

LEGISLATIVE COUNCIL BRIEF

Firearms and Ammunition Ordinance
(Chapter 238)

FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999

FIREARMS AND AMMUNITION (AMENDMENT) REGULATION 1999

INTRODUCTION

At the meeting of the Executive Council on 12 January 1999, the Council ADVISED and the Chief Executive ORDERED that -

- A
- (a) the Firearms and Ammunition (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council, to update and tighten the legislation regulating the possession and use of arms and ammunition for recreational or sporting purposes; and
 - (b) the Firearms and Ammunition (Amendment) Regulation 1999, at Annex B, should be approved in principle, and be referred back to Members to be made after the Bill has passed into law.
- B

BACKGROUND AND ARGUMENT

General Background

2. The Firearms and Ammunition Ordinance (the Ordinance)

regulates the possession of, and dealing in, arms and ammunition. When the Ordinance was enacted in 1981, there was comparatively little interest in the use of arms for recreational or sporting purposes, with only two shooting clubs open to members of the public. The use of arms for the shooting sport has been very much left to self-regulation by individual shooting clubs.

3. The use of arms for recreational or sporting purposes in Hong Kong has become more popular over the years. The number of shooting clubs has increased from 13 in 1988 to 20 in October 1998 and the number of licences and written exemptions issued for possession of arms has also increased from 894 in 1988 to 1 793 in October 1998. With the proliferation of shooting clubs, it was considered that the regulation of possession and use of arms should be strengthened. Accordingly, an inter-departmental Working Group, comprising representatives of the then Security Branch, the Police, Customs & Excise Department, Trade Department, Post Office and Civil Engineering Department, was formed in 1995 to review the licensing policy under the Ordinance. The Working Group recommended that the regulation of shooting clubs, arms licences holders, arms dealers, air guns, deactivated firearms and the use of modified firearms for television/film production should be tightened to safeguard public safety.

Previous Executive Council Discussion

4. To implement the Working Group's recommendations, the former Executive Council decided at the meeting on 12 March 1996 that the Firearms and Ammunition (Amendment) Bill 1996 should be introduced into the Legislative Council and that the Firearms and Ammunition (Amendment) Regulation 1996 should be approved in principle and be referred back to Members to be made after the Bill had passed into law. The Bill was introduced into the then Legislative Council on 3 April 1996. It lapsed after the 1996/97 legislative session as the Legislative Council did not have time to scrutinise the Bill. As the Bill did not meet the criterion of being absolutely essential for the smooth transition of Hong Kong, it could not be submitted during the term of the Provisional Legislative Council.

New Administrative Measures

5. Since the lapse of the Firearms and Ammunition (Amendment) Bill 1996, we have implemented, under the existing legislation, a number of the recommendations of the Working Group by administrative measures, as set out below, to tighten the existing licensing procedures and control -

- (a) Applicants for a new possession licence are required to take a test on the knowledge and proficiency in the use of the arms. Applications for the renewal of possession licences have to be made in person to the Police's licensing office where licensees will be interviewed to assess the suitability for renewal. A test will be conducted if necessary.
- (b) The Police have drawn up a set of standard guidelines on deactivation of firearms for arms dealers to comply with in respect of firearms used for decorative purposes.
- (c) Additional conditions have been imposed in the arms dealers licence where appropriate. These include restricting the types of arms and ammunition which the dealers may deal in; and permitting only employees approved by the licensing authority [(i.e. the Commissioner of Police (CP))] to assist the licensees in dealing in arms and ammunition.

The Proposals

6. We propose to implement the following legislative measures, which are basically the same as those contained in the lapsed 1996 Bill -

- (a) A person holding a licence for the possession of arms and ammunition on behalf of a shooting club will be required to be the one who is personally responsible for the management of the club. At present, the licence for a shooting club is held by a responsible officer of the club. However, there is no clear definition of "responsible officer" under the Ordinance. In addition, tighter licence conditions will be imposed to regulate the conduct of shooting clubs in their possession and use of arms and

ammunition and the running of their range, armoury or other facilities to ensure adequate safety standards.

- (b) A member of a shooting club will be required to complete a course on handling of arms before he can use the club's arms and ammunition if he does not himself hold a possession licence for that particular type of arms and ammunition.
- (c) Only a licensee or his approved agent who is so authorised by the CP can instruct others in the use of arms and ammunition. At present, any licensee can give such instructions.
- (d) Licensees will be required to seek the prior approval of the CP for appointing agents to possess or deal in arms and ammunition. This can preclude a person who is ineligible to obtain a possession licence or whose licence has been revoked from possessing and handling arms and ammunition in the capacity of a licensee's agent.
- (e) The CP will be empowered to restrict the quantity of arms and ammunition to be covered in a licence for possession so as to reduce possible threat to public safety resulting from a large number of arms and ammunition being carried in public places or stored at the licensees' premises.
- (f) At present, low-powered air guns with a muzzle energy of not greater than two joules are not defined as arms and hence are not regulated by the Ordinance. To prevent misuse of these guns that could be potentially harmful, discharging them to the danger or annoyance of any person will be made an offence under the Summary Offences Ordinance.
- (g) Under the existing legislation, the CP is empowered to cancel but not to amend licences. To allow the CP the necessary flexibility in regulating the possession of and dealing in arms and ammunition, the CP will be empowered to amend licences.

THE BILL

7. **Clause 2** provides some key definitions, e.g. those for “shooting club”, “responsible officer”, “shooting range”, “range officer”, “approved agent”, “authorized arms instructor” and “armoury”. To strengthen the regulation over shooting clubs, we have define “responsible officer” who holds the possession licence on behalf of a club as the one who holds a senior office of the club or who is personally responsible for the management of the club. In addition , we have included “export” in the definition of “deal in” to cover the dealing activities relating to or in the course of exportation.

8. **Clause 5** requires members of shooting clubs to complete a course of instruction, the contents of which is determined by the CP as provided under **Clause 25**, before they can use the club’s arms and ammunition. **Clause 6** ensures that only authorized arms instructors, whose appointment is approved by the CP, can instruct other persons in the use and handling of arms and ammunition.

9. **Clause 7** requires a licensee to seek the CP’s approval for appointing any person as his agent to possess or deal in arms and ammunition. **Clause 25** empowers the CP to determine the suitability of a person to be appointed as an agent or an arms instructor.

10. **Clause 10** seeks to replace the existing presumption clause relating to the possession of arms, ammunition and imitation firearms as it is inconsistent with the International Covenant on Civil and Political Rights (ICCPR). The new presumption clause is modelled on a similar provision in the Dangerous Drugs Ordinance and is consistent with the ICCPR.

11. **Clause 11** provides that the CP may issue a licence on such terms and conditions as he thinks fit including a restriction on the number and type of arms and the quantity and type of ammunition in the interest of public safety and security.

12. **Clause 12** seeks to enhance the regulation over shooting clubs by empowering the CP to impose additional conditions on the possession licence issued to a responsible officer of a shooting club regarding the conduct of the club and the operation of its facilities,

including the shooting range and armoury. In this regard, **Clauses 23 and 25** empower the CP to determine the criteria for approving a club to operate a shooting range, armoury or other facilities. The CP can also determine the suitability of a person to be appointed as a range officer.

13. **Clause 16** provides that the CP may renew a licence on such conditions as he thinks fit including a restriction on the number and type of arms and the quantity and type of ammunition. **Clause 17** empowers the CP to amend a licence.

14. **Clauses 18 and 19** extend the existing notification and appeal system to cover the applications made under the revised licensing regime.

15. **Clause 27** provides that the CP may specify forms for any purpose in the Ordinance to replace the present “prescribed forms” so that changes can be made when necessary.

16. **Clauses 28 and 29** amend the Summary Offences Ordinance to make it an offence of knowingly or negligently discharging an air gun (with a muzzle energy not greater than two joules) to the danger or annoyance of any person.

17. The existing provisions which are being amended are at Annex C.

C

THE REGULATION

18. The Firearms and Ammunition (Amendment) Regulation 1999 seeks to implement the detailed requirements of the revised licensing regime. These include –

- (a) replacing the prescribed forms by forms specified by the CP (**regulation 3**);
- (b) empowering CP to require applicants for the appointment of approved agents, authorized arms instructors and range officers to undergo tests (**regulation 4A**); and
- (c) setting out the additional requirements that a shooting club

has to fulfil before the responsible officer of the club can obtain a possession licence on behalf of the club (**regulation 4B**).

IMPLEMENTATION

19. The shooting clubs and other licensees affected by the proposals will need sufficient time to prepare for the transition to the new licensing regime. For example, shooting clubs have to arrange for members who do not possess valid possession licences to complete a prescribed course of instruction so as to be qualified for using the arms and ammunition of the club. In addition, to become an authorised arms instructor, a person needs to undergo a test and to obtain the authorisation from the CP. The preparatory work for implementing the above proposals will take about one year to complete. The Amendment Bill and Regulation will come into operation on a day or days appointed by the Secretary for Security by notice in the Gazette.

LEGISLATIVE TIMETABLE

20. The legislative timetable is as follows -

Publication in the Gazette	15 January 1999
First Reading and commencement of Second Reading debate	27 January 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

21. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

22. The amendments in the Bill and Regulation do not affect the current binding effect of the existing provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

23. The proposals will result in extra work for the Police. Three posts at inspector and sergeant level have already been redeployed to cope with the increased workload arising from the implementation of the new administrative measures. Two additional posts, namely a Ballistics Officer and a Station Sergeant, will be required to deal with the additional inspection and licensing requirements. The additional resources required will be absorbed by the Police.

PUBLIC CONSULTATION

24. We issued a consultation paper in January 1996 to all existing shooting clubs, licensed arms dealers and associations in the television/film industry to seek their views on the above proposals. We received a total of 19 submissions, most of which were from the shooting clubs. Most of them support in principle the enhancement of regulation over shooting clubs. However, they are concerned that over-regulation will suffocate the development of shooting sport in Hong Kong. They also disagree with the stringency of some of the proposed licensing conditions, for example, the security requirement of an armoury, the syllabus of the tests for shooting club members, range officers and arms instructors. We will make use of the transitional period for the implementation of the legislation to liaise further with the clubs to ensure that the new licensing conditions are reasonable and practicable.

25. We consulted the previous Legislative Council Panel on Security on 12 February 1996 and Members were generally supportive of the proposed amendments. We have also briefed the Legislative Council Panel on Security on the major legislative proposals on 3 September 1998.

PUBLICITY

26. A press release will be issued on 15 January 1999. A spokesman will be available to handle media enquiries.

ENQUIRIES

27. Any enquiries to this brief should be directed to Ms. Jessie WONG, Assistant Secretary for Security at 2810 2686.

Security Bureau
14 January 1999

ANNEXES

- Annex A - Firearms and Ammunition (Amendment) Bill 1999
- Annex B - Firearms and Ammunition (Amendment) Regulation 1999
- Annex C - Extracts of the Firearms and Ammunition Ordinance (Cap.238) and the Summary Offences Ordinance (Cap.228)

FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999

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A BILL

To

Amend the Firearms and Ammunition Ordinance and to make related amendments to the
Summary Offences Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Firearms and Ammunition (Amendment)
Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the
Secretary for Security by notice in the Gazette.

2. Interpretation

(1) Section 2(1) of the Firearms and Ammunition Ordinance (Cap. 238) is
amended -

(a) in the definition of “ammunition” -

(i) by adding -

“(ea) a shot, bullet, missile or any other part of an
article which constitutes ammunition under
paragraph (a), (b), (c), (d) or (e);”;

(ii) by repealing paragraph (ii) and substituting -

- “(ii) a shot, bullet, missile, used or empty shell case or cartridge case, or any other part of an article which constitutes ammunition under paragraph (a), (b), (c), (d) or (e), which is used only as an article of personal, household, or office adornment.”;
- (b) in the definition of “deal in”, in paragraph (a), by adding “,export” after “import”;
- (c) in the definition of “dealer’s licence” -
 - (i) by adding “,subject to subsection (4C),” after “means”;
 - (ii) by adding “or 30(1) (b)” after “27(3)”;
- (d) in the definition of “licence for possession” -
 - (i) by adding “,subject to subsection (4C),” after “means”;
 - (ii) by adding “or 30(1) (a) or (b)” after “27(2)”;
- (e) in the definition of “槍械”, in paragraph (h), by repealing “發射” and substituting “鳴響” where it secondly appears;

(f) by adding -

““air gun” (氣槍) includes a gun which uses a compressed gas or compressed gases as a propellant;

“air pistol” (手槍型氣槍) includes a pistol which uses a compressed gas or compressed gases as a propellant;

“air rifle” (長槍型氣槍) includes a rifle which uses a compressed gas or compressed gases as a propellant;

“appoint” (委任) includes employment;

“approved agent” (認可代理人) means a person approved as such under section 12A(2);

“armoury” (槍械庫) means an enclosed area approved under section 46A;

“authorized arms instructor” (獲授權槍械導師) means a person authorized as an arms instructor under section 12(2);

“own” (擁有) includes hire or lease;

“range officer” (射擊場主任) means a person approved as a range officer under section 46C;

“responsible officer” (負責人員) means, in relation to -

- (a) a corporation, a person who is a member of the board of directors of that corporation;
- (b) an unincorporated association of persons, a person who is a member of the management or executive committee (however described) of that association who holds the office of president, chairman, vice chairman, secretary or a similar office; or
- (c) any other person who holds an office in a corporation or an unincorporated association of persons who is wholly or mainly responsible for the management of that corporation or association;

“shooting club” (射擊會) means a corporation or an unincorporated association of persons having as an

object the use of arms and ammunition by its members
for the purposes of recreation, sport or competition;
“shooting range” (射擊場) means a place or premises approved
as a shooting range under section 46B;
“specified form” (指明格式), in relation to any purpose in this
Ordinance, means the form specified for that purpose
under section 58, including particulars determined under
that section.”.

(2) Section 2 is amended by adding -

“(4A) An article which would otherwise come within the definition of “arms”
or “ammunition” in subsection (1) shall not be excluded therefrom by reason only of
the fact that it has been modified and adapted, in the case of -

- (a) “arms”, so that it is -
 - (i) capable of firing but not capable of discharging a
shot, bullet, missile or other ammunition; or
 - (ii) impractical to restore it to working order;
- (b) “ammunition”, so that it is impractical to restore it to working
order.

(4B) Any reference to terms and conditions in this Ordinance is to be construed as including further terms and conditions imposed by the Commissioner, where they have been so imposed.

(4C) For the purposes of sections 11, 12, 12A and 32, a licence does not include a licence granted under section 30.”.

3. Possession on behalf of the Crown etc.

Section 3(b) is amended -

- (a) by repealing “or the Urban Council,” and substituting”, the Provisional Urban Council or the Provisional Regional Council,”;
- (b) in subparagraph (vii) by repealing the full stop and substituting a semicolon;
- (c) by adding -
“(viii) the Agriculture and Fisheries Department.”.

**4. Possession of arms or ammunition
carried on aircraft**

Section 6 is amended -

- (a) by adding “,exportation” after “importation”;
- (b) by adding “,export” after “import”;
- (c) in paragraph (c) (i) by adding “after” before “their”.

**5. Possession by corporations, associations
of persons, and members thereof**

Section 11(2) is amended -

- (a) in paragraph (a) by repealing “a corporation or an unincorporated association of persons” and substituting “a shooting club”;
- (b) by adding -
 - “(aa) he -
 - (i) holds a licence for possession of arms or ammunition of the same type, class or description as the arms or ammunition he is in possession of as a member of the shooting club; or
 - (ii) has successfully completed a prescribed course of instruction under the supervision of an authorized arms instructor in the use and handling of arms or ammunition of the same type, class or description he is in possession of as a member of the shooting club;”;
- (c) by repealing paragraph (b);
- (d) in paragraph (c) -

- (i) by repealing “corporation or association” where it first appears and substituting “shooting club”;
 - (ii) by repealing “corporation or association and complies with the terms and conditions of that licence; and” and substituting “shooting club.”;
- (e) by adding -
 - “(ca) he reasonably believes that the terms and conditions of the licence referred to in paragraph (c) are complied with; and”;
- (f) by repealing paragraph (d) and substituting -
 - “(d) the possession is only -
 - (i) for the purposes of recreation, sport or competition at a shooting range; or
 - (ii) for storage in an armoury, or for repair, testing or proving of the arms or ammunition at a shooting range.”;
- (g) by adding -
 - “(3) In this section -
“prescribed course of instruction”

(訂明訓練課程) means a course the contents and extent of which have been determined by the Commissioner under section 52(1)(a)(iib).”.

6. Possession for purposes of instruction

Section 12 is amended -

- (a) by renumbering it as section 12(1);
- (b) in subsection (1) -
 - (i) in paragraph (a) by adding “and handling” after “use”;
 - (ii) in paragraph (c) by adding “or his approved agent, who is an authorized arms instructor authorized for that particular type, class or description of arms or ammunition” after “licensee”;
- (c) by adding -
 - “(2) The Commissioner may, upon the application of -
 - (a) a licensee; or
 - (b) the approved agent of a licensee,

authorize in writing the applicant to instruct other persons in the use and handling of arms and ammunition of a type, class or description specified by the

Commissioner in relation to the authorization.

(3) The Commissioner may specify the period for which an authorization is given under subsection (2).

(4) The Commissioner may attach such conditions as he thinks fit to an authorization under subsection (2).

(5) The Commissioner may revoke an authorization or vary or revoke any condition attached to an authorization or add further conditions to an authorization.

(6) For the avoidance of doubt it is stated that -

- (a) section 13 does not apply to the possession, by an approved agent who is an authorized arms instructor, of arms or ammunition for the possession of which he is approved under section 12A(2), for the purposes of instruction;
- (b) subject to paragraph (a), an authorization under

this section does not exempt the person authorized from the requirements to be complied with by a person under this Ordinance in relation to the possession of or dealing in arms or ammunition.”.

7. Sections added

The following are added -

“12A. Possession by approved agents

(1) Sections 13 and 14 do not apply to the possession of, or dealing in, arms or ammunition (being the arms and ammunition referred to in subsection (2)) by a person who is-

- (a) the approved agent of a licensee; and
- (b) carrying out the bona fide and lawful instructions of the licensee where those instructions relate to the duties, obligations and responsibilities of a licensee under this Ordinance.

(2) The Commissioner may, upon the application of a licensee, approve in writing, as an approved agent, a person who is appointed or proposed to be appointed by the licensee to possess or deal in the arms and ammunition in respect of which the licensee’s licence is granted.

(3) The Commissioner may attach such conditions as he thinks fit to an approval under subsection (2).

(4) The Commissioner may specify the period for which an approval is given under subsection (2).

(5) The Commissioner may revoke an approval or vary or revoke any condition attached to an approval or add further conditions to an approval.

(6) This section is not to be construed as permitting a person appointed or proposed to be appointed by a licensee as a security guard to possess arms or ammunition without a licence.

**12B. Possession for purpose of being tested on
application for licence**

Section 13 does not apply to possession of arms or ammunition by a person, in the course of taking a test conducted by the Commissioner on the use and handling of arms or ammunition.”.

**8. Possession of arms or ammunition
without licence**

Section 13(1)(b) is repealed.

**9. Giving possession of arms or ammunition
to unlicensed person and obtaining
possession by false pretences**

Section 15(1) is amended by repealing “agent or servant who comes within section 13(1)(b)” and substituting “approved agent”.

10. Section substituted

Section 24 is repealed and the following substituted -

“24. Presumptions

(1) Any person who is proved to have had in his physical possession -

- (a) anything containing arms or ammunition, or both;
- (b) the keys of any baggage, briefcase, box, case, cupboard, drawer, safe-deposit box, safe or other similar containers containing arms or ammunition, or both,

shall, until the contrary is proved, be presumed to have had the arms or ammunition, or both, as the case may be, in his possession.

(2) Any person who is proved or presumed to have had arms or ammunition, or both, in his possession shall, until the contrary is proved, be presumed to have known the nature of such arms or ammunition, or both, as the case may be.

(3) The presumptions provided for in this section shall not be rebutted by proof that the defendant never had physical possession of the arms or ammunition, or both, as the case may be.”.

11. Licences in respect of arms and ammunition

Section 27 is amended -

- (a) in subsection (1) by repealing “such form and manner as may be prescribed” and substituting “the specified form and the prescribed manner”;
- (b) in subsection (4) by adding “(including conditions imposing a limit or restriction on the number, type, class or description of arms, or the quantity, type, class or description of ammunition, or both)” after “conditions”;
- (c) in subsection (5) by repealing “, in the prescribed form,” and substituting “, in a form determined by him,”.

12. Section added

The following is added -

**“27A. Additional conditions in respect
of shooting clubs**

(1) The Commissioner may attach additional terms and conditions (in addition to terms and conditions which may be attached under section 27(4)) to a licence for possession -

- (a) granted to a responsible officer of a shooting club; and
- (b) which is expressed to be held by the responsible officer on behalf of the shooting club.

(2) The additional terms and conditions referred to in subsection (1) may include terms and conditions for the purpose of -

- (a) regulating the conduct of the shooting club in relation to the possession and use of arms and ammunition by its members;
- (b) regulating the operation of any shooting range, armoury or facility owned or under the control or possession of the shooting club, in relation to the use and handling of arms and ammunition by its members;
- (c) without limiting the generality of paragraph (b), ensuring the proper supervision by a range officer of a shooting range or facility used in connection with it, when they are in use; or
- (d) ensuring the safety of persons.”.

13. Effect of licence for possession

Section 28 is amended -

- (a) in paragraph (e) by adding “type,” before “class”;
- (b) by repealing “such form as is prescribed” and substituting “the specified form”.

14. Section substituted

Section 29 is repealed and the following substituted -

“29. Effect of dealer’s licence

(1) Subject to subsection (2), a dealer’s licence shall, subject to the terms and conditions thereof and to section 33(1), authorize a named individual or individuals to deal in by way of trade or business and to have possession of arms or ammunition, or both, for that purpose -

- (a) of a type, class or description specified in the licence;
- (b) at the premises (whether one or more) specified in the licence;
- (c) for the period specified in the licence.

(2) A dealer’s licence may also authorize the individual or individuals referred to in subsection (1) to deal in or to have possession of as described in that subsection, the arms or ammunition, or both, to which the licence relates, in a place or places approved by the Commissioner in a particular case, and subject to the terms and conditions, if any, imposed by the Commissioner.

(3) Subject to subsections (1) and (2), a dealer’s licence must be in the specified form.”.

15. Licences for conveying arms and ammunition or removal thereof from Hong Kong

Section 30(1)(b) is amended by adding “or from place to place” after “aircraft” where it secondly appears.

16. Renewal of licences

Section 32 is amended -

- (a) by renumbering it as section 32(1);
- (b) in subsection (1) by repealing “prescribed” where it first appears and substituting “specified”;
- (c) by adding -

“(2) A licence renewed under this section may be subject to such terms and conditions as the Commissioner thinks fit, including conditions imposing a limit or restriction on the number, type, class or description of arms, or the quantity, type, class or description of ammunition, or both, as may be appropriate.”.

17. Cancellation etc. of licence

Section 33 is amended -

- (a) in subsection (1) -
 - (i) by adding “or amend” after “cancel”;
 - (ii) by adding “including conditions imposing a limit or restriction on the number, type, class or description of arms, or the quantity, type, class or, description of ammunition, or both, as may be appropriate” after

“condition” where it secondly appears;

- (b) in subsection (2) by adding “(in addition to his powers to amend under subsection (1))” after “may”.

**18. Applicant or licensee to be notified
of decision of Commissioner**

Section 34 is amended -

- (a) by adding after subsection (1) -

“(1AA) The Commissioner shall notify in writing the licensee or applicant, as may be appropriate, of any decision whereby he -

- (a) refuses to authorize a person as an arms instructor under section 12(2);
- (b) exercises any power under section 12(5);
- (c) refuses to approve the appointment or the proposed appointment of a person to be an agent under section 12A(2);
- (d) exercises any power under section 12A(5);

- (e) refuses to approve an applicant as a range officer under section 46C(1);
 - (f) exercises any power under section 46C(4).”;
- (b) in subsection (1A) by adding “or (1AA)” after “(1)”;
- (c) in subsection (2) by repealing “A licensee” and substituting “Subject to section 35(2), a licensee”.

19. Appeals

Section 35 is amended -

- (a) in subsection (1) -
 - (i) in paragraph (a) by repealing “or” at the end;
 - (ii) by adding -
 - “(aa) who is aggrieved by a decision of the Commissioner referred to in section 34 (1AA).”;
 - (iii) in paragraph (b) by repealing the comma at the end and substituting”; or”;
 - (iv) by adding -

“(c) who considers any term or condition imposed under section 12(4), 12A(3), 27A(1), 29 or 46C(2) unreasonable,”;

(b) in subsection (2) -

- (i) by repealing “or intended to be brought”;
- (ii) by repealing paragraph (a);
- (iii) in paragraph (b) by repealing the comma and substituting a full stop;
- (iv) by repealing “whichever is the later.”.

20. Commissioner to be notified of transactions etc.

Section 36(1) is amended by repealing “prescribed” and substituting “specified”.

21. Dealers to record particulars of all transactions

Section 37 is amended -

(a) in subsection (1) -

- (i) by repealing “prescribed” where it first appears and substituting “specified”;
- (ii) by repealing “the prescribed particulars in the said register” and substituting “in that register, the

particulars specified for the time being by the
Commissioner for the purposes of this subsection”;

- (b) in subsection (4) by repealing “the prescribed particulars” and substituting “the particulars referred to in that subsection”.

22. Storage of arms, ammunition and imitation

firearms by Commissioner

Section 46(3) is amended by repealing “type” and substituting “type, class or description”.

23. Sections added

The following are added -

“46A. Armouries

The Commissioner may approve any enclosed area for the storage of -

- (a) arms;
- (b) ammunition;
- (c) arms and ammunition;
- (d) imitation firearms; or
- (e) any type, class or description of arms, ammunition or imitation firearms.

46B. Shooting ranges

The Commissioner may, for the purposes of -

- (a) practice, recreation and sport or competition -
 - (i) by a person who is a member of a shooting club; or
 - (ii) by a person who holds a licence for possession of arms or ammunition;
- (b) testing or proving of arms and ammunition by a range officer; or
- (c) instruction in the use and handling of arms under the supervision of an authorized arms instructor,

approve a place or premises (including an open area and an enclosed gallery) designed and constructed or adapted for the target shooting of arms as a shooting range.

46C. Range officers

(1) The Commissioner may upon the application of a person approve in writing the applicant, in relation to a particular type of shooting range, for the following purposes -

- (a) to conduct and supervise the use of the shooting range for the target shooting of arms;
- (b) to test or prove arms and ammunition at the shooting range; or

(c) to supervise persons using the shooting range or other facility used in connection with the shooting range.

(2) The Commissioner may attach any condition he thinks fit to an approval under subsection (1).

(3) The Commissioner may specify a period for which an approval is given under subsection (1).

(4) The Commissioner may revoke an approval or vary or revoke any condition attached to an approval or add further conditions to an approval.

(5) For the avoidance of doubt it is stated that approval as a range officer does not exempt a person from any other requirement in this Ordinance which would apply to that person in relation to the purposes referred to in subsection (1).”.

24. False statements

Section 47(b) is amended by adding “or an exemption under section 4(3)” after “licence”.

25. Regulations

Section 52 is amended -

(a) in subsection (1)(a) by adding -

“(ia) empowering the Commissioner to determine the suitability of a person to be an approved agent or an authorized arms instructor or to be

approved as a range officer and for that purpose to require a person to undergo tests and examinations as the Commissioner thinks fit;

- (iib) empowering the Commissioner to determine the contents and extent of courses to be conducted by authorized arms instructors in the use and handling of arms and ammunition for the purposes of section 11(2);
- (iic) in relation to the granting of a licence to a responsible officer of a shooting club, or otherwise, empowering the Commissioner to determine the criteria for the operation by the club of a shooting range, an armoury or other facility;”;

- (b) in subsection (1)(a)(iii) by repealing “or type of arms and ammunition” and substituting “, type, class or description of arms, or the quantity, type, class or description of ammunition, or both,”;
- (c) by repealing subsection (1)(b) and (d);
- (d) in subsection (1)(c) by adding “, the determination of matters referred to in

subsection (1)(a)(ii) and (iia), examination of arms” after
“ammunition”;

(e) by adding -

“(1A) Without limiting the generality of subsection
(1)(a)(iic), regulations made under that subsection may provide
for criteria designed for the Commissioner to satisfy himself -

- (a) that the physical design or layout of the place or premises to be used as a shooting range, an armoury or other facility is satisfactory;
- (b) as to the imposition by the shooting club of conditions to be observed in respect of the use of the shooting range or other facility to be used in connection with the shooting range; and
- (c) that safety features are installed and safety precautions are in place.”.

26. Transitional provisions

Section 57 is repealed.

27. Section added

The following is added -

“58. Commissioner to specify forms

(1) The Commissioner may specify forms, containing such particulars as determined by him, for any purpose in this Ordinance.

(2) The Commissioner may under subsection (1) specify 2 or more different forms for the same purpose where he considers it appropriate.”.

Summary Offences Ordinance

28. Interpretation

Section 2(1) of the Summary Offences Ordinance (Cap. 228) is amended by adding -

““air gun” (氣槍) includes any gun, rifle or pistol which uses a compressed gas or compressed gases as a propellant and from which any shot, bullet or missile can be discharged with a muzzle energy not greater than 2 joules;”.

29. Nuisances committed in public places, etc.

Section 4 is amended by adding -

“(14A) knowingly or negligently discharges an air gun to the danger or annoyance of any person;”.

Consequential Amendments

Firearms and Ammunition (Declaration of Arms) Regulations

30. Schedule amended

Item 1 of the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238 sub. leg.) is repealed.

Explanatory Memorandum

This Bill amends the Firearms and Ammunition Ordinance (Cap. 238) (“principal Ordinance”) in the manner explained below.

2. Clause 1 - This clause sets out the short title of the proposed Ordinance and enables the Secretary for Security to bring that Ordinance into operation on a day or days appointed by him.

3. Clause 2 - This clause amends the interpretation section of the principal Ordinance as follows -

- (a) to include “export” in the definition of “deal in” so that exportation and causing to be exported are covered under the provisions relating to dealing in arms and ammunition;

- (b) to expand the definitions of “licence” and “dealer’s licence” so that the provisions relating to licences apply to a licence granted under section 30 as well as a licence granted under section 27;
- (c) to define air guns, air pistols and air rifles as including those which use compressed gases as a propellant; they are presently brought within the operation of the principal Ordinance as “arms” by an order made under paragraph (g) of the definition of “arms”, but the provisions which refer separately to “air guns”, “air pistols” and “air rifles” are not applicable to them;
- (d) to define who should be a responsible officer of a corporation or an unincorporated association of persons for the purposes of holding a licence for possession on behalf of the shooting club; under the principal Ordinance, it is a responsible officer who can do so but there is no definition of responsible officer;
- (e) to include a definition of “shooting club”; the principal Ordinance now regulates the use of arms by members of a shooting club, but a shooting club is not defined;
- (f) to add an interpretative provision to bring, within the definition of arms, those that have

been modified or adapted so that they can fire only blank ammunition or cannot be restored to working order;

(g) the other new definitions are consequential upon the substantive provisions included in the Bill.

4. Clause 3 - This clause amends section 3 to the effect that the principal Ordinance does not apply to the Provisional Regional Council and the Agriculture and Fisheries Department.

5. Clause 4 - The effect of the amendment to section 6 is to extend the exemption given in relation to possession of arms or ammunition carried on aircrafts to such possession in the course of exportation of arms and ammunition.

6. Clause 5 - This clause amends section 11(2) which deals with possession of arms or ammunition by members of shooting clubs. At present a member does not require a licence for possession if the responsible officer has a licence and certain other conditions relating to the place where the arms are used are satisfied. The amendment is to make this exemption conditional upon the member having his own licence for possession of arms or ammunition which is of the same type, class or description that he uses as a member of the club or his having completed a course of instruction on the use and handling of arms or ammunition the contents of which has been approved by the Commissioner of Police. This clause also replaces the general description of places approved by the Commissioner for practice with arms and ammunition and storage with "shooting

range” and “armoury” respectively as these terms are now defined.

7. Clause 6 - The amendments in this clause are to require any person who instructs another in the use and handling of arms and ammunition to be an authorized arms instructor. An authorized arms instructor by definition is a licensee or his approved agent who has been approved by the Commissioner as an authorized arms instructor. This clause also provides that the authorization must be in relation to a particular type, class or description of arms or ammunition.

8. Clause 7 - The principal Ordinance as it stands, under section 13(1), exempts from the requirement to have a licence an agent or a servant of the licensee who is carrying out the bona fide and lawful instructions of the licensee. New section 12A requires such a person to be a person approved by the Commissioner and confers power on the Commissioner to do so. It also clarifies that notwithstanding the fact that a security guard may be a person appointed by a licensee for the purpose of possession of arms, this section does not exempt him from the requirement to have a licence for the purpose of possessing arms and ammunition as a security guard. (This restriction is present in the principal Ordinance as well.) This clause also introduces new section 12B the purpose of which is to exempt from the requirement to hold a licence an applicant for a licence for possession who is being tested by the Commissioner as to his suitability to be granted such a licence.

9. Clauses 8 and 9 contain amendments which are consequential upon the introduction of new section 12A.

10. Clause 10 - This clause introduces in place of the repealed section 24 a presumption as to possession modelled on a similar provision in other legislation. The presumption is to the effect that a person who has in his physical possession anything containing arms or ammunition or a key to anything containing arms or ammunition is presumed to have had the arms or ammunition in his possession until the contrary is proved and is presumed to have known the nature of the arms or ammunition. The presumption is not rebutted by proof that the defendant did not have in his physical possession of the arms or ammunition.

11. Clause 11 - This clause makes consequential amendments to section 27 as a result of empowering the Commissioner to specify the forms for the purposes of the principal Ordinance (See clause 27). This clause also enlarges the power of the Commissioner to attach conditions to a licence granted by him under the principal Ordinance.

12. Clause 12 - This clause introduces a new section 27A containing power for the Commissioner to attach terms and conditions, in addition to those he may impose under section 27(4), to a licence granted to the responsible officer of a shooting club. The additional terms and conditions may relate to the conduct of the shooting club in so far it affects the possession and use of arms and ammunition by its members and regulation of the operation of a shooting range and an armoury and the safety of persons.

13. Clause 13 amends section 28 (e) to the effect that a licence for possession granted to a security guard may specify the type of arms in addition to the class or description. It also provides that the licence is to be in the form specified by the Commissioner.

14. Clause 14 substitutes a new section 29 for the existing section 29. The changes in subsection (1) are that it enables the Commissioner, in a dealer's licence, to specify the type, class or description of arms or ammunition for which the licence is granted. Previously the licence had to be for a prescribed class of arms or ammunition. Subsection (2) is new and it empowers the Commissioner to authorize a person named in it to deal in arms or ammunition in places approved by the Commissioner in relation to a particular case (in addition to the premises specified in the licence) subject to the terms and conditions he may impose. Also the dealer's licence is to be in the specified form.

15. Clause 15 amends section 30 to permit a person to convey, under a dealer's licence, arms from place to place and not only from one place to another as is the case now.

16. Clause 16 amends section 32 to the effect that the application for a renewal of a licence is to be in the specified form. It also enlarges the power of the Commissioner to attach terms and conditions upon renewing a licence.

17. Clause 17 which amends section 33 empowers the Commissioner to amend a licence on his own initiative. Under the principal Ordinance he has power to cancel, vary or revoke a licence. The

amendments also enlarge the power of the Commissioner to impose conditions on a licence.

18. Clause 18 - This clause amends section 34 to require the Commissioner to inform the person, affected by any unfavourable decision he makes under the new powers conferred on him, of the decision and the reasons for the decision.

19. Clause 19 amends section 35 so that a person who is aggrieved by a decision of the Commissioner under his new powers has the right to appeal to the Administrative Appeals Board within 28 days after receiving notice of the decision. This clause also amends section 35 to remove the existing provision that if an appeal is intended to be brought from a decision of the Commissioner to revoke a licence, the obligation to surrender the licence does not arise for 28 days.

20. Clause 20 - The effect of this amendment is that the notice of disposal of arms given under section 36 is to be in the specified form instead of a prescribed form.

21. Clause 21 amends section 37 so that the register of transactions a dealer is required to keep is to be in a form specified by the Commissioner. The particulars to be recorded in the register are to be specified by the Commissioner instead of being prescribed.

22. Clause 22 - The effect of the amendment to section 46 is that different fees may be prescribed for firearms of a specified class or description as well as a specified type (which is the case now).

23. Clause 23 - This clause adds new section 46A which empowers the Commissioner to approve an enclosed area as an armoury for the safe storage of arms and ammunition, new section 46B which gives the Commissioner the power to approve as a shooting range a place or premises for the purpose of shooting for practice, recreation, sport or competition, or testing or proving of arms or ammunition, or instruction in the use and handling of arms and ammunition and new section 46C which empowers the Commissioner to approve as a range officer a person who conducts and supervises the use of a shooting range.

24. Clause 24 - This clause amends section 47 so that it is an offence to make a false statement for the purpose of obtaining from the Commissioner an exemption from the requirement to hold a licence.

25. Clause 25 extends the regulation-making power of the Chief Executive in Council to make regulations to empower the Commissioner to determine the suitability of a person to be an approved agent, authorized arms instructor or a range officer and to require an applicant to undergo tests or examinations, to determine the contents and extent of a course conducted by an authorized arms instructor, to determine the criteria for the operation by the club of a shooting range, an armoury or other facility.

26. Clause 26 repeals the transitional provisions introduced upon the repeal of the former Arms and Ammunition Ordinance as they have had their effect.

27. Clause 27 adds a new section 58 which empowers the Commissioner to specify forms for the purposes of the principal Ordinance. Under the existing principal Ordinance forms are prescribed in the regulations.

28. Clauses 28 and 29 respectively include in the Summary Offences Ordinance (Cap. 228) a definition of “air gun” which is the same as the definition of “air gun” included in the principal Ordinance and adds an offence of discharging an air gun as an offence under that Ordinance.

29. Clause 30 removes from the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238 sub. leg.) the definitions of “air gun”, “air pistol” and “air rifle” consequential upon the inclusion of those definitions in the principal Ordinance.

FIREARMS AND AMMUNITION (AMENDMENT) REGULATION 1999

(Made by the Chief Executive in Council under section 52 of the Firearms and Ammunition Ordinance (Cap. 238))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Application for licences for possession and dealer's licence

Regulation 2(1), (2), (3) and (4) of the Firearms and Ammunition Regulations (Cap. 238 sub. leg.) is repealed and the following substituted -

“(1) An application under section 27(1) of the Ordinance, (which under that section must be in the specified form), for -

- (a) a licence for possession; or
- (b) a dealer's licence,

must be accompanied by 2 full face passport-size photographs of the applicant.”.

3. Application for an exemption under s. 4(3) or a licence under s. 30

Regulation 3 is amended by repealing everything after “Ordinance” where it secondly appears and substituting “must be in the specified form. If the Commissioner so requires, the application must be accompanied by such number of full face passport-size photographs of the applicant as specified by the Commissioner.”.

4. Commissioner may require applicants and holders of licences and exemptions to undergo tests

Regulation 4(a) is amended by repealing “safe”.

5. Regulations added

The following are added -

“4A. Requirement to undergo other tests

(1) The Commissioner may require -

- (a) a person in respect of whom a licensee has made an application under section 12A(2) of the Ordinance for approval as an approved agent;
- (b) a person seeking authorization as an arms instructor under section 12(2) of the Ordinance; or
- (c) a person who has applied for approval as a range officer under section 46C(1) of the Ordinance,

to undergo such tests or examinations as the Commissioner thinks fit, including medical and psychiatric tests, to satisfy himself as to whether or not that person possesses the necessary qualifications and competence required for that purpose.

(2) The Commissioner may require any person mentioned in paragraph (1) to submit any document or provide any information relating to the application as the Commissioner thinks fit.

4B. Criteria for shooting clubs to operate shooting ranges

(1) The Commissioner may determine the criteria for the operation by a shooting club, of a shooting range, armoury or facility used in connection with the shooting range.

(2) Without limiting the generality of paragraph (1), the Commissioner may, for the purposes of that paragraph, require the responsible officer of a shooting club applying for a licence for possession which is expressed to be held on behalf of that club to satisfy him -

- (a) that the physical design or layout of any shooting range, armoury or facility to be used in connection with a shooting range, owned or under the control or possession of that shooting club, is satisfactory;
- (b) that conditions to be observed in connection with the use of the shooting range, armoury or other facility are imposed by the club;
- (c) that necessary safety features are installed and safety precautions are in place in the shooting range, armoury or facility.

4C. Courses of instruction

The Commissioner may determine the contents and extent of any course on the use and handling of arms and ammunition, to be undertaken for the purposes of section 11(2) of the Ordinance, and for that purpose may issue guidelines relating to the conduct of such courses and the requirements as to attendance, and the tests to be undertaken by participants of the courses.”.

6. Commissioner may require applicant or licensee to submit arms or ammunition for inspection, etc.

Regulation 5(3) is amended by repealing “of \$10,000” and substituting “at level 3”.

7. Form of register of licences

Regulation 7 is repealed.

8. Form of licences, etc.

Regulation 8 is repealed.

9. Renewal of licences

Regulation 9 is amended by repealing everything after “Ordinance” and substituting”, (which under that section must be in the specified form), if the Commissioner so requires, must be accompanied by such number of full face passport-size photographs of the applicant as specified by the Commissioner.”.

10. Regulation substituted

Regulation 10 is repealed and the following substituted -

“10. Fees

The fee payable for -

- (a) the issue of a licence;
- (b) the renewal of a licence;
- (c) the grant of an exemption; or
- (d) the amendment of a licence or any condition in respect thereof,

shall be the fee prescribed in the Second Schedule.”.

11. Notice of transactions under section 36(1)

Regulation 12 is repealed.

12. Dealer's register of transactions

Regulation 13 is repealed.

13. Forms

The First Schedule is repealed.

14. Fees

The Second Schedule is amended -

- (a) by repealing item 2(a);
- (b) in item 2(c) by adding "subject to item 2A," before "in";
- (c) by adding -
 - "2A. For the issue of a licence for possession or a dealer's licence granted for a limited purpose under section 30(1)43";
- (d) in item 3(b) by repealing "scrap cartridge cases only" and substituting "used cartridge cases, used shot, used bullets, used missiles or parts of any of those articles";
- (e) in item 3(c) by adding "subject to item 2A," before "in".

Clerk to the Executive Council

COUNCIL CHAMBER

1999

Explanatory Note

The purpose of this Regulation is to amend the Firearms and Ammunition Regulations (Cap. 238 sub. leg.) to -

- (a) replace the existing prescribed forms with new forms specified by the Commissioner of Police;
- (b) require persons who seek to be approved by the Commissioner for the purpose of possession of arms and ammunition as approved agents of a licensee, as arms instructors or range officers to undergo tests or examinations in the use and handling of arms or ammunition;
- (c) require that shooting clubs conform to criteria determined by the Commissioner in the interests of public safety;
- (d) enable the Commissioner to determine the content and extent of courses in the use and handling of arms or ammunition; and
- (e) make minor consequential amendments.