

Act on a Measure in Securing Smooth and Safe Activities by the Self-Defense Forces, etc. with the Use and by Avoiding Transmission Failure of Radio Wave due to the Installation, etc. of Wind Power Generation Facility (Tentative translation)

(Act No. 39 of May 24, 2024)

Table of Contents

Chapter I General Provisions (Articles 1 and 2)

Chapter II Designation of Radio Obstruction Prevention Areas (Article 3)

Chapter III Procedures for the Installation, etc. of Wind Power Generation Facility in Radio Obstruction Prevention Areas (Articles 4 to 11)

Chapter IV Miscellaneous Provisions (Articles 12 and 13)

Chapter V Penal Provisions (Articles 14 to 17)

Supplementary Provisions

Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to ensure the smooth and safe activities of the Self-Defense Forces, etc. using radio waves by establishing a system concerning the designation of radio obstruction prevention areas, the obligations of notifications in relation to the installation, etc. of wind power generation facility within radio obstruction prevention areas, and consultations between the wind power generation facility installer and the Minister of Defense, in order to avoid the possibility that installation, etc. of wind power generation facility may hinder the propagation of radio waves used by the Self-Defense Forces, etc.

(Definitions)

Article 2 In this Act, the terms listed in the following items have the meanings provided in those items:

- (i) "Wind Power Generation Facility" means power generation facility that convert wind power into electricity by the rotation of blades on land, with the blade length of 5 meters or more, or with the wind turbine height (meaning the vertical distance between the tip of the blade and the surface of the earth when the tip is at the highest position; the same applies in paragraph (1), item (i) of the following Article and Article 4, paragraph (1)) of 20 meters or

more;

- (ii) "Self-Defense Forces, etc." means the Self Defense Forces or the United States Armed Forces in Japan based on the Treaty of Mutual Cooperation and Security between Japan and the United States of America;
- (iii) "wind power generation facility installer" means an orderer of a contract for construction work concerning installation or modification (referred to below as "installation, etc.") of a wind power generation facility or a person who carries out the construction work by themselves without a contract.

Chapter II Designation of Radio Obstruction Prevention Areas

Article 3 (1) With respect to the activities of the Self-Defense Forces, etc. listed in the following items, when installation, etc. of wind power generation facility is likely to cause extreme obstruction and it is necessary to prevent this and ensure smooth and safe activities of the Self-Defense Forces, etc. using radio waves, the Minister of Defense may designate the area specified in the following items as a radio obstruction prevention area in accordance with the classification in the following items to the extent necessary:

- (i) surveillance using radar necessary for destruction measures against ballistic missiles, etc. under Article 82-3 of the Self-Defense Forces Act (Act No. 165 of 1954) and measures against violation of territorial airspace under Article 84 of the same Act: areas projected on the ground at a height exceeding the total of the height of the plane connecting the facility that transmits and receives radio waves installed for the surveillance and the horizontal line, which is specified by Ministry of Defense Order as the highest wind turbine height expected in Japan (referred to below as "assumed maximum wind turbine height" in this paragraph) and the altitude;
- (ii) guidance or monitoring by using radar necessary for the landing of aircraft such as those of the Self-Defense Forces, etc. as well as for ensuring the safety of their flight operations.: Areas specified in (a) or (b) below:
 - (a) an area projected onto the ground, which includes the plane of the approach surface (meaning the approach surface prescribed in Article 2, paragraph (8) of the Civil Aeronautics Act (Act No. 231 of 1952); the same applies below in this (a)) at airfields where air traffic control is conducted by the Self-Defense Forces, etc., and is encircled by the outer base of the approach surface, whose lines extend outward and upward along oblique sides of the approach surface therewith, and parallel to the outer base concerned for a horizontal distance of 12 kilometers from the outer base of the approach surface, which is also a projected area on the ground that is higher than the total height of the assumed maximum wind turbine height

- and the altitude, among the planes that extend from the horizontal plane starting from the short side of the runway at a slope of 1.4 degrees;
- (b) areas within 5 km from defense facilities of the Self-Defense Forces, etc. (meaning facilities of the Self-Defense Forces or facilities and areas under Article 2, paragraph (1) Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding facilities and areas and the Status of United States Armed Forces in Japan; the same applies below in this (b)) with areas of 900 hectares or less as specified by Cabinet Order, and rectangular areas with longer sides of 20 km or less and shorter sides of 5 km or less in land areas connected to defense facilities of the Self-Defense Forces, etc. where aircraft fire or bomb, and areas projected on the ground in the area where the total height of the assumed maximum wind turbine height and the altitude exceeds that of the plane connecting these areas and facility that transmits and receives radio waves installed for the monitoring purpose;
- (iii) radio communications conducted between a radio station on an artificial satellite used by the Self-Defense Forces and the relevant artificial satellite: an area where, on a plane extended at an attack angle of 3 degrees from a horizontal plane starting from the relevant radio station, the portion of the height exceeding the total of the assumed maximum wind turbine height and the altitude is projected on the ground.
- (2) If the Minister of Defense designates a radio obstruction prevention area pursuant to the provisions of the preceding paragraph, the Minister must issue a public notice to that effect and of the designated area in the Official Gazette.
- (3) The designation of a radio obstruction prevention area under paragraph (1) becomes effective upon the public notice under the preceding paragraph.
- (4) Pursuant to the provisions of Ministry of Defense Order, the Minister of Defense must make drawings indicating radio obstruction prevention areas available for public inspection, and make them public by using the Internet or other means pursuant to the provisions of Ministry of Defense Order .
- (5) The Minister of Defense must cancel the designation of a radio obstruction prevention area without delay when the reason for the designation under paragraph (1) has ceased to exist. In this case, the provisions of paragraphs (2) and (3) apply mutatis mutandis.
- (6) The provisions of paragraphs (2) through (4) apply mutatis mutandis to changes to radio obstruction prevention areas.

Chapter III Procedures for the Installation, etc. of Wind Power Generation Facility in Radio Obstruction Prevention Areas

(Notification of Installation, etc. of Wind Power Generation Facility in Radio

Obstruction Prevention Areas to the Minister of Defense)

- Article 4 (1) Before starting or having the contractor (including subcontractors; the same applies below) start the construction work concerning the installation, etc. of a wind power generation facility in the radio obstruction prevention area (including cases where the work extends over the area and other areas; the same applies in paragraph (4)), pursuant to the provisions of Ministry of Defense Order, the wind power generation facility installer must notify the Minister of Defense of the position, wind turbine height, and shape of the wind power generation facility, the name and address of the contractor if the person is the orderer of the construction work concerning the installation, etc. of the wind power generation facility (referred to as "matters related to the installation of wind power generation facility" in paragraph (5)), and other matters specified by Ministry of Defense Order as necessary matters.
- (2) When a wind power generation facility installer who has given notification under the preceding paragraph intends to change the matters notified, the installer must notify the Minister of Defense of the matters in relation to the change pursuant to the provisions of Ministry of Defense Order.
- (3) If the notification under the preceding two paragraphs has been filed and the Minister of Defense finds that it is impossible to determine whether or not the wind power generation facility causes obstruction to the radio propagation used by the Self-Defense Forces, etc. in the radio obstruction prevention area (referred to below as "cause of obstruction to radio waves used by the Self-Defense Forces, etc.") with the matters in regard to the notification, the Minister may request, to the extent necessary for the determination, the wind power generation facility installer who has filed the notification to make a report on matters found to be necessary within a period designated by the Minister.
- (4) When a radio obstruction prevention area is designated or changed, none of the provisions in paragraph (1) applies to the construction work concerning the installation, etc. of a wind power generation facility that is being executed within the relevant radio obstruction prevention area (including cases where preparation for the construction has proceeded to the extent specified by Order of the Ministry of Defense).
- (5) A wind power generation facility installer concerning the installation, etc. of wind power generation facility prescribed in the preceding paragraph must, as provided for by Ministry of Defense Order, notify the Minister of Defense of the matters related to the installation of wind power generation facility concerning the installation, etc. of the relevant wind power generation facility and other necessary matters pursuant to the provisions of Ministry of Defense Order without delay after the designation or change of the relevant radio obstruction prevention area.

- (6) The provisions of paragraphs (2) and (3) apply mutatis mutandis to cases where a wind power generation facility installer concerning the installation, etc. of wind power generation facility prescribed in paragraph (4) intends to change the matters notified pursuant to the provisions of the preceding paragraph (if a notification of change has been given under paragraph (2) as applied mutatis mutandis pursuant to this paragraph, the matters after the change).

(Order of the Minister of Defense to a Person Who Has Not Made a Notification)

Article 5 (1) In the case where a wind power generation facility installer is required to make a notification under paragraph (1) or paragraph (2) of the preceding Article (including as applied mutatis mutandis pursuant to paragraph (6) of the same Article; the same applies below) or the provisions of paragraph (2) of the same Article as applied mutatis mutandis pursuant to the following paragraph, when the Minister of Defense becomes aware that the installer has started or has had a contractor start the construction work concerning the installation, etc. of the wind power generation facility or the part of the construction work in relation to the matters regarding the relevant changes (excluding those pursuant to the provisions of Ministry of Defense Order) without making the notification, or in the case where the Minister is required to make a notification pursuant to the provisions of paragraph (5) of the same Article, when the Minister becomes aware that the notification has not been made, the Minister is to immediately order the wind power generation facility installer to notify the Minister of Defense of the matters to be notified pursuant to the provisions of paragraph (1) or paragraph (2) of the same Article (including as applied mutatis mutandis pursuant to the following paragraph) or paragraph (5) of the same Article

- (2) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis to a person that has been ordered, pursuant to the provisions of the preceding paragraph, to file a notification of the particulars that are required to be filed pursuant to the provisions of paragraph (1) or paragraph (5) of that Article, and that has filed that notification.

- (3) The provisions of paragraph (3) of the preceding Article (including as applied mutatis mutandis pursuant to paragraph (6) of that Article; the same applies in paragraph (2) of the following Article and Article 9, paragraph (1), item (ii)) apply mutatis mutandis if a notification is filed based on an order under paragraph (1) (other than a notification of information that is required to be filed pursuant to the provisions of paragraph (5) of the preceding Article; the same applies in paragraph (1) of the following Article) or if a notification is filed under paragraph (2) of the preceding Article as applied mutatis mutandis

pursuant to the preceding paragraph.

(Notice of Existence of Obstruction to Propagation of Radio Waves Used by the Self-Defense Forces, etc.)

- Article 6 (1) If a notification under Article 4, paragraph (1) or paragraph (2) (including as applied mutatis mutandis pursuant to paragraph (2) of the preceding Article) or a notification based on an order pursuant to the provisions of paragraph (1) of the preceding Article is made, the Minister of Defense must review the matters concerning the notification, and if the wind power generation facility concerning the notification (in the case of a notification of change, the wind power generation facility after the change; the same applies below) is found that the cause of obstruction radio waves used by the Self-Defense Forces, etc. in the radio obstruction prevention area, the Minister must notify the wind power generation facility installer who made the notification to that effect by indicating the part of the wind power generation facility that causes obstruction to radio waves used by the Self-Defense Forces, etc. (referred to as the "part causing obstruction" in paragraph (3), the following Article, and Article 14, item (i)) and the reason therefor, and if the wind power generation facility is found not to cause obstruction to radio waves used by the Self-Defense Forces, etc. in the radio obstruction prevention area, the Minister must notify the wind power generation facility installer.
- (2) The notice under the preceding paragraph must be given within three weeks from the date of the notification (or, if a report is requested pursuant to the provisions of Article 4, paragraph (3) (including as applied mutatis mutandis pursuant to paragraph (3) of the preceding Article), the date of the report).
- (3) If the Minister of Defense issues a notice pursuant to the provisions of paragraph (1) to the wind power generation facility installer that the wind power generation facility is found to cause obstruction with radio waves used by the Self-Defense Forces, etc. in the radio obstruction prevention area, and that person is the orderer of a contract for construction work concerning the installation, etc. of the wind power generation facility, the Minister must immediately notify the contractor of the construction work concerning the notification from the wind power generation facility installer of the part causing obstruction and other necessary matters.

(Restrictions on Construction Work Relating to the Installation, etc. of Wind Power Generation Facility That Cause Obstruction with Radio Waves Used by the Self-Defense Forces, etc.)

- Article 7 Pursuant to the provisions of paragraph (1) of the preceding Article, the wind power generation facility installer who has received a notice that the wind power generation facility is found to cause obstruction with radio waves

used by the Self-Defense Forces, etc. in the radio obstruction prevention area must not start or have their contractor start the construction concerning the part causing obstruction regarding the notice for two years from the day of receiving the notice, except in cases that fall under any of the following items:

- (i) if the plan for construction work concerning the installation, etc. of a wind power generation facility has been changed and the change has been notified under Article 4, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 5, paragraph (2)), and the notice that the wind power generation facility will not cause obstruction with radio waves used by the Self-Defense Forces, etc. in the radio obstruction prevention area has been received pursuant to the provisions of paragraph (1) of the preceding Article;
- (ii) when the Prime Minister has reached an agreement with the Minister of Defense under paragraph (1) of the following Article;
- (iii) if the designation of the relevant radio obstruction prevention area has been revoked pursuant to the provisions of Article 3, paragraph (5) or as otherwise pursuant to the provisions of Ministry of Defense Order.

(Discussions to Ensure Smooth and Safe Activities of the Self-Defense Forces Using Radio Waves)

Article 8 (1) The wind power generation facility installer and the Minister of Defense prescribed in the preceding Article may mutually request consultation with the other party on measures to supplement the functions of the radar, changes to the construction plan concerning the installation, etc. of the wind power generation facility, and other measures necessary to coordinate the ensuring of smooth and safe activities of the Self-Defense Forces, etc. using radio waves with the exercise of property rights regarding the relevant wind power generation facility.

- (2) The Minister of Defense or the wind power generation facility installer prescribed in the preceding Article who has received a request under the preceding paragraph must respond to the consultation in relation to the request.

(Measures in the Event of a Violation)

Article 9 (1) When the Minister of Defense finds it necessary in the case falling under any of the following items, the Minister may, within the scope of the necessity, order wind power generation facility installer stated respectively in those items to suspend or have the contractor suspend the construction work stated respectively in those items that the wind power generation facility installer is actually carrying out or has the contractor carry out, or set a reasonable period and prohibit the installer from carrying out or having the contractor carry out the construction work stated respectively in those items

during that period:

- (i) in the case where, in violation of the provisions of Article 4, paragraph (1) or paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 5, paragraph (2)), a wind power generation facility installer has not made a notification pursuant to these provisions (excluding the case where a notification based on an order under Article 5, paragraph (1) has been made and a notice thereof has been given under Article 6, paragraph (1)), when the person has already started or has ordered a contractor to start or is in the near future believed to be starting or ordering a contractor to start the construction work concerning the installation, etc. of the wind power generation facility;
 - (ii) when the Minister of Defense has requested a report pursuant to the provisions of Article 4, paragraph (3) (including cases where it is applied *mutatis mutandis* pursuant to Article 5, paragraph (3)), but the relevant wind power generation facility installer has not made the report by the due date, and when the relevant wind power generation facility installer has already started or has ordered a contractor to start the construction work concerning installation, etc. of the relevant wind power generation facility, or when it is certain that the installer will start or order a contractor to start the construction work in the near future.
- (2) The reasonable period referred to in the preceding paragraph is to be specified within the limit of the period prescribed in Article 7 in consideration of the circumstances, such as the extent to which the relevant wind power generation facility cause obstruction with radio waves used by the Self-Defense Forces, etc. in the relevant radio obstruction prevention area, and the period normally required for taking measures to supplement the functions of radar if those measures are to be taken.
- (3) When the Minister of Defense has ordered a wind power generation facility installer pursuant to the provisions of paragraph (1) not to execute or have the contractor execute the construction work concerning the installation, etc. of the wind power generation facility for a specified period, the Minister must, during that period, revoke the order without delay if an agreement is reached between the wind power generation facility installer and the Minister of Defense, if the situation falls under Article 7, item (i) or item (iii), or if the need for that order ceases to exist for any other reasons.

(Collection of Reports)

Article 10 When the Minister of Defense finds it particularly necessary for the enforcement of the provisions of this Chapter, the Minister may have the wind power generation facility installer report on matters concerning the plan or implementation of construction concerning the installation, etc. of Wind Power

Generation Facility to the extent necessary.

(Cooperation of the Minister of Defense and the Minister of Economy, Trade and Industry)

Article 11 The Minister of Defense and the Minister of Economy, Trade and Industry are to cooperate with each other for the enforcement of the provisions of this Chapter.

Chapter IV Miscellaneous Provisions

(Entrustment to Ministry of Defense Order)

Article 12 Beyond what is provided for in this Act, procedures and other matters necessary for the enforcement of this Act are prescribed by Ministry of Defense Order.

(Transitional Measures)

Article 13 When enacting, revising or abolishing an order pursuant to the provisions of this Act, necessary transitional measure (including transitional measure concerning penal provisions) may be specified by that order to the extent considered reasonably necessary for the enactment, revision or abolition.

Chapter V Penal Provisions

Article 14 In cases falling under any of the following items, a person who has committed the relevant violation is subject to imprisonment for not more than one year or a fine of not more than five hundred thousand yen:

- (i) if the employer has, in violation of the provisions of Article 7, carried out or had a contractor carry out construction of the part causing obstruction;
- (ii) when, in violation of an order pursuant to the provisions of Article 9, paragraph (1), the person fails to suspend or has the contractor suspend the construction work concerning the installation, etc. of the wind power generation facility, or has executed or has the contractor execute the construction work.

Article 15 If a person has failed to make a notification or has made a false notification in violation of an order under Article 5, paragraph (1), the person who has committed the relevant violation is punished by a fine of not more than five hundred thousand yen.

Article 16 In cases falling under any of the following items, a person who has committed the relevant violation is punished by a fine of not more than three

hundred thousand yen:

- (i) a person who has failed to file notifications under Article 4, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to Article 5, paragraph (2)) or filed false notifications;
- (ii) a person who has failed to make reports under Article 10, or made false reports.

Article 17 If a representative of a corporation, or any agent, employee, or other worker of a corporation or individual, has violated the provisions of the preceding three Articles regarding the business operation of the corporation or individual, a wrongdoer is subject to the punishment, and the fine referred to in the respective Article is imposed on the corporation or the individual.

Supplementary Provisions

(Effective Date)

- (1) This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation.

(Adjustment Provisions)

- (2) If this Act comes into effect before the date on which the Act Partially Amending the Penal Code and Other Acts (Act No. 67 of 2022) comes into effect (referred to below as the "effective date of the Penal Code" in this paragraph), to apply the provisions of Article 14 until the day before the effective date of the Penal Code, the term "imprisonment under the new Penal Code" in that Article is deemed to be replaced with "imprisonment under the former Penal Code". The same applies to the application of the provisions of that Article to conduct in which a person engages before the effective date of the Penal Code on or after the effective date of the Penal Code.

(Review)

- (3) After approximately five years from the enforcement of this Act, the government is to review the status of enforcement of this Act and take any necessary measures based on the results of the review if it finds this to be necessary.