



FIREARMS CONTROL BRIEFING

LICENCE RENEWALS: A CORNERSTONE OF GUN CONTROL

INTRODUCTION

The introduction of a firearm licence renewal system in the Firearms Control Act of 2000 (FCA) was one of the innovations of the new gun law that brought South Africa in line with global norms on effectively controlling civilian owned firearms. Section 24 of the FCA provides that:¹

- (1) The holder of a licence ... 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-....*
- (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.*

The principle underlying a firearm licence renewal system is that the state is responsible for public safety and is therefore obliged to ensure that gun owning individuals are “fit and proper” for this responsibility. As such a firearm licence documents the state’s recognition that the person has been judged “fit and proper” to own a firearm at a particular point in time.

Recognising that an individual’s circumstances may change, a system of regular gun licence renewals allows the state to extend its responsibility for public safety beyond this point and into the future. Factors that could affect whether a gun owner remains “fit and proper” over time include changes in employment status such as retrenchment, drug and alcohol dependence or displaying signs of violent behaviour, including domestic violence incidents. Regular gun licence renewal also provides an opportunity for a licensed gun owner to consider whether or not he continues to need a weapon and to demonstrate genuine need for continued ownership of a gun. In addition, by requiring that existing gun owners renew their licences, the state can ensure compliance with legislative or policy changes that may have occurred subsequent to the original licence being issued (e.g. stricter provisions for safe storage).

Given that gun licence renewal is a dramatic departure from the Arms and Ammunition Act of 1969 (which effectively provided a licence for life) there is significant resistance to this provision, despite the fact that a system of regular firearm licence renewal is a global norm.

INTERNATIONAL FRAMEWORK

Regular licence renewal

In collaboration with international experts, the United Nations has developed International Small Arms Control Standards (ISACS) that provide practical guidance to practitioners and policymakers on fundamental aspects of small arms and light weapons control. The most recent global standard on regulating civilian access to firearms, ISACS Module 03.30, provides clear and comprehensive guidance on the mechanisms to effectively control firearms owned by civilians over their full life cycle.² Regular gun licence renewal is identified in ISACS Module 03.30 as a cornerstone of effective gun control, which recommends that the validity of a firearm licence be limited to a reasonable period of time, e.g. 3 to 5 years.

Over the last 20 years several countries, including South Africa, have undertaken significant reforms to regulate firearm ownership by strengthening national laws and policies.³ As a result, almost all countries across

¹ Firearms Control Act No 60 of 2000. S 24; p.34.

² International Small Arms Control Standards. ISACS 03.30:2015 (E) V1.0

³ This includes Afghanistan, Australia, Brazil, Belgium, Cambodia, Canada, Sierra Leone, Turkey and the United Kingdom.



the world currently conform to the renewal recommendation of ISACS by requiring the holder of a gun licence to renew this on a regular basis: In a comparative analysis of legislation governing civilian access to and use of firearms across 42 jurisdictions, only one state – Finland – granted licences for an indefinite period (and this excluded licences granted for employment purposes, which are valid for 5 years). Of the remaining jurisdictions reviewed, the duration of firearm licences ranged from 12 months to 10 years.⁴

Firearm registration system

In addition to the trend by governments to strengthen outdated, weak or incomplete national firearm laws, several multilateral processes have contributed to the strengthening of national arms control regimes; the most significant being the *UN Programme of Action (UN PoA) to Prevent, Combat and Eradicate the Illicit trade in Small, Arms and Light weapons in All its Aspects*. It urges States to:

“ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of small arms and light weapons within their jurisdiction. These records should be organised and maintained in such a way to ensure that accurate information can be promptly retrieved and collated by competent national authorities.”⁵

In practice, this entails establishing a firearms registration system, of which renewals is a cornerstone, as it ensures the maintenance of accurate information on who is licensed to possess what weapon for which purpose.

Licensing the person and registering the gun is a central part of any registration system, as it records the details of a firearm, together with information about the person responsible for a specific weapon, so linking a firearm to an owner.⁶ An accurate registration system is:

- A *critical component* of an effective licence renewal system: It certifies who may continue to own and use firearms, and the procedures and administrative requirements necessary to minimise the unlawful possession and misuse of firearms by civilians.
- An *outcome* of regular gun licence renewals in that records of firearms and owners can be regularly updated.

Imposing a limited duration on a gun licence provides for the following:

1. Regular confirmation that the licensed owner is still qualified to have a firearm;
2. An incentive for complying with licensing – this places responsibility on the licence holder to maintain ‘fit and proper behaviour’ since there is a risk the licence may be revoked;
3. An incentive for acquiring a new licence when the old licence expires.

Other benefits of a renewal system include enhancing police investigations; improving police officer safety; and reducing gun theft. For example, the timely reporting of lost and stolen firearms will assist law enforcement officials to detect and seize lost, stolen, trafficked and smuggled weapons.⁷

CURRENT STATUS OF FIREARM LICENCE RENEWALS IN SOUTH AFRICA

The issue of the firearm licence renewal system has been at the forefront of debates on the impact and efficacy of the implementation of the FCA since its promulgation in 2000. As well as being a key component to measure success in the turn-around strategies of the Central Firearms Registry as reported to Parliament in recent years, it is also central for effective gun control.

⁴ Small Arms Survey. 2011. *Small Arms Survey 2011: States of Security*. Cambridge: Cambridge University Press.

⁵ UN (2001) Report of the UN PoA conference. A/CONF.192/15, July, para 11.9; italics are our emphasis.

⁶ Small Arms Survey. 2011. *Small Arms Survey 2011: States of Security*. Cambridge: Cambridge University Press. Canada, 1995, s.13 as cited on p.280.

⁷ ISACS 03.30:2015 (E) V1.0ISACS. See Clause 9.5; member States are also required to report loss and theft to INTERPOL’s Illicit Arms Records and Traffic Management System (iARMS).



Transitional Provisions

The new and more restrictive provisions of the FCA, such as limiting both the number and type of gun that any civilian may own, meant that many existing gun owners who had been issued a licence to possess a firearm under the previous Act of 1969, would have to comply with the new law. To accommodate existing firearm owners, Schedule 1 of the FCA provides that:

“any licence which was issued in terms of the previous Act and which was valid immediately before the date of the commencement of this Act remains valid for a period of five years from the date on which this Act comes into operation, unless such licence is terminated, cancelled or surrendered in terms of this Act.”⁸

Clause 11 of Schedule 1 provides that ‘the holder of a licence, permit or authorisation issued in terms of the previous Act, must apply for a corresponding licence, permit or authorisation in terms of the FCA within the period determined by the Minister by notice in the Gazette.’⁹

On 20 August 2004, Government Gazette No 26664 gave notice of the renewal of an existing licence to possess a firearm, providing details on the renewal period which was aligned with the month of the year in which the gun owner was born.¹⁰ For example, all those born between 1 January and 31 March were required to renew the existing licence in the period 1 January 2005 to 31 December 2005.¹¹

Interim Court Order 2009

In 2009, the SA Hunters and Game Conservation Association filed a motion in the North Gauteng High Court against the then Minister of Safety and Security in the matter of the FCA licence renewals system including the alleged poor implementation of the renewals system. On 26 June 2009, Judge Bill Prinsloo ordered *that: “all firearm licences contemplated in s 1 (1) of Schedule 1 of the FCA of 2000 shall be deemed to be lawful and valid pending the final adjudication of the main application.”*¹²

This means that hundreds of thousands of gun owners remain in valid possession of licences which were issued under the old 1969 Act, commonly referred to as “Green Licences”. As a result, these owners have not been subjected to the more stringent provisions of the new law as at no stage have they migrated to the FCA, despite this being the responsibility of law abiding citizens. It is unacceptable that nine years later this interim order remains in place.

SAPS Instruction 2016

In February 2016, Acting National Police Commissioner issued a directive regarding the renewal of firearm licences in terms of s 24 of the FCA, which reiterated that an application for the renewal of a firearm licence must be lodged at least 90 days before the expiry of the licence. The directive stated that it only applied to those who possess a firearm licence issued under the FCA, noting that should a gun owner with a valid “Green Licence” want to renew this under the FCA, that this must be dealt with as a new application. Furthermore, in the case where a person wants to renew or apply for a licence, but the validity of the licence has already expired, the person must be informed that he is not in lawful possession of the firearm and the firearm must be surrendered to the nearest police station, as required under s 28 of the FCA (which deals with the termination of gun licences: under subsection 1a, a licence terminates when the renewal period has expired unless the licence has been renewed). However, if a firearm licence has expired and is voluntarily surrendered; there will be no prosecution of the owner.

⁸ Firearms Control Act No 60 of 2000. p.139.

⁹ Firearms Control Act No 60 of 2000. p.144.

¹⁰ Responding Affidavit of Minister of Police. Annexure NPTN 21.

¹¹ This continued in this manner with every three months allocated to a one year period for licence renewal; 1 April to 30 June (2006); 1 July to 30 September (2007); and 1 October to 31 December (2008).

¹² Judge Prinsloo, North Gauteng High Court. Case 33656/09 in the matter between SA Hunters A.O. (Applicant) and the Minister of Safety and Security (Second Respondent). Interim Order made on 26 June 2009.



Despite allegations that this directive reflects a change in policy, the law is very clear on this matter: When the period of validity of a firearm licence expires, unless renewed in terms of s 24 of the FCA, the licence will be terminated under s 28.¹³ This was unanimously confirmed by the Constitutional Court, which ruled on 7 June 2018 that sections 24 and 28, under which gun owners must renew their firearm licences or forfeit guns for which licences have expired, are constitutional.¹⁴

In making this judgement, the ConCourt ruled that gun ownership is not a fundamental right under our Bill of Rights, rather it is a privilege regulated by the FCA, under which:

- No person may possess a gun without a valid licence;
- A firearm licence is valid for a limited period of time; and
- Unless a gun owner has renewed his gun licence before expiry, he has committed a criminal offence and is subject to penalties, including a fine or imprisonment.

Interim Court Order 2018

To stop the police acting on the ConCourt ruling, Gun Owners SA (GOSA) lodged an urgent appeal in the North Gauteng High Court. In direct contradiction to the ruling of the highest court in South Africa, Judge Bill Prinsloo granted an interim interdict halting any action by the police until the case has been heard as part of the normal court's roll.¹⁵

While interim court orders are not normally appealable, appeals can be considered in exceptional circumstances. However, the Minister of Police has been unable to appeal this interim order as Judge Bill Prinsloo has either neglected or is refusing to issue his typed judgement.

In the meantime, a Private Members Bill (B40-2018) aimed at amending sections 24 and 28 of the FCA was introduced to the National Assembly on 26 October 2018.¹⁶ In essence, the Bill, which will be debated by the Portfolio Committee on Police on 6 November 2018, reduces firearm licence renewals to a technical process rather than a key principle of effective gun control in South Africa.

CONCLUSION

Regular gun licence renewals are integral to public safety: Renewals ensure that licensed gun owners remain "fit and proper" for this responsibility and that registered guns have not been lost or stolen but are still in the possession of the licensed owner. They also help the state keep accurate records of who owns what gun for which purpose.

As such they are more than a 'tick box' technical procedure required under the FCA. As such, any amendments to laws regulating firearm licence renewals must be carefully scrutinised to ensure that the overall objective of regular gun licence renewal – namely public safety – will be met.

¹³ Firearms Control Act No 60 of 2000. See s 28 (1) (a). p.35.

¹⁴ Judge Froneman, Constitutional Court of South Africa. Case CCT 177/17 in the matter between the Minister of Safety and Security (Applicant) and South African Hunters and Game Conservation Association (Respondent) and Fidelity Security Services (PTY) Limited (First Amicus) and Gun Free South Africa (NPO) (Second Amicus). Unanimous judgement made on 7 February 2018.

¹⁵ Judge Prinsloo, North Gauteng High Court. Case 46684/18 in the matter between Gun Owners of South Africa (Applicant) and the National Commissioner of Police (First Respondent) and Minister of Police (Second Respondent). Interim Order made on 27 July 2018.

¹⁶ Firearms Control Amendment Bill (B40-2018). Government Gazette No. 41881 of 31 August.