
MEMORANDUM

To: JUAN KOTZE ATTORNEYS

Date: 4 April 2016

**:THE NATIONAL HUNTING AND SHOOTING
ASSOCIATION OF SOUTH AFRICA**

1. This opinion concerns the validity of firearm licences issued under the Arms and Ammunition Act No 75 of 1969 ("the 1969 Act"). I shall refer to these licences as "the green licences". The opinion is sought with reference to the judgment of Prinsloo J in the matter of SA Hunters v Minister of Safety and Security Case No 33656/09, North Gauteng High Court, Pretoria. This matter was decided after the commencement of the Firearms Control Act No 60 of 2000 ("the New Act").
2. The order that Prinsloo J issued was to the effect that "all fire-arm licences contemplated in sub-item I of Item I of Schedule I of the Fire-Arms Control Act, 2000 (Act 60 of 2000) shall be deemed to be lawful and valid pending final adjudication of the main application. The firearms contemplated are those in respect of which green licences were issued pending the final adjudication of the main application and thus curtails the operation of the New Act to the extent of the order. The main application has not yet been disposed of and the order is still in place.

3. A perusal of the judgment reflects that the court intended to preserve the status quo and the validity of all firearm licences issued in terms of the 1969 Act. The court intended to protect all green licence holders against the threat of criminal prosecution and against the deprivation of their ownership of firearms that the New Act posed. The Minister did not seek to exclude some green licences from the order, for example where licences were already issued for some firearms under the New Act.
4. The order granted included "all fire-arm licences" and was thus issued without any limitation. The order covers all green licences and no green licence is excluded from the order. The order preserves the lawfulness and validity of a green licence until the final adjudication of the main application. That is the only basis upon which the green licence will lose its deemed lawfulness and validity.
5. On 3 February 2016 a direction was issued by the Acting National Commissioner: South African Police Service, Lieutenant-General J K Phahlane, which has seemingly cast doubt on the extent of the order. The heading of the direction refers only to renewals of firearm licences in terms of section 24 of the New Act. Although green licences are not subject to renewal in terms of the New Act, it appears that some members of the South African Police Service interpret the direction to mean that if a licence in terms of the New Act has expired, the green licence for the same firearm is no longer valid. This interpretation is contended for to convince the owner to surrender the firearm voluntarily, with the promise that no prosecution will be instituted.
6. Such an interpretation will be wrong. Considerations such as that the holder of a green licence may have received a licence under the New Act, do not impact on the order. If a licence in terms of the New Act has been issued to the holder of a green licence in respect of the same firearm, then that owner has two valid licences.

7. The direction issued by the Acting National Commissioner is confusing and appears to have been written by different persons with different intentions. I attach a copy thereof to this memorandum.

7.1. Paragraph 3 of the direction is correct. So are paragraphs 4, 5 and 6. The first sentence of paragraph 7 is also correct.

7.2. The second sentence of paragraph 7 states that the order issued by Prinsloo J "covers persons who at no stage migrated to the current Act of 2000". The intention with the quoted portion is seemingly to convey that persons with licences issued under the New Act, but who also still have green licences, are somehow not entitled to the protection of the order. If that was the intention, the direction is wrong and in conflict with the court order. As explained, the order is applicable to all green licences without limitation and regardless of whether a licence has been issued under the New Act.

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7.3. Paragraph 8 of the directive does not apply to green licences, as all green licences "shall be deemed to be lawful and valid pending final adjudication of the main application " and because green licences are not renewed under the New Act. Paragraph 8 can thus only apply to renewals under the New Act.

7.4. Every holder of a green licence is in possession of a licence, which is deemed to be lawful and valid. If such a person's licence for the same firearm in terms of the New Act has expired, he or she still has a valid green licence. Paragraph 9 of the directive is accordingly not applicable to green licences.

8. If a licence issued in terms of the New Act has expired, the owner of the firearm will remain in valid possession of that firearm if he or she has a green licence. Such owner will then have one valid licence, whereas he or she previously had two valid licences. The owner is under no lawful

obligation to surrender such firearm, even if the renewal of a licence in terms of the New Act is refused because the renewal application was not made timeously. Such a refusal would, however, be foolhardy and the owner should successfully defend any prosecution in respect of the possession of such a firearm.



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Maisels Chambers
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4 April 2016

South African Police Service  *Suid-Afrikaanse Polisie*

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- A. The National Head
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- B. ALL DIVISIONAL COMMISSIONERS
- c. ALL PROVINCIAL COMMISSIONERS
- D. The Head CORPORATE COMMUNICATION
- E. All Heads
HEAD OFFICE
- F. All Section Heads HEAD OFFICE
- G. All Commanders
SAPS ACADEMY AND TRAINING CENTRES
- H. ALL DEPUTY NATIONAL COMMISSIONERS

1. The Chief of staff

MINISTRY OF POLICE

RENEWAL OF FIREARMS LICENCES IN TERMS OF SECTION 24 OF THE
FIREARMS CONTROL ACT, 2000 (ACT GO OF 2000)

-G.1 Circular 27/5/2/1 of the Acting Divisional Commissioner Visible Policing dated
21 August 2015, has reference.

- 2 The aim of this letter is to provide further clarity regarding the renewal of firearm licences.

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RENEWAL OF FIREARMS LICENCES IN TERMS OF SECTION 24 OF
THE
FIREARMS CONTROL ACT, 2000 (ACT 60 OF 2000)

- 3 Section 24 provides that: ⁰ 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"
- 4 Applications for renewal of firearm licences must be lodged at least 90 days before the expiry of the licence. Applications for renewal may, however be considered if the application is lodged in less than 90 days, in which case reasons for the late application must be provided on the application form.
- 5 Licences for which renewal applications have been lodged as per paragraph 4 above will remain valid until the application has been decided upon.
- 6 The above scenario applies only to persons who possess licences issued under the Firearms Control Act, 2000 (Act 60 of 2000).
- 7 In terms of the Interim Court Order in the SA Hunters matter, the "Green Licences" issued under the Arms and Ammunition Act, 1969 (Act 75 of 1969) remains valid. This Order covers persons who at no stage migrated to the current Act of 2000. In the event such persons would like to apply for a licence under the Firearm Control Act, 2000, their applications must be dealt with as new applications and the person would remain in lawful possession of the relevant firearm under the "Green Licence" until the application has been decided upon.
- 8 In the case where a person want to renew or apply for a licence, but the validity of the licence has already expired, the person must be informed that he/she is not anymore in lawful possession of the firearm and that the firearm must be surrendered to the nearest police station.
- 9 When a firearm in respect of which the licence has expired is voluntarily surrendered, the owner will not be prosecuted.

10 The contents of this directive must be brought to the attention of all DFC's for compliance.

H-1.1. For your information.
Memorandum
ACTING NATIONAL COMMISSIONER: SOUTH AFRICA
K. PHAHLANE
Date 2816 -02- 0 3

LIEUTENANT
GENERAL
AFRICAN POLICE
SERVICE