



SAGA SNIPPETS

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Update: Constitutional Court Judgement & Expired Licences

30 July 2018

Over the last month there have been some developments concerning expired firearm licences and surrendering of firearms, but to date no directive has been received from the National Commissioner.

There is currently litigation pending, firstly brought by the South African Arms and Ammunition Dealers Association (SAAADA), which application deals with issues relating to firearm dealers and then also to administrative issues affecting all firearm licence holders.

Secondly, an application was recently brought on an urgent basis by the Gun Owners of South Africa (GOSA) which was due to be heard on the 17th July 2018, but which application was postponed to Friday 27th July 2018.

GOSA's application dealt directly with the consequences of the Constitutional Court judgement and the inability by SAPS to implement or deal with the 430,000 plus persons with expired firearm licences. GOSA's application also requested that the court grant an interdict against SAPS and the surrendering of firearms.

Further, on Monday 9th July 2018, the Minister of Police Mr Bheki Cele, stated on Radio Jacaranda, that because of logistical reasons SAPS were unable to implement the Constitutional Court decision, and further that persons with expired firearm licences did not

have to surrender their firearms to the police as there is an amnesty pending. The podcast of the interview was made available on SAGA's website and Facebook page.

After this interview, SAGA made a number of enquiries with the Portfolio Committee on Police (PCoP) and it was confirmed that an amnesty had indeed been tabled for discussion on the 16th August 2018.

SAGA will be addressing the PCoP with respect to the amnesty and its conditions, and specifically make submission with respect to those persons with expired firearm licences who may wish to take advantage of the amnesty.

What has certainly also levelled the playing fields so to speak, is GOSA's success with its urgent application and interdict which was heard on Friday 27th July 2018 before Judge Prinsloo of the North Gauteng High Court. Judge Prinsloo is the same Judge that dealt with the SA Hunters original application from June 2009, and who gave the judgement confirming that all green licence cards are valid.

While SAGA has not yet had sight of the actual written judgement, the following has been reported by GOSA as being the Order granted in their favour against the Minister of Police and the National Commissioner:

1 Directing that the SAPS as represented herein by the 1st and 2nd Respondents be prohibited from implementing any plans of action or from accepting any firearms for which the license expired at its police stations or at any other place, for the sole reason that the license for the firearm expired, and that the SAPS be prohibited from demanding that such firearms be handed over to it for the sole reason that the license for such a firearm has expired, and that this order will operate as an interim interdict, pending the further determination of this application, as prayed for in paragraphs 2 to 10 infra;

2 That this matter then be postponed to the opposed motion roll for further determination in the normal course of the roll, alternatively with such set time limits as this Honourable Court may deem reasonable upon hearing the parties or as agreed to between the parties, for the further determination of the following relief, as prayed for by the Applicant:

3 that by order of Court the periods as referred to in sections 27 and / or 24(1) and 24(4) of the Firearms Control Act, Act 60 of 2000, will be extended, in order for people that hold expired



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licenses to apply for the renewal thereof.

a. further alternatively

4 The First Respondent shall withdraw the circular issued by Acting National Commissioner Phahlane on 3 February 2016.

5 The First Respondent shall issue a directive that the information technology system of the Central Firearms Register be restored to a position that it is able to accept applications for renewal of licenses which are late because they are lodged inside the 90 days period envisaged in section 24(1) of the Firearms Control Act 60 of 2000.

6 The First Respondent shall issue a directive that the information technology system of the Central Firearms Register be restored to a position that it is able to accept applications for renewal of licenses

which have expired because the period of their validity contemplated in section 27 of the Firearms Control Act 60 of 2000 has expired.

7 Any applications for renewal contemplated in paragraphs (b) and (c) above shall still be subject to the requirement of "good cause" as contemplated in section 28(6) of the Firearms Control Act 60 of 2000.

8 Any applicant who has lodged an application for renewal and who has prima facie provided good cause in the relevant space provided on SAPS Form 518(a), shall be deemed to be in lawful possession of the firearm until his application has been decided.

9 Further and / or alternative relief;

10 Costs, inclusive the cost of two counsel where so employed are reserved for determination in the main application.

SAGA wishes to congratulate GOSA, its Executive and its legal team on an excellent and far reaching judgement, which although is in favour of those persons with expired firearm licences, bodes well for all firearm licence holders in the future.

SAGA is still waiting on the full written judgement and as soon as this comes to hand, further practical and sound advice will be furnished.

We will keep our members updated with respect to GOSA's court case and the amnesty as matters develop.

Carrying a Handgun for Self-Defence

By John Welch

Part 2

This second part of the series relates to an owner's responsibility to safeguard her or his firearm while carrying it for self-defence. Although incidents (breaches of safety rules and negligent handling) involving firearms can happen anywhere and anytime, people carrying firearms for self-defence probably need to be the most vigilant because, other than hunters and sport shooters, they carry loaded firearms within the public domain, and when they are required to use them, they do so without the assistance or guidance of a range officer.

Be reminded that in terms of section 13 of the Firearms Control Act, No. 60 of 2000 (FCA), a licence may be issued for a "(1) (a) *shotgun which is not fully or semi-automatic; or (b) handgun which is not fully automatic*". A licence for a self-defence firearm may be issued only if the Registrar is convinced that the applicant "(2) (a) **needs a firearm for self-defence**; and (b) **cannot reasonably satisfy that need by means other than the possession of a firearm**".

In accordance with subsection (3) no person may hold more than **one licence** issued in terms of this section. Subsection (4) provides that a "*firearm in respect of which a licence has been issued in terms of this section may be used where it is **safe** to use the firearm and for a **lawful purpose***" (my italics).

Section 84 of the FCA provides for the carrying of firearms in a **public place** and stipulates that "(1) *No person may carry a firearm in a public place unless the firearm is carried- (a) in the case of a handgun- (i) in a **holster or similar holder** designed, manufactured or*



*adapted for the carrying of a handgun and **attached to his or her person**; or (ii) in a **rucksack or similar holder**; or (b) in the case of any other firearm, in a **holder** designed, manufactured or adapted for the carrying of the firearm*".

Subsection (2) further provides that a "*firearm contemplated in subsection (1) must be **completely covered** and the person carrying the firearm must be able to **exercise effective control** over such firearm*".

Members must bear in mind that the carry-conditions only apply to carrying in a public place. At home, at your factory, on your farm, etc you may have your section 13 shotgun conveniently available for use. Please remember, though, that you always must exercise effective control over such shotgun. If not, it must be locked away in your safe.

Most people carry handguns for self-defence and this will almost always be in public places. The holster does not have to cover the handgun completely, however what must be completely concealed, is the firearm. I often see people walking in shopping malls and elsewhere clearly displaying that they are carrying a handgun. This is especially noticeable when a person exits his car and his shirt or jacket moves up to display the handgun on his hip. Often such person does not even remedy the situation by covering it up again. Also, some people tuck the pistol into their belt and cover it with their shirt. This Mexican-carry style is not allowed.

Whichever way or position you decide to carry your self-defence handgun, please ensure that you know exactly where it is and that you exercise effective control over it. I have seen people who have become so accustomed to carrying their handgun on their strong-side hip, that they involuntarily grabbed there, completely forgetting that they had decided to use an ankle holster on that occasion. You do not have to be paranoid when carrying a firearm for self-defence (neither should you be paranoid because you carry it), however, you must constantly be aware of it. You must always be alert and take any steps necessary to prevent someone from disarming you.

Most importantly when you carry a handgun in a briefcase, rucksack, handbag or similar holder, you must be very cautious to not leave the bag somewhere, when you depart. Be aware that bag snatching is still a daily occurrence in many places, as are smash-and-grab incidents from car seats.

A firearm is useless without ammunition. Yes, I know a firearm could be used as an impact weapon, but now is not the time to discuss it, and please do not do what you see on TV – grabbing a loaded pistol by the barrel and hitting someone with it. Always ensure that you have extra ammunition with you, either in speed-loaders or magazines. To reload under fire is no easy task, even with a speed-loader or extra magazine – don't make life more difficult for yourself.

Section 90 provides that you may not possess ammunition unless you hold a licence for a firearm capable of discharging such ammunition (or that you have a permit for the possession of the ammunition – such as a section 18

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ammunition collector's permit). Section 92 restricts the quantity of ammunition per firearm to 200 rounds. Dedicated hunters, sports persons, professional hunters and persons who have been authorised by the registrar may possess more than 200 rounds per firearm.

There is no provision in the law prohibiting the type of ammunition you may use in your self-defence firearm. The FCA must be read in conjunction with the Explosives Act, 1955, which *inter alia* bars the possession of explosives. The only effect hereof is that you may neither possess nor use so-called explosive bullets in your ammunition. Since the definition of an incendiary device or substance is extremely wide, it may be difficult to prove that it is unlawful to possess and use incendiary bullets. Generally, this ammunition is used by the military only and you will almost certainly be investigated in terms of the terrorism legislation should an incident occur. Accordingly, we advise



members to abstain from using incendiary and armour-piercing bullets. Rather stay with good quality expandable bullets. However, before loading such ammunition in your section 13 firearm, make sure that your firearm functions reliably with it. With a self-defence firearm, reliability is the most important factor.

To summarise: The first rule of a gun-fight is to have a gun. When you carry a firearm for self-defence you need to be well trained; your firearm needs to be loaded; you need to be constantly alert. Do not be distracted by anything – it makes you vulnerable – and provides an opportunity for

someone to attack you or to disarm you.

When you are forced to use your self-defence firearm, identify your threat (target) and what is behind or adjacent to him, making as sure as is reasonably possible in the circumstances, that you are under an unlawful and violent attack that has begun or is imminent (remember you will have to justify your action in court); do not point your firearm at anyone you are not prepared to kill; and keep your finger off the trigger until you are ready to shoot.

Once the attack is over, do not holster your gun immediately – the rule is “be quick on the draw and slow to re-holster”. First make sure the threat has ceased, and that there are no other attackers.

Be prepared; be alert; be safe: remember you are the first responder to a violent attack on yourself.

Third Review Conference on the Programme of Action (RevCon3)

From WFSA Newsletter July 2018

The Third Review Conference on the Programme of Action (RevCon3) was held in New York 18-29 June, 2018.

WFSA President, Mr. Torbjorn Lindskog, attended the meetings and delivered a statement on behalf of the WFSA which is available by going to the link at the end. Other WFSA member who were in attendance included: James Baranowski (NRA), Sheldon Clare (NFA), Thierry Jacobs (IEACS-BWF), Rick Patterson (SAAMI), Mauro Silvis (ANPAM) and Nico Wirtz (SAAMI).

While RevCon3 broke with consensus, a final outcome document was adopted and can be found by clicking [here](#). Consensus was not reached on the issue of ammunition, with the United States and Israel voting against its inclusion in the outcome document. Several other states also voiced their concern over ammunition, but ultimately abstained from voting against its inclusion in the outcome document. This, however, did not prevent RevCon3 Ambassador Jean-Claude Brunet from including reference to ammunition in the final text. For further information, please read the NRA article on this specific issue by clicking on the link at end.

Increased firearms marking requirements were also an issue at RevCon3, and the WFSA worked hard to educate and reiterate to those pushing for the marking of all parts and components that only the frame/receiver of a firearm needs to be marked.

Other technical issues of our interest were discussed, most notably the deactivation and destruction of firearms, their conversion, new technologies, polymers, modular weapons, end users, and 3D printing.

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Israel Armed Citizenry

Israel Set to Further Embrace Armed Citizenry to Promote Public Safety

Friday, July 20, 2018

After a spate of terror attacks in 2015, Israel opted to loosen its firearms restrictions so that more citizens could help to defend themselves and their communities. According to a recent report from Israeli newspaper Haaretz, the Ministry of Public Security is considering further liberalizing the country's firearms licensing process.

Under current Israeli law, prospective firearms licensees must demonstrate a "personal or public need, as decided by the authorities" in order to obtain a license. As explained in a November 2016 document published by the Ministry, other eligibility requirements include Israeli residency for at least three years, fluency in Hebrew, and good health. Applicants are also required to complete a firearms training course and undergo an interview with the firearms licensing bureau.

The 2015 changes relaxed the guidelines on who qualifies for a firearms license. Specifically, the guidelines made more active and reserve officers in the Israeli Defense Force eligible, along with civilians who have completed one of several security guard courses. By the end of that year, there were a total of 264,679 firearms licenses in the country of 8.5 million. Private firearm licenses accounted for 143,943 of the total, while security guards accounted for the other 120,736.

Characterizing the new proposal, the Haaretz article noted that the new measure would "allow any citizen with infantry firearms training to be eligible for a gun permit." Israel has a system of compulsory military service, therefore

a significant portion of the population has received some firearms training. In concert with this shift, the Israel Police and Knesset (Legislature) Interior and Environment Committee are working on a more comprehensive firearms license training course, upping the mandatory 2 hour lesson to four and a half hours. The Ministry estimates that the change will increase the number of citizens with gun licenses by 35,000 to 40,000.

Discussing the matter with Haaretz, Knesset Member Amir Ohana explained, *A civilian who carries a gun is more of a solution than a threat, and serves as a force multiplier for the security forces. Even in the most optimistic scenario, we won't have a Special Ops unit in every neighborhood but during the terror wave we saw that skilled civilians save lives.... A law-abiding citizen with the basic necessary skills should be allowed to protect himself and his surroundings.*

Ohana's recognition of the role an armed citizenry can play in thwarting terrorist violence is similar to the sentiment expressed by former Interpol Secretary General Ronald K. Noble to ABC News in 2013.

Noble stated, *Societies have to think about how they're going to approach the problem.... One is to say we want an armed citizenry; you can see the reason for that. Another is to say the enclaves are so secure that in order to get into the soft target you're going to have to pass through extraordinary security.*

The law enforcement official went on to add, *Ask yourself: If that was Denver, Col., if that was Texas, would those guys have been able to spend hours, days, shooting people randomly?... What I'm saying is it makes police around the world*

question their views on gun control. It makes citizens question their views on gun control. You have to ask yourself, 'Is an armed citizenry more necessary now than it was in the past with an evolving threat of terrorism?' This is something that has to be discussed... People are quick to say 'gun control, people shouldn't be armed,' etc., etc. I think they have to ask themselves: 'Where would you have wanted to be? In a city where there was gun control and no citizens armed if you're in a Westgate mall, or in a place like Denver or Texas?'

Moreover, the FBI has recently acknowledged the potential for armed citizens to combat mass violence. An April 2018 FBI report titled, Active Shooter Incidents in the United States in 2016 and 2017, stated,

Armed and unarmed citizens engaged the shooter in 10 incidents. They safely and successfully ended the shootings in eight of those incidents. Their selfless actions likely saved many lives. The enhanced threat posed by active shooters and the swiftness with which active shooter incidents unfold support the importance of preparation by law enforcement officers and citizens alike.

As the Ministry of Public Safety makes clear on their website, Israeli "law does not recognize a right to keep and bear arms." However, it is encouraging that the small nation is moving in a direction that will allow more of its citizens to exercise their inalienable right to self-defense.

<https://www.nraila.org/articles/20180720/israel-set-to-further-embrace-armed-citizenry-to-promote-public-safety>

Watch this space ...for more interesting firearm snippets