or](#)
- [d. auction procedure.](#)

[2 In agreement with Our Minister of Finance, the procedure or procedures to be applied shall be laid down by Ministerial Order.](#)

[3 If permit applications may be submitted for multiple procedures, the order in which the applications are to be handled shall be laid down by Ministerial Order, in agreement with Our Minister of Finance. In agreement with Our Minister of Finance, it may be laid down by Ministerial Order that an applicant may submit an application for one procedure only.](#)

[4 It may be laid down by Ministerial Order that there is to be one application only.](#)

Section 15

1 A permit shall specify:

- a. the period for which the permit is valid;
- b. the site for which the permit is valid;
- c. within what periods, once the permit has become irrevocable, the activities stated in the permit should be carried out.

2 The period referred to in 1.a shall be consistent with the expected lifespan of a wind farm and the specific area to which the permit relates, subject to a maximum of 30 years. [The period may be extended by a maximum of ten years by means of an amendment to the wind farm site decision.](#)

3 Our Minister may attach conditions and regulations to a permit.

4 Our Minister may grant an exemption from 1.c. Regulations may be attached to the exemption and the exemption may be granted with restrictions.

5 It is unlawful to act in contravention of the permit, the conditions and regulations attached thereto, or the exemption referred to in part 4 above or the regulations and restrictions attached thereto.

Section 15a

[1 The permit shall be granted subject to the suspensive condition that the permit holder has provided a deposit or bank guarantee as surety for the building of an offshore wind farm.](#)

[2 More detailed rules may be laid down by Ministerial Order on:](#)

- [a. the amount of the deposit or bank guarantee;](#)
- [b. the period within which the deposit or bank guarantee is to be provided;](#)
- [c. the period for which the deposit or bank guarantee is to be provided.](#)

3 If the conditions laid down pursuant to part 2 are not met within the specified time, the permit for the site concerned shall be granted to the next applicant eligible to be granted the permit.

4 If the holder of a permit fails to carry out the activities set out in the permit within the relevant periods of time, the holder shall forfeit the deposit or bank guarantee to a sum laid down by Ministerial Order.

Section 16

1 The holder of a permit may transfer the permit to another person/entity with the written consent of Our Minister.

2 Regulations may be attached to such consent and the consent may be granted with restrictions.

3 Paragraph 4.1.3.3 of the General Administrative Law Act shall apply to an application for a decision granting consent for the transfer of the permit referred to in part 1 above.

4 If the period within which to provide surety as referred to in Section 15a has not yet expired, Our Minister shall not grant consent if the intended permit holder has not provided surety in compliance with the provisions of or pursuant to Section 15a.

Section 17

1 Our Minister may amend or rescind a permit if:

- a. the information or documents furnished with the application prove incorrect or incomplete in such a way that a different decision would have been made on the application if the correct circumstances had been fully known when considering it;
- b. the activities for which the permit is valid are no longer being carried out;
- c. the subsidy granted under Section 3 of the Economic Affairs Subsidies Enabling Act has been withdrawn; or
- d. this is warranted by a change in the holder's technical or financial capabilities.

2 Our Minister may rescind a permit if:

- a. acts not in accordance with the wind farm site decision have been or are being carried out;
- b. acts not in accordance with the permit have been or are being carried out; or
- c. the rules under this Act or the Water Act for the activities for which the permit is valid are not complied with.

3 Our Minister shall not rescind under part 2 above unless he has issued a written warning to the holder and the situation that gives rise to the rescission continues to occur or occurs again.

4 Our Minister may amend or rescind a permit at the holder's request.

5 The permit shall lose its validity ipso jure:

- a. if the holder is a natural person, on the date following that on which that person died;
- b. if the holder is a juridical person, on the date following that on which the juridical person ceased to exist.

Section 18

1 This section applies to the holding of a permit by more than one natural person or juridical person.

2 When applying for a permit, the persons shall be regarded jointly as the applicant for the permit. Once the permit has been granted, they shall be regarded jointly as the holder of the permit.

3 Section 16 shall apply mutatis mutandis if one of the persons wishes to transfer his share of the permit to another person.

4 Section 17.5 notwithstanding, the permit shall not lose its validity if one of the holders who is a natural person dies, or if one of the holders who is a juridical person ceases to exist, but shall be held by the remaining holders.

§3.2 Procedure with subsidy

Section 19

~~This paragraph applies if a subsidy can be granted under an administrative order as referred to in Section 3 of the Economic Affairs Subsidies Enabling Act.~~

Section 20

~~In addition to Section 14.3, Our Minister shall reject any application if the application does not comply with 1 Applications for a permit shall be submitted during the period in which a subsidy application may be submitted.~~

~~2 The application shall comply with the requirements under Section 14 and the requirements laid down for subsidy applications.~~

~~3 The applicant shall be charged for the handling of an application for a permit. Our Minister shall specify the amount of the charge by Ministerial Order.~~

Section 21

~~1 Our Minister shall grant the permit to the applicant to whom a subsidy is granted. 1 If more than one application complies with Sections 14 and 20, Our Minister shall grant the permit to the applicant to whom a subsidy is granted.~~

~~2 Our Minister shall decide on applications at the same time as deciding on the subsidy applications.~~

§3.3 Procedure for a comparative assessment without subsidy

Section 22

~~This paragraph applies if a subsidy cannot be granted under an administrative order as referred to in Section 3 of the Economic Affairs Subsidies Enabling Act.~~

Section 23

~~1 Applications for a permit shall be submitted within the application period laid down by Ministerial Order.~~

~~2 An application shall include at least:~~

- ~~a. a design for the wind farm;~~
- ~~b. a timetable for the building and operation of the wind farm;~~
- ~~c. an estimate of the costs and returns;~~
- ~~d. an estimate of the social costs;~~
- ~~e. a survey and analysis of the risks;~~
- ~~f. a description of the measures to ensure cost efficiency;~~
- ~~g. a list of the parties involved in the building and operation of the wind farm;~~
- ~~h. a description of the knowledge and experience of the parties involved.~~

~~3. More detailed rules on how an application is to be submitted and the information and documents to be furnished with the application may be laid down by Ministerial Order.~~

~~4. The applicant shall be charged for the handling of an application for a permit. Our Minister shall specify the amount of the charge by Ministerial Order.~~

Section 24

~~1 Our Minister shall grant the permit to the applicant whose application ranks highest. If more than one application complies with Sections 14 and 23, Our Minister shall grant the permit to the applicant whose application ranks highest.~~

~~2 When ranking applications, Our Minister shall at least consider:~~

- ~~a. the assurance that the wind farm will be realised;~~
- ~~b. the wind farm's contribution to the energy supply. When ranking applications Our Minister shall consider:~~

- ~~a. the knowledge and experience of the parties involved;~~
- ~~b. the quality of the design for the wind farm;~~
- ~~c. the capacity of the wind farm;~~
- ~~d. the social costs;~~
- ~~e. the quality of the survey and analysis of the risks;~~
- ~~f. the quality of the measures to ensure cost efficiency.~~

~~3 More detailed rules on the criteria referred to in part 2 and additional criteria to be considered when ranking the applications may be laid down by Ministerial Order.~~

~~34 Rules on the respective weighting of the ranking criteria may be laid down by Ministerial Order.~~

Section 25

Our Minister shall decide on applications within 13 weeks of the end of the application period referred to in Section ~~23~~12a.1, and this time limit may be extended once by a maximum of 13 weeks.

§ 3.4 Procedure for a comparative assessment with financial bid

Section 25a

In addition to Section 14.3, any application which does not include a financial bid shall be rejected.

Section 25b

1 Our Minister shall grant the permit to the applicant whose application ranks highest.

2 When ranking applications, Our Minister shall at least consider:

- a. the amount of the financial bid;
- b. the assurance that the wind farm will be realised;
- c. the wind farm's contribution to the energy supply.

3 More detailed rules on the criteria referred to in part 2 and additional criteria to be considered when ranking the applications may be laid down by Ministerial Order.

4 Rules on the respective weighting of the ranking criteria may be laid down by Ministerial Order.

Section 25c

Our Minister shall decide on applications within 13 weeks of the end of the application period referred to in Section 12a.1, and this time limit may be extended once by a maximum of 13 weeks.

§ 3.5 Auction procedure

Section 25d

In addition to Section 14a.3 Our Minister shall reject an application if no financial bid is submitted.

Section 25e

1 In agreement with Our Minister of Finance, rules on the application and implementation of the auction procedures shall be laid down by Ministerial Order.

2 The rules referred to in part 1 shall at least relate to:

- a. the manner in which a bid is to be submitted;
- b. the requirements which a valid bid must meet;
- c. situations in which bids may be declared void;
- d. measures to ensure an uninterrupted and honest auction process;
- e. the provision of surety that the bid will be declared unconditional or that any costs and damages could be recovered;
- f. the method by which a bid submitted during an auction by an applicant eligible to be granted the permit is to be declared;
- g. the requirements laid down in relation to the method of payment and the time within which the party to whom the permit is granted must have made such payment.

3 An applicant shall provide surety for the payment of the bid in the form of a deposit or bank guarantee for an amount laid down by Ministerial Order.

4 The surety shall be provided for the period up to:

- a. in the case of a rejected application, the time of rejection;
- b. in the event that the application is not handled, the time of the decision not to handle the application;
- c. in the event that the application is granted, the time that the bid has been paid in full.

Section 25f

1 Our Minister shall grant the permit to the applicant with the highest bid.

2 Our Minister shall decide on applications within 13 weeks of the end of the auction procedure referred to in Section 25e, and this time limit may be extended once by a maximum of 13 weeks.

Section 26

1 Officials designated by decision of Our Minister shall be responsible for monitoring compliance with the provisions of and pursuant to this Act. If the officials designated fall under a Ministry other than that of Our Minister, the decision in question shall be made in agreement with Our Minister also concerned.

2 A decision as referred to in part 1 above shall be announced in the Government Gazette.

Section 27

In the event of contravention of the provisions of or pursuant to this Act, Our Minister may issue an administrative enforcement order against the offender.

Section 28

1 Our Minister may require surety to be furnished for the payment of monies due if he issues an administrative enforcement order in enforcement of the obligations laid down under or pursuant to this Act.

2 The obligation referred to in part 1 above shall rest with the holder of the permit or, if the permit has lost its validity, the last holder of the permit.

3 The amount of, periods for which, dates on which and the way in which the surety is to be furnished for the removal, demolition or re-use following removal, of wind farms that are no longer in use shall be laid down in the wind farm site decision and shall be to the satisfaction of Our Minister in any other cases.

PART 5: AMENDMENT OF OTHER ACTS

Section 29

[editors: amended Electricity Act 1998]

Section 30

[editors: amended General Administrative Law Act]

Section 31

[editors: amended Water Act]

Section 32

[editors: amended Environmental Law (General Provisions) Act]

Section 33

[editors: amended Economic Offences Act]

PART 7: TRANSITIONAL AND FINAL PROVISIONS

Section 34

1 Section 12 shall not apply to wind farms for which, before the date on which this Act enters into force, a permit under the Public Works (Management) Act or under Section 6.5 of the Water Act and subsidy under an administrative order under Section 3 of the Economic Affairs Subsidies Enabling Act or under Section 72m of the Electricity Act 1998 as it read on 31 December 2008 has been granted.

2. A permit for a wind farm granted under the Public Works (Management) Act or under Section 6.5 of the Water Act shall lose its validity on the date on which this Act enters into force if no subsidy under an administrative order under Section 3 of the Economic Affairs Subsidies Framework Act has been granted.

Section 35

This Act shall enter into force on a date to be laid down by Royal Decree.

Section 36

This Act shall be cited as the Offshore Wind Energy Act.