



SAGA SNIPPETS

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Developments with Expired Firearm Licences

By Damian Enslin

As previously reported, GOSA were successful on the 27th July 2018 in obtaining an interim Order against both the National Commissioner of Police and the Minister of Police, as First and Second Respondent, respectively.

Unfortunately it took some time to obtain the Court Order, a copy of which Order has been posted on our website and Facebook page.

In essence, the Court ordered that SAPS be prohibited from implementing any plans of action or accepting any firearms for which licences had expired at police stations. They were also prohibited from demanding that such firearms be handed over to them because the firearm licence had expired.

This is an interim Order / interdict until the main application has been dealt with. The matter was then postponed to the opposed roll for further determination of the following issues as laid out in paragraphs 3 to 9, but which will only be dealt with in the main application when the application has been set down, which relief is summarised as follows:

That -

1. Sections 27 and/or 24(1) and/or 24(4) and time periods therein could be extended in terms of Section 28(6) for persons that hold expired licences who wished to apply for renewal thereof, if good cause is shown.

2. First Respondent (the National Commissioner) would be required to withdraw the circular issued by the Acting National Commissioner of 3rd February 2016.

3. The First Respondent would have to issue a directive that the information technology system of SAPS be restored so that applications for renewal of licences lodged within the 90 days could be processed.

4. First Respondent would have to issue a directive that the information technology system of SAPS would be restored to accept applications for renewal after the expiry date.

5. Any applications for renewal above would be subject to the requirement of good cause shown.

6. Further, any applicant that lodged an application for renewal and who has prima facie provided good cause, would be deemed to be in lawful possession until the application had been decided upon.

Please note that SAGA re-iterates that the above must still be determined at a later stage when the main application has been heard.

The National Commissioner, General Sitole issued a Directive on the 30 July 2018, a copy of which is posted to our website and Facebook page. The Directive dealt with

the GOSA Court Order, and reiterated much of what has been stated above and from paragraph 3 onwards also stated the following:

That -

"3. Provincial Commissioners must suspend all directives issued in their respective provinces in relation to handing over firearms for which licences had expired.

4. Furthermore, the interdict is only applicable to firearms where the licences have expired and thus members are not prevented from seizing or taking into custody firearms for other purposes provided for in law.

5. It must be emphasized that if people still surrender their firearms voluntarily, it can be accepted, but they must be aware that they must state in writing that they surrender the firearm voluntarily."

In terms of Clause 6 of the Directive it was noted that an appeal would be lodged and further only directives and/or instructions from the National Commissioners office must be adhered to.

Very importantly, in clause 7 of the Directive, it stated that persons who had already handed over their



Update Continued

firearm as a result of the Constitutional Court ruling from 2018/06/07, that such persons could request that their firearms be handed back if they so demanded.

Paragraph 8 stated that the contents of the directive must be brought to the attention of all members for compliance.

Subsequent to the above Directive, the Minister of Police, as well as the National Commissioner have applied for leave to appeal on the 7th August 2018 against the Order of Judge Prinsloo of 27th July 2018.

The crux of the appeal is that the Minister of Police and National Commissioner of Police are of the view that the judge incorrectly interpreted the Act, and made an Order/s that he was not permitted to do in Law.

SAGA will keep members up to date as matters develop.



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

Parliamentary Session: 16th August 2018

There was meant to have been a Parliamentary session of the Portfolio Committee on Police on the 16th August 2018, which was to have dealt with various firearm issues and the Firearm Amnesty.

SAGA, amongst other firearm groups and organisations, was going to submit a presentation to the Committee, but this session was cancelled two days before the scheduled date.

We are trying to obtain further clarity concerning the Amnesty and as to whether this has been completely shelved or whether it will tabled in the near future. We will keep members updated as matters develop.

Watch this space ...for more interesting firearm snippets

Storing and Safeguarding Muzzle Loaders and Airguns

By John Welch

SAGA members are aware that when a firearm is not in a person's possession or under their direct control, it must be stored away in a prescribed safe.

In this regard regulation 86 prescribes as follows: "(1) When a firearm or muzzle loading firearm is not under the direct personal and physical control of a holder of a licence, authorisation or permit to possess the firearm or muzzle loading firearm, the firearm or muzzle loading firearm and its ammunition must be stored in a safe or strongroom that conforms to the prescripts of SABS Standard 953-1 and 953-2, unless otherwise specifically provided in these Regulations".

Also, section 120 (8) makes it an offence, punishable with 5 years' imprisonment, if a person fails to lock away his or her firearm or a firearm in his or her possession in a prescribed safe, strong-room or device for the safe-keeping when such firearm is not carried on his or her person or is not under his or her direct control.

A **firearm** is defined by the Firearms Control Act (FCA) as any (a) device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of burning propellant, at a muzzle energy exceeding 8 joules (6 ft-lbs); (b) device manufactured or designed to discharge rim-fire, centre-fire or pin-fire ammunition; (c) device which is not at the time capable of discharging any bullet or projectile, but which can be readily altered to be a firearm within the meaning of paragraph (a) or (b); (d) device manufactured to discharge a bullet or any other projectile of a calibre of 5.6 mm (.22 calibre) or higher at a muzzle

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energy of more than 8 joules (6 ft-lbs), by means of compressed gas and not by means of burning propellant; or (e) barrel, frame or receiver of a device referred to in paragraphs (a), (b), (c) or (d), but does not include a muzzle loading firearm or any device contemplated in section 5.



A **muzzle loading firearm** is accordingly excluded from the definition of a firearm. Members are reminded that the FCA previously referred to antique firearms rather than muzzle loading firearms. The important effect of this, is that all muzzle loading firearms are exempted from licensing, even modern ones, provided they fall within the definition. Due to an oversight there is still reference to antique firearms in the FCA, but those must be interpreted as muzzle loading firearms.

It is defined as a barrelled device that can fire only a single shot, per barrel, and requires after each shot fired the individual reloading through the muzzle end of the barrel with separate components consisting of a;

- (i) measured charge of black powder or equivalent propellant;
- (ii) wad; and
- (iii) lead bullet, sabot or shot functioning as a projectile, and ignited with a flint, match, wheel or percussion cap.

Since a percussion-cap revolver (a so-called cap and ball revolver) is not loaded through the muzzle it does not fall under the definition of a muzzle loading firearm and is accordingly licensable as a firearm. However, since the licensing regime of SAPS is currently incapable of processing such applications, a former National Commissioner of Police has issued a directive in terms of which current possessors of such revolvers do not have to license them and that the acquisition of such revolvers also is not subject to licensing. I assume the amendment bill, if and when it makes its appearance (it has been promised since March 2015), will provide for the licensing of these items.

However, be aware that since these devices function with black powder, one requires a black powder permit from the Chief Inspector of Explosives. Since a percussion cap revolver is a firearm, it must be stored unloaded in a safe. As stated above, a muzzle loading firearm must also be stored in a prescribed safe.

The devices contemplated in section 5 (referred to above under the definition of a firearm), are (a) any explosive powered tool manufactured specifically for use in industrial application, including line-throwing guns and impex-type building pistols; (b) any explosive powered tool manufactured to split rock or concrete by means of discharging an explosive cartridge; (c) any industrial tool manufactured for use in the mining and steel industry to remove refracto-

Continued...Muzzle Loaders and Airguns

ry material;
 (d) any captive bolt gun manufactured for use in an abattoir in the humane killing of animals;
 (e) a muzzle loading firearm;
 (f) an airgun;
 (g) a tranquilliser firearm;
 (h) a paintball gun;
 (i) a flare gun;
 (j) a deactivated firearm; and
 (k) any other device which the Minister may, by notice in the Gazette, exempt.

Neither licenses nor competency certificates are required to possess and use any of these devices. However, please note that section 10 of the FCA now provides for a separate competency certificate for muzzle loading firearms. No person may acquire or possess a muzzle loading firearm unless she is in possession of the appropriate competency certificate. With the exception of muzzle loading firearms, they also do not need to be stored in a safe.

In the definition of a firearm above you may have noticed that an airgun is excluded from the definition. An **airgun** means any device manufactured to discharge a bullet or any other projectile
 (a) of a calibre of less than 5.6 mm (.22 calibre); or
 (b) at a muzzle energy of less than 8 joules (6ft-lbs), by means of compressed gas and not by means of burning propellant. You also would have noticed that the safe-storage provisions are not applicable to airguns (except those airguns that are indeed firearms according to the definition – calibre of 5,6mm or larger and those which can create muzzle energy of more than 8 joules).

Despite muzzle loading firearms and airguns being excluded from the definition of firearm, there still are various prohibitions concerning their use. It is, for instance an

offence to be in possession of any firearm, airgun, deactivated firearm, muzzle loading firearm, or imitation firearm, with intent to commit an offence (not necessarily a firearm-related offence) or to use the firearm, airgun, deactivated firearm, muzzle loading firearm, or imitation firearm to resist arrest or prevent the arrest of another person; cause bodily injury to any person or cause damage to property of any person by negligently using a firearm, an antique firearm or an airgun; discharge or otherwise handle a firearm, an antique firearm or an airgun in a manner likely to injure or endanger the safety or property of any person or with reckless disregard for the safety or property of any person; have control of a loaded firearm, an antique firearm or an airgun in circumstances where it creates a risk to the safety or property of any person and not to take reasonable precautions to avoid the danger; handle a firearm, an antique firearm or an airgun while under the influence of a substance which has an intoxicating or a narcotic effect; point any firearm, an antique firearm or an airgun, whether or not it is loaded or capable of being discharged, at any other person, without good reason to do so; or anything which is likely to lead a person to believe that it is a firearm, an antique firearm or an airgun at any other person, without good reason to do so; and discharge a firearm, an antique firearm or an airgun in a built-up area or any public place, without good reason to do so.

You would have also noticed that in some of the prohibitions, reference is made to imitation firearms. The FCA defines such a device as anything that has the appearance of a firearm but is not capable of operating as such and cannot by superficial examination be identified as an imitation. The last part

of the definition means that on face value it appears to be a firearm. These things do not need to be locked away in a safe and with the exception of the few provisions referred to above, the FCA is not applicable to them. A “soft-air” gun and some higher quality model guns (1:1 scale) will generally fall under this definition. Children’s toy guns may, but will not necessarily meet the requirements.

In addition, airguns, muzzle loading firearms, non-firing replicas, imitation guns and even toys could constitute dangerous weapons under the Dangerous Weapons Act, but much depends on the motive with, or for which, the item was possessed or used.

Despite and irrespective of the statutory prohibitions I am of the view that one should not tempt fate or, for that matter, people, and therefore not cause people to believe something to be a firearm, thus tempting them to break open your car to steal the airgun or imitation gun you had left on the car seat. Accordingly, I propose that you also lock away your airguns, air-soft guns and those real-life looking imitations. Many people use their deactivated firearms as wall-hangers, and although I understand their reasons for doing so, one must just be careful that they are not stolen in order to use in crime. Despite their effective deactivation to prevent them from functioning, they could easily fool someone into believing that they are real. Although knives are not covered by the FCA, my advice is that a knife collection should preferably be stored safely out of sight to prevent theft and the use thereof in crime. All these preventive measures are unfortunate but necessary in our crime-ridden society.

Here's how many South Africans own a Gun

<https://businesstech.co.za/news/lifestyle/252713/heres-how-many-south-africans-own-a-gun/>

Staff Writer
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Weapons watchdog the Small Arms Survey has released its latest report on gun ownership around the world.

The survey includes statistics from over 230 countries, and is based on the ownership of revolvers and self-loading pistols, rifles, carbines, assault rifles and sub-and light machine guns, held by civilian, military and law-enforcement groups.

It estimates that there are now more than one billion firearms in the world. 857 million (85%) are in civilian hands, 133 million (13%) are in military arsenals, and 23 million (2%) are owned by law enforcement agencies.

The new studies suggest that the global stockpile has increased over the past decade, largely due to civilian holdings, which grew from 650 million in 2006 to 857 million in 2017.

Virtually all countries show higher numbers, although national ownership rates vary widely, reflecting factors such as national legislation, a country's gun culture, historical and other factors, the report found.

National ownership rates vary from about 120.5 firearms for every 100 residents in the United States to less than 1 firearm for every 100 residents in countries like Indonesia, Japan, Malawi, and several Pacific island states.

South Africa

While the number of registered civilian gun owners is relatively low in South African compared to other countries, the country stands out due to the high number of unregistered/illicit firearms in civilian hands.

The survey estimates that there are currently 5,351,000 firearms in civilian possession in the country – placing it as the 20th highest in the world behind countries such as Saudi Arabia (5.5 million) and Iran (5.9 million).

Of these, approximately 3 million are registered (legal) firearms, while the remaining 2.35 million are unregistered. This means that there are effectively 9.65 civilian firearms per every 100 persons in the country.

In comparison, there are approximately 250,481 firearms registered to law enforcement in the country, and around 350,636 total military firearms.

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Gareth Vorster*

Note from SAGA

The ability to calculate the number of illegal firearms in any country is controversial and raises questions about the methods used. This item presents interesting comparative facts about legal firearm ownership.