

LAWS CONTROLLING FIREARMS IN JAPAN

In Japan, the question of gun control is governed by the Law Controlling the Possession of Firearms and Swords (37 Articles)^{1/}, the Enforcement Order of the Cabinet (7 Articles)^{2/}, the Enforcement Regulations of the Prime Minister's Office (20 Articles)^{3/}, and the Registration Regulation of the Cultural Properties Protection Commission (9 Articles)^{4/}. These laws and regulations, which are concerned mainly with the possession of a gun, are subject to police control.

The manufacture, sale, and transfer of firearms, however, are regulated by the Minister of International Trade and Industry under the Law Concerning the Manufacture of Firearms^{5/}, Cabinet Order No. 198^{6/}, and the Regulation of the Ministry of International Trade and Industry No. 43^{7/}. The bullet or cartridge and the blank cartridge are also subject to the control of the same Minister, but under a different set of legislation, such as the Explosive Control Law (61 Articles)^{8/}, the Enforcement Order of the Cabinet (8 Articles)^{9/}, and the Enforcement Regulation of the Ministry of International Trade and Industry (101 Articles)^{10/}. In addition, the Order Concerning Transportation of Explosives issued by the Prime Minister's Office (37 Articles)^{11/} is in force.

This dual control by police (possession) and the Ministry of International Trade and Industry (sale, transfer, cartridge, etc.) results in the inefficient administration of gun control legislation, and this group of laws has been a target of constant criticism by those

who advocate the enactment of uniform gun control legislation under the exclusive control of the police. These people argued that the possession of firearms, which is the most important aspect of the gun control, is so closely connected with the problems of import, sale, and transfer of guns that the uniform administration of a law which covers both aspects of firearms control is urgently needed.^{12/} They also suggested that the category of swords should be governed separately. Consequently, in 1965, the 1958 Law Controlling the Possession of Firearms and Swords was drastically amended; however, this amendment did not constitute an attempt to enact a uniform law.

Government statistics revealed that the number of crimes committed through the unauthorized use of firearms (pistol and shotgun) has been greatly increased, as the following figures indicate: in 1960, 70 cases involving the illegal use of pistols and 61 cases involving shotguns were increased in 1963 to 89 and 90 respectively. Out of the above 179 criminal acts committed in 1963, only 45 involved the authorized use of firearms, the majority of crimes being committed by unauthorized users of firearms.^{13/} These facts gave impetus to the argument for a drastic revision of the 1958 law which would strengthen the methods of control of unauthorized possession of firearms.

Most of the law breakers are affiliated with the organized crime syndicates. The confiscation of the weapons used by these crime syndicates clearly indicates that the number of guns owned by unauthorized

persons was very large and increasing rapidly, while the number of swords and various types of knives used for criminal purposes was decreasing. Following are statistics regarding illegally owned guns, swords, and other deadly weapons. In 1960, 190 pistols and 134 shotguns were illegally owned; in 1963, 330 pistols and 264 shotguns; and in 1964, 552 pistols and 375 shotguns. At the same time, figures for swords, knives, and other deadly weapons of similar nature which had been in the unauthorized possession of crime syndicates were on the decrease: 5480 in 1960; 3346 in 1963; and 3890 in 1964.^{14/}

The 1965 amendment, aimed at curtailing illegal possession of firearms as a measure to prevent the use of such weapons in crimes of violence, imposed heavier penalties on the culprits. It incorporated a new provision into the existing law (Article 3-2) concerning the prohibition on the importation of firearms and the over-all increase of punishment of law violators, especially in cases involving the illegal manufacture of firearms and the transfer of firearms or the possession of firearms, amending the relevant laws, such as the Law Concerning the Manufacture of Firearms, and others.^{15/}

The following is a summary of the Law Controlling the Possession of Firearms and Swords as amended in 1965:

The Law consists of five chapters: (I) general provisions, (II) permission for the possession of firearms or swords, (III) registration of the matchlock-type firearms or swords, (IV) miscellaneous

provisions, and (V) penal provisions. Under Chapter I (Articles 1-3), the purpose and definition of the above law are set forth:

Art. 1. The purpose of this Law is to provide control measures necessary for the prevention of danger and injury arising from the possession of firearms, swords, etc.

Art. 2. In this Law "firearms" shall mean the powder charging firearms which project a metal shell and an air gun (including one using compressed gas).

At the same time, Article 3 expressly enumerates instances where possession of firearms is allowed:

Art. 3. Any person may not possess firearms or swords. However, this shall not apply in cases which come under any of the following items:

- (1) In case of possession for the purpose of performing a duty in accordance with laws and ordinances;
- (2) In case of possession by the state officials or by officials of the local public body with the intention of examination or study, or of exhibition to the public.
- (3) In case of possession by any person who has obtained permission in accordance with the provisions of Articles 4 and 6.
- (4) In case of possession of a firearm which has been registered in accordance with the provisions of Article 14.
- (5) In case of possession by any arms or hunting gun manufacturer as provided in the Law concerning the manufacture of Arms (Law No. 145, 1953) or by any person who has obtained permission under Articles 4 or 18 of the above Law in order to carry on business.

(6) In case of possession by any dealer of hunting guns, mentioned in the Law Concerning the Manufacture of Arms, who with permission under Article 4, has purchased from any manufacturer of hunting guns, from any dealer of hunting guns, or from any person who possesses the same, or [in the case of possession] by the said dealer who has imported the same for the purpose of business.

(7) - (10). [Omitted.]

Art. 3 - 2. No person shall import pistols, rifles, machineguns, or guns (cannons) with the following exceptions:

(1 - 5). [Omitted.]

Chapter II (Articles 4 to 13) is concerned with procedure regarding permission and restriction on the possession of firearms. Thus, any person who wishes to possess firearms, in accordance with the procedure prescribed by the Regulation of the Prime Minister's Office must obtain the permission of the Public Safety Commission of To, Do, Fu, or Ken, ^{16/} whichever controls the possession of firearms and swords in his place of residence.

Under Article 4, permission should be obtained in the following instances: 1) for firearms necessary for hunting, the extermination of harmful birds and beasts, butchery, life saving, fishery, and construction; 2) for firearms necessary for experimenting and research purposes; 3) for pistols to be used for international athletic games upon recommendation by the person designated by Cabinet Order; 4) for firearms necessary for the signals of the umpire in international or nation-wide athletic games upon recommendation by the person designated by Cabinet Order.

However, under Article 5, the following persons are prohibited from possessing firearms: 1) any person who is younger than 18 years of age (14 years of age in the case of possession of an air-gun); 2) any person with mental derangement, one poisoned by narcotics or "taima" or a mentally-dissipated person; 3) any person having not fixed abode; 4) any person with respect to whom three years have not elapsed since the day when his permission was withdrawn in accordance with Article 11; 5) any person who, for violation of Article 3, paragraph 1, has been sentenced to punishment more severe than a fine, during the three years prior to the date of his application for permission; and 6) any person (including the relatives living together) about whom there is reasonable cause to suspect of being dangerous to other persons' lives or properties or public peace.

Aliens who enter Japan in order to use firearms in international athletic games to be held in Japan must obtain permission from the competent local Public Safety Commission which has jurisdiction over the ports of entry and exit. ^{17/}

When a Public Safety Commission gives the permission, a permit certificate must be delivered. However, such permit shall be invalidated in the following instances: 1) when the possession of firearms has become impossible within 3 months from the time the permit was granted; 2) when a person who had permission has died; 3) when a person has transferred the said firearms and no longer has them in his possession at his

voluntary will; 4) when the firearms has been lost or stolen or destroyed; 5) when the firearms have been recalled by the Public Safety Commission or confiscated by the same Commission (Article 27, paragraph 1); 6) when the recommendation by the designated person under Article 4, paragraph 1, items 3 or 4, (international athletic games) has been withdrawn or when the recommendation by the designated person for the permission for a person younger than full 18 years of age to possess an air-gun has been withdrawn; and 7) when the permit has expired.^{18/}

Under Article 10, the carrying, transporting, or discharging of firearms, other than that specifically permitted by law (Articles 4 and 6), is prohibited with certain exceptions. The person who has obtained permission to possess firearms for the purpose of participating in the international games must have the said firearms put under the custody of another person.^{19/}

Furthermore, any person who has been authorized to possess firearms is subject to supervisory power such as revocation,^{20/} provisional holdings,^{21/} hearings,^{22/} and inspection^{23/} by the competent Public Safety Commission.

Chapter III (Articles 14 through 21) is exclusively devoted to the problems arising from the registration of the matchlock-type firearms and swords, which have an artificial value, in the Cultural Property Protection Commission.

Chapter IV (Articles 21-2 through 30 inclusive) sets forth miscellaneous provisions. The manufacturer of firearms, hunting guns, signal guns for whaling or the dealer of hunting guns or signal guns for whaling shall not transfer the said gun to an assignee unless the former has confirmed that the latter is authorized to possess the gun under the provisions of Article 3 or unless he has displayed the permit under Article 7.^{24/}

Any person who has found or picked up firearms must report this promptly to the nearest police station.^{25/}

Any person who carries or transports a gun must carry with him the permit and registration, which are subject to police inspection upon request.^{26/}

Under Article 24-2, the possessors of firearms are subject to police inspection and temporary custody of the firearms: 1) when there is a reasonable doubt that the person carrying or transporting firearms is dangerous to other persons' lives or properties or public peace judging from unusual behavior of the said person or from the surrounding circumstances, the police official may make him show the said firearms for inspection; 2) when it is deemed necessary, such firearms may be provisionally held by the police official; within 5 days from the time the firearms were taken into custody, they would be returned to the original possessor; 3) if the police official deems that such return is not proper, the firearms should be returned to the relatives or other persons;

4) when the firearms are in the possession of persons other than those having permission, the firearms in question may not be returned; 5) if it is unable to return the firearms to the possessor or his relatives due to an unknown address, within 5 days from which the police officer provisionally took them into custody, the police chief must announce this effect in the public notice in accordance with the Ordinance of the Prime Minister's Office; and 6) if no return is made within 6 months from the time at which the public notice was made, the ownership of the said firearms would be in the hands of the state or local government.

Under Article 25, the similar inspection and temporary custody of firearms also apply to the person who enters Japanese ports carrying firearms. ^{27/}

In a case where a Public Safety Commission clearly deems that the delivery, transportation, and carrying of the firearms which have the permit under Articles 4 and 6 and registration under Article 14 are directly dangerous to the maintenance of public order when there exists disaster or disturbance to local tranquility, 1) the Commission may prohibit or limit these actions in a fixed district and period by means of a notice in the fixed form of an announcement; 2) the Public Safety Commission may in a case where the above notice has been made, retain provisionally the firearms; 3) the notice given by the Commission must be approved by the deliberative assembly of the local public body convened within 7 days from the day of notice; 4) when the above approval has not been obtained, the

notice shall lose its effect thereafter; and 5) when the fixed period has expired or the notice has become invalid, the Commission shall immediately return the firearms provisionally held.

The person who has permission to possess firearms must submit to the Commission the records showing the classification, name, model, and serial number and pay the necessary fees for the issuance or the reissuance of the permit.^{28/}

Under Chapter V of the same Law (Articles 31 to 37 inclusive), any person who possesses firearms in contravention of Article 3 or fails to obtain permission is subject to a maximum punishment of penal servitude not exceeding 5 years or a fine not exceeding 200,000 yen.^{29/} Any person who imports firearms in violation of Article 3-2 is subject to penal servitude not exceeding 5 years or a fine not exceeding 300,000 yen. If any person imports firearms for the purpose of profit, he is subject to penal servitude not exceeding 7 years or a fine not exceeding 500,000 yen.^{30/} For a minor violation, a minimum punishment of a fine not exceeding 10,000 yen or confiscation of the firearms may be imposed.^{31/}

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FOOTNOTES

1/ Law No. 6, March 10, 1958; came into force on April 1, 1958. This Law superseded the Ordinance Concerning Firearms and Swords (Ordinance No. 334, 1950) which was issued pursuant to the general directives of the Supreme Commander for Allied Powers (SCAPIN 2099). This Ordinance prevailed as law by virtue of Law No. 13, 1952 after the Peace Treaty came into force on April 20, 1952, until the enactment of the present law.

2/ Cabinet Ordinance No. 33, March 17, 1958.

3/ Regulation No. 16, March 22, 1958.

4/ Regulation No. 1, March 10, 1958.

5/ Law No. 145, August 1, 1953, as last amended by Law No. 161, September 15, 1962.

6/ Cabinet Order No. 198, August 15, 1953.

7/ Regulation of the Ministry of International Trade and Industry No. 43, September 1, 1953.

8/ Law No. 149, May 4, 1950, as last amended by Law No. 161, 1962.

9/ Cabinet Order No. 323, October 31, 1950, as amended by Order No. 216, July 28, 1954.

10/ The Ministry of International Trade and Industry Ordinance No. 83, October 31, 1950 as amended by Ordinance No. 5, February 5, 1960.

11/ Prime Minister's Office Order No. 65, December 28, 1960.

12/ Isao Koike, "Juhō tōken nado shoji torishimarihō no ichibu o kaiseisuru hōritsu," [Partial Amendment to the Law Controlling the Possession of Firearms and Swords], Toki no hōrei (June, 1965), No. 536, p. 2.

13/ Ibid.

14/ Ibid.

15/ Ibid.

16/ These terms refer to the administrative division of Japan which is as follows: 1) To (Metropolis) refers to Tokyo; 2) Do (District) refers to Hokkaido; 3) Fu refers to the urban prefectures, Kyoto and Osaka; and 4) Ken refers to the 42 rural prefectures. The respective public safety commissions have control over each police force under their jurisdiction (see Police Law, Law No. 162, June 8, 1954).

FOOTNOTES - 2

- 17/ Art. 6.
- 18/ Art. 7.
- 19/ Art. 10-4.
- 20/ Art. 11.
- 21/ Ibid.
- 22/ Art. 12.
- 23/ Art. 13.
- 24/ Art. 21-2.
- 25/ Art. 23.
- 26/ Art. 24.
- 27/ Art. 25.
- 28/ Arts. 28 and 29.
- 29/ Art. 31.
- 30/ Art. 31-2.
- 31/ Arts. 35 through 37.