



10 DECEMBER 2007

DIRECTOR BOTHMA

BY E MAIL: bothmaj@saps.org.za

MINISTER OF SAFETY AND SECURITY

BY TELEFAX: (012) 393-2812

COMMISSIONER FLIP JACOBS

SOUTH AFRICAN POLICE SERVICES

LEGAL SERVICES – HEAD OFFICE

BY TELEFAX : (012) 393-2819

Dear Sirs

**REPRESENTATIONS ON THE FIREARMS CONTROL ACT AMENDMENT
REGULATIONS – NOTICE 1325 OF 2007**

- 1 This document constitutes the South African Gun Owners Association's comments on the draft Firearms Control Act regulations, published in Government Gazette No 3041 on the 26th October 2007.
- 2 Before we deal with specific issues arising out of the Firearms Control Act proposed amended regulations, we feel that it is necessary to revisit a number of issues arising out of the regulations and the Act that need urgent attention.
- 3 The first one is the conflict between the definition of "main firearm component" in the regulations and what constitutes a firearm as defined in the definition section of the Act.

- 4 Firstly, “main firearm component” is not defined in the Act and therefore the use of barrel frame, receiver, slide bolt or breach block of a firearm in the regulations is *ultra vires* the legislation. These parts cannot be regulated in terms of the regulations and we suggest for the sake of clarity, that the definition of firearm as contained in the Act be repeated when used in the regulations.

SAFES AND SAFEKEEPING

5 Regulation 62 – Application for Import and Export Permits

- 6 There is an anomalous situation in that a returning resident or citizen may not apply for a temporary permit on arrival in the Republic, but a visitor may obtain a temporary import permit. The one is criminalized, the other one is given a permit. We would suggest that provision is made in regulation 62 for a returning resident or citizen to obtain at the point of entry a temporary import permit for a firearm. This would require an amendment to regulation 62(4) to state simply “a returning resident or citizen may obtain a temporary import permit valid for a period not exceeding 90 days, upon arrival back in the Republic.”

Regulation 67

- 7 We understand that regulation 67 is designed to cover commercial storage of firearms and ammunition, i.e where there is a contract for reward in place.

8 We would suggest that the heading of regulation 67 be amended to state "Commercial Storage of Firearms and Ammunition".

New Regulation 69

9 Regulation 11(b) to of Regulation 88 is contradictory. It does not accommodate a situation where a husband and wife both own firearms and share a safe. This situation criminalizes both parties because they should have exclusive access to a safe.

10 It also does not accommodate the situation where a person has been given a SAP539 to store somebody else's firearm in their safe. This regulation should be deleted.

COMMENT ON PROPOSED REGULATIONS

11.1 Cap and ball revolvers

11.1.1 Once again, for reasons best known to the South African Police Services, no provision has been made to legitimate the possession of cap and ball revolvers.

11.1.2 Cap and ball revolvers were legal to possess without a license prior to the amendment to the definition of antique firearms. The amendment of this definition was deliberately drafted, to delete cap and ball

revolvers from the definition. This implies that their possession requires some form of licence or permit, otherwise such possession would be unlawful.

11.1.3 However, no mechanism has been created in the Act as to what should be done to legitimate possession of these objects and accordingly it follows that nothing can be provided for in the regulations to allow possession of these objects without another amendment to the Act. This situation needs to be urgently addressed.

11.2 Competency certificates

11.2.1 The Act, as amended, requires that competency certificates remain valid for the same period as determined in the Act in respect of a license to which a competency certificate relates. There are two difficulties with this. Firstly, competency certificates are not issued simultaneously with a specific license and therefore the South African Police Services have created a tremendous administrative burden upon themselves to check and determine for what period a competency certificate should be valid and in respect of what license.

11.2.2 Furthermore, there are different categories of licenses that have different time periods of validity and there is no clarity in the Act as to what should happen in this event. For example, a restricted firearm for self-defence is valid for two years, and a normal license for self-

defence is valid for five years. Likewise, a business license will be valid for a period of five years, but a normal occasional or dedicated hunting license for the same type of firearm is valid for ten years.

- 11.2.3 Secondly, a competency certificate is issued for a type of firearm, eg. handgun, rifle or shotgun and not for a specific license. No mechanism is created in the regulations to address this and it is our respectful submission that it cannot be dealt with in regulations because it requires a further amendment to the Act to state that the period of validity of a competency certificate shall be linked to the type of firearm as opposed to a specific license.

Regulation 17

- 12 Regulation 17(b) should be amended to state "it's historical, or technological or scientific or heritage or educational or cultural or commemorative or investment or rarity or thematic or artistic value, or any other aspect that may be deemed appropriate by the Registrar."

SKILLS DEVELOPMENT ACT

- 13 The deletion with reference to the Skills Development Act is to be welcomed.

- 14 However, SAGA believes that the delegation of this function in terms of the regulations to the Registrar of firearms is inappropriate for two fundamental reasons.
- 15 The first reason is quite simply that the Registrar is not properly equipped to assess the content of any training programs submitted to it, in an objective manner without assistance from accredited associations with expertise in that particular field. This also concentrates power in the Registrar's hands, which we believe is in conflict with the role of accredited associations. Functions were delegated to accredited associations, including that of training and certification. This function should remain within the association and should not be the sole responsibility of the Registrar.
- 16 Secondly, for the Registrar to approve training courses may well contravene the South African Qualifications Act, and may infringe upon the authority of the Minister of Education.

GENERAL COMMENTS

Lack of clear disclosed policy

- 17 There are no clear policy guidelines publically available to assist members of the public to determine whether they qualify to be granted a specific license. It is clear that there are policy guidelines used internally by the South African Police Services and the Appeal Board. This can be gleaned from numerous court cases where

answering affidavits have been filed by the Registrar of Firearms and the Chairman of the Appeal Board.

18 However, there is no coherently disclosed cohesive policy that is utilized in assessing firearm applications or appeals.

19 It is a constitutional obligation of the South African Police Services to have a policy and to disclose that policy. We call upon the Minister to disclose all policy documents relative to the assessment and granting of licenses.

20 Secondly, the SAP371 needs to be amended. As it currently stands it is misrepresentative as it only provides three lines for a motivation and no direction is given in the application form that further space can be utilized and further documentation can be submitted to assist in the motivation.

21 The South African Police Services do not provide any assistance in this respect and licenses are frequently refused for the standardized reasons are given for such refusal.

MINISTERIAL COMMITTEE

22 We would urge the Minister to form the Ministerial Committee to address the issues raised in this presentation and issues of a general nature that occurs on an ongoing basis.

23 SAGA remain committed to the Minister to assist in formulating clear policy guidelines and providing expertise and assistance to the South African Police Services.

Yours faithfully

MARTIN HOOD

SPOKES PERSON – SOUTH AFRICAN GUN OWNERS ASSOCIATION