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THE NATIONAL COMMISSIONER
DIE NASIONALE KOMMISSARIS
PRETORIA
0001

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- A. All Provincial Commissioners
- B. All Component Heads of Legal Services: Head Office
- C. All Provincial Heads: Legal Services
- D. All Provincial Heads: Firearms, Liquor and Second-Hand Goods Control (FLASH)

LEGAL CONSEQUENCES OF THE PUTTING INTO OPERATION OF CERTAIN SECTIONS OF THE FIREARMS CONTROL AMENDMENT ACT, 2006 (ACT NO. 28 OF 2006)

- A-D.1. The circular 27/5/11, dated 28 December 2010 regarding the implementation of the Act, has reference. This circular is intended to correct certain information set out in the said circular as well as to provide further explanations regarding the legal implications of the implementation of the Amendment Act.
- 2. Sections 1(b), 1(i), 2, 4, 8, 9 10, 18 and 52 of the Firearms Control Amendment Act, 2006, are being put into operation with effect from 10 January 2011. The Proclamation for the commencement of the said sections of the Act and the relevant Regulations have been circulated under cover of the said circular and are not circulated again. Circular 27/5/11 dated 28 December 2010 is hereby revoked.
- 3. The legal implications of the Amendment Act are the following:

MUZZLE LOADING FIREARMS

- 3.1 The definition of "antique firearm" (meaning a muzzle loading firearm manufactured before 1900 or a replica thereof) is deleted from the Act, and a definition is inserted of a "muzzle loading firearm". It must be

noted that in section 5 of the Act, the reference to "an antique firearm" has also been deleted and "a muzzle loading firearm" is reflected in section 5 as a device that is not regarded as a firearm for purposes of the Act. Throughout the Act, it is indicated which provisions are applicable to firearms or muzzle loading firearms respectively. The position with cap and ball (black powder) revolvers must, however, be noted:

Although cap and ball (black powder) revolvers are regarded as firearms from 10 January 2011, and would be required to be licensed in terms of the Act, no police action must be taken against any person for the possession of a cap and ball revolver. The fact that the Act does not provide, as is the case with muzzle loading firearms, for the transitional possession of cap and ball revolvers in the licensing process, the matter needs to be addressed on a policy level. A further statement on how the South African Police Service will deal with cap and ball revolvers will be made at a later stage. In the meantime it must be clear that no person must be arrested for the possession of a cap and ball revolver from 10 January 2011, until the matter is resolved.

POSSESSION OF MUZZLE LOADING FIREARMS

- 3.2 Previously a muzzle loading firearm (antique firearm) could be legally possessed without any formalities. The amended section 3 in subsection (2) provides that no person may possess a muzzle loading firearm if he or she has not been issued with the relevant competency certificate. Possession of a muzzle loading firearm without a competency certificate is criminalised and the penalty for a contravention is the same as for the possession of a firearm without a licence. In view of the transitional provision in Item 1A, however, no prosecution may be instituted during the period of one year from the commencement of the Amendment Act in respect of persons who have not applied for the relevant competency certificate within such period(s).

COMPETENCY CERTIFICATES FOR MUZZLE LOADING FIREARMS

- 3.3 Persons who are in possession of muzzle loading firearms must within one year from the commencement of the Act, in other words, one year from 10 January 2011, apply for the relevant competency certificate for a muzzle loading firearm. To remain in lawful possession it is therefore not necessary that the person must be in possession of such competency certificate within one year, only that he or she applied within that period. The Minister of Police may also extend that period, in which case no person may within the extended period be prosecuted for being in possession of a muzzle loading firearm without the relevant competency certificate. Item 1A(4) of the Schedule clearly states that once a person has applied for the relevant competency certificate for a muzzle loading firearm, he or she remains in lawful possession thereof until the application has been decided.

3.4 APPLICATION FOR A COMPETENCY CERTIFICATE TO POSSESS A MUZZLE LOADING FIREARM (SAPS517)

RESPONSIBILITIES OF THE APPLICANT

- 3.4.1 The Applicant must submit a duly completed application form (SAPS 517) which is the application for a competency certificate to the nearest police station.
- 3.4.2 The following supporting documentation must be attached to the application form:
- 3.4.2.1 Two recent (not older than 3 months) colour photographs (passport size), which shall-
- (i) Show a full and unobscured front view of the applicant's head, face and shoulders and have a neutral background (no headdress); and
 - (ii) be to the dimensions of 33 mm (width) X 40mm (height).
- 3.4.2.2 A certified copy of the applicant's identity document or passport on which the applicant's photo and personal particulars are reflected;
- 3.4.2.3 A certified copy of the proficiency training certificate obtained from an accredited training institution in terms of the provisions of the Act; and
- 3.4.2.4 A certified copy of the applicant's permanent residential address (permit for non-South African citizens) must be submitted by all applicants.

3.5 RESPONSIBILITIES OF THE DESIGNATED FIREARMS OFFICER IN CASE OF APPLICATION FOR A COMPETENCY CERTIFICATE TO POSSESS A MUZZLE LOADING FIREARM

- 3.5.1 Receive the application form (SAPS 517) and the supporting documents from the applicant.
- 3.5.2 Check the correctness and completeness of the application.
- 3.5.3 Check and verify the contents of the supporting documentation.
- 3.5.4 Hand the application form and supporting documentation back to the applicant if incomplete.
- 3.5.5 If the application is complete-
- 3.5.5.1 Obtain two full sets of fingerprints of the applicant as required in section 6(1)(a) of the Act on form SAPS 91(a) (Enquiry) form;
 - 3.5.5.2 Record the details of the application in the SAPS 86 register;

- 3.5.5.3 Endorse the SAPS 86 reference number in red ink on the application form;
- 3.5.5.4 Capture the information of the application form on the Enhanced Firearms Register System (EFRS). In cases where the Designated Firearms Officer does not have access to the EFRS, he or she must contact the Designated Firearms Officer at the Firearms Registration Centre (identify enabled police station) to obtain a system generated application number and the exact amount that needs to be paid by the applicant.
- 3.5.5.5 Issue a remittance advice (SAPS 523(a)) to the applicant. Refer the applicant to the relevant office for payment.
- 3.5.5.6 Obtain proof of payment (expenditure receipt Z 263) from the applicant. Make a copy of the proof of payment and certify it;
- 3.5.5.7 Attach a copy of the proof of payment to the application form;
- 3.5.5.8 Update the details of payment on the EFRS;
- 3.5.5.9 Record the SAPS 86 and the system generated application number on the back of the applicant's photographs in black ink. Caution must be exercised to prevent any indenture on the photograph;
- 3.5.5.10 Scan the photograph(s), fingerprint(s) and signature of the applicant on the EFRS;
- 3.5.5.11 Write the system generated application number in black ink on the application form and in red ink in column a of the SAPS 86 Register;
- 3.5.5.12 All pages of the application must be endorsed in red ink on the top right hand corner as "*Muzzle Loading Firearm*";
- 3.5.5.13 Print and date stamp the acknowledgement of receipt (SAPS 523) for the application from the EFRS. In cases where the Designated Firearms Officer does not have access to the EFRS, he/she must complete the acknowledgement of receipt (SAPS 523) form;
- 3.5.5.14 Issue the acknowledgement of receipt (SAPS 523) to the applicant;
- 3.5.5.15 Update the status of the application on the EFRS.
- 3.6 The validity period for a competency certificate for a muzzle loading firearm is ten (10) years. Note: Previously no competency certificate, permit or licence was required to possess a muzzle loading firearm. The renewal of competency

certificates for muzzle loading firearms will therefore only become applicable at the soonest after 2021.

RENEWAL OF COMPETENCY CERTIFICATES

- 4 The second important amendment relates to the fact that the Act previously contained no mechanism and no obligation to renew a competency certificate. It needs to be made clear that possession of a firearm without a licence is criminalised and that the validity period of the competency certificate does not determine the lawfulness of possession of the firearm. The issuing of a licence is dependent on the possession of a competency certificate, but possession of the firearm only becomes unlawful upon expiry of the licence and not expiry of the competency certificate.
- 4.1 From 10 January 2011 application for the renewal of a competency certificate must be made ninety (90) days before the date of expiry of the competency certificate. In some instances the competency certificates of persons who apply for the renewal of firearms licences after 10 January 2011, the validity period of the competency certificate as indicated on the competency certificate may have expired already. It must be noted that instructions were previously issued that persons who renew their licences issued under the 2000 Act, could apply, in lieu of a mechanism to renew a competency certificate, for a new competency certificate. In respect of all such applications made before 10 January 2011, the person may not be prejudiced for not applying at least ninety (90) days before the expiry of the competency certificate, as long as he or she applied for the renewal of the licence. In respect of applications from 10 January 2011 onwards, the expiry of the competency certificates issued before 10 January 2011, can also not result into prejudice to the applicant, as the Amendment Act aligns the period of validity of the competency certificate to that of the relevance licence.
- 4.2 Competency certificates issued after 10 January 2011 must be issued with the same period of validity of the relevant licence applied for, and the minimum period of ninety (90) days before expiry of both the licence and competency certificate will be applicable for those competency certificates. The prescribed form for the renewal of a competency certificate is attached to the Regulations published on 17 December 2010 (SAPS 517(g)). The minimum period for the application of the renewal of a licence in the Act remains ninety (90) days before and after the amendment of the Act.
- 4.3 Section 10A of the Act, also provides that "if the application for the renewal of the competency certificate was lodged within the relevant time period, it remains valid until the application has been decided". The Act now provides that a competency certificate remains valid for the period of validity of the licence in

respect of which it has been issued. If the licence was issued in respect of self defence, the competency certificate will be valid for five (5) years. If, however, the licence had been issued for occasional hunting or occasional sports shooting, the validity of the competency certificate is now for a period of 10 years. In view thereof that all competency certificates were previously valid only for five (5) years, persons who are in possession of licences issued for a period of ten (10) years need not renew their competency certificates in respect of that category of firearms before ninety (90) days before the expiry of the relevant competency certificate, but ninety (90) days before the expiry of the said licence.

- 4.4 In the case of a person who has a licence and competency certificate for a handgun for self defence as well as a handgun for occasional hunting, the view is held that the existing competency certificate remains valid for the period of the licence with the longest period of validity, and when the licence for self defence is renewed, the applicant would be in possession of a valid competency certificate and need not apply for renewal of the competency certificate. That will only be in the exceptional case where a person is in possession of a competency certificate for a particular category of firearm both for self defence and occasional sports shooting/hunting.
- 4.5 The Amendment Act does not have a transitional provision in respect of the validity period of a competency certificate and the provision in respect of the validity of competency certificates to run concurrently with the validity period of the licence becomes applicable from 10 January 2011, irrespective of the date printed on the competency certificate. The fact that the date printed on the competency certificate has lapsed becomes irrelevant in view of the fact that the validity of the competency certificate has been aligned from 10 January 2011 with the period of validity of the licence. In terms of section 24 of the Act, an application for the renewal of a licence must be lodged ninety (90) days before the expiry of the licence. The effect of the aligning of the period of validity of the competency certificate with the period of validity of the relevant licence, to possess a firearm, means that when a person applies for the renewal of his or her firearms licence, he or she must simultaneously apply for the renewal of his or her competency certificate (both at least ninety (90) days before the expiry of the licence) and irrespective of the validity period indicated on the competency certificate.
- 4.6 The question may arise on how cases should be dealt with where the person applies for the renewal of a competency certificate and a licence in a shorter period than the ninety (90) days required by the Act. The view is held that the application must be processed in the normal manner. Should the application, however, not be finalised before the expiry of the licence, then the licence will expire as the Act provides in section 24(4) that if an application for the renewal of a firearm licence

has been lodged within in other words at least ninety (90) days before expiry of the licence, the licence remains valid until the application has been decided. If it is therefore not possible to decide the application within the shorter period of ninety (90) days, the licence (and competency certificate) will expire and possession of the firearm upon expiry of the licence will become unlawful. In such case it is proposed that the Registrar deal with the matter in terms of section 28(2) to 28(6), due the applicant's non-compliance with the Act to apply at least ninety (90) days before expiry of the licence. Although non-compliance with the renewal period for the licence would not in itself constitute an offence, it could lead to the lapsing of the validity of and cancellation of the licence and the firearm having to be disposed of in terms of the Act. The South African Police Service must deal with such situation in a reasonable manner. If it is possible to process such a late application within the time period available it should be done and the finalisation of the application should not be delayed unreasonably.

- 4.7 In respect of applications for the renewal of licences until 11 March 2011, where the ninety (90) days period has not been adhered to in respect of either the competency certificate or the licence, the application must be accommodated through the use of section 28(2) to (6) of the Act in order to phase in the implementation of the Act in a reasonable fashion.
- 4.8 It is not an offence in the Act or amended Act not to renew a competency certificate or a licence within the stipulated period. The validity of the competency certificate is also not a requirement for lawful possession of a firearm, although the possession of a competency certificate is a prerequisite for the issuing of a firearms licence. No prosecution can therefore be instituted for not renewing a competency certificate within the prescribed period or at all. A valid licence is, however, required for lawful possession and a person may be prosecuted for being in possession of a firearm without being in possession of a valid licence. The non-compliance with the renewal period may eventually affect the validity of the competency certificate and a licence cannot be issued or renewed without the relevant person being in possession of a competency certificate. In such cases, as indicated above, the Registrar is advised to deal with the matter in terms of section 28(2) to 28(6) of the Act, if a licence has not been issued upon the expiry of thereof. (Both the licences and competency certificates of persons who applied within the required period remain valid until the applications have been decided).
- 4.9 A person who has not at all applied for the renewal of a licence, issued in terms of Act 60 of 2000, before the expiry thereof will upon expiry of the licence be in unlawful possession of the firearm which constitutes an offence and he or she may be prosecuted for that and the firearm seized.

- 4.10 It is realised that numerous competency certificates have been issued to persons, but no firearms licence had been issued to the person. In such case there is technically no expiry date for the competency certificate. In view of the fact that no licence is granted for a period exceeding 10 years, a competency certificate issued without the issuing of a licence can only be accepted for a period not exceeding 10 years from the date of issuing of the competency certificate. After 10 January 2011, any competency certificate should be printed simultaneously with the licences, in respect of which the competency certificate is applied for, when the licence is granted, in order to reflect the expiry date of the licence also as the expiry date of the competency certificate.
- 4.11 It must be noted that in view of the Court order which followed the application against the Minister by the SA Hunters and Game Conservation Association, licences issued in terms of the repealed Arms and Ammunition Act, 1969 (Act No. 75 of 1969), remain valid until the Court has decided on the Constitutionality of the Act. No steps may at this stage be taken against persons who have not renewed their licences which have been issued in terms of the repealed Arms and Ammunition Act, 1969, within the time periods prescribed in terms of the Firearms Control Act, 2000. These "green licenses" remain valid for the present.
- 4.12 **APPLICATION FOR RENEWAL OF COMPETENCY CERTIFICATE IN RESPECT OF A FIREARM (SAPS 517(g)) RESPONSIBILITIES OF THE APPLICANT**
- 4.12.1 Applications for the renewal of a competency certificate issued in terms of the Act, must be made simultaneously with the application to renew the licence of the firearm in question, irrespective of the date of validity indicated on the existing competency certificate (in view thereof that the Amendment Act has aligned the period of validity of the competency certificate with the period of validity of the licence in question). In respect of both applications, for renewal of a competency certificate and a licence the Act requires that the application must be made at least ninety (90) days before expiry of respectively the competency certificate and the licence.
- 4.12.2 The following supporting documents must be attached to the application form:
- 4.12.2.1 Two recent (not older than three (3) months) colour photographs (passport size), which shall-
- (i) Show a full and unobscured front view of the applicant's head, face and shoulders and have a neutral background (no headdress); and
 - (ii) be to the dimensions of 33 mm (width) X 40mm (height).

- 4.12.2.2 A certified copy of the applicant's competency certificate which he or she wishes to renew;
- 4.12.2.3 A certified copy of proof of the applicant's permanent residential address (permit for non-South African citizens) must be submitted by all applicants;
- 4.12.2.4 A declaration under oath or solemn statement by the applicant in the prescribed form confirming that he/she still conforms to the requirements of section 9(2) of the Act. Note that the prescribed statement is integrated into form SAPS 517(g). Also note that the applicant need not comply again with the provisions of section 9(2) (q) or (r) of the Act, in other words he or she need not again complete the prescribed test on knowledge of the Act, or the practical test regarding the efficient handling of the firearm, unless the Registrar in a specific case and on good grounds require otherwise.
- 4.12.2.5 Any other documentation submitted by the applicant in support of the application;
- 4.12.2.6 Proof of payment;
- 4.12.2.7 A certified copy of the applicant's identity document;
- 4.12.2.8 The application for the renewal of a competency certificate must be submitted by the applicant to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or conduct business whichever is applicable; and
- 4.12.2.9 Two written testimonials from friends/colleagues or any other person who might have knowledge of the applicant.

GUIDELINES TO DEAL WITH APPLICATION FOR COMPETENCY CERTIFICATES AND RENEWAL OF COMPETENCY CERTIFICATES

- 5. The Designated Firearms Officer must confirm the physical address indicated on the application form to determine whether the applicant resides at the given address.
- 6. The Designated Firearms Officer must after submission of an application for a competency certificate or a renewal of a competency certificate conduct a background evaluation of the applicant.
- 7. A minimum of two interviews must be conducted. Both interviews may be conducted telephonically or one in person and the other by telephone. At least one interview must be conducted with the spouse or partner, of the applicant. In the case of unavailability of such spouse or partner, an adult family member must be interviewed.

8. The Designated Firearms Officer must forward the completed form (SAPS 517) or 517(g) whichever is applicable, together with his or her written recommendation, to the Provincial Office: Firearms, Liquor and Second-Hand Goods Control who must also forward the same to the Head: Firearms, Liquor and Second-Hand Goods Control for further processing.
9. All fully completed applications must be finalised within a period of thirty (30) calendar days at station level/Designated Firearms Officer level and must be forwarded to the Provincial Office.

VALIDITY PERIOD OF LICENCES

10. The third important amendment of the Act relates to the validity period of two types of licences, namely a licence to possess a firearm for business purposes: Business as game rancher and in hunting (section 20 of the Act) from five (5) to ten (10) years and to possess a firearm for business purposes: Business other than as game rancher and in hunting (section 20 of the Act) from two (2) years to five (5) years. Irrespective of the dates printed on the relevant licence, all such licences which have not yet expired by 10 January 2011 will automatically remain valid for the new period of validity, calculated from the date of issuing of the licence.

RESPONSIBILITY OF THE PROVINCIAL OFFICE: FLASH

11. All fully completed applications must be finalised within a period of fourteen (14) calendar days at the Provincial Office and must be forwarded to the National Office.

RESPONSIBILITY OF THE NATIONAL OFFICE: FLASH

12. All fully completed applications must be finalised within a period of four (4) months by the National Office.

LEGAL QUESTIONS

13. It is realised that the implementation of the Amendment Act may raise various questions of a legal nature, and where such legal issues arise, an opinion must be requested for the

Executive Legal Officer through the Head of the Component Firearms, Liquor and Second-Hand Goods Control ensure uniformity and a correct implementation of the Act. In the case of general enquiries and if information is required, Colonel Mahlabane may be contacted at (012) 353 6034 or 082 778 9240.

14. These guidelines must be adhered to in the implementation of the Amendment Act.


Deputy National Commissioner: Chief Operations Officer
Lieutenant General
B.C. Mkwana
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE
Date: 2011 -01- 07