

立法會
Legislative Council

LC Paper No. CB(2) 1293/99-00
(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, 25 January 2000 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 David CHU Yu-lin
Hon MA Fung-kwok
Hon Howard YOUNG, JP

Members absent : Hon Gary CHENG Kai-nam
Hon CHOY So-yuk

Public Officers attending : Security Bureau

Mr Raymond WONG
Deputy 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

Ms CHAI Chih-hui, Rayne
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

Action

I. Confirmation of minutes of meetings held on 14 and 21 September 1999

The minutes of meetings held on 14 and 21 September 1999 were confirmed.

II. Meeting with the Administration
(LC Paper No. CB(2)941/99-00(01))

Regulation of modified firearms for TV/film shooting

2. Deputy Secretary for Security (DS(S)) said that the Administration had examined in depth the proposal put forward by the film industry to ask the arms dealers instead of the actors to assume full responsibility for the security of the modified firearms used in a TV/film production. The Department of Justice had advised that the film industry's proposal was not feasible as it might infringe the right to presumption of innocence if the arms dealers were imposed strict liability for the security of the modified firearms. In addition, an arms dealer did not have the capability to examine and decide whether each actor concerned was fit and proper to possess and use modified firearms. The proposal was considered unreasonable and hence unenforceable.

3. With regard to the new permit system proposed by the Administration, DS(S) said that the Police could vet the users of modified firearms in advance to ensure that they were fit and proper to possess and use modified firearms. The permits would also impose both legal and moral obligations on the holders for

Action

using the modified firearms with due care. In the case of a loss of modified firearms during TV/film shooting, it would be easier for the Police to trace them according to the "users records" kept by the arms dealers if only persons with valid permits were allowed to use the firearms. The Administration was of the view that the permit system provided an effective tool for the Police to exercise necessary control over the possession and use of modified firearms for TV/film shooting. Having regard to the views from the industry, the Administration intended to allow more flexibility for both actors and TV/film producers under the new system bearing in mind the concern about public safety and security. To enhance the transparency of the permit system, the Administration proposed to provide applicants with the criteria which the Commissioner of Police (CP) would take into account in considering applications for exemption permits, namely, whether the applicant was a fit and proper person; and whether there was a legitimate need.

4. Mr MA Fung-kwok said that the film industry expressed objection to the Administration's proposal. Notwithstanding that a list of approving criteria would provide the industry with a clearer idea of the factors taken into account in considering applications for exemption permits, the industry considered that the criteria discriminated against those actors with criminal records. In addition, the film industry maintained the view that modified firearms posed no danger to the public safety and security.

5. DS(S) responded that given there were over 1 000 modified firearms being used by the TV/film industry and that such firearms could be reverted to genuine firearms, the Administration was of the view that there was a genuine need to regulate the use of modified firearms under a permit system so as to ensure the safety of users and other people in the vicinity. He stressed that the Administration had no intention to discriminate against those who had criminal records when considering applications for exemption permits. While fully aware of the industry's concern, he said that the proposed regulation over the modified firearms was the bare minimum and new permit system would be able to strike a proper balance between the concern about public safety and the interests of the film industry.

6. Referring to approving criteria, the Chairman opined that the factors taken into account by the Police in considering whether the application for an exemption permit made by a person who had criminal record were in general less stringent as compared with those under other ordinances, e.g. the Security and Guarding Services Ordinance.

7. Mr MA Fung-kwok said that the major concern of the film industry was that a list of persons who were not eligible for exemption permits would be drawn up by the industry. Consequently, those actors had their names on the list would not be able to participate in TV/film shooting. The industry considered that the arrangement was too harsh as an actor used modified firearms during TV/film shooting simply according to the instruction of the director. They expressed

Action

doubt as to whether the risk level in using modified firearms was so high that it warranted a stringent regulation. Mr MA stressed that the safe use of modified firearms during TV/film shooting was safeguarded.

8. Mr David CHU said that the film industry's concern was understandable. Given that the major concern of the safe use of modified firearms was about its reversibility and the provision of a trail for the Police in the case of loss, Mr CHU suggested that the Administration should consider requiring the arms dealers to hold responsible for the daily inventory taking of their modified firearms. The proposed requirement could safeguard public safety as well as address the industry's concern.

9. DS(S) responded that the Administration had explored the feasibility of the proposal and found that it was difficult to impose strict liability on arms dealers for the loss of modified firearms. The adoption of a permit system would impose obligations on the holders for using the modified firearms with due care. In addition, the possibility for a person to procure spare parts of firearms by mail order and then assemble the parts into a genuine firearm should not be overlooked having regard to a recent court case about illegal possession of firearms. Given the reversibility of modified firearms, it was necessary to ensure that modified firearms were under control and they would not be used by unauthorized persons.

10. Mr MA Fung-kwok disagreed with the Administration's argument on the need to regulate the use of modified firearms during TV/film shooting. He saw no reason why the possibility of losing a firearm used for TV/film shooting would be higher than that used in a shooting club. He said that the Administration failed to address the different arrangements for firearms users in the shooting clubs and that for TV/film shooting. Under the new legislation, any person, including a criminal record holder, could use real firearms in approved ranges under the supervision of authorized arms instructors without the need to obtain a licence for the possession of arms and ammunition. Whilst for TV/film shooting, an actor was required to obtain an exemption permit and that a person with criminal record might not be issued with an exemption permit. The film industry requested the Administration to seriously consider asking the arms dealer instead of the actors to assume full responsibility for the security of the modified firearms used in a TV/film production.

11. DS(S) responded that the use of firearms in a licensed shooting club could not be compared with the use of modified firearms in a TV/film production on an equal footing. He pointed out that the operation of a shooting club was subject to stringent licensing conditions. When shooting, all arms could be pointed at the targets only. For a non-licensee, he was confined to use firearms in a shooting club to approved ranges under the supervision of authorized arms instructors. In the light of the membership system of a shooting club, any irregularities occurred in a range could be traced. Whilst for the use of modified firearms in TV/film shooting, it was not uncommon that the targets for TV/film shooting were moving objects instead of a fixed one in an approved range. In addition, the arms dealers

Action

might not be able to keep a close watch on individual modified firearms users during TV/film shooting in the light of the numerous users concurrently.

12. The Chairman said that he preferred that the use of firearms in a shooting club by a non-licensee would also be subject to the prior vetting of the Police.

13. Mr MA Fung-kwok stressed that the film industry did not object to the introduction of the new permit system, instead it had strong objection that the criminal record of an applicant would be a factor for considering whether an applicant was a fit and proper person. The film industry held strong view that this factor was discriminatory in nature and unreasonable. They considered that whether "the applicant is a fit and proper person" should be excluded from the criteria for considering an application for an exemption permit. The criteria adopted by a film producer to assess whether an actor was a fit and proper person for a particular production were different from those adopted by the Police. The proposal would result in a radical change in the current practice in the film industry and hence the industry considered that the permit system should be introduced for identification purpose, i.e. who was in use of modified firearms, and facilitating the Police to trace lost modified firearms during TV/film shooting.

14. DS(S) clarified that the fit and proper test in respect of the application for an exemption permit for the possession of modified firearms by individual actors was already contained in the existing legislation. The proposal to provide applicants with the criteria that CP would take into account in considering applications for exemption permits was to enable the industry to have a clearer idea on the criteria to be adopted for issuing exemption permits.

15. The Chairman pointed out that criminal record of an applicant as a factor for considering permit application was also found in other licensing regimes.

16. In the light of the serious concern expressed by the film industry, Mr MA Fung-kwok suggested to delete "the applicant was a fit and proper person" from the criteria that CP would take into account in considering applications for exemption permits. Mr David CHU echoed Mr MA's proposal. The Chairman, Messrs Howard YOUNG and James TIEN opposed the suggestion.

Additional Committee Stage amendments (CSAs) to be moved by the Administration

17. Members raised no questions on CSAs proposed in paragraphs 10 and 11 of the Administration's information paper.

18. In response to the Chairman, Assistant Secretary for Security said that the following technical amendments were proposed to be moved to the Firearms and Ammunition (Amendment) Bill 1999 (the Bill) -

Action

- (a) an amendment was proposed to clause 3 of the Bill so as to delete the amendment concerning the reference to the Urban Council in section 3(b) of the Firearms and Ammunition Ordinance (the Ordinance) following the enactment of the Provision of Municipal Services (Reorganization) Ordinance; and
- (b) a consequential amendment was proposed to the Schedule to the Administrative Appeals Board Ordinance as the Bill sought to extend the right to appeal to the Board under section 35 of the Ordinance.

Further submissions from the film industry

19. The Chairman informed the meeting that three further submissions from the film industry had been received which were tabled for members' reference.

20. Referring to the submission from the Props Co. Ltd., Mr MA Fung-kwok drew members' attention to the experience of the company which cast doubt on the capability of the Forensic Firearms Examination Bureau of the Police (FFEB) to inspect modified firearms, in particular new model firearms. He explained that the company had used a new method to modify firearms for a film shooting in accordance with the instruction of FFEB. However, accidents occurred when the modified firearms were used in a film shooting. Consequently, FFEB requested the company to use the old method to re-modify the firearms. It posed danger on the modified firearms users. The film industry therefore maintained the view that the training and professional knowledge of the experts in FFEB were different from that required by the industry. Mr MA Fung-kwok questioned the authority of the Police to revise the modification requirements.

21. Assistant Commissioner of Police (Support) ACP(Sup) responded that he did not have ready information on the quoted case. As a general rule, FFEB would consult the industry when a new modification method was put in place. The Chairman suggested and the Administration agreed to provide a written response on the above case.

Adm

22. In response to Mr Howard YOUNG, ACP(Sup) said that a set of revised guidelines on firearms modification had been issued and circulated to the industry in November 1999 after consulting the industry.

23. The Chairman said that individual complaint cases could be followed up via the redress system of the Legislative Council, if deemed necessary. DS(S) said that should a person be aggrieved by the decision of FFEB, he could make an appeal to the Administrative Appeal Board provided under the Ordinance. In addition, FFEB would meet periodically with the industry to improve the mutual understanding between the industry and the Police over the regulation of modified firearms.

24. Mr MA Fung-kwok reiterated that the TV/film industry considered that the

Action

proposed regulation of modified firearms would stifle the development of the industry. They urged that the regulation of modified firearms should be put under the Information Technology and Broadcasting Bureau which had a better understanding of the TV/film industry. Mr MA said that reference could be made to the regulation of the use of explosive in TV/film production which was now under the purview of the Film Services Office.

25. DS(S) pointed out that given that the firearms experts were in the Police Force, the Administration had no intention to change the current mode of operation in respect of the application for use of modified firearms. Moreover, the Administration had made reference to overseas experience and found that the regulation of arms and ammunition, including modified firearms, was under the purview of the law enforcement agencies.

26. Mr Howard YOUNG disagreed with the proposal to regulate the use of modified firearms under the purview of another bureau having regard to the need for regulating the use of modified firearms from the public safety angle.

Legislative timetable

27. Members agreed that the Bills Committee would report its deliberations to the House Committee at the meeting on 11 February 2000, recommending that the Bill would resume its Second Reading debate at the Council meeting on 23 February 2000. The deadline for giving notice to CSAs would be 14 February 2000.

28. There being no other business, the meeting ended at 3:45 pm.

Legislative Council Secretariat
11 February 2000