



SAGA SNIPPETS

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Proposed Amendment to the Firearms Control Act, 2000

By Heinrich Gonzales

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The recent Constitutional Court judgement in the matter of *Minister of Safety and Security v South African Hunters and Game Conservation Association [2018] ZACC* introduced a system of more questions than answers in terms of the Firearms Control Act, 2000 (Act No 60 of 2000). Hereinafter referred to as the "Act".

In the Government Gazette, Notice 531 of 2018, dated 31 August 2018, Dr Groenewald of the Freedom Front Plus, intends to introduce an amendment to the Act. The proposed amendment intends to address the "defects" in terms of section 24 of the Act, thus paving the way for clarity on the process of renewal of your firearm licence after the subsequent expiry thereof. The proposed amendment caters for 3 different scenarios of expiry.

1. What does the amendment entail?

For the purposes of this discussion, it is important to take note of the contents of section 24 of the act:

"(1) The holder of a licence issued in terms of this Chapter who wishes to renew the licence must at least 90 days before the date of expiry of the licence apply to the Registrar for its renewal.
(2) The application must be -
(a) accompanied by such information as may be prescribed; and

(b) delivered to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or in which the applicant's business is, as the case may be.

(3) No application for the renewal of a licence may be granted unless the applicant shows that he or she has continued to comply with the requirements for the licence in terms of this Act.

(4) If an application for the renewal of a licence has been lodged within the period provided for in subsection (1), the licence remains valid until the application is decided."

2. The following should be noted about the proposed amendment:

1) The first scenario: You as the holder of a licence in terms of the Act, may apply for the renewal of the licence within 90 days before expiry thereof. Thus if your licence expires at, for instance, the end of September 2018, you would be able to still submit your application for renewal on or before 30 September 2018, despite the 90 days requirement currently in terms of section 24. In this regard, an administrative fine of R500-00 would be imposed by the South African Police Service.

2) The second scenario proposes that you can apply for renewal of your firearm licence within 90 days after the expiry thereof, which will include an administrative

fine not exceeding R1 000-00. For example: Your firearm licence expires on 30 September 2018, but you can still apply for renewal of the licence within 90 days after 30 September 2018.

3) The third scenario entitles you, the firearm owner, a further extension of 30 days to apply for the renewal of the firearms licence if you did not comply with the first and second scenarios. An administrative fine not exceeding R1 500-00 will be imposed for the late applicant. The proposed amendment imposes a further obligation on the licence holder, and that is that if you did not comply with scenario 1 and 2 above, you will have to hand in your firearms at the SAPS station, or your dealer for storage thereof. The costs for storage will be for your account, and the firearms will only be handed back to you if you can provide proof of your application of renewal.

If you look at the practicality and the consequences of the scenarios above, a R1 500-00 administrative fine is a small price to pay for you to keep your firearm. During the three "grace periods", the licences are valid until the renewal application is successfully finalised. The mere fact that you



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applied late for the renewal of your firearm licence and/or due to the fact that an administrative fine was imposed on you, will not disqualify you in being successful with your application for renewal.

3. General provisions

* The bill also proposes an amendment to sections 106 and 107 of the act in that proof of application of renewal will be sufficient in the event of an inspection at your house or upon request of the SAPS at a road-block;

* The bill also seeks the implementation of a transitional provision to be applicable to expired licences before the commencement of the proposed amendment.

4. Conclusion

It is important to take note that the Firearms Control Amendment Bill, 2018 is a proposed amendment to the Act, and not yet in force. This bill will have to be accepted by the Parliament of South Africa and also signed by the President before it will be in operation and enforceable. At this stage, you as a firearm owner and South African citizen can submit written representations on the bill until the end of September 2018, either if you support the contents thereof or if you are against it.

Remember, if you don't participate in the process, you can't complain later!

NOTE:

This article is an information piece and not a formal legal opinion.

See the SAGA website at www.saga.org.za for the Government Gazette which contains this Notice and has the information for submissions.

Watch this space ...for more interesting firearm snippets

What Paperwork Should You Carry?



By John Welch

Members are aware that a valid competency certificate precedes the issue of a relevant firearm licence. In other words, no licence to possess a firearm may be issued unless the person is in possession of a suitable competency certificate. Competence of the person is something SAGA has promoted for many years. In fact, so strongly do we feel about competence of the person, that we believe licences should almost follow automatically – mere registration and issuing of a permit at the local DFO ought to suffice. However, whether such a system will ever prevail may be wishful thinking. Currently any firearm owner will therefore have at least two relevant documents: a competency certificate to possess, and a licence for a particular firearm.

The bearer of a firearm needs to identify him- or herself at the request of a police official. Section 107 (1) of the FCA provides that *“any person who carries with him or her a firearm must at the request of a police official or any person authorised by the Registrar produce the licence, permit or authorisation, as the case may be, in respect of such firearm for inspection”*.

However, subsection (2) provides that *“a person referred to in subsection (1) must- (a) at the request and to the satisfaction of a police*

official or any person authorised by the Registrar, identify himself or herself forthwith; and (b) at the request of a police official or any person authorised by the Registrar, produce such firearm for inspection”.

It is noticed that the word “forthwith” appears in subsection (2) only, accordingly the inference is that when in possession of a firearm, you only need to be able to identify yourself, rather than to forthwith produce the relevant licence. This inference is strengthened by section 106 (1) which stipulates that *“subject to section 107, any holder of a licence, permit or authorisation issued in terms of this Act must- (a) produce the licence, permit or authorisation for inspection within seven days of being required to do so by any police official or by any person authorised by the Registrar;”*.

With respect to both sections 106 and 107, the police official is obliged to identify him- or herself to the firearm owner and also to produce her or his appointment certificate.

Not all people understand the subtle nuance differences in the statutory requirements and therefore SAGA recommends that you rather err on the side of caution and not tempt fate. Therefore, whenever you carry a firearm or have one (or more) in your possession, also have the relevant (unexpired) firearm licences in your possession. You do not have to have the competency certificate in your possession.

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Members are reminded that licences must be maintained in such a state that they can be produced in an undefaced and legible condition. This has not always been possible as the quality of the cards has been rather poor. However, try to maintain your licences in the best possible condition.

Muzzle loading firearms are exempt from licencing, but owners have to have the relevant competency certificate. When you are en route to the shooting range with your muzzle loader, be prepared to identify yourself when requested by a police official. You might also prevent unnecessary questions if you have in your possession your competency certificate and your black powder permit issued by the Chief Inspector of Explosives (which you are in any event obliged to possess).

Please note that although percussion-cap revolvers (so-called cap and ball) are indeed firearms (they do not load through the muzzle but rather through the cylinder) and accordingly are licensable, the police's IT system currently does not provide for them to be licenced. Hence a moratorium has been placed on them and they will be required to be licenced only whenever the system is in place. When you convey such a percussion-cap revolver to the shooting range, ensure that you have your muzzle loading competency certificate and your black powder permit with you.

Unless an air rifle is of calibre 5.6mm or larger, or creates a muzzle energy of more than 8 joules

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(6ft-lbs), it is not deemed to be a firearm and therefore exempt from being licenced. Also, no competency certificate is required. Therefore, when proceeding to the shooting range with your air rifle, please be able to identify yourself.

The only other category of persons that may require a permit are private ammunition collectors in accordance with section 18. Such private ammunition collectors must carry their section 18 permit whenever they have in their possession collectable ammunition. A person may be declared a private ammunition collector only if he or she has been approved as such by an accredited collectors' association.

A question that is often asked is whether a licence holder may carry with her or him a certified copy of the relevant licence? In theory, at least, the police ought to be able to scan licences and verify information by means of a bar code reader. This is not possible when scanning a copy of the licence and accordingly, you may not carry a certified copy of your licence. This despite the assumption that it is safer to carry a copy rather than the original should it be destroyed, lost or stolen. At least you should be able to prove your identity and that you do have a licence, which then ought to convince the police to instruct you to produce your actual licence within 7 days at a police station.

SAGA members are responsible – whenever you drive on a public road, be in possession of your driver's licence; whenever you are in possession of your firearm/s (for personal protection, hunting or sport shooting) be in possession of all relevant firearm licences.

Lost or Stolen Firearms: Your 5 Step Plan of Action

By Heinrich Gonzales

You arrive home one night after a long day's work, only to realise that your firearm is not in the holster anymore. You immediately run to your motor vehicle to establish if it maybe "slipped-out" there, but the firearms is still nowhere to be found. It is important to immediately act in accordance with the Firearms Control Act, 2000 (Act No 60 of 2000) and the relevant regulations. (Hereinafter referred to as the "Act")

Section 120(11) of the Act places an obligation on the holder of a licence, permit or authorisation to possess a firearm, and any other person who was in the possession of or who had control of a firearm when it was lost, stolen or destroyed, must report such loss, theft or destruction within **24 hours after having become aware of the loss, theft or destruction of the firearm to the nearest police station.**

Failure to comply with section 120 (11), could lead to criminal prosecution with the possibility of imprisonment for up to 10 years in terms of schedule 4 of the Act. In terms of section 35 of the South African Constitution, you have the right to an attorney of your choice who can assist you in this process. You also have the right to remain silent and anything you say can and will be used against you in a court of law. You also enjoy the right against self-incrimination, and you are under no obligation to depose an affidavit which incriminates yourself. Taking into account all this legislation and obligations, it is important to instruct the right attorney to guide you through the process.

Your 5 step plan of action:

1) Upon realization that you lost your firearm, you should immediately contact your criminal law attorney who specializes in firearm related issues. This is of the utmost importance. Always keep in mind your 24 hour window to report the loss and/or theft of the firearm.

2) Briefly explain the facts surrounding the matter to your attorney. This could be done by telephone. Be honest with your attorney. He is your best friend! Your attorney will schedule a meeting with you as soon as possible. Subject to the time frame of 24 hours. If the 24 hours is about to expire, your attorney must immediately act and assist you with the necessary, even if it is after hours!

3) Your attorney will have a thorough consultation with you regarding the matter and draft an A1 police statement on behalf of yourself in accordance with your instructions. This affidavit will only contain the necessary averments to report the firearm as stolen. Remember, you don't have to assist the police in their investigation and you have the right to remain silent.

4) After step 3, you and your attorney must go to the nearest police station and report the firearm as stolen. Kindly take note that this must be done within 24 hours upon establishing the firearm is lost and/or stolen.

5) At the police station the police officer will open a docket and file your A1 statement which was drafted by your attorney. If the police officer starts asking

questions regarding the facts and background surrounding the incident, your attorney will inform the police officer that you have already filed your affidavit and you have nothing to add. Police officers sometimes "fish" for more facts to incriminate you.

Conclusion:

After reporting the firearm as being stolen, the South African Police Service will most probably open a criminal docket against you and will start the process to investigate the matter and possibly charge you of a criminal offence in terms of section 120(8) of the act.

Section 120(8) states as follows:

"(8) A person is guilty of an offence if he or she-

b) loses a firearm, or is otherwise dispossessed of a firearm owing to that person's failure to-

(i) lock the firearm away in a prescribed safe, strong-room or device for the safekeeping of a firearm;

(ii) take reasonable steps to prevent the loss or theft of the firearm while the firearm was on his or her person or under his or her direct control;

(iii) keep the keys to such safe, strong-room or device in safe custody."



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After the police docket is opened, the police will assign an investigating officer to investigate the matter, where after they will take the docket to the control prosecutor for a decision on the matter.

Your attorney will draft and file representation on the merits of the case, which includes relevant legislation and/or case law, to convince the control prosecutor not to proceed with prosecution. If the control prosecutor is of the opinion that they have a *prima face* case against you, they will charge and prosecute you with the negli-

gent loss of a firearm. If the prosecutor is of the opinion that there is reasonable doubt that they will successfully prosecute you, they will withdraw the charges.

It is of utmost importance to phone your attorney the moment you establish that your firearm is lost and/or stolen. Don't go to the police station by yourself to report the lost and/or stolen firearm, and refrain from deposing your own affidavit regarding the matter. It is more than likely that you could say something in the "self-drafted" affidavit that could later

be used against you in the criminal trial. Ensure that you always have your criminal law attorney's cell phone number on your phone for an after hour crisis.

In terms of schedule 4 of the act, you could be imposed with direct imprisonment for up to 5 years if found guilty of an offence in terms of section 120(8) of the Act. The stakes are high and the risk is serious. Get the right advice from a specialist.

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