

立法會
Legislative Council

LC Paper No. CB(2) 439/99-00
(These minutes have been seen by
the Administration)

Ref : CB2/BC/15/98

**Bills Committee on
Firearms and Ammunition (Amendment) Bill 1999**

**Minutes of meeting
held on Tuesday, 8 June 1999 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon James TIEN Pei-chun, JP
Hon MA Fung-kwok
Hon CHOY So-yuk

Members absent : Hon David CHU Yu-lin
Hon Gary CHENG Kai-nam
Hon Howard YOUNG, JP

Public Officers attending : Security Bureau
Mr Philip CHAN
Principal Assistant Secretary for Security

Ms Jessie WONG
Assistant Secretary for Security

Hong Kong Police Force

Mr M B DOWIE
Assistant Commissioner of Police (Support)

Mr FAN Sik-ming
Superintendent (Licensing)

Department of Justice

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman

Ms Leonora IP
Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Betty MA
Senior Assistant Secretary (2)1

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I. Meeting with the Administration

Clause-by-clause examination

Clause 23 - Sections added

New section 46C. Range officers

Responding to Mr James TIEN, Superintendent (Licensing) (SP(Lic)) said that the suitability of a person to be appointed as a range officer would be assessed by a written test together with a field test. The emphasis of the assessment was on the safety aspect in the use of firearms, in particular the applicant's knowledge on the types of firearms to be used the range concerned. Exemption might be granted after taken into account the qualifications and experience of an applicant. The syllabus of the examination would be made known to the shooting clubs.

2. The Chairman said that the Administration had been requested in the last meeting to consider spelling out clearly in the legislation that the appointment and assessment of range officers were simply on the safety aspect in the use of firearms. Principle Assistant Secretary for Security E (PAS(S)E) responded that notwithstanding the proposed new section 46C sought to assess the suitability of an applicant from the safety point of view, the Administration would take note of members' concern and further consider the drafting of the clause.

3. Mr MA Fung-kwok asked under what circumstances would the

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Commissioner of Police (the Commissioner) invoke new section 46C(4). PAS(S)E said that as a general rule, a licence would be granted in accordance with the established criteria. The Commissioner might apply section 46C if the applicant failed to meet the original approving conditions, e.g. the applicant was no longer considered as a fit and proper person.

4. The Chairman said that members were concerned that the provision did not spell out the prerequisite conditions under which the Commissioner might revoke an approval. Referring to para.16 of the Administration's response to issues/proposals raised at previous Bills Committee meetings (LC Paper No. CB(2) 2226/98-99(01)), PAS(S)E pointed out that the Administration was considering stipulating in the Firearms and Ammunition Ordinance (the Ordinance) (Cap.238) that when processing applications for licence, the Commissioner would consider whether the applicant was a fit and proper person. As the proposed new section 46C was dealing with the safety in handling firearms in the ranges, the Administration would further consider whether the above criteria would also be stipulated in the provision. The Chairman said that he supported the principle proposed in para.16 of the Administration's response. Nevertheless, he urged the Administration to consider members' concerns.

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Clause 24 - False statements

5. PAS(S)E said that the clause sought to spell out clearly that it was an offence to make a false statement for the purpose of obtaining from the Commissioner an exemption from the requirement to hold a licence.

6. Members raised no question on the amendment.

Clause 25 - Regulations

7. Miss CHOY So-yuk enquired about the rationale for proposing the amendments. In response, PAS(S)E said that the proposed addition of subsection (1)(a)(iia), (iib) and (iic) to section 52 of the Ordinance sought to empower the Commissioner to determine the suitability of a person to be an approved agent, authorized arms instructor or a range officer for the purpose of adding the definition of "approved agent", "arms instructor" and "range officer" to the Ordinance.

8. As regards clause 25(c), the Chairman said that the amendment would be considered in the context of the Administration's response to the proposal to empower the Commissioner to specify forms under the Ordinance, i.e. to replace "prescribed forms" by "specified forms".

9. With reference to clause 25(d), PAS(S)E said that the proposed addition of subsection (1A) to section 52 was a consequential amendment which sought

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to empower the Commissioner to make regulations in relation to the proposed addition of subsection (1)(a)(iia), (iib) and (iic) to section 52. Responding to the Chairman, PAS(S)E said that the regulations made by the Commissioner under section 52 were subsidiary legislation and were subject to the scrutiny of the Legislative Council.

Clause 26 - Transitional provisions

10. PAS(S)E said that clause 26 repealed the transitional provisions introduced upon the enactment of the previous legislative amendments.

11. The Chairman asked whether the proposed repeal of the transitional provisions would have any effect on the validity of those licences granted during the transitional period. In response, SP(Lic) said that as all licences were granted in accordance with the law, the proposed repeal of section 57 would have no bearing on their validity.

Clause 27 - Section added "58. Commissioner to specify forms"

12. PAS(S)E said that the new section 58 empowered the Commissioner to specify forms for the purpose of the principal Ordinance. As to whether the forms would be specified by means of a Gazette notice, PAS(S)E said that the Administration would consider members' views in this regard. Nevertheless, the design of the forms would take into account flexibility as well as transparency.

13. The Chairman said that the issue would be discussed later in the context of the proposal to replace "prescribed forms" by "specified forms".

Clause 28 - Interpretation (Summary Offences Ordinance)

14. PAS(S)E said that the amendment sought to provide a definition of "air gun" which was the same as the definition of "air gun" in the principal Ordinance (i.e. Cap 238).

Clause 29 - Nuisances committed in public places, etc. (Summary Offences Ordinance)

15. The Chairman enquired about the rationale for making it an offence of negligently discharged an air gun under the proposed new section 4(14A) of the Summary Offences Ordinance. PAS(S)E said that at present, low-powered air guns with a muzzle energy of not greater than two joules were not defined as arms and hence were 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 would be an offence under the Summary Offences Ordinance.

16. In response to Mr James TIEN's enquiry, PAS(S)E said that a minor was

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subject to the same criminal liability as an adult under the Bill. The Chairman remarked that adult and minor offenders should be dealt with differently. ACP(Sup) said that when a minor was involved in an offence, the Police would deal with the case with due care. As it was impossible to stipulate all possible scenarios in the legislation, it would be rested with the experience of the Police officers involved in those scenarios which were not spelt out explicitly in the legislation. The Police would seek legal advice if necessary. PAS(S)E pointed out that presently there was a Superintendent's Discretionary Scheme in place, under which minors would be cautioned by a Superintendent for minor offences and would not be prosecuted.

17. Members expressed divergent views on the proposal to make it an offence of negligently discharging an air gun to the danger or annoyance of any person. Mr James TIEN was of the view that having regard to its easy accessibility, the regulation of the use of air guns should be more stringent. The Chairman, however, considered that the proposal was too severe. He pointed out that it was a complicated issue in making a person criminally responsible for his act and hence it should be handled with caution in making such a decision. For instance, whether consenting adults participated in a war game would constitute an offence of knowingly discharged air guns to the danger or annoyance of any person. While appreciating the need to regulate the use of air guns, Miss CHOY So-yuk had reservations about whether negligently discharged an air gun should constitute an offence, in particular air guns might be discharged simply due to ignorance or by naughty children in some cases.

18. Assistant Commissioner of Police (Support) (ACP(Sup)) explained that the new subsection was proposed because there had been cases where persons discharging air guns knowingly or negligently, but the Police were unable to take actions as the air guns involved were having a muzzle energy of not greater than two joules. The participation of war games would not constitute an offence for the purpose of this provision. Should there be complaints made by the public about the use of air guns, the Police would assess the circumstantial evidence of each case in considering whether the act was in breach of the legislation. SP(Lic) pointed out that the new section 4(14A) should be construed in conjunction with the first sentence of section 4 (i.e. any person who without lawful authority or excuse ...). Hence, the discharge of air guns by consenting parties, regardless of whether knowingly or negligently discharged, should have lawful excuse for the purpose of the Ordinance. PAS(S)E added that in proposing the amendment, the Administration had to consider the sensible application of the provision from the enforcement angle.

19. The Chairman was of the view that knowingly discharged an air gun and negligently discharged an air gun should be dealt with separately. Miss CHOY So-yuk shared the Chairman's view. Whilst not opposing to impose punishment for the misuse of air guns, Miss CHOY considered that different penalties should be imposed for these acts. Otherwise, the penalty for a negligent act would be too severe. ACP(Sup) explained that the Administration

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had no intention to make a criminal record for the person who misused an air gun. However, negligently discharging an air gun had to be included in the legislation in order to draw the attention that some sorts of punishment would be imposed for the danger or annoyance caused to others if the negligence was serious. PAS(S)E said that the Administration understood members' concerns. It would examine the individual merits of each case in deciding whether a person discharged an air gun to the danger or annoyance of any person or he simply discharged an air gun carelessly.

20. The Chairman commented that the Administration had not given sufficient consideration to all possible scenarios in drafting the legislative amendments. Under the existing drafting, very trivial acts in connection with the use of air guns would be covered. He expressed doubt whether naughty behaviour committed by children should be treated as a criminal offence. He enquired whether the Administration would consider putting in place some administrative measures to deal with acts involving the misuse of air guns by naughty children. Mr MA Fung-kwok echoed the Chairman's view.

21. To alleviate members' concerns that naughty behaviour should not be covered under the Ordinance, the Chairman said that the Administration might consider deleting the term "annoyance" from the proposed new section 4(14A). Alternatively, the Administration might consider replacing "to the annoyance of person" by "to the destruction of property". Mr MA Fung-kwok said that "negligently discharged an air gun to the annoyance of any person" might be dealt with under other ordinances.

22. The Chairman further enquired whether the Police would consider charging a person for disorderly conduct or in breach of the peace when a person misused an air gun, instead of charging the person in question for negligently discharging an air gun. ACP(Sup) said that it was very difficult, if not impossible, to prove a disorderly conduct.

23. The Chairman suggested that the Administration might consider replacing "annoyance" by "reckless" having regard to the fact that members did not have a consensus as to whether "to the annoyance of any person" should be added to the Bill. Mr MA Fung-kwok supported the suggestion. PAS(S)E said that the Administration would further consider members' views and revert to the Bills Committee later.

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Consequential Amendments - Firearms and Ammunition (Declaration of Arms) Regulations

24. In response to the Chairman's enquiry, PAS(S)E said that the amendment removed from the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations the definitions of "air gun", "air pistol" and "air rifle" consequential upon the inclusion of those definitions in the principal Ordinance.

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25. Members raised no question on the amendment.

Firearms and Ammunition (Amendment) Regulation 1999

26. PAS(S)E said that the amendments to the Firearms and Ammunition (Amendment) Regulation 1999 were in line with the amendments to the principal Ordinance. Should members agree with the (Amendment) Regulation in principle, the Regulation would be introduced into the Legislative Council after the Bill coming into effect. Assistant Legal Adviser 4 (ALA4) pointed out that the Regulation was subject to the scrutiny of the Legislative Council even the Bills Committee supported it in principle.

Regulation 2 - Application for licences for possession and dealer's licence and Regulation 3 - Application for an exemption under s.4(3) or a licence under s.30

27. Responding to Miss CHOY So-yuk, PAS(S)E said that Regulation 2(1) to (4) were amended for the purpose of replacing the existing prescribed forms with new forms specified by the Commissioner.

Regulation 4 - Commissioner any require applicants and holders of licences and exemptions to undergo tests

28. The Chairman enquired about the rationale for repealing "safe" from the Regulation. SP(Lic) responded that according to an earlier legal advice, it was advised that as the emphasis of tests or examinations in the use of and handling of arms or ammunition was from the safety angle, there was no such need to specify "safety" in the Regulation. The Chairman disagreed with the rationale. He considered that the proposed repeal of safety from the Regulation might give rise to disputes over the legislative intent which might include consideration factors other than safety in undergoing tests or examinations in the use of and handling of arms or ammunition. He urged the Administration to reconsider the issue.

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Regulation 5 - Regulations added

"4A. Requirement to undergo other tests" and "4B. Criteria for shooting clubs to operate shooting ranges"

29. Referring to the proposed new Regulation 4B, the Chairman asked what the criteria were and whether the criteria were administrative requirements. PAS(S)E said that the Regulation was in line with the principal Ordinance which sought to supplement the application of the principal Ordinance in the interests of public safety.

30. The Chairman pointed out that the present drafting of the Regulation was similar to the wording of section 52 of the principal Ordinance which sought to empower the Commissioner to make Regulations. He considered that the

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Regulation should lay down more administrative details than the provisions in the principal Ordinance. Mr MA Fung-kwok shared the view.

31. ALA4 said that the Regulations might be further revised if the Administration acceded to members' concerns raised over some issues at previous meetings. He suggested to consider the Regulations at a later stage pending the Administration's response, if deemed necessary. Members agreed.

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32. The Chairman urged the Administration to take note of members' views when submitting the relevant Regulations for the scrutiny of the Legislative Council.

Matters arising

(LC Paper No. CB(2) 2226/98-99(01))

Nature of modified firearms

33. PAS(S)E said that as demonstrated by the forensic expert of the Police's Forensic Firearms Examination Bureau, it was technically feasible for a modified firearm capable of creating the required effect in a TV/film production to be reverted to discharge live ammunition. For the sake of public safety, the Administration maintained the view that there was a need to regulate the possession and use of modified firearms as other types of arms. However, the Administration would streamline the application procedures to facilitate the use of modified firearms for TV/film shooting as far as practicable. The proposed improvement measures were stipulated in para.6 of LC Paper No. CB(2) 2226/98-99(01).

Exemption permits for possession of modified firearms

34. Miss CHOY So-yuk's enquired about whether consideration would be given to allowing a TV/film producer or any specified person to apply and hold exemption permit on behalf of all actors for using modified firearms in a TV/film production. PAS(S)E responded that such an arrangement would give rise to considerable difficulties in taking enforcement action against the exemption permit holders or actors who actually possessed and used the modified firearms where there was a breach of the permit conditions of the exemption permit.

35. Miss CHOY So-yuk said that the TV/film industry had expressed their views on the difficulties for them to provide the number and details of the actors who would be involved in the handling of firearms in the production well beforehand. PAS(S)E reiterated that there was practical need for the Police to know who would actually use the modified firearms and whether they were fit and proper persons to do so. SP(Lic) supplemented that under the existing procedures, the Police Licensing Office could be able to issue a fresh exemption

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permit within one to two days upon being informed of a change of actors in a TV/film production. Mr MA Fung-kwok, however, pointed out that it was not uncommon that the TV/film producer was aware of a change of actors only on the spot, in particular when a large number of actors were involved in a shooting scene. Due to practical difficulties, the TV/film producer would not report to the Police on such a change for the purpose of exemption permit.

36. The Chairman suggested that the Administration should consider designating a person to hold exemption permit on behalf of all actors for using modified firearms in a TV/film production. Such a designated person would assume similar role and responsibility as a responsible officer of a shooting club or an arms instructor as defined in the Bill. Miss CHOY So-yuk and Mr MA Fung-kwok echoed the view. Mr MA Fung-kwok pointed out that modified firearms were in effect unable to discharge live ammunition. In addition, modified firearms were subject to periodic inspection. Thus, he expressed doubt on the need for such a strict regulation over the issue of exemption permits for actors using modified firearms in a TV/film production. Mr MA further said that the use of modified firearms in a TV/film production was similar to the use of firearms in a shooting club except that there was no fixed venue for the former. A filming location might be regarded as a mobile shooting range. He, therefore, considered that it was feasible to require a responsible officer from the arms dealer to station at a filming location and be held responsible for the use of modified firearms in the TV/film production. A TV/film producer might only need to specify the filming locations and the number of modified firearms to be used in a TV/film production when submitting application for exemption permit. The responsible officer from the arms dealer would be criminally liable if unauthorized persons were proved to have used the modified firearms in question. Miss CHOY So-yuk added that the designated person might keep record of the names and identity card numbers of the actors who used modified firearms in the TV/film production.

37. ACP(Sup) said that there was a need to place responsibility firmly on persons who held exemption permits to follow the requirements of exemption permits. Otherwise, according to the advice of the Department of Justice, it would be very difficult to prove who actually possessed the modified firearms when irregularities were spotted. Moreover, users of modified firearms would probably handle with less care if they would not be held responsible for the use of modified firearms. Hence, it was considered that the exemption permit system placed responsibility for using modified firearms on exact places where they were used.

38. The Chairman asked whether an arms instructor would be held responsible if a person, under his supervision, used firearms for unlawful activities. ACP(Sup) said that the proposed legislation enabled the Police to take action against the arm instructor in question. In the circumstance, the Chairman enquired about the feasibility of extending the application of the provision to the use of modified firearms in a TV/film production. SP(Lic)

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pointed out that in a shooting range, an arms instructor would usually supervise one to two users only. Whilst in a TV/film production, there might be over hundred of users concurrently.

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39. PAS(S)E pointed out that the use of firearms in a shooting club could not be compared with the use of modified firearms in a TV/film production on an equal footing. The operation of a shooting club was subject to stringent safety requirements in meeting the licensing requirements whereas no such prerequisite requirements for carrying out a TV/film production. Nevertheless, he agreed to consider members' suggestions.

II. Date of next meeting

40. The next meeting would be held on 14 June 1999 at 8:30 am.

41. The meeting ended at 4:40 pm.

Legislative Council Secretariat

6 October 1999