

For discussion
on 2 March 2021

Legislative Council Panel on Security

Proposed amendments to the Firearms and Ammunition (Declaration of Arms) Regulations

Preamble

This paper seeks Members' views on the Government's proposal to amend the Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238D) for the purpose of providing a clearer definition of genuine firearm component parts.

Background

2. There has always been stringent control over firearms and their component parts in Hong Kong. Sections 13 and 14 of the Firearms and Ammunition Ordinance (Cap. 238) ("FAO") make it an offence for any person to possess or deal in¹ any arms or ammunition without a licence. Under section 2(1) of the FAO, "arms" means -

"...

(h) a component part used or intended to be used for the discharge of a missile from any of the arms coming within the foregoing paragraphs, and any accessory to such arms designed or adapted to diminish the noise or flash caused by firing the same,

..."

3. In recent years, there has been an increase in cases involving genuine arms in Hong Kong. We notice that criminals have made use of the loophole in the existing definition of "arms" under the FAO to smuggle component parts of genuine firearms into Hong Kong in separate shipments, and then assemble them into fully functional genuine firearms to evade the law. The situation is worrying.

¹ According to section 2(1) of the FAO, "deal in" means "(a) to manufacture, store, sell, let on hire, part with possession of, supply, import, export, procure, purchase, take on hire, take possession of, transport, repair, test, prove or to offer to do any of the foregoing; (b) to expose for sale or hire or to have in possession for storage, sale, hire, supply, transport, repairing, testing or proving".

4. Under the existing provisions, even if a person is found to be in possession of or dealing in component parts proved to be fit for a genuine firearm without an applicable licence, to prove an offence under section 13 or section 14 of the FAO, the prosecution still has to prove to the court that such component parts are used or intended to be used for the discharge of a missile from arms. As seen from past cases, there were often practical difficulties in proving this element of the offence. This difficulty has created a loophole which criminals could exploit. The Government considers it necessary to provide a clearer and more concrete definition of firearm component parts to plug this legal loophole.

Proposals

5. The Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238D)² confers upon the Chief Executive in Council (“CE in C”) the power to declare anything which is not a weapon to which the Weapons Ordinance (Cap. 217) applies to be “arms” under the FAO.

6. The Government proposes to amend the Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238D) to list out the following essential firearm³ (i.e. genuine firearm) component parts as “arms” under the FAO -

- (a) a barrel, chamber or cylinder,
 - (b) a frame, body or receiver,
 - (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber
- and the above item must be capable of being used as a part of a firearm.

7. The proposed amendments seek to provide a clearer and more concrete description of the component parts covered by “arms”, thereby combatting the misuse of arms by criminals. The Government also proposes setting a 90-day grace period to allow those affected to dispose of the component parts or apply for a licence from the Police before the regulations come into operation.

² The Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238D) is made by the CE in C pursuant to section 52 of the FAO. Section 52(1) of the FAO provides that the CE in C may make regulations for “... (e) declaring any thing which is not a weapon to which the Weapons Ordinance (Cap. 217) applies to be... (ii) arms in terms of paragraph (g) of the definition of *arms* in [section 2(1)]...”. According to section 2(1) of the FAO, “arms” means “... (g) any other thing declared by the Chief Executive in Council in regulations made under section 52 to be within the definition of *arms* for the purpose of this Ordinance...”.

³ According to section 2(1) of the FAO, “**firearm**” means “a lethal barrelled weapon of any description from which any shot, bullet or missile can be discharged”.

Consultation

8. The Security Bureau launched a four-week public consultation on the above proposals on 17 February 2021. The consultation period will end on 16 March 2021. Details of the proposals are set out in the consultation paper at **Annex**. The Security Bureau will consolidate the views received upon the conclusion of the consultation period and table the proposed amendments by way of subsidiary legislation at the Legislative Council, with a view to completing the legislative process within the 2020-2021 legislative session.

Views sought

9. Members are invited to give their views on the proposed amendments set out in the paper.

**Security Bureau
February 2021**

CONSULTATION PAPER

Control of genuine firearm component parts

February 2021

1. Introduction

- 1.1 There has been a worrying increase in cases involving arms and ammunition in Hong Kong in recent years. Criminals often smuggled the component parts of genuine firearms into Hong Kong in separate shipments, and then assembled them into fully functional genuine firearms. The Government considers it necessary to tighten the control of genuine firearm component parts, so as to prevent the misuse of arms by criminals and to protect citizens' lives and properties.
- 1.2 At present, the Firearms and Ammunition Ordinance (Cap. 238) ("FAO") regulates the possession of, and dealing in, arms or ammunition.
- 1.3 Unless otherwise provided, any person who wishes to possess or deal in arms or ammunition must apply for a licence from the Commissioner of Police ("the Commissioner") under the FAO. The Police Licensing Office is responsible for processing the applications. Currently, there are about 2 900 licensees for various licences and permits of different types of arms under the FAO.
- 1.4 As stipulated in section 27(3A) of the FAO, when considering an application for a licence, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -
 - (a) whether the applicant is a fit and proper person to be granted a licence;
 - (b) whether there is good reason for that applicant to hold a licence; and
 - (c) whether it is objectionable, for reasons of public safety and security, to grant the licence to that applicant.

Further, pursuant to section 35 of the FAO, any person who is aggrieved by the decision of the Commissioner may lodge an appeal to the Administrative Appeals Board.

- 1.5 It is a criminal offence for any person to possess or deal in arms or ammunition without a valid licence issued by the Commissioner. Under section 13 of the FAO, no person shall have in his possession any arms or ammunition unless he holds a licence. Offenders are liable on conviction upon indictment to a fine of \$100,000 and to imprisonment for 14 years. Under section 14 of the FAO, no person shall by way of trade or business deal in arms or ammunition unless he holds a dealer's licence issued by the Commissioner. Offenders are liable on conviction upon indictment to a fine of \$100,000 and to imprisonment for 10 years.

2. Background

Smuggling of genuine firearms into Hong Kong

2.1 The recent surge in smuggling cases involving suspected genuine firearms and their component parts is worrying. From 2016 to 2019, the Customs and Excise Department (“C&ED”) detected a total of 24 such cases. In the year 2020 alone, the figure rocketed to 35 (involving over 550 genuine firearm component parts), representing a year-on-year increase of 28 cases (or 400%).

2016	2017	2018	2019	2020
6	8	3	7	35

Exhibit 1: Number of smuggling cases involving suspected genuine firearms and their component parts detected by C&ED

- 2.2 Several risk indicators have been identified for the rising trend -
- (a) using air parcels as the smuggling channel; and
 - (b) firearms are always disassembled in multiple parts for separate shipments with camouflaged products declaration.

Misuse of genuine firearms

2.3 The numbers and models of genuine firearms seized by the Police in recent years are equally worrying. From 2016 to 2020, the Police seized a total of 61 genuine firearms. In the year 2019 alone, the Police seized 30 pieces of genuine firearms, including pistols and rifle.

2016	2017	2018	2019	2020
5	0	20	30	6

Exhibit 2: Number of genuine firearms seized by the Police

- 2.4 Particularly noteworthy is that similar models of the genuine firearms seized were commonly used in mass shootings or terrorist attacks overseas. Examples include -
- (a) in the 2017 mass shooting on a crowd of concert-goers in Las Vegas of the United States (“US”), resulting in 60 deaths and over 800 injuries;
 - (b) in the 2018 synagogue shooting in Pittsburgh of the US, resulting in 11 deaths and six injuries;
 - (c) in the 2019 shooting in a grocery store in New Jersey of the US, resulting in four deaths and three injuries; and
 - (d) in the 2019 mass shooting at mosques in Christchurch of New Zealand, resulting in 51 deaths and 40 injuries.

2.5 In relation to the firearms seized by the Police, it is believed that the culprits had shipped multiple genuine firearm component parts from overseas to Hong Kong through parcel forwarding and then assembled them into fully functional firearms in Hong Kong. In view of the mass casualties that can be caused by the misuse of genuine firearms, it is necessary to impose stringent control over genuine firearm component parts.

Existing control on firearm component parts

2.6 Sections 13 and 14 of the FAO make it an offence for any person to possess or deal in¹ any arms or ammunition without a licence. Under section 2(1) of the FAO, “arms” means -

“...

(h) a component part used or intended to be used for the discharge of a missile from any of the arms coming within the foregoing paragraphs, and any accessory to such arms designed or adapted to diminish the noise or flash caused by firing the same,

...” (emphasis added; see Exhibit 3 for the full text of the provision)

2.7 Under the existing provisions, even if a person is found to be in possession of or dealing in component parts proved to be fit for a genuine firearm without an applicable licence, to prove an offence under section 13 or section 14 of the FAO, the prosecution still has to prove to the court that such component parts are used or intended to be used for the discharge of a missile from arms. As seen from past cases, there were often practical difficulties in proving this element of the offence. This difficulty has created a loophole which criminals could exploit by importing genuine firearm component parts through separate shipments, and assembling them to form fully functional firearms thereafter. The Government thus considers that there is a pressing need to plug the loophole by providing a clearer and more concrete definition of genuine firearm component part.

¹ According to **section 2(1)** of the FAO, “**deal in**” means “(a) to manufacture, store, sell, let on hire, part with possession of, supply, import, export, procure, purchase, take on hire, take possession of, transport, repair, test, prove or to offer to do any of the foregoing; (b) to expose for sale or hire or to have in possession for storage, sale, hire, supply, transport, repairing, testing or proving”.

Definition of “arms”

According to section 2 of the Firearms and Ammunition Ordinance (Cap. 238), **arms** means –

- (a) any firearm;
- (b) an air rifle, air gun or air pistol from which any shot, bullet or missile can be discharged with a muzzle energy greater than 2 joules;
- (c) any portable device which is designed or adapted to stun or disable a person by means of an electric shock applied either with or without direct contact with that person;
- (d) any gun, pistol or other propelling or releasing instrument from or by which a projectile containing any gas or chemical could be discharged;
- (e) any weapon for the discharge of any noxious liquid, gas, powder or other similar thing (including an aerosol containing any noxious liquid, gas, powder or other similar thing which is not in general trade or domestic use in aerosol form);
- (f) any harpoon or spear gun, however powered;
- (g) **any other thing declared by the Chief Executive in Council in regulations made under section 52 to be within the definition of arms for the purpose of this Ordinance;**
- (h) **a component part used or intended to be used for the discharge of a missile** from any of the arms coming within the foregoing paragraphs, and any accessory to such arms designed or adapted to diminish the noise or flash caused by firing the same...

... (emphasis added)

Exhibit 3: Definition of “arms” under the Firearms and Ammunition Ordinance (Cap. 238)

3. Proposals

Overseas legislation

3.1 Overseas jurisdictions (such as Australia, Canada, Singapore and the United Kingdom) include firearm component parts in their definition of arms under the relevant legislation. Some jurisdictions give a broad definition of component parts, while others specify various items (such as barrel, frame, pistol slide, etc.) as component parts. **It is noteworthy that among the jurisdictions studied, none of them requires the proof that the component part is “used or intended to be used for the discharge of a missile” as in the case in Hong Kong.** The relevant overseas legislation on firearm component parts is summarised below -

Jurisdiction	Definition of firearm component parts	Source
Australia (New South Wales)	Barrel, breech, pistol slide, frame, receiver, cylinder, trigger mechanism, operating mechanism or magazine designed as, or reasonably capable of forming, part of a firearm.	Firearms Act 1996
Australia (Queensland)	Receiver, body, barrel, breechbolt, frame or top slide without which the firearm would be considered inoperative or incomplete.	Weapons Act 1990
Australia (Victoria)	Any device, whether or not assembled or in parts – which is designed or adapted, or is capable of being modified, to discharge shot or a bullet or other missile ...	Firearms Act 1996
Canada	Any frame or receiver of a barreled weapon and anything that can be adapted for use as a firearm.	Criminal Code C- 46
Singapore	Any component part of any firearm, air-gun, air-pistol...	Arms Offences Act

Jurisdiction	Definition of firearm component parts	Source
United Kingdom	A relevant component part in relation to a lethal barreled weapon or a prohibited weapon, include (a) a barrel, chamber or cylinder, (b) a frame, body or receiver, and (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber, but only where the item is capable of being used as a part of a lethal barreled weapon or a prohibited weapon.	Firearms Act 1968

Exhibit 4: Overseas legislation on firearm component parts

The proposals

3.2 With reference to the legislation on arms in overseas jurisdictions, we **propose** amending the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238D)² to specify the following essential **firearm component parts** as **arms** for the purpose of the FAO

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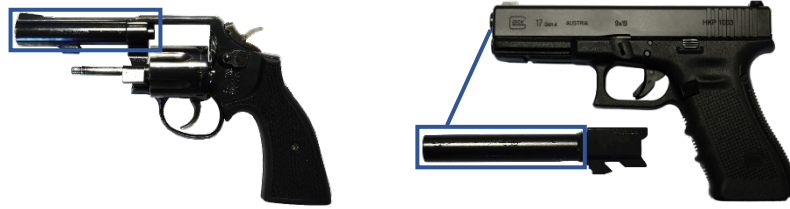
- (a) a barrel, chamber or cylinder,
 - (b) a frame, body or receiver,
 - (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber
- but only where the item is capable of being used as a part of a firearm³.

3.3 **The proposed amendments will provide a clearer and more concrete definition of genuine firearm component parts.** With the proposed amendment, the prosecution may resort to part (g) of the definition of “arms” (see Exhibit 3) for the purpose of proving the firearm component parts as specified in the Schedule constitute “arms”, without having the need to rely on part (h) of the definition of “arms” which requires the proof of the component parts being “used or intended to be used to discharge a missile”.

² The Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238D) is made by the Chief Executive in Council (“CE in C”) pursuant to section 52 of the FAO. **Section 52(1)** of the FAO provides that the CE in C may make regulations for “... (e) declaring any thing which is not a weapon to which the Weapons Ordinance (Cap. 217) applies to be... (ii) arms in terms of paragraph (g) of the definition of *arms* in [section 2(1)]...”. According to **section 2(1)** of the FAO, “**arms**” means “... (g) any other thing declared by the Chief Executive in Council in regulations made under section 52 to be within the definition of *arms* for the purpose of this Ordinance...”.

³ According to **section 2(1)** of the FAO, “**firearm**” means “a lethal barrelled weapon of any description from which any shot, bullet or missile can be discharged”.

Barrel



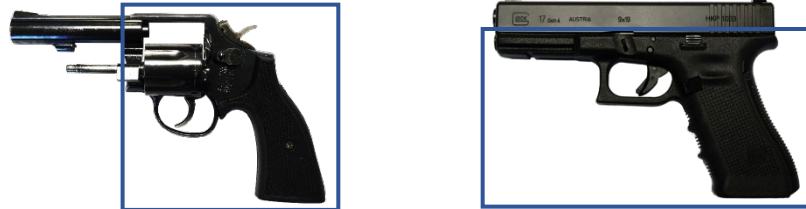
Chamber



Cylinder



Frame



Body



Receiver



Breech Block



Bolt



Exhibit 5: Component parts proposed to be declared as arms

Consultation Question 1

In view of the increasing trend of cases involving genuine firearms in recent years and the mass casualties that can be caused by the misuse of firearms, do you agree that the legislation should provide a clearer definition of firearm component parts?

Consultation Question 2

Do you agree that the essential firearm component parts set out paragraph 3.2 should be regulated?

- 3.4 Further, we envisage that some of the existing licensees or those who are currently in possession of the firearm component parts proposed to be regulated may be affected. They will need to arrange proper disposal of such component parts or apply for a licence (or apply for amendments to their existing licences to cover the component parts).
- 3.5 We **propose** setting a 90-day grace period to allow those who are affected by the proposal to arrange disposal of such firearm component parts or apply for a licence from the Police Licensing Office. The proposed legislative amendments will take effect after the end of the grace period.

Consultation Question 3

Do you agree that a 90-day grace period should be given before the proposed legislative amendments take effect?

4. Offer your views

4.1 Members of the public are invited to offer their views on the legislative proposals as set out in this document. Please send your views to the Security Bureau by mail, facsimile or email on or before **16 March 2021**.

Address: Assistant Secretary (E1)
Security Bureau
10/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong
Fax: 2810 7702
Email: firearms@sb.gov.hk

4.2 For ease of responding to this consultation exercise and to facilitate subsequent analysis, members of the public may download a response form to submit their views.

4.3 It is optional for members of the public to supply their personal data when providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise.

4.4 The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper (“senders”) may be published for public viewing. We may, either in public or private discussions, or in any subsequent report, cite comments submitted in response to this consultation paper.

4.5 To safeguard senders’ personal data privacy, we will remove senders’ relevant data, such as contact details, identification numbers, and signatures, where provided, when publishing their submissions.

4.6 If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality, their submissions will not be published.

4.7 If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.

4.8 If the senders wish to access or correct the personal data in the submissions, please make the request to the Security Bureau using the means as set out in paragraph 4.1 above.

Security Bureau
February 2021

Consultation Paper
Control of genuine firearm component parts
Response Form

CONSULTATION QUESTIONS

1. In view of the increasing trend of cases involving genuine firearms in recent years and the mass casualties that can be caused by the misuse of firearms, do you agree that the legislation should provide a clearer definition of firearm component parts?

- (a) Yes
(a) No (*please specify below*).....

Remarks:

2. Do you agree that the essential firearm component parts set out paragraph 3.2 should be regulated?

- (a) Yes
(b) No (*please specify below*).....

Remarks:

3. Do you agree that a 90-day grace period should be given before the proposed legislative amendments take effect?

- (a) Yes
(b) No (*please specify below*)

Remarks:

FURTHER VIEWS (*Optional*)

Further views and suggestions can be set out below:

PERSONAL PARTICULARS (*Optional*)

Name / Organisation :

Correspondence address:

Email address:

Are you an existing licensee : Yes
 No

Others : My name and submission can be published in their entirety
 Do not wish to disclose my name
 Do not wish to publish my submission

NOTE

1. Members of the public are invited to offer their views on the legislative proposals as set out in this document. Please send your views to the Security Bureau by mail, facsimile or email on or before **16 March 2021**.

Address: Assistant Secretary (E1)
Security Bureau
10/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

Fax: 2810 7702

Email: firearms@sb.gov.hk

2. It is optional for members of the public to supply their personal data when providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise.
3. The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper (“senders”) may be published for public viewing. We may, either in public or private discussions, or in any subsequent report, cite comments submitted in response to this consultation paper.
4. To safeguard senders’ personal data privacy, we will remove senders’ relevant data, such as contact details, identification numbers, and signatures, where provided, when publishing their submissions.
5. If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality, their submissions will not be published.
6. If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.
7. If the senders wish to access or correct the personal data in the submissions, please make the request to the Security Bureau using the means as set out above.