

LEGISLATIVE COUNCIL BRIEF

Firearms and Ammunition Ordinance
(Chapter 238)

**FIREARMS AND AMMUNITION (DECLARATION OF ARMS)
(AMENDMENT) REGULATION 2021**

INTRODUCTION

At the meeting of the Executive Council on 25 May 2021, the Council **ADVISED** and the Chief Executive **ORDERED** that, under section 52 of the Firearms and Ammunition Ordinance (Cap. 238) (“FAO”), the Firearms and Ammunition (Declaration of Arms) (Amendment) Regulation 2021 (“the Regulation”) (at **Annex A**) should be made to specify certain firearm component parts as “arms” under the FAO.

A

JUSTIFICATIONS

Smuggling of Genuine Firearms into Hong Kong

2. 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 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%).

3. 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

4. The number and models of genuine firearms being seized by the Police in recent years are equally worrying. From 2018 to 2020, the Police seized a total of 56 genuine firearms. In the year 2019 alone, the Police seized 30 pieces of genuine firearms, including pistols and rifle.

5. 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.

6. In relation to the firearms seized by the Police, we notice that criminals have smuggled firearm component parts into Hong Kong in separate shipments and then assembled them into fully functional firearms to evade the law.

Existing Control on Firearm Component Parts

7. There has always been stringent control over firearms and their component parts in Hong Kong. Sections 13 and 14 of the FAO make it an offence for any person to possess or deal in 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,

B ...” (emphasis added) (see **Annex B** for the full text of the provision)

8. Under the existing provisions, even if a person is found to be in possession of or dealing in¹ 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.

THE PROPOSAL

9. 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 at **Annex C**.

Declaring Essential Firearm Component Parts as “Arms”

C 10. The Firearms and Ammunition (Declaration of Arms) Regulations are made under section 52 of the FAO which 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 applies to be “arms”

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”.

under the FAO².

11. With reference to relevant overseas legislation, we propose amending the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations to specify an item that is capable of being used as a firearm³ component part specified below as “arms” for the purpose of the FAO –

- (a) a barrel, chamber or cylinder;
- (b) a frame, body or receiver; or
- (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber.

 D The relevant component parts are shown at **Annex D**. The provisions
 E being amended are at **Annex E**.

12. To provide clarity and be consistent with the primary legislation which provides that an item which is defective or out of repair [section 2(4) of the FAO]⁴ or modified and adapted [section 2(4A) of the FAO]⁵ will still be regarded as “arms”, an item set out in paragraph 11 that would have been capable of being used as a firearm component part had it not been defective, out of repair or modified and adapted will also be “arms” for the purpose of the FAO.

13. The proposed amendments only target the component parts of firearms. The component parts of other types of arms (e.g. air guns, spear guns, etc.) which are not capable of being used as a part of a firearm are

² Section 52(1) of the FAO provides that the Chief Executive in Council may make regulations for, among others, “... (e) declaring any thing which is not a weapon to which the Weapons Ordinance 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, among others, “... (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”.

⁴ According to section 2(4) of the FAO, “An article which would otherwise be within the definition of arms... in subsection (1) shall not be excluded therefrom by reason only of the fact that it is defective or out of repair”.

⁵ According to section 2(4A)(a) of the FAO, “An article which would otherwise come within the definition of arms... in subsection (1) shall not be excluded therefrom by reason only of the fact that it has been modified and adapted, in the case of arms, so that it is (i) capable of firing but not capable of discharging a shot, bullet, missile or other ammunition; or (ii) impractical to restore it to working order”.

not affected. 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 paragraph (g) of the definition of “arms” under the FAO for the purpose of proving the firearm component parts as specified in the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations constitute “arms”, without having the need to rely on paragraph (h) of the definition of “arms” under the FAO which requires the proof of the component parts being “used or intended to be used for the discharge of a missile”.

Provision of a Grace Period

14. We envisage that some 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 under the FAO (or apply for amendments to their existing licences to cover the component parts). We propose that the Regulation will come into operation on 1 November 2021, such that those being affected may dispose of the component parts concerned or apply for a licence from the Police during the grace period.

THE REGULATION

15. The Regulation adds to the Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations an item that is capable of being used as a firearm component part specified below, or would have been capable of being used as such a firearm component part had it not been defective, out of repair or modified and adapted –

- (a) a barrel, chamber or cylinder;
- (b) a frame, body or receiver; or
- (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber.

LEGISLATIVE TIMETABLE

16. The legislative timetable is as follows –

Gazettal of the subsidiary
legislation

4 June 2021

Tabling of the subsidiary
legislation at LegCo for negative
vetting

9 June 2021

Commencement date of the
subsidiary legislation

1 November 2021

IMPLICATIONS OF THE PROPOSAL

17. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendments will not affect the current binding effect of FAO. It has no financial, civil service, economic, productivity, environmental, sustainability, family or gender implications. Additional work arising from the proposal will be absorbed by existing resources.

PUBLIC CONSULTATION

18. We conducted a four-week public consultation on the legislative proposal from 17 February 2021 to 16 March 2021. We received a total of 257 written submissions, including submissions from The Law Society of Hong Kong, Hong Kong Bar Association, Hong Kong Security Association, Hong Kong Association of Property Management Companies, Chinese Banking Association of Hong Kong, and some political parties. The majority of the respondents who gave their views using the response form provided supported a clearer statutory definition of firearm component parts (88%) and agreed to regulate the proposed essential firearm component parts (85%). Also, 80% of the respondents supported the provision of a 90-day grace period before the legislative proposal takes effect. A summary of the views received is at **Annex F**. We also consulted the LegCo Security Panel on 2 March 2021. Members were supportive of the proposal and considered that the Government should table the Regulation at LegCo as soon as practicable.

F

BACKGROUND

19. There is a stringent licensing regime over firearms and ammunition in Hong Kong. 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 existing holders of various licences and

exemption permits of different types of arms⁶ under the FAO. According to 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. 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.

ENQUIRIES

20. A press release regarding the gazettal of the Regulation will be issued. Enquiries on this brief can be addressed to Ms Joceline Chui, Principal Assistant Secretary (Security) E at 2810 2632.

Security Bureau
2 June 2021

⁶ Including firearms, air guns (with a muzzle energy greater than 2 joules), spear guns, crossbows, etc.

**Firearms and Ammunition (Declaration of Arms)
(Amendment) Regulation 2021**

“Schedule

(Made by the Chief Executive in Council under section 52 of the Firearms and Ammunition Ordinance (Cap. 238))

[reg. 2]

1. Commencement

This Regulation comes into operation on 1 November 2021.

2. Firearms and Ammunition (Declaration of Arms) Regulations amended

The Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238 sub. leg. D) are amended as set out in sections 3 and 4.

3. Regulation 2 amended (declaration of arms)

Regulation 2, after “specified in”—

Add

“Part 1 of”.

4. Schedule amended

(1) The Schedule—

Repeal

“Schedule

[reg. 2]”

Substitute

Part 1”.

(2) The Schedule, Part 1, after item 2—

Add

“3. An item that—

- (a) is capable of being used as a firearm component part; or
- (b) would have been capable of being used as a firearm component part had it not been—
 - (i) defective;
 - (ii) out of repair; or
 - (iii) modified and adapted.”.

(3) At the end of the Schedule—

Add

“Part 2

1. In this Schedule—

firearm component part (火器元件) means a component part of a firearm specified below—

- (a) a barrel, chamber or cylinder;
- (b) a frame, body or receiver; or
- (c) a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber.”.



Clerk to the Executive Council

COUNCIL CHAMBER

25 May 2021

Explanatory Note

The Schedule to the Firearms and Ammunition (Declaration of Arms) Regulations (Cap. 238 sub. leg. D) sets out the things that are declared to be within the definition of *arms* for the purpose of the Firearms and Ammunition Ordinance (Cap. 238).

2. This Regulation adds to that Schedule an item that—
 - (a) is capable of being used as certain component parts of a firearm; or
 - (b) would have been capable of being used as such had it not been—
 - (i) defective;
 - (ii) out of repair; or
 - (iii) modified and adapted.

Section 2 of Firearms and Ammunition Ordinance

Definition of Arms

According to section 2(1) 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,*

but does not include—

(i) *any cartridge-operated fixing tool as defined in regulations relating thereto made under the Factories and Industrial Undertakings Ordinance (Cap. 59);*

(ii) *any slingshot, catapult, bow or other similar weapon,*

unless the same is included by virtue of regulations referred to in paragraph (g);

(emphasis added)

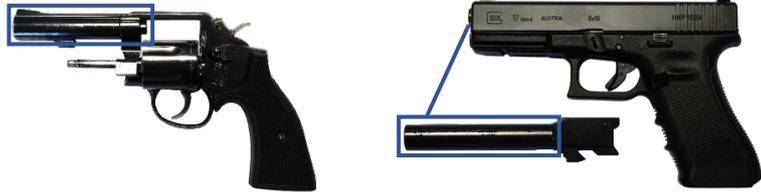
Annex C

Definition of firearm component parts in overseas jurisdictions

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
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

Component parts proposed to be declared as arms

Barrel



Chamber



Cylinder



Frame



Body



Receiver



Breech Block



Bolt



Cap. 238D

Firearms and Ammunition
(Declaration of Arms) Regulations

26/04/2018

2. Declaration of arms

Every thing of a description specified in the Schedule, not being a weapon to which the Weapons Ordinance (Cap. 217) applies, is declared to be within the definition of *arms* for the purpose of the Ordinance.

(L.N. 68 of 1991)

Schedule

[reg. 2]

Item

Description

1. *(Repealed 14 of 2000 s. 32)*

2. A crossbow with a draw weight of more than 6 kilograms.

(L.N. 68 of 1991)

**Public consultation
Control of genuine firearm component parts
Analysis of written submissions received**

1. The Government published the consultation paper on the control of genuine firearm component parts on 17 February 2021 to solicit public views on the legislative proposals therein. During the public consultation, members of the public were invited to submit their views through the following channels –
 - (a) by mail to the Security Bureau;
 - (b) by facsimile (2810 7702); or
 - (c) by email (firearms@sb.gov.hk).
2. The four-week public consultation ended on 16 March 2021. We received a total of 257 written submissions (including 7 submissions received after the deadline) via mail (102), fax (42) and email (113).
3. Among the 257 written submissions received, 234 (91%) respondents indicated their views using the Response Form provided, while 23 (9%) respondents did not. The majority of the written submissions (85%) supported the proposal.

A. Written submissions using the Response Form

4. 234 respondents gave their views using the Response Form provided. They were invited to provide their views to the following questions –

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?

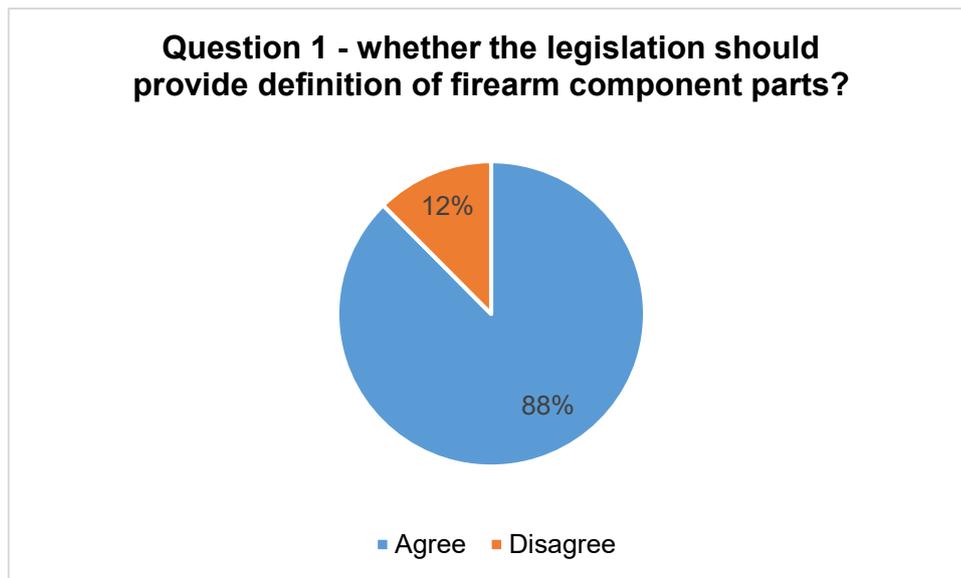
Consultation question 2

Do you agree that the essential firearm component parts set out in paragraph 3.2 [of the consultation paper] should be regulated?

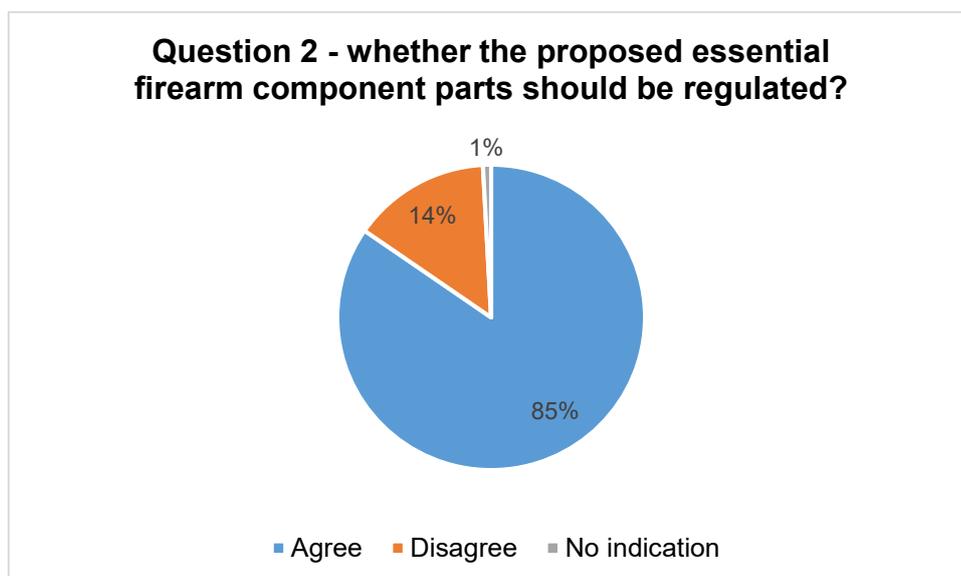
Consultation question 3

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

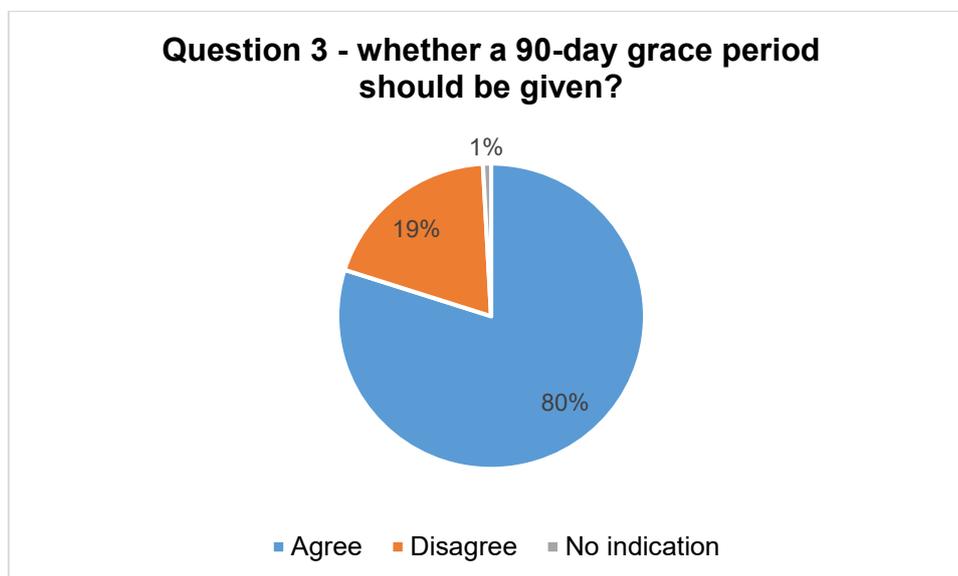
5. In response to **consultation question 1**, the majority (88%) of the respondents who provided their views through the Response Form agreed that the legislation should provide a clearer definition of firearm component parts. Those who disagreed with the proposal (12%) are of the view that there is stringent control over firearms in Hong Kong and the existing definition of firearms is clear enough. Some also expressed mistrust toward the Government and law enforcement agencies.



6. In response to **consultation question 2**, the majority of the respondents (85%) agreed that the essential firearm component parts set out above should be regulated. Those who disagreed with the proposal (14%) are concerned that the proposal would affect the airgun industry (including athletes, players, collectors and retail shops).



7. In response to **consultation question 3**, the majority (80%) of the respondents who provided their views through the Response Form agreed that a 90-day grace period should be given before the proposed legislative amendments take effect. Among those who disagreed with the proposal (19%), some are of the view that a longer grace period should be provided, while some consider the proposed legislative amendments should take effect immediately.



B. Written submissions not using the Response Form

8. 23 respondents provided their views to the consultation paper without using the Response Form provided. Some considered that the legislation should be enacted as soon as possible to plug the loophole. Others expressed concerns on whether the component parts of air guns or airsoft guns would be affected. There were also views that component parts made by 3D printing should be regulated.

