

立法會
Legislative Council

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the Administration)

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

**Minutes of meeting
held on Thursday, 13 May 1999 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Howard YOUNG, JP
Hon CHOY So-yuk

Members absent : Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon MA Fung-kwok
Hon Gary CHENG Kai-nam

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 to examine the Bill clause by clause

Clause 10 - Section substituted

The Chairman enquired about the reasons for proposing amendment to section 24 of the Firearms and Ammunition Ordinance (the Ordinance) (Cap.238) and the differences between section 24 of the Ordinance and clause 10 of the Bill. Principal Assistant Secretary for Security E (PAS(S)E) said that clause 10 sought to replace the existing presumption clause relating to the possession of arms, ammunition and imitation firearms. Its application would be much more limited than the existing provision. The proposed presumption clause was modelled on a similar provision in the Dangerous Drugs Ordinance, i.e. section 47 of the Dangerous Drugs Ordinance.

2. Mr Howard YOUNG wondered if the proposed presumption clause would be able to cover all possible scenario given its limited scope of application, for example, whether it was in breach of the Ordinance if firearms were left on a table. He expressed concern that the proposed amendment might give rise to loopholes in the legislation.

3. Assistant Legal Adviser 4 (ALA4) pointed out that in a Court of Appeal

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case, the Court had ruled that certain presumptions contained in the Dangerous Drugs Ordinance were inconsistent with the Hong Kong Bill of Rights Ordinance and declared the provision be repealed. In another High Court case, the Court held that section 24(1)(b) of the Firearms and Ammunition Ordinance was inconsistent with the Hong Kong Bill of Rights Ordinance and hence declared repealed. The proposed amendment was in line with the rulings of the Court. At the request of the Chairman, ALA4 agreed to provide copies of the two Court judgments in question.

(Post-meeting note : The two Court judgments were circulated to members under LC Paper No. CB(2) 1997/98-99 on 17 May 1999.)

Clause 11 - Licences in respect of arms and ammunition

Clause 11(a)

4. PAS(S)E said that under the existing legislation, the “prescribed forms” for licences for possession and dealer’s licences were stipulated in the Schedule to the Ordinance. It was a piece of subsidiary legislation as specified in section 52(1)(b) of the Ordinance. In the circumstances, even a minor textual amendment to the forms could only be made after obtaining consent from the Chief Executive in Council and was subject to the scrutiny of the Legislative Council. The arrangements were considered inflexible. It was therefore proposed under clause 27 of the Bill that the Commissioner of Police (the Commissioner) might specify forms for any purpose in the Ordinance to replace the “prescribed forms” so that changes could be made when necessary.

5. Miss CHOY So-yuk said that the trade was concerned that applicants were often asked to answer irrelevant questions when applying for a licence for possession of arms. The proposal to replace “prescribed forms” with “specified forms” would result in inconsistency in the issue of licences for possession of arms. Miss CHOY So-yuk and Mr Howard YOUNG considered that the trade’s concern was understandable.

6. At the invitation of Miss CHOY So-yuk, ALA4 said that it might not be technically feasible to spell out in the legislation that approval from the Chief Executive in Council was required only when substantive changes were proposed to "prescribed forms". The Administration might consider making an undertaking in the Secretary for Security's speech during the resumption of the Second Reading debate of the Bill that the relevant Panel would be consulted before introducing any major changes to the forms.

7. PAS(S)E pointed out that “prescribed forms” for application of licences for possession and dealer's licences were indeed repealed in 1994. The

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Administration was considering members' suggestions raised at previous meetings that all information required for application to be spelt out either in the form of subsidiary legislation or a Gazette notice in order to address the problem of inconsistency in issuing licences for possession of firearms. A new application form for possession of firearms was being designed by the Police Licensing Office. The Administration would revert to the Bills Committee later.

8. The Chairman expressed concern about the validity of approval granted for the possession of firearms after 1994 having regard to the fact that all the application forms in the Schedule to the Ordinance were repealed in 1994. He urged the Administration to consider the legal basis of the forms in question.

9. In response to Miss CHOY So-yuk, PAS(S)E said that under the current drafting convention, forms were increasingly being specified administratively instead of being prescribed as subsidiary legislation. It was in line with the Administration's policy of removing as many prescribed forms as possible from the statute book of Hong Kong. The replacement of "prescribed forms" by "specified forms" could provide the Administration with the flexibility required to meet the operational requirements.

10. Mr Howard YOUNG suggested that in considering whether the new application form for possession of firearms should be subsidiary legislation, reference be made to application forms prescribed under other ordinances to ensure a consistent approach.

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11. To alleviate the possible concerns about the uncertainty arising from the proposed "specified forms", Miss CHOY So-yuk suggested that the Administration should consider spelling out explicitly the scope of information required when applying for a licence for possession of arms. She did not have strong views as to whether "specified forms" should be subsidiary legislation. PAS(S)E said that the Administration would consider the suggestion.

12. The Chairman considered that any amendments to the forms under the Ordinance would be regarded as substantial change. Thus, he strongly requested the Administration to consider setting out that changes to the content of the forms under the Ordinance would be subject to the scrutiny by the Legislative Council. The Legislative Council would strike a balance as to whether an amendment was considered unnecessary.

Adm

13. PAS(S)E said that the Administration would revert to the Bills Committee later having regard to members' views.

Clause 11(c)

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14. The Chairman considered that the amendment was acceptable as it sought to empower the Commissioner to keep a register in respect of each type of licences granted by him.

Adm

15. Miss CHOY So-yuk expressed concern that the Commissioner might request an applicant for possession of firearms to answer irrelevant questions for the purpose of keeping his register. PAS(S)E took note of Miss CHOY's concern.

Clause 12 - Section added "27A. Additional conditions in respect of shooting clubs"

16. PAS(S)E said that clause 12 sought to enhance the regulation over shooting clubs by empowering the Commissioner 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. The responsible officer would be defined in the Ordinance.

Adm

17. Responding to the Chairman, PAS(S)E said that the proposed new section 27A(2)(a) to (d) laid down the scope for imposing additional terms and conditions on shooting clubs. Superintendent (Licensing) (SP(Lic)) illustrated the additional terms and conditions that might be imposed on the possession licence, such as the introduction of range orders, the proper transportation of arms and ammunition from the armoury to the range, etc. Such conditions were generally applicable to all shooting clubs. Specified conditions might be laid down to meet the specific operational requirements in respect of individual shooting clubs. At the request of the Chairman, SP(Lic) agreed to provide a copy of the existing conditions attached to a licence for possession for shooting clubs for members' information.

18. Referring to the proposed new section 27A(2)(a) and (d), Miss CHOY So-yuk said that the proposed additional conditions were too vague. In response, SP(Lic) explained that any additional conditions and terms proposed for the purpose of regulating the conduct of the shooting club must be in relation to the possession and use of arms and ammunition. PAS(S)E added that the proposed new section 27A sought to provide a reasonable scope for imposing additional conditions in respect of shooting clubs. Should any person be aggrieved by the decision of the Commissioner, he might lodge an appeal to the Administrative Appeals Board. The Chairman agreed that it was difficult, if not impossible, to exhaust all the conditions and terms that could be attached to a licence for possession of firearms in the Bill. Hence, the setting up an appeal channel could provide a check and balance.

19. To avoid the possibility of imposing unknown conditions on a possession licence under the proposed new section 27A, the Chairman enquired whether the

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Administration would confine the additional terms and conditions to those conditions spelt out in the proposed new section 27A(2)(a) to (d). As to whether any undefined conditions were unreasonable, it would be subject to the decision of the Administrative Appeals Board. In response, PAS(S)E said that the legislation sought to provide a mechanism for the Commissioner to enforce the regulation over shooting clubs. Enforcement actions would be carried out after taking into account the merits of individual cases. It would result in a lack of flexibility should the legislation be drafted in a strict sense. The establishment of the Administrative Appeals Board could be able to provide a check and balance mechanism.

20. While agreeing with the Administration's view that the drafting of legislation should not be too strict, the Chairman said that the issue on whether a defined scope could facilitate the Administrative Appeals Board to make a decision might be further discussed at a later stage. Members agreed.

Clause 13 - Effect of licence for possession

21. Referring to the amendment to add "type," before "class", Senior Assistant Law Draftsman (SALD) explained that "type" was more specific than "class" from the drafting point of view.

22. As regards clause 13(b), members agreed to defer the discussion pending the Administration's response to the concerns raised by members about the proposal to empower the Commissioner to specify forms under the Ordinance.

Clause 14 - Section substituted "29. Effect of dealer's licence"

23. PAS(S)E said that the provision sought to empower the Commissioner to authorize a specific person to deal in arms or ammunition in places approved by the Commissioner in relation to a particular case subject to the terms and conditions he might impose.

24. Responding to Miss CHOY So-yuk, PAS(S)E said that approval from the Commissioner for the use of modified firearms for TV/film shooting in a place or places had to be obtained on a case-by-case basis. SP(Lic) said that such applications were free of charge. Whilst for actors involved in the handling of modified firearms in a TV/film production, they were required to obtain exemption permits. SP(Lic) added that under the existing practice, the film producers would notify the Police Public Relations Branch of the filming location at least three days before using modified firearms in a TV/film production.

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

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25. PAS(S)E said that the amendment sought 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 was the case now.

26. Members raised no question on the amendment.

Clause 16 - Renewal of licences

27. PAS(S)E said that the proposed addition of subsection (2) to section 32 of the Ordinance provided that the Commissioner might renew a licence on such conditions as he thought fit including a restriction on the number and type of arms and the quantity and type of ammunition. Under the existing legislation, the Commissioner could either approve or reject a renewal application, but not to amend a licence.

28. The Chairman asked whether, when processing an application for a renewal of licence, the Commissioner could take the opportunity to amend the scope of the licence. SP(Lic) said that the provision empowered the Commissioner to amend the terms and conditions imposed on a licensee. At the invitation of the Chairman, ALA4 pointed out that the amendment proposed that "a licence renewed may be subject to such terms and conditions *as the Commissioner thinks fit*". In the circumstance, the Commissioner might impose more stringent conditions or vice versa. SALD shared the view with ALA4. She said that the Commissioner might impose the same, additional or less stringent conditions when renewing a licence.

29. As regards the amendment to section 32(1), the Chairman said that the discussion would be deferred pending the Administration's response to the concerns raised by members about the proposal to empower the Commissioner to specify forms. Members agreed.

Clause 17 - Cancellation etc. of licence

30. PAS(S)E pointed out that the amendment was to tie in with clause 16 which empowered the Commissioner to amend a licence.

31. The Chairman considered that the cancellation of a licence by the Commissioner was a drastic process. He expressed concern about the proposal to give the Commissioner the power to amend the licence without qualifying such power. Hence, the Commissioner might at least be required to act reasonably in the interest of public order.

32. Assistant Commissioner (Support) (ACP(Sup)) pointed out that the Commissioner was required to act reasonably in accordance with the

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Interpretation and General Clauses Ordinance (Cap.1). Under the existing Ordinance, the Commissioner was empowered to cancel a licence at anytime. Such arrangement had not given rise to any problem so far. In addition, any person who was aggrieved by the Commissioner's decision to amend the licence could appeal to the Administrative Appeals Board.

33. Miss CHOY So-yuk shared the Chairman's view that the Administration should have specified the terms in respect of the Commissioner's power to amend a licence. She considered that the Administration should avoid relying on litigation to resolve any disputes in connection with licence renewal.

34. ALA4 pointed out that ACP(Sup) was referring to section 41 of Cap.1. He supplemented the common law interpretation of "act reasonably" with a Canadian Court case. In the case, the Court held that the discretion enjoyed by the authority to cancel any permit necessarily implied good faith in discharging public duty. He further said that though it was preferably to put some criteria in the provision, the question might be postponed until the Administration reverted back to the Bills Committee concerning the point. Members agreed.

35. The Chairman said that notwithstanding the above concerns, members supported the proposal to empower the Commissioner to amend a licence.

Clause 18 - Applicant or licensee to be notified of decision of Commissioner

36. PAS(S)E said that the clause amended section 34 to require the Commissioner to inform an applicant or a licensee in writing of his decision and the reasons for the decision. SP(Lic) added that the amendment to section 34(2) sought to enable a licensee to retain his licence when making an appeal to the Administrative Appeals Board.

37. In response to the Chairman, SP(Lic) said that under the existing section 34(1A), a statement of the reasons for every decision of the Commissioner must be provided to an applicant or a licensee when he refused to grant or renew a licence.

Clause 19 - Appeals

38. PAS(S)E said that amendments to section 35(1) were consequential amendments to section 34. The amendments to section 35(2) removed the existing provision that if an appeal was intended to be brought from a decision of the Commissioner to revoke a licence, the obligation to surrender the licence did not arise.

39. The Chairman said that under section 35(2), there might be an indefinite

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period between receiving notice of the decision to reject an application and intending to bring an appeal. The Administration's proposal would address the loophole. However, a licensee might not be able to make an appeal under section 35 once his existing licence expired even if he intended to do so. If it was the Administration's intention that an appeal must be brought within 28 days as required under section 35(1), the Administration should limit the intention to bring an appeal within a specified period. When an appeal was brought within the specified period e.g. a number of days after receiving the notice of decision, a licensee did not need to surrender his licence. ALA4 said that it was viable to specify in the legislation that if an appeal was brought within a specified period after the notice was given, the obligation to surrender a licence did not arise. The Chairman requested and PAS(S)E agreed to consider his view.

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Clause 20 - Commissioner to be notified of transactions etc. and
Clause 21 - Dealers to record particulars of all transactions

40. Members agreed to defer the discussion pending the Administration's response to the concerns raised by members about the proposal to empower the Commissioner to specify forms.

Clause 22 - Storage of arms, ammunition and imitation firearms by
Commissioner

41. Members raised no question on the amendment.

Clause 23 - Sections added

New section 46A. Armouries

42. PAS(S)E said that the new section sought to empower the Commissioner to approve an enclosed area as an armoury for the safe storage of arms and ammunition.

43. In response to the Chairman's enquiry, SP(Lic) said that no licence was required for an armoury.

44. The Chairman expressed doubt about the legal effect of the Commissioner's approval given that there was no licensing requirement for armouries. Mr Howard YOUNG remarked that the Commissioner should take into account the actual need in approving armouries. In response, SP(Lic) said that the new section sought to facilitate the storage of arms and ammunition. As a result of the proposed addition of the definition of armoury to the Ordinance, the Commissioner ought to be empowered to approve an enclosed area as an armoury. Under the existing arrangement, the storage areas in

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respect of arms and ammunition were specified in the respective possession licences. A licensee was required to seek fresh approval from the Police Licensing Office if he wish to keep his arms and ammunition in an area which was not specified in his possession licence. He pointed out that after the coming into effect of the Bill, a licensee would be allowed to store arms and ammunition in any approved armouries. Thus, a licensee would no longer have to submit fresh application for a change in storage area in respect of his arms and ammunition.

New section 46B. Shooting ranges

45. PAS(S)E said that the proposed new section 46B gave the Commissioner the power to approve a place or premises as a shooting range for the purpose of the proposed addition of the definition of shooting range to the Ordinance.

New section 46C. Range officers

46. PAS(S)E said that the proposed new section 46C empowered the Commissioner to approve a person as a range officer who conducted and supervised the use of a shooting range for the purpose of the proposed addition of the definition of range officer to the Ordinance.

47. The Chairman pointed out that the arms dealers and the film/TV industry had expressed concerns in their earlier submissions about the assessment and appointment of arms instructors and range officers by the Police. They were of the view that the arms trainers of the Police Force might not have the relevant training and professional knowledge to assess the suitability of a person to be appointed as an authorized arms instructor or a range officer as the use of firearms or modified firearms for sporting/recreational activities or TV/film production was different from the training received by the Police.

48. SP(Lic) responded that the emphasis of the assessment was on the safety aspect in the use of firearms. The shooting experience of and the qualifications obtained by the candidates in the shooting field would also be taken into account in assessing their suitability. The standard of assessment would be made known to the candidates.

49. The Chairman said that to alleviate the concerns of the trade, the Administration might consider spelling out explicitly in the new section 46C(1) that only the safety aspect in the use of firearms would be assessed. Mr Howard YOUNG and Miss CHOY So-yuk echoed the view. PAS(S)E said that the Administration would take note of members views.

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II. Date of next meeting

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50. The next meeting would be held on 28 May 1999 at 10:45 am.

(Post-meeting note : The next meeting was re-scheduled to 8 June 1999 at 2:30 pm.)

51. The meeting ended at 10:40 am.

Legislative Council Secretariat

6 October 1999