

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Tuesday, 14 September 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon MA Fung-kwok
Hon Gary CHENG Kai-nam
Hon Howard YOUNG, JP
Hon CHOY So-yuk

Public Officers attending : Security Bureau

Miss Eliza YAU
Principal Assistant Secretary for Security E

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

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

Proposed Committee Stage Amendments
(LC Paper No. CB(2) 2770/98-99(01))

Principal Assistant Secretary for Security E (PAS(S)E) said that on the basis of discussions at previous Bills Committee meetings, the Administration proposed to make amendments to the Firearms and Ammunition (Amendment) Bill 1999 (the Bill) mainly to address members' concerns raised at the meetings. She then took members through the proposed Committee Stage amendments (CSAs) as set out in items (a) to (h) of paragraph 2 of the Administration's information paper (LC Paper No. CB(2) 2770/98-99(01)).

Power to specify application forms (para. 2(a))

2. Referring to paragraph 2(a) of the information paper, the Chairman said that all application forms under the Firearms and Ammunition Ordinance (Cap. 238) (the Ordinance) would be specified by the Commissioner of Police (CP) by publication in the Gazette. In other words, amendments to the application forms would not be subject to the approval by the Legislative Council. Members raised no question on the proposal.

Licensing criteria (para. 2(b))

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3. PAS(S)E said that the criteria taken into account by CP when examining an application for a licence/renewal of a licence or considering cancellation of a licence as well as the appointment of an authorized arms instructor, an approved agent or a range officer as stipulated in paragraph 2(b) of the information paper would be effected through amendments to clauses 6(c), 7, 11, 16(c), 17 and 23 of the Bill.
4. Referring to the proposed amendments to clause 6(c), the Chairman said that the factor to be considered by CP in processing an application for a licence under the proposed section 12(5A), i.e. whether there were any objections in terms of public safety and security was already very wide. He asked whether it was necessary to empower CP to consider any other matter.
5. PAS(S)E responded that under the existing legislation, authorized arms instructors were not subject to licence requirement for the possession of arms or ammunition. The drafting of clause 6(c) was to provide flexibility for the Police to have regard to some unforeseeable factors in future, particularly when arms instructors were required to obtain authorization under the Bill.
6. Assistant Commissioner of Police (Support) (ACP(Sup)) said that it was necessary to retain the phrase "any other matter that CP might reasonably take into consideration" in processing an application. The major concern was not to open a loophole in the legislation which would require subsequent amendments to the legislation. He pointed out that under the proposed section 12(5A), CP must examine the suitability of an applicant in terms of the two criteria. The provision of "any other matter that CP might reasonably take into consideration" aimed to cater for other circumstances, e.g. environmental issues, land lease, etc. which were not covered under the proposed sections 12(5A)(a) and (b).
7. Senior Assistant Legal Draftsman (SALD) supplemented that under the proposed section 12(5A), CP would be obliged to consider the criteria listed in sub-sections (a) and (b) in processing an application for a possession licence. He would have a discretion to take into consideration other reasonable matter he considered relevant.
8. The Chairman said that the criterion in respect of whether the applicant was a fit and proper person was a personal consideration factor and the criterion as to whether there were any objections in terms of public safety and security could be regarded as physical factor other than the personal factor. Thus, there was no question of any other matter not being considered by CP from both the personal and physical angles. Should the Administration maintain that there was a need to include the phrase in question in proposed section 12(5A), the Chairman suggested that the scope of "any other matter" should be clearly spelt out.
9. Mr James TIEN echoed the Chairman's suggestion. He said that CP was

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empowered to process all types of applications, however it appeared that under no circumstances the decision of CP could be challenged. He asked whether an appeal against the decision of CP could be lodged.

10. Assistant Secretary for Security (AS(S)) responded that it was very difficult, if not impossible, for the Police to draw up a list exhausting all the criteria in considering applications for licences for possession of arms and ammunition. Having consulted the Department of Justice, the phrase "reasonably take into consideration" was proposed to be added. An applicant could lodge complaint with the Administrative Appeal Board (AAB) should he be aggrieved by the decision of CP in rejecting his application. It would rest with AAB to decide whether CP had reasonably considered all the relevant factors in examining an application for a licence/renewal of a licence.

11. Mr James TIEN expressed concern whether the Administration would take the opportunity to reduce the number of licensees by rejecting the applications for licence renewal so as to tie in with its policy to discourage the participation of shooting activity in Hong Kong. PAS(S)E clarified that the Administration had no intention to hamper the development of shooting activity. The major factor taken into account by CP in considering an application for a licence for the possession of arms and ammunition was from the public safety angle.

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12. To allay members' concerns, PAS(S)E suggested to replace "any other matter" with "any other relevant matter" in clause 6(c) concerning the criteria that CP would take into account when considering application for a licence for the possession of arms and ammunition. Similar amendments would be made to clauses 7, 11, 16(c), 17 and 23 of the Bill. Whilst agreeing that the proposals would improve the drafting, the Chairman said that he reserved his position on this point.

13. Referring to the proposed amendments to clause 11 of the Bill, the Chairman enquired about the reasons for adding "whether there was good reason for the applicant to hold a licence" as a factor to be considered in processing an application for a possession licence. AS(S) explained that the Police would have to consider whether the applicant had a need for holding a licence for the possession of arms or firearms. The provision was applicable to arms dealers and members of shooting clubs. She said that having an interest in shooting activity would be regarded as a good reason for an application of a possession licence. On the question as to whether the possession of firearms for collection purpose would be regarded as a good reason for holding a licence, AS(S) said that the licensees would be encouraged to deactivate the firearms in question. Deactivated firearms were subject to the regulation of section 4(3) of the Ordinance. The Chairman requested the Administration to mention in its speech during the resumption of the Second Reading debate of the Bill that interest in shooting would be considered as a good reason.

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14. Referring to the amendments proposed to clause 17 of the Bill, the Chairman said that the present drafting was ambiguous about the onus of proof. It was not clear whether it was rested with the licensee to prove that his licence should not be revoked or the approving authority to prove that the licensee was no longer suitable for holding a licence. ACP(Sup) explained that in considering revocation of a licence, there might be information to suggest that the circumstances of a licensee had changed. After investigation of the matter, a decision would be made. The licensee would be informed of the decision and the reasons for revoking his licence. Mr Howard YOUNG asked whether proposed section 33(3)(b) should read as "whether there is good reason for that person *not* to hold a licence;" as it concerned a revocation of a licence. SALD agreed that the suggestion would make clearer the meaning of the provision. Amendment would be made accordingly.

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Function of a range officer (para. 2(c))

15. PAS(S)E said that the Administration proposed to expressly stipulate in the proposed section 46C(a) that the major function of a range officer was to ensure the safe use of a shooting range having regard to members' concerns raised at the previous meetings. Members raised no question on the proposed amendment.

Regulation of modified firearms (para. 2(f))

16. PAS(S)E said that the Administration intended to introduce a new permit system for the use of modified firearms for TV/film shooting which was an improvement of the existing system. Under the existing system, actors were required to apply for exemption permits for the use of modified firearms for each TV/film production. Having regard to the views expressed by the trade and the discussions at the previous meetings, the Administration proposed a new system, under which a blanket approval for the use of modified firearms would be given for a specified period, say, one year. Hence, actors were no longer required to apply for the exemption permits for each production. The film industry had been consulted about the proposed new permit system through Mr MA Fung-kwok. Although the trade expressed dissatisfaction about the new proposal, the Administration was of the view that the proposed regulation over the modified firearms was the bare minimum and the new licensing system would be able to strike a proper balance between the concern about public safety and the interests of the film industry.

17. Mr MA Fung-kwok said that the trade objected in principle to the exemption permit system. The trade considered that the exemption permit system discriminated against the TV/film industry and was unfair to them. He pointed out that under the existing legislation, any person could use real firearms in approved ranges under the supervision of authorized arms instructors without the need to

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obtain a licence for the possession of arms or ammunition. Whilst for TV/film shooting, an actor was required to obtain an exemption permit to use modified firearms in a TV/film production. The trade also disagreed with the argument that the use of modified firearms for TV/film shooting was more prone to accidents as it was not confined to approved ranges and was not possible for the authorized arms instructors to closely supervise the users, i.e. the actors. In addition, the trade expressed doubts about how and the extent to which users of modified firearms would be held responsible for the actual use of the modified firearms as actors used modified firearms during TV/film shooting simply according to the instruction of the TV/film director.

18. AS(S) responded 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. She pointed out that the use of firearms in a shooting club was confined to approved ranges and was closely supervised by authorized arms instructors. The maximum manning ratio between an authorized arms instructor and firearms users in an approved range was one to three whereas there was no such restriction for TV/film shooting. When shooting, all arms could be pointed at one direction only. On the contrary, it was not uncommon that the targets for TV/film shooting were moving objects instead of a fixed one in an approved range. The use of modified firearms in TV/film shooting was thus more prone to accidents. There was a genuine need to regulate the use of modified firearms for the sake of the safety of the users and other people in the vicinity. As regards the question on the responsibility of a user of modified firearms, AS(S) said that it was proposed that the users were required to apply for exemption permits so that they would be held responsible for the actual use of the modified firearms. Safety conditions in respect of the use of modified firearms would be attached to the exemption permits. The arms dealers would be held responsible for the safety standard and proper functioning of the modified firearms being used during TV/film shooting.

19. Mr MA Fung-kwok pointed out that it was an established practice in the TV/film productions that an authorized arms instructor would supervise no more than five users concurrently. He commented that the Administration had shown less confidence on the use of modified firearms by professional actors than the use of real firearms by an inexperienced member of a shooting club.

20. ACP(Sup) said that as demonstrated by the Police's forensic expert at previous meetings, modified firearms could be reverted back to genuine firearms easily. Having regard to the fact that there were a large number of modified firearms in use in the TV/film industry, it was unrealistic for arms dealers to be held responsible for the use of modified firearms in TV/film shooting because of their potential danger to other people in the vicinity and the possible loss of modified firearms. The Administration considered that it was necessary to ensure that modified firearms were under control and they would not be used by unauthorized persons.

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21. Miss CHOY So-yuk enquired about the criminal liability of an actor if an accident occurred when he used a modified firearm in a film shooting under the instruction of the film director. AS(S) responded that the legislative intent was to hold an actor responsible only if he used the modified firearms negligently.

22. Miss CHOY So-yuk asked whether the Administration would consider spelling out clearly its legislative intent in the legislation. PAS(S)E said that the proposed new permit system under new clause 3A was dealing with exemption permits instead of the liability of respective users of modified firearms. Generally speaking, an actor who used modified firearms during TV/film shooting would be held responsible for his act same as what was expected of a reasonable man would have acted in similar circumstances.

23. Mr MA Fung-kwok commented that the Administration's concern about the possible loss of modified firearms used for TV/film shooting would also occur in a shooting club. PAS(S)E responded that in the light of the membership system of a shooting club, any irregularities occurred in a range could be traced. Should users of modified firearms be exempted from holding licences/permits, the Police could not trace who had actually used the modified firearms in the event of an accident occurred. Mr MA Fung-kwok disagreed with the Administration's rationale. He said that under the existing practice, a film producer would keep record of the users of modified firearms in a film production.

24. Mr MA Fung-kwok pointed out that there were practical difficulties in implementing the Administration's proposed new permit system. The film production plan would have to be aborted if one of the actors forgot to bring along his exemption permit to the filming location. He suggested that the Administration might consider requesting the arms dealers or arms instructors to assume more responsibilities in TV/film shooting.

25. Superintendent (Licensing) (SP(Lic)) responded that the Police were aware of the practical difficulties encountered by the trade. Under the new system, CP would issue exemption permits to give a blanket approval to the actors for the use of modified firearms that were received from a licensed arms dealer for TV/film shooting under the instruction of an authorized arms instructor during a specified period. The notification requirement of the filming dates and locations would be taken up by the arms dealers under the new permit system. He said that the proposed regulation over the modified firearms under the new permit system was the bare minimum.

26. The Chairman considered that the new permit system was workable. He saw no reason why actors could not be able to comply with the proposed requirement of bringing along the exemption permits to filming locations. He agreed with the need to trace who had actually used the modified firearms and

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when such firearms were used.

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27. The Chairman suggested that the criteria that CP would consider when processing an application for or considering cancellation of new exemption permits for the use of modified firearms for TV/film shooting should be added to new clause 3A(6) in line with the amendments proposed to clauses 6(c), 7, 16(c), 17 and 23.

Possession by carriers, their agents or employees (para. 2(h))

28. Responding to members' enquiry, PAS(S)E said that clause 4B provided for a carrier, and his agent or employees to be exempted from the need to hold a licence for the possession of arms or ammunition that they were entrusted by a licensee or his approved agent to transport from one place to another in the presence of the licensee or the approved agent.

29. Members raised no question on the other proposed CSAs.

Matters arising - Administration's response to submissions
(LC Paper No. CB(2) 2770/98-99(02))

Inspection of modified firearms

30. AS(S) said that due to normal wear and tear, improper use or lack of proper maintenance, a modified firearm might become out of order. The modification might also become ineffective. The Administration maintained the view that there was a genuine need to inspect modified firearms on a regular basis so as to ensure the safety of the users and other people in the vicinity. The Police would set a performance pledge to complete an inspection of a modified firearm within a week. The performance pledge was set on the assumption that all modified firearms would be delivered in different batches according to a staggered schedule that would be worked out in consultation with the arms dealers concerned.

31. Responding to Mr CHENG Kai-nam, AS(S) clarified that the performance target did not mean that the Police's Forensic Firearms Examination Bureau could only complete one inspection within a week.

Replacement of "prescribed forms" by "specified forms"

32. Responding to the trade's concern that all applications for the possession of arms and ammunition should be processed within a reasonable time, AS(S) said that according to the Police's performance pledge, it would take about 28 working days to process an application for a possession licence provided that all required information had been submitted.

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Cancellation and refusal to renew a licence

33. AS(S) said that according to the existing legislation, the Police had to notify a licensee in writing if it had decided to cancel or refuse to renew his licence. Responding to the Chairman, AS(S) said that CP was required under section 34(1A) of the Ordinance to do so.

34. In response to the Chairman, SP(Lic) said that the Police would explain clearly to the licensees why their licences were cancelled or not renewed, e.g. the licensee was physically unfit, had left Hong Kong for a long period of time, etc.

Regulation of shooting clubs

35. AS(S) said that the regulation of shooting clubs was to ensure their safety standard. A safe environment for the shooting participants through the control, which in turn would facilitate the long-term development of the sport.

Testing of licensees, arms instructors and range officers

36. AS(S) said that the primary objective of the tests was to ensure safety in shooting ranges. The emphasis of the assessment was on the safety aspect in the use of firearms instead of the skills in getting high scores. She stressed that the Police officers who were responsible for conducting the tests in question were working under the Police's Weapons Training Division. All of them were qualified and experienced weapon trainers and had the professional knowledge about different types of arms.

37. The Chairman enquired about the qualifications of the Police officers who were responsible for conducting the tests. SP(Lic) said that the Police had provided on the job training to these Police officers. In addition, they had attended overseas training courses to keep abreast of their knowledge about different types of arms. ACP(Sup) added that there were no internationally recognized qualifications in respect of range officers. He pointed out that the Police had adopted the best available practice from overseas organizations when establishing the Police's Weapons Training Division. Moreover, the Police had constantly sent Police officers to attend overseas training courses with a view to providing training to other Police officers locally. All the Police officers working in the Weapons Training Division were full time teaching staff and were well versed with a huge variety of weapons. At the Chairman's request, ACP(Sup) agreed to provide information on the qualifications of the Police officers in the Weapons Training Division, if available.

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38. The Chairman said that the Concern Group had expressed concern that the Police might refuse to issue a licence when the test involved a new model of

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firearm because of a lack of professional knowledge on the firearm in question. ACP(Sup) responded that although not every Police officer was capable of handling all sorts of weapons, each Police officer was specialized in certain aspects. He believed that there should be no weapons in Hong Kong being used in shooting ranges would pose difficulties for the Police's Weapons Training Division in respect of their use.

39. Responding to Mr MA Fung-kwok, ACP(Sup) said that the syllabus of the tests would be made known to the candidates, but no model answers would be provided.

Proposed amendment to Summary Offences Ordinance (Cap.228)

40. AS(S) said that the Department of Justice had been consulted on the proposal to replace "negligently" with "recklessly" in the proposed new section 4(14A) in respect of making "knowingly or negligently discharged an air gun to the danger or annoyance of any person" an offence under Cap.228. The Department of Justice advised that to prosecute a person for "recklessly discharging an air gun", the Administration had to prove that the person failed to give any thought to the consequences or he decided to do it even if he was aware of the consequences. It was very difficult to bring about prosecution under such provision. On the contrary, in order to find someone "negligently discharging an air gun", it was required to prove that the action fell below the standard reasonably expected of a reasonable man would have done. In the circumstances, the Administration was of the view that the original proposal should be retained.

41. At the invitation of the Chairman, Assistant Legal Adviser 4 (ALA4) said that the "reasonableness" test inherent in the proposed provision was comparatively lax than the "recklessness" test as proposed by members. The adoption of respective tests would depend very much on the policy intent.

42. ALA4 said that consideration might be given to applying the concept of "gross negligence". SALD responded that there appeared to be not much differences between "recklessness" and "gross negligence". Nevertheless, she agreed to revert to the Bills Committee on this point later.

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II. Date of next meeting

43. The next meeting would be scheduled for 21 September 1999 at 10:45 am.

44. The meeting ended at 4:35 pm.

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Legislative Council Secretariat
20 December 1999