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

Purpose

This paper reports on the deliberations of the Bills Committee on Firearms and Ammunition (Amendment) Bill 1999 (the Bill).

Background

2. The use of firearms for recreational and sporting purpose in Hong Kong has become more popular over the years. The number of shooting clubs had increased from 13 in 1988 to 20 in October 1998 and the number of licences and exemption permits issued for possession of arms had also increased from 894 in 1988 to 1 793 in October 1998. With the proliferation of shooting clubs, there is increasing concern that their possession and use of firearms should be strictly regulated. An inter-departmental Working Group, comprising representatives of the then Security Branch, the Police, Customs and Excise Department, Trade Department, Post Office and Civil Engineering Department, was formed in 1995 to review the licensing policy under the Firearms and Ammunition Ordinance. It recommended that the regulation of shooting clubs, arms licences holders, arms dealers, air guns, deactivated firearms and the use of modified firearms for TV/film production should be tightened to safeguard public safety.

3. The Firearms and Ammunition (Amendment) Bill 1996 ("the 1996 Bill") was introduced into the then Legislative Council (LegCo) on 3 April 1996. Most of the proposals in the 1996 Bill were similar to those in the Bill. The House Committee of the then LegCo decided to form a Bills Committee to study the 1996 Bill. The 1996 Bill lapsed after the 1996/97 legislative session as the then LegCo did not have time to scrutinise the Bill.

The Bill

4. The Bill seeks to tighten the existing statutory controls on the possession and use of arms and ammunition to safeguard public safety.

The Bills Committee

5. At the meeting of the House Committee on 29 January 1999, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon James TO Kun-sun, the Bills Committee held 11 meetings with the Administration. The Committee has also met representatives of two deputations : “二三八關注組” and “全港影視製作用槍械經營人”.

Deliberations of the Bills Committee

7. The major issues and concerns discussed by the Bills Committee are summarized below.

Regulation of shooting clubs

8. Under the Firearms and Ammunition Ordinance (Cap. 238) (the Ordinance), the licence for a shooting club is held by a responsible officer of a shooting club. However, there is no clear definition of “responsible officer” who holds the licence for the possession of arms and ammunition on behalf of a club. The Bill proposes to define in the Ordinance “responsible officer” as the one who is personally responsible for the management of the club. Tighter licence conditions will be imposed to regulate the conduct of shooting clubs in their possession and use of arms and ammunition and the running of their range, armoury or other facilities to ensure adequate safety standards. In addition, a member of a shooting club will be required to complete a course on handling of arms before he can use the club’s arms and ammunition if he does not himself hold a possession licence for that particular type of arms and ammunition. Any instruction on the use of arms and ammunition must be conducted by a licensee or his approved agent who has been authorized by the Commissioner of Police (CP) to give such instructions.

9. Some members express concern about the impact of the proposed regulatory measures on the development of the shooting sport in Hong Kong. The Administration considers that the proposed regulatory measures are reasonable and practicable. It is conscious of the need to ensure that the new licensing conditions would strike the right balance between safeguarding public safety and not stifling the development of shooting sport. After the enactment of the Bill, the Administration will, during the one-year transitional period, liaise further with the shooting clubs to ensure that the new licensing

conditions are practicable. The Administration stresses that it needs to take a proactive approach to tighten the regulation of possession and use of firearms.

10. On the proposal to empower CP to impose additional conditions on the possession licence issued to a responsible officer of a shooting club, the Administration has explained that any additional conditions and terms imposed for the purpose of regulating the conduct of the shooting club must be in relation to the possession and use of arms and ammunition. Specified conditions may be imposed on individual shooting clubs to meet specific operational requirements of the clubs in question. Any person aggrieved by the decision of CP may appeal to the Administrative Appeals Board.

Assessment and appointment of arms instructors and range officers

11. The Bill proposes that only a licensee or his agent who is approved by CP for instructing others in the use of firearms may give such instruction. The Bill also proposes to empower CP to approve a person as a range officer who conducts and supervises the use of a shooting range. Members point out that arms shooting is divided into different categories which are unique in nature. They question whether the arms trainers of the Police Force have the relevant training and professional knowledge to assess the suitability of a person to be appointed as an arms instructor or a range officer.

12. The Administration has explained that at present, any holder of a licence for possession of arms may instruct others on the use of arms and ammunition. They are not required to possess any specific qualifications or experience or to obtain any form of approval from the licensing authority. The Administration considers it important that the licensing authority be empowered to determine the suitability of a person to be appointed as an arms instructor or a range officer to ensure safety. The Administration has advised that Police officers in the Police's Weapons Training Division are responsible for conducting the testings in question. They are qualified and experienced weapon trainers and have the professional knowledge of different types of arms. Moreover, the emphasis of the assessment is on the safety aspect in the use of firearms. The shooting experience and qualification of the candidates in the shooting field will be made known to the candidates. The Administration considers it unsatisfactory from the safety point of view if the testings are conducted by individual shooting clubs as the standard of assessment can vary significantly.

13. Members consider that the criteria under which CP may revoke an authorization of an arms instructor and an approval for a range officer should be spelt out in the Bill. The Administration has agreed to move Committee Stage amendments (CSAs) to the effect that when considering the applications for the appointment of an arms instructor, a range officer or an agent, CP will consider whether the applicant is a fit and proper person to take up the appointment and whether there are any objections in terms of public safety and security. For the purpose of clarity, the Administration would move a CSA to spell out that the major function of a range officer is to ensure the safe use of a shooting range.

Application for, renewal, cancellation and amendment of licences

14. Members have expressed concern that the lack of criteria in considering applications for licences for possession of arms and ammunition, including dealer's licence has resulted in inconsistencies in the issue of licences.

15. The Administration has explained that in processing an application for a licence and renewal of a licence, and in considering the cancellation of a licence, CP will consider whether the applicant is a fit and proper person, whether he has a good reason to hold the licence and whether there are any objections in terms of public safety and security. Other relevant factors such as criminal record, storage facilities for the firearms, his experience and training in the use of firearms and his involvement in the shooting activities for recreational and sporting purposes would also be considered. To address members' concerns, the Administration has agreed to move CSAs to spell out the considerations of the Police when making such decisions. At members' request, the Administration has undertaken to mention in its speech during the resumption of the Second Reading debate that interest in shooting would be considered as a good reason.

16. On the proposal to give CP the power to amend a licence, the Administration has explained that under the existing legislation, CP is empowered to cancel a licence and vary or revoke any condition attached thereto or add any further condition. The proposal to empower CP to amend a licence would allow CP the necessary flexibility in regulating the possession of and dealing in arms and ammunition in the interest of public safety and security. CP would take into account all relevant factors before making a decision. Any person who is aggrieved by the CP's decision to amend the licence could appeal to the Administrative Appeals Board under section 35 of the Ordinance.

Power to specify application forms

17. Under the existing Ordinance, all application forms are prescribed in the regulations. The Bill proposes to empower CP to specify forms for the purpose of the Ordinance. The "specified forms" will not be subsidiary legislation. Members question the need to replace "prescribed forms" with "specified forms". They point out the trade's concern that the proposed replacement by "specified forms" would result in inconsistencies in the issue of licence for possession of arms and ammunition. Applicants are often asked to answer irrelevant questions. They consider that the information which applicants are required to furnish should be standardized so that the applicants can know what is required of them.

18. The Administration has explained that all forms in the First Schedule to the Firearms and Ammunition Regulations were repealed in 1994 and replaced by "specified forms" approved by the CP. The introduction of the "specified forms" was intended to streamline the operation of the licensing system and improve the standard of service provided to applicants. The proposed replacement of "prescribed forms" by

"specified forms" can provide the Administration the flexibility required to meet operational needs. The Police Licensing Office has completed reviewing the "specified forms" now in use with a view to including all the information which applicants are required to provide.

19. To address members' concerns about the proposal to empower CP to specify forms and the uncertainty arising from the proposed "specified forms", the Administration has agreed to move CSAs to the effect that all application forms under the Ordinance will be specified by CP by publication in the Gazette. These forms will not be subsidiary legislation. The general licensing criteria will be set out in the information note for each type of licence and exemption for applicants' reference.

Surrender of licences

20. Members have pointed out that a licensee may not be able to make an appeal under section 35 once his existing licence expires. It may take some time for the licensee to seek legal advice or to collate information and documents to support the appeal. Under the Bill, if an appeal is not yet brought (even if the appeal is brought later), the licensee is still required to surrender the licence under section 34.

21. To address the situation, the Administration has agreed to move CSAs to the effect that the obligation to surrender the licence under section 34(2) will arise on the expiry of 28 days from the date of the revocation or after the appeal is disposed of if an appeal is brought within the 28 days.

Limited licence issued under section 30

22. Under the existing legislation, a licensed arms dealer is allowed to deal in arms and ammunition by way of trade or business only at the premises specified in the licence. A dealer has to apply for a limited licence under section 30 if he is required by CP to transport the arms and/or ammunition to Police's Forensic Firearms Examination Bureau (FFEB) for inspection. In the same way, a licensee or a permit holder is required to apply for such limited licence if he is required by CP to submit the arms or ammunition to which the licence or permit relates, to a designated place for testing. To waive these unnecessary licensing requirements, the Administration would move CSAs to allow such transport without obtaining a limited licence.

23. One of the deputations has suggested waiving the need for a limited licence for conveying arms or ammunition by a licensed arm dealer/shooting club to another licensed arms dealer/shooting club. Instead, the arms dealers or "responsible persons" of shooting clubs should only be required to notify the Police on the transportation date. The Administration considers that such arrangements would weaken the existing control over the movement of arms or ammunition, which is very important from the public safety point of view.

Possession of arms and ammunition in transit

24. The Administration proposes to extend the exemption from the licensing requirement for possession of arms and ammunition in transit to cover the situation where 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 exemption will apply provided that the cargo remains on board either 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 except during the transfer to that vessel or aircraft while the arms or ammunition are in Hong Kong. Advance notice will need to be given to the Police. The Administration also proposes to waive 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. The relevant CSAs would be made by the Administration.

Control of modified firearms for TV/film production

Definition of "arms"

25. Some members are of the view that as modified firearms used for television (TV) or film production can only fire blank ammunition to produce sound and visual effects, they should not be subject to the stringent controls as genuine firearms. They have suggested that the control of modified firearms use for TV/film production should be relaxed by removing it from the definition of "arms" under the Ordinance.

26. The Administration has explained that under section 2(4) of the Ordinance, an article which would otherwise be within the definition of "arms" shall not be excluded therefrom by reason of the fact that it is defective or out of repair. Irrespective of whether a firearm is modified for TV/film shooting purpose or deactivated for decorative purpose, it is still within the meaning of "arms" under the Ordinance. The Administration has pointed out that these modified or deactivated firearms can easily be reverted to function like genuine firearms. It is technically feasible for a modified firearm capable of creating the required effect in a TV/film production to be reverted to discharge like ammunition. It is therefore necessary to regulate the possession and use of modified firearms as other types of arms for the sake of public safety. The proposed removal of modified firearms used for TV/film shooting from the definition of "arms" would weaken the existing control over the possession and use of firearms in Hong Kong.

Regular inspection of modified firearms

27. Members question the need for modified firearms used in TV/film productions to be submitted to the licensing authority for regular inspection since such firearms had

been inspected when they were first submitted for approval. They express concern that the proposed regular inspection may interrupt the normal business of the arms dealers.

28. The Administration has explained that under the existing system, all modified firearms are inspected by FFEb only before they are first used. However, due to normal wear and tear, improper use or lack of proper maintenance, a modified firearm may become out of order or ineffective. There is therefore a genuine need to inspect these modified firearms on a regular basis to ensure the safety of users and other people in the vicinity. In addition, regular inspection can ensure that the firearms are modified properly as approved by FFEb during their first inspection. It is proposed that each modified firearm will be inspected at an interval of two years. The Police would set a performance pledge with a view to completing an inspection of a batch of modified firearms submitted simultaneously within a week.

Requirement to obtain exemption permits

29. Members have pointed out that at present, individual actors involved in the handling of modified firearms in a TV/film production are required to obtain exemption permits for the possession of the firearms. This has created difficulties for the film industry as it is often difficult to provide the number and details of the actors who will be involved in the handling of firearms in the production. The requirement for each actor to obtain an exemption permit and pay the permit fee has also increased the production costs of the film. Members have suggested that more flexible arrangements should be introduced, such as allowing a TV/film producer or any specified person to apply and hold exemption permit on behalf of all actors for using modified firearms in a TV/film production. Some kind of contractual agreements could be made between the exemption permit holder and the actors to set out the responsibilities of both parties to comply with the conditions of the exemption permit.

30. The Administration has advised that under section 4(3) of the Ordinance, the exemption permit is only granted to an individual person for the possession of specified firearms. According to legal advice, such an arrangement would give rise to considerable difficulties in taking enforcement action against the exemption permit holder or actors who actually possess and use the modified firearms where there is a breach of the permit condition. The existing control over the possession and use of modified firearms will also be weakened as the Police being the licensing authority, does not know who would actually use the firearms and whether they are fit and proper persons to do so.

31. Members have further suggested that in controlling the use of modified firearms in TV/film production, reference be made to the use of firearms in a shooting range under the supervision of an authorized arms instructor. The Administration has explained that as the use of modified firearms for TV/film shooting is not confined to approved ranges and it is not possible for the authorized arms instructor to closely supervise the users, i.e. the actors, during TV/film shooting, it is more prone to

accidents. The Administration considers that there is a genuine need to require the users to apply for exemption permits and to be held responsible for the actual use of the firearms.

32. Having considered the concerns of the TV/film industry and members, the Administration proposes a new permit system for the use of modified firearms for TV/film shooting. Under the new system, CP will issue exemption permits giving a blanket approval to the holders for the use of modified firearms for TV/film shooting purpose for a specified period of one year. Hence, actors are no longer required to apply for the permits for each production, and TV/film producers do not have to confirm the full list of actors in advance in order to apply for exemption permits for the actors. The Administration stresses that the proposed regulation over the modified firearms is the bare minimum and the new permit system should be able to strike a balance between the concern about public safety and the interest of the film industry. The Administration would move the relevant CSAs.

33. The film industry is not fully satisfied with the proposed new permit system and has requested the Administration to 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.

34. Having examined in depth the proposal of the film industry, the Administration has reservations about the proposal. The Administration has explained that, according to legal advice, imposing a strict liability on the arms dealers for the security of the modified firearms might infringe the right to presumption of innocence. 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, it would be unreasonable to impose a licensing condition requesting the dealer to take full care of the firearms and be held responsible for any loss of the firearms which are being used by the actors. It is also very difficult to fix upon the arms dealers criminal responsibility for the acts of the actors who actually possess and use the firearms. 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. The Administration stresses that the permit system provides an effective tool for the Police to exercise necessary control over the possession and use of the modified firearms for TV/film shooting. The proposed new permit system would allow more flexibility for both actors and TV/film producers. To enhance the transparency of the system, the Administration proposes to provide applicants with the criteria which CP will take into account in considering applications for exemption permits, namely, whether the applicant is a fit and proper person; and whether there is a legitimate need.

35. The film industry has strong objection that criminal record of an applicant will be a factor for considering whether an applicant is a fit and proper person. The film industry is of the view that this factor is discriminatory in nature and unreasonable. Some members share the views of the film industry. They consider that whether "the applicant

is a fit and proper person" should be excluded from the criteria for considering an application for an exemption permit.

36. Some members consider the Administration's proposed new exemption permit system acceptable. They also consider that the two criteria for considering an application reasonable. They point out that criminal record of an applicant as a factor for considering permit application is also found in other licensing regimes.

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

37. The Bill proposes to add a provision to section 4 of the Summary offences Ordinance to the effect that any person who without lawful authority or excuse knowingly or negligently discharges an air gun to the danger or annoyance of any person shall be liable to a fine of \$500 or to imprisonment for three months.

38. Some members consider the proposal too severe in making a person criminally liable for negligently discharging an air gun to the annoyance of any person, in particular an air gun may be discharged simply due to ignorance or by naughty children in some cases. The proposed provision should be considered cautiously. They suggest that such a negligent act should be dealt with separately.

39. The Administration has explained that at present, low-powered air guns with a muzzle energy of not greater than two joules are not defined as arms and hence are not regulated by the Ordinance. The proposal is necessary in order to induce greater care in the handling of air guns which could be potentially harmful. The Police would examine the individual merits of each case when deciding whether a person discharges a gun to the danger or annoyance of any person or he simply discharges an air gun carelessly.

40. On members' suggestion of replacing the wording "negligently discharges an air gun" by "recklessly discharges an air gun", the Administration has advised that it would be very difficult to bring the prosecution under such provision as the Police has to prove that the person fails to give any thought to the consequences or he decides to do it even if he is aware of the consequences. On the contrary, the concept of "negligence" means a deviation from the standard of a reasonable man who would have acted in similar circumstances. The Administration considers that the "reasonableness" test inherent in the proposed provision would be able to relieve members' concerns about the scope and nature of behavior to be covered.

Committee Stage amendments

41. Apart from the CSAs explained in the above paragraphs, the Administration would move technical amendments to the Bill. A copy of the draft CSAs to be moved by the Administration is in **Appendix II**.

Consultation with House Committee

42. The Bills Committee consulted the House Committee and sought the latter's agreement that, subject to the CSAs to be moved by the Administration, the Second Reading debate of the Bill be resumed at the Council meeting on 23 February 2000.

Council Business Division 2
Legislative Council Secretariat
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