

Bills Committee on
Firearms and Ammunition (Amendment) Bill 1999

Use of modified firearms for TV/film shooting and additional
Committee Stage Amendments to be moved by the Administration

I. Purpose

This paper informs members of a proposal to further improve the permit system for the use of modified firearms for TV/film shooting and additional Committee Stage Amendments (CSA) that the Administration proposes to move.

II. Use of modified firearms for TV/film shooting

Background

2. Under the existing legislation, any person who needs to use modified firearms for TV/film shooting is required to obtain an exemption permit issued by the Commissioner of Police (CP). At the Bills Committee meeting held on 14 September 1999, we proposed a new permit system for the use of modified firearms for TV/film shooting so as to obviate the need for a TV/film producer to submit the actors' applications for the required exemption permits for each production.

Under the new system, a blanket approval will be given to permit holders (i.e. the actors) for the use of modified firearms for TV/film shooting for one year. Unlike the existing system, actors are no longer required to apply for exemption permits for each TV/film production. Instead, an actor who may have to use modified firearms in the course of TV/film productions may apply for an exemption permit from CP at any time.

3. The film industry is not fully satisfied with the proposed system. At a meeting with some of their representatives in October 1999, we undertook to examine the feasibility of asking the arms dealers instead of the actors to assume full responsibility for the security of the modified firearms used in a TV/film production.

Assessment of the film industry's proposal

4. We have examined the suggestion in depth with the Department of Justice and the Police. The Department of Justice has advised that imposing strict liability on the arms dealers for the security of the modified firearms might infringe the right to presumption of innocence. In addition, as an arms dealer does not have the capability to examine and decide whether each actor involved is fit and proper to possess and use the modified firearms, we cannot impose a licensing condition to request the dealer to take full care of the firearms even when they are being used by the actors and be held responsible if any of the firearms is lost. Such a condition is considered unreasonable and hence may not be enforceable. According to the legal advice, it is also very

difficult to fix criminal responsibility for the acts of the actors, who actually possess and use the firearms, upon the arms dealers.

5. In addition, the Police have strong objection to replacing the permit system because it can facilitate them to regulate the possession and use of modified firearms in the following ways -

- (a) the permit system enables the Police to vet the persons who are going to possess and use the modified firearms in advance to ensure that they are fit and proper for such purpose;
- (b) the permits will impose both legal and moral obligations on the holders for using the modified firearms with due care; and
- (c) when firearms are lost during TV/film shooting, it will be easier for the Police to trace them according to the “users records” kept by the arms dealer if only persons with valid permits are allowed to use the firearms.

6. We also have reservation on the effectiveness of the film industry’s suggestion. Firstly, arms dealers do not have access to information (e.g. criminal records) that can enable them to decide whether a person is fit and proper to possess and use modified firearms. Hence, even a “Wanted Person” may be employed and has a chance to get

hold of modified firearms. In addition, without a permit system, even if an arms dealer, as suggested, keeps “users records” and passes them to the Police afterwards, it does not serve much purpose if any of the modified firearms is lost after use. This is because it will be difficult for the dealer to verify the identity of a person before passing the modified firearms to him (e.g. the identity card shown may be a stolen or fake document).

Administration’s proposal

7. The Administration is concerned that modified firearms for TV/film shooting might get into the wrong hands for illicit purposes and that they are not being used in a safe and proper way. On the other hand, we fully appreciate the desire of the film industry to have a system that will cause them minimum inconvenience. We have endeavored to work out a proposal that can address our concern on public safety and security as well as the interests of the film industry.

8. The permit system provides an effective tool for the Police to exercise necessary control over the possession and use of modified firearms for TV/film shooting. Compared with the existing permit system, the new system that we proposed at the meeting in September 1999 would allow more flexibility for both actors and TV/film producers. To enhance the transparency of the system, we now propose to provide applicants with a list of criteria that the Commissioner of Police will take into account in considering applications for exemption permits. A copy

of the list is at Annex A. This will enable the industry to have a clearer idea on criteria to be adopted for issuing the exemption permits. We hope that this will alleviate the film industry's concern.

III. Additional CSAs to be moved by the Administration

9. In addition to the CSAs that were submitted for members' consideration at the meeting on 21 September 1999, we intend to move additional CSAs to implement proposals as explained in the ensuing paragraphs.

10. At the Bills Committee meeting on 14 September 1999, we proposed to move a CSA to extend the exemption from licensing requirement for possession of arms and ammunition in transit under section 8 of the Firearms and Ammunition Ordinance (Cap.238) to cover the scenario under which the cargo needs to be transferred from one vessel or aircraft to another vessel or aircraft in the course of transit in Hong Kong. The conditions are that the cargo should remain on board the second vessel or aircraft at all times when it is in Hong Kong and advance notice has been given to the Police before the transfer.

11. To make the system more flexible, we propose to revise the conditions so that the exemption will apply no matter the cargo remains on board the vessel or aircraft in which it is brought into Hong Kong or on the vessel or aircraft in which it is to be transported out of Hong Kong at all times while the arms or ammunition are in Hong Kong. Advance

notice will need to be given to the Police. In addition, we suggest waiving the notification requirement for air-to-air transshipment cargo provided that the cargo remains on board the first or the second aircraft at all times while the arms or ammunition are in Hong Kong or is stored at a location designated for such purpose by the Commissioner of Customs and Excise in the restricted area of the Airport.

12. We are also going to move the following CSAs that are technical in nature -

- (a) to delete the amendment concerning the reference to the Urban Council in section 3(b) of Cap.238 subsequent to the enactment of the Provision of Municipal Services Ordinance (Clause 3 of the Bill); and
- (b) to amend the Schedule to the Administrative Appeals Board Ordinance (Cap.442) as we have extended the right to appeal to the Board under section 35 of Cap.238 to cover applications for the issue of licences and exemption permits and the appointment of arms instructors, range officers or agents under the Ordinance.

The CSAs in question and a relevant extract of Cap. 238 are at Annex B and C respectively.

Security Bureau

January 2000
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**Exemption Permit for Use of Modified Firearms
in TV/Film Production**

An exemption permit for use of modified firearms in TV/Film production will be granted if the Commissioner of Police is satisfied that:

- (a) the applicant is a fit and proper person; and
- (b) there is a legitimate need.

2. In considering whether an applicant is a fit and proper person, the Commissioner of Police will consider whether the applicant has any criminal record. When considering an applicant's criminal record, the following will be taken into account:

- (a) a conviction, which did not result in a period of detention or imprisonment of more than 12 months and in respect of which a period of 10 year has lapsed between the date of conviction and the date of application, will be disregarded;
- (b) for convictions which are not disregarded by virtue of paragraph (a) above, the following matters will be considered before a decision is taken as to whether the conviction should be disregarded:
 - (i) whether the conviction is taken as 'spent' under the Rehabilitation of Offenders Ordinance, Cap. 297;
 - (ii) the nature of the offence;
 - (iii) the age of the applicant at the time of commission of the offence;
 - (iv) the punishment awarded by court; and
 - (v) whether the applicant has any other conviction records.

FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999

ADDITIONAL COMMITTEE STAGE AMENDMENTS

<u>Clause</u>	<u>Amendment Proposed</u>
3	By deleting paragraph (a).
New	By adding - “4A. Possession of arms and ammunition in transit Section 8 is amended - (a) By renumbering it as section 8(1); (b) by adding - “(2) Sections 13 and 14 do not apply to the possession of or dealing in arms or ammunition by a person whose possession or dealing is limited to arms or ammunition - (a) which are brought into Hong Kong on board - (i) a vessel to be transported as cargo to some other place in another vessel or aircraft; or (ii) an aircraft to be transported as cargo to some other place in a vessel, if -

- (A) the arms or ammunition are recorded as cargo in the manifest of the vessel or aircraft in which they are brought into Hong Kong and the manifest of the vessel or aircraft in which they are transported out of Hong Kong; and
- (B) the arms or ammunition remain on board either the vessel or aircraft in which they are brought into Hong Kong or the vessel or aircraft in which they are to be transported out of Hong Kong, at all times except during the transfer to that vessel or aircraft while the arms or ammunition are in Hong Kong; and
- (C) the Commissioner is given notice before the arms or ammunition are transferred to the vessel or aircraft in which they are to be transported out of Hong Kong, of the particulars of the arms or ammunition and the date, time and place of arrival in Hong Kong of the vessel or aircraft in which they are brought into Hong Kong and the date, time and place of departure from Hong Kong of the vessel or aircraft in which they are to be transported out of

Hong Kong; or

(b) which are brought into Hong Kong on board an aircraft (“the first aircraft”) to be transported as cargo to some other place in another aircraft (“the second aircraft”), if -

(i) the arms or ammunition are recorded as cargo in the manifest of the first aircraft and the manifest of the second aircraft; and

(ii) the arms or ammunition -

(A) remain on board either the first aircraft or the second aircraft at all times except during the transfer to the second aircraft while the arms or ammunition are in Hong Kong; or

(B) are transferred from the first aircraft to a place of storage designated for the purpose by the Commissioner of Customs and Excise in the restricted area, within the meaning of section 2 of the Aviation Security Ordinance (Cap. 494), and remain there until they are transferred to the second

aircraft to be transported
out of Hong Kong.”.

New By adding -

**”Administrative Appeals Board
Ordinance**

31. Schedule amended

Item 14 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended in column 3 by adding -

- “(d) A decision of the Commissioner referred to in section 34 (1AA).

- (e) The imposition of a term or condition under section 4(3) or (4), 12(4), 12A(3), 27A(1), 29 or 46C(2), which is considered to be unreasonable.”.”.

BLIS ON
INTERNET

Annex C

Section of Enactment

Chapter: 238	Title: FIREARMS AND AMMUNITION ORDINANCE	Gazette Number: L.N. 362 of 1997
Section: 3	Heading: Possession on behalf of the Crown etc.	Version Date: 01/07/1997

PART II

APPLICATION

Sections 13 and 14 do not apply to the possession of, or dealing in, arms or ammunition by any person- (a) on behalf of Her Majesty's Government, including possession by an officer or member of any of Her Majesty's Force who is in possession of or deals in the arms or ammunition in his capacity as such; or (b) on behalf of the Government of Hong Kong or the Urban Council, including possession by an officer or member of any of the following in his capacity as such-

- (i) (Repealed 20 of 1997 s. 25);
 - (ii) the Government Flying Service; (Amended 54 of 1992 s. 19)
 - (iii) the Hong Kong Police Force; (Amended L.N. 362 of 1997)
 - (iv) the Hong Kong Auxiliary Police Force; (Amended L.N. 362 of 1997)
 - (v) the Customs and Excise Service;
 - (vi) the Correctional Services Department; (Amended L.N. 30 of 1982)
 - (vii) the Independent Commission Against Corruption.
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Section of Enactment

Chapter: 238 Title: FIREARMS AND Gazette Number:
AMMUNITION ORDINANCE
Section: 35 Heading: Appeals Version Date: 30/06/1997

(1) Any person-

(a) who is aggrieved by a decision of the Commissioner made in respect of him to refuse a licence or a renewal thereof or to cancel a licence or to exercise any power under section 33(1) or to refuse to amend a licence under section 33(2); or

(b) to whom a licence or a renewal of a licence is granted subject to any condition which he considers unreasonable,

may, within 28 days after receiving notice of the decision, appeal to the Administrative Appeals Board. (Replaced 6 of 1994 s. 48)

(2) If an appeal is brought or intended to be brought under subsection (1) the obligation under section 34(2) to surrender or deliver a licence to the Commissioner shall not arise until-

(a) the expiry of the period of 28 days specified in subsection (1); or

(b) the appeal is disposed of, withdrawn or abandoned, whichever is the later. (Amended 6 of 1994 s. 48)
