

LOCAL REGULATIONS

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Summary

The concept of a local authority is different in different countries. For the purpose of this article, it is understood as the lowest tier of the governmental system that is closest to the polluter and the public. Local regulations are understood to be the regulations, whether provisions of international and national regulations or provisions adopted by the local authority, applicable within the jurisdiction of the local authority. The most important tool for pollution prevention is planning control associated with environmental impact assessment. The remainder of the local authority's resources is mostly spent on statutory nuisance management, an area in which local authorities are vested with enormous regulatory powers. In addition, local authorities have regulatory powers to prescribe industrial processes within their jurisdiction.

1. Introduction

The term “local regulations” is ambiguous in the sense that, although it means regulations that are adopted and enforced in a locality by a statutory body (municipality, regional authority, district authority etc. depending upon the government structure of the said country), all national regulations and responsibilities arising out of the international treaties ratified by the national legislative body are also fully enforceable

in the same locality. Therefore, local regulations in the classical sense will be understood in this article as legislative and control measures taken by the local government to address specific problems of the locality, to achieve the aspirations of the local inhabitants for a better environmental performance, to fulfill the requirements of national and/or international regulations, or to follow certain best practices. As different countries have different governmental structures, the concept of local government or a local authority needs to be elaborated further in the particular context of local regulations.

2. Meaning of a local authority

Irrespective of its governmental structure, a modern State usually comprises a number of political subdivisions. The prevailing political processes are the dominating factors that decide how power is delegated to different levels of such subdivisions. The term “local authority” is understood to mean the lowest level of such sub-divisions that is closest to the people. In the case of a federation like Australia for example, it is the third level of government that is subordinate to the state government which, in its turn, is subordinate to the federal government. In a participatory democracy a local authority is deemed to have the following characteristics:

1. It is a separate person in law.
2. It has some governmental powers over a defined local area.
3. It is financed, at least in part, by the people living within its jurisdiction.
4. It is controlled by directly elected representatives of the people living within its jurisdiction
5. It exercises statutorily conferred governmental functions over its jurisdiction.
6. In certain respects it is usually subordinate to a higher form of government.

The essential structure, powers and responsibilities of a local authority are spelt out in national regulations. It appears from such regulations that in a given country there may be different types of local authorities that are somewhat independent of each other, although the smaller ones may be subordinate to the larger ones. This is usually the case in a large metropolitan city that is divided into borough or wards and also into a cluster of small villages that are subordinate to some district council, county council, etc. Whether, or the extent to which, such entities fulfill the above conditions is subject to examination. If they do, they can be considered as local authorities.

The purpose of such political subdivision of a State is to delegate power to the lower rungs as a matter of practical choice. Governance of a modern State with all its complexities cannot be handled in a centralized way, and so there is a need to share power. Modern participatory democracies tend to delegate power to the lower levels except in some areas of national concern (e.g. defense, foreign affairs, monetary and fiscal matters, etc.). In the environmental area, such democracies tend to delegate a good deal of power to the local authorities so that informed and affected local inhabitants are able to address the problem at source. However, increasing complexity of enforcement demands modern technology, up-to-date knowledge, a sound resource base and growing need for a holistic approach to environmental management and

gradual adoption of the IPPC regime. There is thus a growing feeling that many of the local authorities with their limited resources may not be able to cope with many of their regulatory responsibilities. In section 6.4.6 (of *Environmental Pollution Regulations*) we have already commented on the importance of discretionary powers in pollution control. If such powers are taken away from the local authorities, it may endanger the local environment and therefore the national or regional environment.

3. Local authority and pollution control

The important role that local authorities play in environmental protection is widely acknowledged. Indeed, recognizing that sustainable development cannot be achieved through top-down policies, Local Agenda 21 (chapter 28 of Agenda 21) urges local authorities everywhere to develop and implement policies for local sustainable development in the spirit of “act locally and think globally”. How much of the sustainable development work the national government of a country is willing or able to delegate to the local authorities remains an essential yardstick with which to measure the environmental performance of that country, even in the case of unitary States. Where the importance of local authorities in this regard is recognized, a host of environmental issues including land use controls, local parkland designation, supply of potable water, waste and sewage management, etc. can be and are delegated to local authorities. Some of the specific issues in this context are discussed below.

3.1 Nuisance management by local regulations

Nuisance is considered an act, or effects of an activity, which may cause unreasonable interference with, or can be prejudicial to, the property, enjoyment or health of others. Nuisance may be public, private or statutory. The term “nuisance” may not be found in the legislation of all countries, as activities or effects of such activities may be enshrined in different pieces of legislation. The UK Environment Protection Act (1990) defines nuisance as:

- Any premises in such a state as to be prejudicial to health or a nuisance.
- Smoke emitted from premises so as to be prejudicial to health or a nuisance.
- Fumes or gas emitted from premises so as to be prejudicial to health or a nuisance.
- Any dust, steam, smell or effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance.
- Any accumulation or deposit which is prejudicial to health or a nuisance.
- Any animal kept in such a place or manner as to be prejudicial to health or a nuisance.
- Noise emitted from premises so as to be prejudicial to health or a nuisance.
- Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.
- Any other matter declared by any enactment to be a statutory nuisance.

The other matters above are concerned with water bodies (static or flowing) that are prejudicial to health or a nuisance; any type of human habitation that is prejudicial to health, as well as unfenced, abandoned, disused mines and quarries.

Given the wide definition of “nuisance” and the long list of statutory nuisances, it is clear that due care for the abatement of such nuisances can significantly stretch the local authority’s resource base. In most cases under relevant pieces of legislation local authorities are required to inspect and find such nuisances, or to take steps to investigate complaints of their occurrence. If the local authority is satisfied that such a nuisance exists or is likely to occur, it must serve notice requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence and may impose such requirements and such steps as may be necessary for such purpose.

Such provisions and authorities delegated to local authorities open up an array of possibilities for them to issue delegated legal measures (orders, codes, etc.) to deal with the so-called small pollution of air, small pollution of water, and noise pollution generated in the neighborhood or by vehicles, machinery, equipment, etc.

3.2 Planning control as regulatory measure

Planning control is understood to be a control regime over the future use of land exercised by planning authorities. Local authorities may play a significant role in this area as the planning system provides legal control over significant new developments and changes of use. It also uses persuasive powers to build consensus among the players involved. However, since job creation, economic development or rejuvenation, etc. are often more pressing issues for a local planning authority, there is no guarantee that it will give more weight to pollution control or prevention. Even so, pollution prevention and control must be considered an important factor in the processing of planning applications. In general, applications for planning permission and their subsequent processing, falls within the framework of the development plan, structure plan, and local plan. These are prepared within the framework of the national, regional and local planning policies that are generally enshrined in different circulars or guidance notes of various ministries, government departments and agencies.

The practice of preparing development, structure and local plans may vary from country to country. Usually the structure plan for a large political subdivision is first prepared. It is then approved either by a council entrusted with such powers, or by the State or the Federal government. The approved structure plan for that large political sub-division forms the basis of the local development plans that are then prepared and approved. Approval is first given by the local authority following a public inquiry if deemed necessary, and then by the district or county authority.

During the development of a local plan, and especially when there is a system of public participation, the planning system is often modified with the incorporation of pollution control measures or strategies. The local development plan usually spells out planning policies in great detail and contains land use maps that set out local authority policy on land use in the locality. For example, if the local plan indicates that a certain area should

be free from industrial pollution resulting from some undesirable processes, this will have potential to influence the developers.

Applications for planning permission are usually submitted to the local authority whose responsibility it is to publicize them to the extent required by law and is obliged to consult with the various statutory consultees. An environmental statement may be required as a part of the application, or the authority may ask for it. While dealing with an application for planning permission, the local authority must give due regard to all material considerations, including environmental issues. Particular importance is attached to land use for waste disposal. Local development plans usually have a waste plan that may indicate new possible sites for waste management facilities and criteria for the location of each method of treatment or disposal to handle all controlled wastes for which it has responsibility, including imported and exported waste. In general, local authorities also act as waste regulatory authorities. Therefore, as planning authority they are expected to keep in mind the objectives and requirements of waste management acts and regulations. There is now a trend to develop contaminated land. In dealing with applications for planning permission to develop such land, the local authority may take the initiative to inform the developer about the dangers involved and set conditions for such development.

The actual relationship between planning control and pollution control is quite complicated. Many of the development projects are potential polluters that may be located on contaminated land or may cause land contamination. Therefore, one of the functions of the planning system is to regulate, control and minimize pollution that may be caused by development or land use. If a local authority has reason to believe that pollution may occur from certain development or land use with serious environmental impacts, it will be required to consult the competent pollution control authority so that it could take account of the scope and requirements for pollution control.

Enforcement of the planning system within a local authority is completely in the hands of the said authority which may serve an enforcement notice that may be issued because of a breach of planning control; a planning contravention notice alerting the developer to a possible breach of planning control; a breach of condition notice (i.e. for a breach of conditions to fulfill certain requirements specified in the planning permission); or a 'stop' notice to demanding the termination of development or land use activity. For the purpose of enforcing the planning system in place, local authorities have powers of inspection to discover any breaches of planning control.

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Bibliography

Ball S., Bell S. (1995). *Environmental Law*, 546 pp., United Kingdom: Blackstone Press Limited. [This book looks at general issues that cut across all aspects of environmental protection and then examines specific environmental laws].

Burnett-Hall R. (1995). *Environmental Law*, 1168 pp., London, United Kingdom: Sweet & Maxwell. [This is an excellent book which, in one volume, provides what lawyers need to know about applicable environmental law, particularly in the UK and the EU].

Ercmann S. (1996). *Pollution Control in the European Community*, 822 pp., Kluwer Law International Ltd. [This guidebook contains all EC pollution control texts and provides information on the implementation of EU environmental legislation by the Member States].

Garbutt J. (1996). *Environmental Law - A Practical Handbook*, 184 pp., United Kingdom: John Wiley & Sons Ltd. [This handbook gives general practitioners in law an overview of the present state of environmental law in the UK].

Leeson J. D. (1995). *Environmental Law*, 482 pp., London, United Kingdom: Pitman Publishing. [This book is a rich source of material with general exposition and commentary, especially for those with a non-legal background].

Malcolm R. (1994). *A Guidebook to Environmental Law*, 260 pp., London, United Kingdom: Sweet & Maxwell. [The book deals with different aspects of environmental law and gives a cohesive perspective of the subject].

Nath B., Hens L., Devuyt D. (1998). *Textbook on Sustainable Development*, 368 pp., Brussels, Belgium: VUB University Press. [This textbook gives an overview of the state-of-the-art in sustainable development and tries to answer a number of important questions in related fields].

Robinson N. A. (1997). *Comparative Environmental Law and Regulation 1 and 2*, New York, USA: Oceana Publications. [This book gives a large amount of information on the evolution of environmental law in different countries of the world].

Thornton J., Beckwith S. (1997). *Environmental Law*, 316 pp., London, United Kingdom: Sweet & Maxwell. [Meant for law students, this textbook gives a lucid description of numerous and interdependent provisions in environmental law].

Biographical Sketch

After graduating from Calcutta University (India) in 1967, **Dr. Prabir Ganguly** worked for four years in Indian coal mines in various capacities, rising to the position of Manager of a large coal mine. In 1971 he went to what was then Czechoslovakia to do his PhD, which he completed in 1975. He worked in the coal industry in India until 1980 as a senior planning engineer. In 1980 he took up an assignment to work at the University of Liberia in West Africa. He completed this assignment in 1986, following which he joined the Faculty of the Technical University of Ostrava in the Czech Republic. During his tenure at that university he became head of the Institute of Environmental Engineering and "Phare Project Management Cell" of the university. Currently he is the Director of the Centre for European Studies of that university.

Dr. Ganguly has been responsible for organising and participating in several international postgraduate teaching and training programmes sponsored by the Commission of the European Communities, as well as a number of international conferences and seminars.

Dr. Ganguly has published widely, mainly on sustainable development, environmental protection and related issues. He is on the Editorial Board of the journal, *Environment, Development and Sustainability* published by the Kluwer Academic Publishers of Dordrecht, the Netherlands.