

立法會
Legislative Council

LC Paper No. CB(2) 938/99-00

(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, 21 September 1999 at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon David CHU Yu-lin
Hon MA Fung-kwok
Hon Howard YOUNG, JP

Members absent : Hon James TIEN Pei-chun, JP
Hon Gary CHENG Kai-nam
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)

Department of Justice

Mrs N DISSANAYAKE
Senior Assistant Law Draftsman

Miss 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

Proposed amendments to the draft Committee Stage Amendments

The Chairman drew members' attention that the Administration had revised the proposed Committee Stage Amendments (CSAs) based on the discussion at the last meeting held on 14 September 1999. He then took members through the revised draft CSAs (annex to LC Paper No. CB(2) 2858/98-99(01)). Members raised no question on the revised CSAs.

Proposed amendment to the Summary Offences Ordinance (Cap.228)

2. Principal Assistant Secretary for Security E (PAS(S)E) said that the Department of Justice had been consulted on the application of the concept of "gross negligence" in the proposed new section 4(14A) of Cap.228. The Department of Justice advised that there were no major differences between the concepts of "negligence" and "gross negligence" when applied to the civil proceedings. Both referred to a situation where one failed to exercise the standard of care that a reasonable person in his position would have exercised. In relation to the criminal responsibility arising from negligence, the term "gross negligence" was normally used to denote the very high degree of negligence or recklessness that was required to establish the criminal responsibility. It was rarely used in areas other than homicide offences. Hence, the Administration considered that no further amendment to the provision was necessary.

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3. The Chairman said that most of the cases in relation to negligently discharging air guns were committed by naughty children participated in a war game rather than knowingly discharged air guns by consenting adults. In such cases, it would be more useful to educate the naughty children so that they would not commit similar acts again instead of making them criminally responsible for their acts. He remarked that holding a naughty child criminally responsible for his act was an uncommon punishment found in the statute book. He had reservation about the proposal in order not to make a precedent for making a person criminally responsible for his negligent act.

4. SALD pointed out that negligence was in fact a criminal offence under sections 4(8) and 4(14) of Cap.228. ACP(Sup) added that the new subsection 14A was proposed because there had been cases where persons discharged 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, which was not regulated under the existing legislation.

5. While appreciating the Administration's concerns in proposing the new subsection 14A, the Chairman said that he could not accept the proposal to make a person criminally responsible simply because of he negligently discharged an air gun. He considered that such an act should be dealt with under civil proceedings.

Testing of licensees, arms instructors and range officers

6. ACP(Sup) said that the Licence Team of the Police's Weapons Training Division consisted of one Inspector and two Sergeants. All of them were experienced Police officers. They had completed the arms instructor courses organized by the Police Force and had conducted firearms training in the Force. The Team was directly supervised by a Superintendent who had qualifications which were recognized in the US and the UK and had completed a number of arms instructors and range management courses conducted in the US and the UK. All of the Police officers concerned were not members of any shooting clubs in Hong Kong in order to avoid any possible conflict of interests in performing their duties. He said that the Force was confident that all of the officers in the Licence Team possessed the necessary knowledge and skills to conduct the tests in question.

7. While agreeing with the need to test the suitability of a person before appointing him as an arms instructor or a range officer, the Chairman said that the Police should continue to enhance the qualifications and knowledge of the Police officers in the Licence Team as they were required to conduct tests to assess the suitability of applicants who were indeed experienced firearms users.

Further submission from the "二三八關注組"

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(LC Paper No. CB(2) 2851/98-99(01))

8. Referring to the submission from the "二三八關注組" (the Concern Group), the Chairman enquired about the existing practices in respect of limited licences for transportation of arms and ammunition.

9. PAS(S)E responded that it was important from the public security point of view that the Commissioner of Police (CP) to know the route and timing of transport of arms or ammunition in Hong Kong. She pointed out that under section 30 of the Firearms and Ammunition Ordinance (Cap.238) (the Ordinance), a limited licence had to be obtained from the Police for the transport of arms and ammunition within Hong Kong.

10. ACP(Sup) said that there was a need for the Police to exercise control and to monitor the movement of arms and ammunition in Hong Kong as such movement was considered to have potential danger to public safety. Although the definition of "deal in" in section 2 of the Ordinance included, amongst others, transport, the Administration was of the view that section 2 should be construed with sections 29 and 30 of the Ordinance. He agreed that there was a lack of clarity in respect of limited licence required of dealers in the transport of arms and ammunition in Hong Kong. In the view of the Police, a limited licence should be required for the case quoted by the Concern Group in its submission.

11. Responding to the Chairman, PAS(S)E said that although a dealer's licence allowed the licensee to "deal in" which included transportation of arms or ammunition, it was expressly provided under section 29 of the Ordinance that the licensee could only deal in places approved by CP. In addition, section 30 of the Ordinance expressly provided that a limited licence was required for conveying arms and ammunition or removal from Hong Kong. Should members have doubts about the interpretation of sections 2, 29 and 30 in respect of the need for a limited licence for the transport of arms or ammunition, the Administration could make technical amendments to the Bill to clarify the doubts.

12. At the invitation of the Chairman, Assistant Legal Adviser 4 said that under the existing legislation, a licensee was required to apply for a limited licence for the transport of arms or ammunition.

13. Responding to the Chairman, ACP(Sup) said that a limited licence for transport of arms or ammunition would be issued within two working days.

14. The Chairman agreed with the Administration's interpretation in respect of the need for a limited licence in addition to a dealer's licence. He said that exemption under new section 12B was a relaxation of the requirement for limited licence.

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Legislative timetable

15. The meeting agreed that the Bills Committee would report its deliberations to the House Committee at its meeting to be held on 15 October 1999. The Bill would resume its Second Reading debate at the Council meeting on 27 October 1999.

(Post-meeting note : The Bills Committee had deferred submitting its report to the House Committee pending the Administration's response to further views submitted by the TV/film industry.)

16. There being no other business, the meeting ended at 11:35 am.

Legislative Council Secretariat
20 December 1999