

GENERAL NOTICE

NOTICE NO. OF 2015

DEPARTMENT OF CIVILIAN SECRETARIAT FOR POLICE

DRAFT FIREARMS CONTROL AMENDMENT BILL, 2015

NOTICE CALLING FOR PUBLIC COMMENTS

The Civilian Secretariat for Police is consulting on the Draft Firearms Control Amendment Bill, 2015 with a view to submitting it to Cabinet for approval for its introduction in Parliament.

The Draft Firearms Control Amendment Bill, 2015 is hereby published for public comments. An invitation is hereby extended to any person, association, body, private or public institution wishing to comment on the Draft Firearms Control Amendment Bill, 2015 to provide written comments by not later than the 31 March 2015.

The written comments must be directed to:

Postal Address

The Civilian Secretariat for Police
Attention: Mr A. Soman – Director, Legislation
Private Bag X922
PRETORIA
0001

PHYSICAL ADDRESS

Civilian Secretariat for Police (For attention: Mr A. Soman)
7th Floor, Van Erkom Building
217 Pretorius Street
PRETORIA
0001

Enquiries: (012) 393 4658 (Ms Thandeka Khumalo)

E-mail Address

somana@saps.gov.za

REPUBLIC OF SOUTH AFRICA

FIREARMS CONTROL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of 2015)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B —2015]

BILL

To amend the Firearms Control Act, 2000, so as to amend and insert certain definitions; to provide for the verification by accredited associations of applications to possess a firearm; to provide that a semi-automatic firearm or semi-automatic shotgun may only be licenced to a person who has held a dedicated status as a sports-shooter for a period of at least two years; to provide that additional motivation must be provided to the Registrar for the registration of any firearm licence that exceeds the stipulated two firearms licences for dedicated hunting or dedicated sports-shooting, taking into account the needs of the dedicated hunter and sports shooter, the type of firearm required, the shooting disciplines involved in, and that such motivation must be supported by the relevant accredited hunting association or sports-shooting organisation; to provide for the validity period of competency certificates; to provide for a penalty for late applications for the renewal of a firearms licences; to provide for consequential amendments in respect of muzzle loading firearms in order to provide for control over muzzle loading firearms in respect of trading, manufacturing, marking, display of, disposal of and alterations thereto; to provide for the compulsory application of microdots that comply with standard specifications on and the ballistic testing of all firearms licenced in terms of the Act; to provide for the application of microdots on firearms and the ballistic sampling of firearms of Official Institutions registered in terms of the Act; to provide for a licence in respect of a percussion-cap-and ball firearm; to provide for the application of microdots

on, and the marking of, muzzle loading firearms in dealers stock in a prescribed, non-damaging manner; to provide for the ballistic sampling of firearms; to provide for the designation of a Designated Firearms Officer at each police station, where practicable, with a clear description of functions, in order to strengthen the control over firearms in possession of the South African Police, other Official Institutions and private security service providers and to improve the processing of applications for competency certificates and firearm licences; to provide for obligations of commanders, including station commanders in respect of the control over firearms; to provide for the approval by the Minister of Police of a list of Designated Firearms Officers who will exclusively function as such and the factors to take into account in determining the same; to provide for the Minister of Police to appoint additional members to the Appeal Board, to provide for the strengthening of the independence of the Appeal Board and the functions of the Appeal Board; to provide for powers of the Minister of Police to prescribe matters pertaining to the processing of applications for firearm licences and competency certificates, the functioning of the Appeal Board and the carrying of firearms by security officers in the execution of their duties and functions; to provide for the number of cartridges that may be possessed; to provide for transitional provisions in respect of percussion cap-and-ball firearms, including provision for an additional licence in the category of occasional hunting and sports shooting, in order to accommodate the licensing of percussion cap-and-ball firearms; to provide for the compliance by Official Institutions to Chapter 11 of the Act; to provide for transitional provisions in respect of the registration of actions, frames and receivers; to provide for transitional provisions in respect

of licences issued under the repealed Arms and Ammunition Act, 1969; to provide for the amendment of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), in order to provide for minimum sentences where a firearm was used in a murder, rape or robbery and to provide for a minimum sentence for the illegal possession of any firearm; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 60 of 2000, as amended by section 1 of Act 43 of 2003, section 1 of Act 28 of 2006 and section 7 of Act 6 of 2010

1. Section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000)

(hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of "**authorised person**" of the following definition:

" **ballistic sampling** means the firing of a firearm in order to obtain a cartridge case or the firing of a missile to place details thereof on the Integrated Ballistics Identification System used by the South African Police Service, for comparison in the investigation of crimes committed with firearms:"

(b) by the insertion after the definition "**imitation firearm**" of the following definition:

" **Integrated Ballistics Identification System** means the computerised system which consists of computerised instruments

through which the process of taking three dimensional images of a discharged bullet or cartridge case, collected from a crime scene is compared with a—

(a) bullet or cartridge case discharged from a firearm found at a crime scene or linked in any manner with a crime scene; or

(b) discharged bullet or cartridge case from a firearm which has been ballistically tested in terms of the provisions of this Act;”;

(c) by the insertion after the definition of "**load**" of the following definition:

" 'microdot' means a micro-particle with a diameter smaller than 1,8 mm which bears a unique optically readable microdot identifier of which the content and structure complies with the specifications SANS 534-1 and is legible with equipment that magnifies the text 60 times;"

(d) by the substitution for the definition of "**Minister**" of the following definition:

" '**Minister**' means the Minister [**for Safety and Security**] of Police;"

(e) by the substitution for the definition of "**muzzle loading firearm**" of the following definition:

" '**muzzle loading firearm**' means—

(a) a barrelled device that can fire only a single shot, per barrel, and requires, after each shot fired, the individual reloading through the muzzle end of the barrel with separate components consisting of a—

(i) measured charge of black powder or equivalent propellant;

(ii) wad; and

(iii) [**lead**] bullet, sabot or shot functioning as a projectile,

and ignited with a flint, match, wheel **[or]**, percussion cap or primer or other ignition system;"; and

(f) by the insertion after the definition of “**occasional sports person**” of the following definition:

" **'percussion cap-and-ball firearm'** means a handgun or rifle with a cylinder or any number of rotating barrels which is capable of discharging more than two shots in succession after loading of the cylinder, or barrels through the muzzle or directly into the cylinder with separate components consisting of a—

- (a) measured charge of black powder or equivalent propellant; and
- (b) bullet, sabot or shot, functioning as a projectile,

and ignited by a percussion cap or primer or other ignition system;".

Amendment of section 8 of Act 60 of 2000, as amended by section 7 of Act 28 of 2006

2. Section 8 of the principal Act is hereby amended by the addition of the following subsections—

"(7) The chairperson or an authorised office bearer of an association accredited in terms of this Act must, with regard to an application by its member for a licence to possess—

- (a) a firearm for dedicated sports shooting;
- (b) a firearm for dedicated hunting;
- (c) a firearm for professional hunting; or
- (d) subject to section 17, a firearm or ammunition for a private collection,

in the prescribed manner, verify the application made by such member of that association regarding the use, purpose and category of the firearm applied for, including the motivation for the application or any other part of the application.

(8) The Registrar must take into account the verification by the accredited association when considering the application referred to in subsection (7), by a member of that association.

(9) The Registrar may independently verify any information supplied by the chairperson or an authorised office bearer of the accredited association.

(10) The Registrar may refuse the application on good cause in which case the Registrar must notify the applicant in writing of such refusal and include reasons for the refusal, within 30 days of the said refusal."

Amendment of section 9 of Act 60 of 2000, as amended by section 3 of 43 of 2003 and section 8 of Act 28 of 2006

3. Section 9 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (b) of the following paragraph—

"(b) Compelling reasons contemplated in paragraph (a) may include the fact that the applicant conducts a business, is gainfully employed, a dedicated hunter, a dedicated sports person **[or]**, a professional hunter or a private collector in such category as may be prescribed."

Amendment of section 10 of Act 60 of 2000, as amended by section 9 of Act 28 of 2006

4. Section 10 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) Subject to Item 3C in the Schedule [A] a competency certificate contemplated in **[subsection 1(a)(i), (ii), (iii) and (iv),]** this section remains valid for **[the same period of validity as the licence to which the competency certificate relates]** a period of 5 years from the date of issue thereof, unless the competency certificate is terminated or renewed in accordance with the provisions of this Act.";

(b) by the deletion of subsection (3); and

(c) by the addition of the following subsections:

"(4) A competency certificate referred to in subsection (1)(a)(iB) shall also be valid for an application to possess a firearm for the purposes of self-defence, occasional hunting or occasional sports shooting.

Amendment of section 10A of Act 60 of 2000, as inserted by section 10 of Act 28 of 2006

5. Section 10A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsections:

"(1) **[Any]** Subject to subsection (2), any holder of a

competency certificate contemplated in **[subsection (2) and]** section 9(1) **[and]** who wishes to renew the competency certificate must apply in the prescribed form to the Registrar for its renewal **[together with an application for the renewal of the licence to which the competency certificate relates] at least ninety days before its expiry date.**"

Amendment of section 15 of Act 60 of 2000

6. Section 15 of the principal Act is hereby amended by the insertion in subsection (3) after paragraph (a) of the following paragraph:

"(aA) Despite paragraph (a), a fifth licence may be issued to a person, on good cause shown, in respect of a percussion cap-and-ball firearm."

Amendment of section 16 of Act 60 of 2000 as amended by section 4 of Act 43 of 2003 and section 11 of Act 28 of 2006

7. Section 16 of the principal Act is hereby amended by the addition of the following subsections—

"(5) Not more than two licences in respect of a semi-automatic rifle or a semi-automatic shotgun may be issued to a dedicated hunter or a dedicated sports-shooter.

(6) Despite subsection (5), the Registrar may, in addition to the licences contemplated in subsection (5), issue additional licences if the applicant provides the Registrar with compelling reasons in writing for such

additional licences.

(7) A semi-automatic rifle or a semi-automatic shotgun may only be registered in terms of this section to a person who has maintained a dedicated status as a sports-shooter for a period of at least two years and continues to maintain such a dedicated status.

(8) The applicant must submit a written motivation with compelling reasons in the prescribed manner as to why more than the number of licences contemplated in subsection (5) and section 15 should be registered under this section.

(9) The written motivation must contain details relating to—
(a) the needs of the dedicated hunter or dedicated sports shooter;
(b) the type of firearm required;
(c) the shooting disciplines that the applicant is involved in; and
(d) such other information as may be required by the Head of the Central Firearms Register.

(10) The motivation contemplated in subsection (8) must be supported by the chairperson or authorised office bearer of the relevant hunting association or sports-shooting organisation, as the case may be.

(11) Where a licence holder under this section ceases to hold the status as dedicated hunter or dedicated sports-shooter, professional hunter or private collector, the licence holder must, in writing, notify the Registrar of such cessation within 30 days of ceasing to hold such status; and the Registrar must follow the process in section 28 for the cancellation of the licence.

(12) Any failure by the holder to comply with the provisions of

subsection (11) constitutes an offence.

(13) The association which has granted dedicated status to the member involved must, at the end of the association's year, provide a report in the prescribed manner to the Registrar on all its members who—
(a) have not renewed their membership;
(b) have had their membership suspended; and
(c) have been expelled from the association."

Amendment of section 17 of Act 60 of 2000 as amended by section 13 of Act 28 of 2006

8. Section 17 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) A firearm which may be possessed in a private collection is **[any]** a firearm approved for collection by an accredited collector's association, based upon such historical, heritage, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value determined by the association, of which the private collector is a member in good standing and where such firearm has been demonstrated to be part of the said private collector's approved field of interest or theme or both such field or theme."; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) The Registrar may issue a licence in terms of this

section to a private collector if the application is accompanied by a sworn statement or solemn declaration from the chairperson of an accredited collectors association, or someone delegated in writing by him or her, stating that the applicant—

(a) is a registered member in good standing of that association and qualifies to collect the firearm, prohibited firearm or restricted firearm; and

(b) has confirmed to the association that he or she complies with the relevant requirements of the Act."

Amendment of section 23 of Act 60 of 2000

9. Section 23 of the principal is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) (a) No firearm licence may be issued unless the firearm bears the manufacturer's serial number, microdots [or] and any other mark by which the firearm can be identified.

(b) The microdots must be applied in the prescribed manner and must contain such information as may be prescribed.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) The identification number must be stamped and the mark affixed in the prescribed manner on the barrel **[and the]**, frame **[, or the barrel and the]** or receiver **[,]** of the firearm."

(c) by the addition of the following subsection:

"(8) Muzzle loading firearms which are imported or kept in a dealer's stock must be applied with microdots and marked with such serial number as may be prescribed and affixed in the prescribed manner: Provided that the serial number may not be inscribed on the muzzle loading firearm itself."

Amendment of section 24 of Act 60 of 2000

10. Section 24 of the principal Act is hereby amended by—

(a) the substitution for subsection (4) of the following subsection:

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

(b) the insertion of the following subsection:

(5) If an application for the renewal of a licence is not made within the period provided for in subsection (1), therefore when the date of expiry of the licence is less than 90 days from the date of application for renewal, an administrative fine, as provided for in section 122 must be considered to be imposed, taking into account any explanation which the applicant may have presented in the application form for renewal of the licence.

(6) The fact that an application for the renewal of a licence is made in less than 90 days before expiry thereof and that an administrative fine has been imposed does not disqualify the applicant from the renewal of the licence.

Insertion of sections 23A and 23B in Act 60 of 2000

11. The following sections are hereby inserted in the principal Act after section 23:

"Application of microdots on firearms

23A. (1) Every firearm licenced in terms of this Act, except firearms licences issued in terms of section 19, must be applied with microdots that comply with the requirements of standard specification SANS 534-1.

(2) The applicant for a new firearm to be licenced under section 13 to 17 and section 20, must ensure that—

(a) such firearm is applied with microdots in the prescribed manner by an accredited service provider;

(b) that the microdots comply with the requirements of standard specification SANS 534-1;

(c) the microdot contains the model and manufacturer's serial number and such other information as may be prescribed; and

(d) a certificate of microdot application issued by the accredited service provider is submitted in the prescribed form to the Registrar together with the application for a firearm licence, before the licence may be issued by the Registrar.

(3) The holder of a firearm licenced in terms of this Act prior to the coming into operation of the Firearms Control Amendment Act, 2015,

except firearms licenced in terms of section 19, must—

(a) ensure that the firearm is applied with microdots in the prescribed manner by an accredited service provider within six months of the date of coming into operation of the Firearms Control Amendment Act, 2015; and

(b) submit to the Registrar a certificate, issued by the accredited service provider in the prescribed form, confirming that microdots have been applied to the firearm.

(4) The microdots contemplated in subsection (3) must—

(a) comply with the requirements of standard specification SANS 534-1; and

(b) contain the model and manufacturer's serial number and such other information as may be prescribed.

(5) The holder of a firearm contemplated in subsection (3) must submit the certificate of microdot application contemplated in subsection (3)(b) to the Registrar not later than six weeks after the expiry of the period referred to in subsection 3(a), failing which the Registrar may terminate the firearm licence in accordance with section 28."

Ballistic sampling of firearms

23B(1) The owner of every firearm, including any firearm licensed for—

(a) business purposes in general;

(b) business purposes related to the private security industry in terms of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

(c) self-defence;

(d) occasional and dedicated sports shooting;

(e) occasional and sports shooting;

(f) collection, subject to the firearm being able to safely fire any ammunition and the availability of ammunition for such firearm, must comply with a programme published by the Minister by notice in the Gazette to have the firearms in their possession ballistically sampled.

(2) Whenever any firearms licence referred to in subsection (1) is renewed or when there is a change in ownership, the original owner must ensure that the firearm is submitted to the designated firearms officer for ballistic sampling of the firearm, before the renewal or before the ownership of the firearm is transferred to any other person.

(3) A firearm submitted in terms of subsection (1) must be subjected to the relevant sampling process and handed back forthright to the security service provider and may not be kept by the officer designated by the Registrar to perform the sampling test.

(4) The sampling of firearms must be arranged in advance with the officer designated by the Registrar to perform the sampling test.

(5) The Minister may, by notice in the Gazette determine a date by which firearms in the possession of different categories of owners must have

been submitted for ballistic sampling, which date may be extended by the Minister.".

Amendment of section 31 of Act 60 of 2000 as substituted by section 19 of Act 28 of 2006

12. Section 31 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) A person who wishes to sell or donate a firearm, or a muzzle loading firearm, or ammunition **[in a collection]**, to a willing buyer or donee, as the case may be, may do so without the intervention of a dealer, subject to the provisions relating to possession thereof in the Act, and such conditions as may be prescribed."

Amendment of section 36 of Act 60 of 2000

13. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Registrar may issue a temporary authorisation to a dealer to trade in firearms, muzzle loading firearms and ammunition at premises other than those specified in the dealer's licence."

Amendment of section 39 of Act 60 of 2000

14. Section 39 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) A dealer may trade in firearms, muzzle loading firearms or ammunition only on premises specified in the dealer's licence.

(2) A dealer may not permit any person to trade in firearms, muzzle loading firearms or ammunition on his or her behalf unless that person is in possession of the appropriate competency certificate."; and

(b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) any firearms, muzzle loading firearms or ammunition that the dealer may have in stock;".

Amendment of section 46 of Act 60 of 2000

15. Section 46 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) A manufacturer's licence may be issued to a person who is a fit and proper person to manufacture firearms, muzzle loading firearms or ammunition."; and

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) a manufacturer of firearms or muzzle loading firearms if the firearms or muzzle loading firearms are manufactured in a

factory registered in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), except in respect of the manufacturing of muzzle loading firearms by a gunsmith licenced in terms of this Act, who is exempted by the Registrar on good cause shown, subject to such conditions as the Registrar may determine; or".

Amendment of section 50 of Act 60 of 2000

16. Section 50 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Registrar may issue a temporary authorisation to a manufacturer to display firearms, muzzle loading firearms and ammunition at premises other than those specified in the manufacturer's licence."; and

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"A temporary authorisation to display firearms, muzzle loading firearms and ammunition must specify—".

Amendment of section 53 of Act 60 of 2000

17. Section 53 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) A manufacturer may manufacture firearms, muzzle loading firearms or ammunition only on premises specified in the licence.

(2) A manufacturer must apply or affix such serial number, microdots or any other mark to any firearm or muzzle loading firearm manufactured by the manufacturer as may be prescribed."; and

(b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) any firearms, muzzle loading firearms or ammunition that the manufacturer may have in stock;".

Amendment of section 56 of Act 60 of 2000

18. Section 56 of the principal Act is hereby amended—

(a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) If a notice contemplated in subsection (2) is issued, the former holder of the licence must dispose of any firearms, muzzle loading firearms and ammunition in his or her possession through a dealer or in such manner as the Registrar may determine."; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) If the firearms and ammunition or muzzle loading

firearms are not disposed of within 60 days they must be forfeited to the State and the former holder of the licence must surrender them immediately at such place and in such manner as the Registrar may determine."

Amendment of section 59 of Act 60 of 2000, as amended by section 8 of Act 43 of 2003

19. Section 59 of the principal Act is hereby amended by the substitution for paragraphs (b), (c) and (d) of the following paragraphs, respectively:

- "(b) alter the calibre of a firearm or muzzle loading firearm;
- (c) alter the barrel length of a firearm or muzzle loading firearm;
- (d) alter or remove the serial number or any other identifying mark of a firearm or muzzle loading firearm; or".

Amendment of section 84 of Act 60 of 2000

20. Section 84 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) **[No]** Subject to subsection (3), no person may carry a firearm in a public place unless the firearm is carried—"; and

(b) by the addition of the following subsection:

"(3) The Minister may prescribe the manner in which a firearm must be carried by a security officer in the performance of his

or her duties and functions.".

Amendment of section 91 of Act 60 of 2000, as amended by section 26 of Act 28 of 2006

21. Section 91 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- "(a) (i) a dedicated hunter, dedicated sports person, a private collector, an accredited training service provider or a professional hunter who holds a licence issued in terms of this Act; or
- (ii) any other holder of a licence issued in terms of this Act, authorised in writing by the Registrar, on good cause shown—
- (a) in relation to and with submission of proof of the frequency of the use of the firearm and the level of participation in the activity for which the firearms is registered;
- (b) the number of cartridges used per occasion for the particular activity; or
- (c) any other relevant factors or circumstances which may be presented,
- to possess **[more than]** a number of cartridges which is in excess of 200 cartridges for a firearm in respect of which he or she holds a licence, **[on good cause shown]** the number of cartridges being specified in the written authorisation.".

Amendment of section 96 of Act 60 of 2000

22. Section 96 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No provision of this Act other than this Chapter, section 109 **[and]**, section 145, and item 1C of Schedule 1, in so far as it relates to Official Institutions, applies to an Official Institution."

Insertion of sections 98A and 98B in Act 60 of 2000

23. The following sections are hereby inserted in the principal Act after section 98:

"Ballistic sampling of firearms and application of microdots on firearms

98A. (1) The Head of an Official Institution must comply with a notice issued by the Minister in the *Gazette* for the application of microdots and the ballistic sampling of all firearms in the custody of such Head.

(2) The results of the ballistic sampling of all firearms referred to in subsection (1) must be placed on the Integrated Ballistics Identification System, for purposes of investigating crimes committed with firearms.

(3) The Divisional Commissioner responsible for Forensic Science Laboratory in the South African Police Service must submit an annual report to the Registrar and the Minister on the—

- (a) application of microdots on firearms in the custody of the Head of Official Institutions;
- (b) storage of the results of ballistic sampling of firearms in the custody of the Head of Official Institutions; and
- (c) use of all the results of ballistically sampling on the Integrated Ballistics Identification System.

Date of ballistic sampling

98B. (1) The Minister may, by notice in the *Gazette* determine the date by which the firearms in possession of a particular Official Institution must be applied with microdots and be ballistically sampled, which date may be extended by the Minister by notice in the *Gazette*.

(2) Different dates for different areas in the Republic may be determined by the Minister for the application of microdots on firearms and ballistic sampling of firearms in the possession of the respective Official Institutions."

Amendment of section 124 of Act 60 of 2000 as amended by section 16 of Act 43 of 2003

24. Section 124 of the principal Act is hereby amended—

- (a) by the deletion in subsection (2) of the word "and" at the end of paragraph (g);
- (b) by the substitution in subsection (2) for the full-stop at the end of paragraph (h) of a semi-colon;

(c) the addition in subsection (2) of the following paragraph:

"(i) submit to the Minister and Parliament a quarterly report on—

(a) all losses of firearms issued to members of the South African Police Service;

(b) the losses of firearm and ammunition exhibits;

(c) the outcome of the investigations into losses of all firearms and ammunition under the control of the South African Police Service; and

(d) the disciplinary steps taken and criminal prosecutions instituted against members who have lost firearms through negligence.";
and

(d) by the addition of the following subsections:

"(4) A Designated Firearms Officer must, as far as practically possible and taking into account—

(a) the geographical location of a police station;

(b) the population it serves; and

(c) the extent of the duties of such Designated Firearms Officer at the particular police station; and

(d) the need for effective service delivery and accessibility of services to the public,

be designated at each police station or a station cluster.

(5) The Minister of Police must approve the list of designated Firearms Officers appointed to police stations and in which cases subsection (9) will be applicable.

(6) The said list must be reviewed annually and any

amendment to the list must also be approved by the Minister of Police.

(7) The Designated Firearms Officer must, in addition to such firearm-related duties as may be assigned to him or her by the Registrar or the Head of the Central Firearms Register, perform the following duties:

- (a) receive and process all applications for competency certificates, licences and authorisations;
- (b) ensure compliance with Chapter 11 by members of the South African Police Service including ensuring that such members undergo the prescribed competency testing, and that an official firearm is only issued to a member who has passed the prescribed tests and has been issued with the prescribed permit to be in possession of a firearm;
- (c) perform inspections at Official Institutions within the police station area to ensure compliance with Chapter 11 of this Act;
- (d) at any reasonable time, perform regular and random inspections at the business premises of security service providers registered in terms of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), to ensure compliance with this Act, in particular in respect of the safe-keeping and issuing of firearms and ammunition to employees;
- (e) ensure that all firearms and ammunition destined for destruction are inspected, before destruction by a representative of the South African Heritage Resources Agency established in terms of the National Heritage Resources Act, 1999 (Act No. 25 of

1999), with a view to identify firearms to be preserved for heritage purposes; and

(f) ensure that all firearms destined for destruction be submitted to the Forensic Science Laboratory of the South African Police Service for an Integrated Ballistics Identity test.

(8) The inspections contemplated in subsection (4)(d) must be conducted with strict regard for decency and order, and with regard to the right to dignity, freedom, security and privacy.

(9) A Designated Firearms Officer must be responsible solely for issues relating to the administration and compliance of this Act."

Insertion of sections 124A and 124B in Act 60 of 2000

25. The following sections are hereby inserted in the principal Act after section 124:

"Duties of commanders in respect of firearms

124A. Every commander in the South African Police Service, including all station commissioners, must ensure that—

(a) firearms for issue to members of the Service, or kept in the police station as exhibits, are kept safely in accordance with the relevant prescripts, including national instructions made under the South African Police Service Act, 1995 (Act No. 68 of 1995);

- (b) criminal investigations are initiated and disciplinary steps are taken against members of the Service who have lost firearms through negligence;
- (c) losses of official firearms and ammunition are reported as soon as possible;
- (d) losses of firearms and ammunition are investigated immediately;
- (e) firearms are not re-issued to members of the Service against whom any of the actions referred to in paragraphs (a), (b), (c) and (d) are still pending;
- (f) steps are taken to recover losses of firearms and ammunition caused through negligence of members of the Service;
- (g) firearms and ammunition kept as exhibits at the police station are kept safely and in accordance with the relevant prescripts, including the applicable national instructions made under the South African Police Service Act, 1995 (Act No. 68 of 1995); and
- (h) that regular and random inspections of official registers for the booking in and out of firearms and ammunition to members of the Service are performed and also to personally perform such inspections.

Supervision and control of Designated Firearms Officer

124B. Every station commissioner must effectively supervise and control the duties and functions set out in section 124A of each Designated Firearms Officer appointed within his or her jurisdiction."

Amendment of section 128 of Act 60 of 2000

26. Section 128 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The Appeal Board, subject to subsection (3),
consists of **[no more than]** at least five members who must be
appointed by the Minister on such terms and conditions as the Minister
may determine in a letter of appointment and who **[, when viewed**
collectively,]—

(a) must as far as possible be broadly representative of the
population of the Republic;

(b) must be citizens of the Republic;

(c) has not been convicted of a criminal offence or has a pending
criminal or disciplinary case against him or her;

(d) has a recognised tertiary academic qualification in law ; and

(e) has successfully undergone a security clearance check by the
State Security Agency."

(b) by the addition of the following subsections:

"(3) If the Minister deems it necessary in view of the
workload of the Appeal Board or other exceptional circumstances, he
or she may appoint an additional member or members to the Appeal
Board on such terms and conditions as the Minister may determine in a
letter of appointment .

(4) The Appeal Board must—

(a) consider appeals against decisions of the Registrar made in

terms of the Act;

(b) consider any representation made;

(c) determine the appeal procedure;

(d) ensure that appeals are dealt with in accordance with such guidelines as the Minister may prescribe;

(e) identify systemic problems that result in appeals;

(f) submit reports on systemic problems to the Minister at least once every year; and

(g) invite a person or persons with sound knowledge of firearms to assist the Appeal Board on technical aspects of firearms where necessary.

(5) The Minister must appoint the chairperson of the Appeal Board.

(6) A simple majority of the members appointed by the Minister constitutes a quorum for meetings of the Board.

(7) The Minister may remove a member of the Appeal Board on good cause shown."

Substitution of section 131 of Act 60 of 2000

27. The following section is hereby substituted for section 131 of the principal Act:

"Administrative work of Appeal Board

131. (1) The administrative work of the Appeal Board must be performed by such members of the South African Police Service, or any other employee of the South African Police Service as may be designated by the National Commissioner; Provided that a member employed at the Office of the Central Firearms Register may not be designated to perform the administrative work of the Appeal Board.

(2) The Appeal Board must function independently of the Office of the Central Firearms Register."

Amendment of section 140 of Act 60 of 2000, as amended by section 17 of Act 43 of 2003 and section 45 of Act 28 of 2006

28. Section 140 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Minister may, after consultation with the National Commissioner and the Secretary for **[Safety and Security]** the Police Service appointed in terms of, the Civilian Secretariat for Police Service Act, 2011 (Act No. 2 of 2011), by notice in the *Gazette*, declare any premises or categories of premises to be firearm-free zones, if it is—".

Amendment of section 145 of Act 60 of 2000

29. Section 145 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word "and" at the end of paragraph (m); and

(b) by the addition of the following paragraphs:

"(mA) the consideration and processing of appeals being considered by the Appeal Board, including the time-frames within which appeals must be disposed of;

(mB) the consideration and processing of applications for competency certificates and licences to possess firearms;

(mC) the application of microdots to firearms and muzzle loading firearms and the information that must be contained in the microdots;

(mD) the performance of the functions by Designated Firearms Officers; and"; and;

(c) by the substitution for subsection (2) of the following subsection:

"(2) A regulation may provide for a penalty for any contravention thereof or failure to comply therewith, of a fine or imprisonment for a period not exceeding **[12 months]** three years or both such a fine and such imprisonment in the case of a natural person and to a fine not exceeding five hundred thousand rand in the case of a juristic person."

Amendment of Schedule 1 of Act 60 of 2000, as amended by section 19 of Act 43 of 2003 and section 52 of Act 28 of 2006

30. Schedule 1 to the principal Act is hereby amended—

(a) by the substitution in item 1A for subitem (3) of the following subitem:

"(3) The period referred to in **[subsection]** subitem (1)

may be extended by the Minister for such period as the Minister may determine by notice in the *Gazette*.";

(b) by the insertion after item 1A of the following items:

"Possession and surrendering of percussion cap-and-ball and other firearms

1B. (1) Any person who possesses a percussion cap-and-ball firearm or a firearm in respect of which a licence was issued to that person prior to the coming into operation of the Arms and Ammunition Act, 1969 —

(a) must before the expiry of 18 months from the date of commencement of the Firearms Control Amendment Act, 2015, apply for a firearms licence to possess such percussion cap-and-ball firearm or a firearm in respect of which a licence was issued to that person prior to the coming into operation of the Arms and Ammunition Act, 1969;

(b) may lawfully possess such percussion cap-and-ball firearm—

(i) until the expiry of the period referred to in paragraph (a);

or

(ii) if an application has been made for a licence to possess such percussion cap-and-ball firearm during the period referred to in paragraph (a), until such application has been decided; and

(c) who has not applied for a firearm licence in respect of that

percussion cap-and-ball firearm before the expiry of the period referred to in paragraph (a), must surrender such percussion cap-and-ball firearm to the nearest police station.

(2) No prosecution may be instituted during the period referred to in subitem (1)(a) against any person found in possession of a percussion cap-and-ball firearm without being in possession of a licence.

(3) The Service may dispose of any percussion cap-and-ball firearm surrendered to it in terms of subitem (1)(c) in accordance with the provisions of the Act.

(4) A receipt must be issued to the person who surrenders a percussion cap-and-ball firearm in accordance with subitem (1)(c).

(5) Percussion cap-and-ball firearms which were registered before 30 June 2004 as firearms must be licenced free of charge before the expiry of the period referred to in subitem (1).";

Compliance by Official Institutions

1C. All Official Institutions must within one year of the commencement of the Firearms Control Amendment Act, 2015, be fully compliant with the provisions of Chapter 11, and Heads of Official Institutions must report to the Registrar on progress made on a quarterly basis.

Surrendering or licensing of actions, frames and receivers

1D. (1) Any person who possesses an action, a frame or receiver—

(a) must, before the expiry of 18 months from the date of commencement of the Firearms Control Amendment Act, 2015, apply for a firearms licence to possess such action, frame or receiver;

(b) may lawfully possess such action, frame or receiver—

(i) until the expiry of the period referred to in paragraph (a);

or

(ii) if an application has been made for a licence to possess such action, frame or receiver during the period referred to in paragraph (a), until the said application has been decided; and

(c) who has not applied for a firearm licence in respect of that frame or receiver before the expiry of the period referred to in paragraph (a), must surrender such frame or receiver to a police station.

(2) In the case where such frame or receiver is not numbered, the required serial number must be applied in such non-damaging way as may be prescribed.

(3) No prosecution may be instituted during the period referred to in subitem (1) against any person found in possession of a frame or receiver without being in possession of a licence.

(4) The South African Police Service may dispose of any frame or receiver surrendered to it in terms of subitem (1)(c) in accordance with the provisions of the Act.

(5) A receipt must be issued to the person who surrenders a frame or receiver in accordance with subitem (1)(c).

Relicensing of firearms

1E. (1) Any licence which was—

(a) issued in terms of the Arms and Ammunition Act, 1969 or previous legislation; and

(b) not renewed as contemplated in this Act, remains valid for a period of two years from the coming into operation of the Firearms Control Amendment Act, 2015.

(2) The Minister may, with the approval of Parliament, extend the period referred to in subitem (1) for a maximum period of two years.

(3) Subitems (1) and (3) of item 1 apply with the necessary changes required by the context, to item 1A."; and

(c) by the insertion in item 11 after subitem (3) of the following subitems:

"(3A) The holder of a licence contemplated in item 1E must apply for the corresponding licence in terms of this Act within the period specified in item 1E(1) or the extended period referred to in subitem 1E(2).

(3B) Subitems (1)(a), (2), (3) and (4) are applicable,

with the necessary changes required by the context, to any application made in terms of item 1E."

Insertion of item 12 in Schedule 1 of Act 60 of 2000

31. The following item is hereby inserted in Schedule 1 to the principal Act after item 11:

"Validity of competency certificates

12. All competency certificates issued in terms of this Act before commencement of the Firearms Control Amendment Act, 2015, remain valid in the case —

(a) where no firearms licence had been issued before the commencement of the Firearms Control Amendment Act, for a period of five years from the date of commencement of the said Act;

(b) where a firearms licence had been issued before the commencement of the Firearms Control Amendment Act, 2015, until the expiry of any such firearms licence issued to the person, in which case the person must apply for the renewal of the competency certificate together with the renewal of the said licence."

Amendment of Schedule 1 of Act 60 of 2000

32. Schedule 4 to the principal Act is hereby amended—

- (a) by the insertion in the Table after section 16(4) of "section 16(9)" in the first column and the insertion of "five years" in the corresponding second column; and
- (b) by the insertion in the Table after section 29 (2) of "section 30A(7)" in the first column and the insertion of "five years" in the corresponding second column.

Amendment to Act 105 of 1997

33. The Criminal Law Amendment Act, 1997, is hereby amended by—

- (a) the substitution for paragraph (b) in the first item in Part 1 of Schedule 2 of the following:

“(b) the victim was—

- (i) a law enforcement officer performing his or her functions as such, whether on duty or not; **[or]**
- (ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act 51 of 1977), at criminal proceedings in any court; or
- (iii) killed by means of a firearm;

- (b) the addition of the following subparagraph in paragraph (b) of the second item of Part 1 to Schedule 2 of the following:

“(iv) was threatened with a firearm; or”

- (c) the addition of the following subparagraph to paragraph (b) of the third

item to Part 1 of Schedule 2 to the Act for the following:

“(iv) threatened with a firearm; or”

(d) the substitution of the following for the second item in Part 2 to Schedule 2 of the Act:

“Robbery-

(a) when there are aggravating circumstances; **[or]**

(b) involving the taking of a motor vehicle; or

(c) where a firearm was used in the commission of the crime.”.

(c) the substitution in Part 2 to Schedule 2 for item 4 of the following:

“Any offence relating to-

(a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or

(b) the possession of **[an automatic or semi-automatic]** any firearm, explosives or armament.”.

Short title and commencement

34. This Act is called the Firearms Control Amendment Act, 2015, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE FIREARMS CONTROL AMENDMENT BILL, 2015

1. BACKGROUND AND PURPOSE

1.1 The Firearms Control Amendment Bill, 2015 (the Bill), seeks to amend the Firearms Control Act, 2000 (Act No. 60 of 2000) (the Act). In the process of the putting into operation of the Firearms Control Amendment Act, 2006 (Act No. 28 of 2006), some deficiencies in the Act, had been noted, namely a that some consequential amendments are required in order to align the control over muzzle loading firearms with the control over firearms. Submissions were also made by the National Association of Arms Collectors of South Africa, pertaining to a lack of transitional provisions in respect of percussion cap-and-ball firearms. Although the same could be provided for in regulations, the impact of licensing percussion cap-and-ball firearms on the number of firearms which may be possessed can only be addressed through legislative amendment.

1.2 A Task team appointed by the Minister of Police in the meantime investigated the Central Firearms Register and made recommendations to the Minister in order to address the problems experienced by the Central Firearms Register in the timeous and proper consideration of applications for firearms and making decisions on such applications. There was also some confusion on the proper interpretation of the provisions relating to the validity of competency certificates, the provisions relating to the issue of renewing competency certificates as well as the regulation of muzzle loading firearms.

1.3 Whilst the amendment of the Act as well as the Firearms Control Amendment Act, 2006, is necessary, there was a critical review of all issues pertaining to the Act. Other amendments were also included, such as providing for a uniform period of validity for competency certificates, the designation of a Designated Firearms Officer at each police station, as far as is practicably possible, to improve the control over firearms in possession of the police and other Official Institutions and private security service providers.

1.4 In order to improve the control of firearms issued in terms of the Act, the amendment also seeks to provide for the compulsory application of microdots on all firearms that are licenced in terms of the Act. This will enhance the identification and tracing of all licenced firearms. The amendment also seeks to place a limit on the number of semi-automatic rifles and semi-automatic handguns that may be licenced to a dedicated-hunter or a dedicated sports-shooter.

1.5 In *SA Hunters A.O v Minister of Safety and Security Case No: 33656/09*, the South African Hunters Association sought an urgent interim order in the High Court to declare the firearm licences issued in terms of the Arms and Ammunition Act, 1969 to be lawful and valid pending the finalisation of the main application as to the constitutionality of item 1(1) of Schedule 1 to the Act.

1.6 The main application was against the commencement and implementation of item 1(1) of the Act, which provides for transitional provisions. Item (1)(1) to the Schedule provides that any licence which was issued in terms of the repealed Arms

and Ammunition Act, 1969 (Act No. 75 of 1969) and which was valid immediately before the date of the Act, remains valid for a period of five years from the date on which the Act comes into operation, unless such licence is terminated, cancelled or surrendered in terms of the Act. In addition, firearm licence holders must within this period apply for new licences in terms of the Act, lawfully dispose of any firearm not lawfully possessed and any firearm not disposed of may be forfeited to the State.

1.7 In the main application the South African Hunters Association were to argue that the item 1(1) of the Act infringed the constitutional right to ownership (of a firearm); the right not to be prosecuted and imprisoned for the possession of firearms that were legally acquired in terms of the Arms and Ammunition Act, 1969; the right to lawful, reasonable and procedurally fair administrative action.

1.8 The SA Hunters Association maintained that the five year period would expire before all the licence holders could apply and obtain licences and competency certificates due to backlogs in the South African Police Service, resulting in the applications not yet being processed and finalised in terms of the Act. The State did not have resources to implement the administration necessary to finalise the renewal of firearm applications and new firearm applications. Some licenses applications had been declined. As a result of this situation many lawful licence holders would be subject to criminal prosecution by virtue of not holding licences to possess their firearms in terms of the Act, and their firearms would be forfeited to the State.

1.9 The High Court in the South African Hunters Association case held that a prima facie case had been made in respect of the pending main application as to the

absence of a justification for the limitations of the constitutional rights affected by the impugned transitional provisions. The respondent could not show any justifications for the limitations. Furthermore the North Gauteng High Court held that the legislature should have taken into account the available administrative facilities and should not have designed a transitional arrangement which cannot be implemented by the officials of the respondent.

1.10 The North Gauteng High Court granted an interim order pending the finalisation of the main application as to the constitutionality of the impugned transitional provisions as contained in Schedule 1 to the Act. The court ordered that that firearm licenses which were issued in terms of the Arms and Ammunition Act, 1969 will be deemed to remain valid until the main application had been finalised.

1.11 Based on this judgement, the Bill seeks to propose amendments to give effect to rectify the anomalous transitional provisions contained in Schedule 1 to the Act.

2. CLAUSE-BY-CLAUSE ANALYSIS

2.1 Clause 1

Clause 1 of the Bill amends section 1 of the Act by substituting the definitions of "Minister" and "muzzle loading firearm" and adding the definitions of "Integrated Ballistics Identification System", "ballistic sampling", "microdot" and "percussion cap-and-ball firearm".

2.2 Clause 2

2.2.1 Clause 2 of the Bill amends section 8 of the Act which provides for the accreditation by the Registrar (who is the National Commissioner of Police who generally delegates certain duties and functions in writing) in terms of the Act, of associations belonging to firearm licence holders. Clause 2 adds two new subsections to section 8 of the Act.

2.2.2 The new section 8(7) provides that an authorised office bearer of an accredited association must in the prescribed manner verify applications by its member for the possession of firearms and ammunition made by members regarding the use, purpose and category firearm applied for, including the motivation for the application or any other part of the application. The new section 8(8) provides that the Registrar must consider the verification by the accredited association when considering the application of a member of that association, but the Registrar may also verify such information independently and may also the refuse of the application on good cause.

2.3 Clause 3

Clause 3 of the Bill amends section 9 to provide for the inclusion of a "professional hunter" or a "private collector" in the categories of compelling reasons for allowing a person to be in possession of a firearm before he or she is 21 years of age.

2.4 Clause 4

Clause 4 of the Bill amends section 10 of the Act which provides for competency certificates to, among other things, possess, trade in or manufacture, firearms.

Clause 4 of the Bill amends section 10 to provide that a competency certificate shall remain valid for a period of 5 years from the date of issue, unless terminated in terms of the Act and subject to transitional provisions provided for in Clause 30 in the proposed item 3C in the Schedule 1.

2.5 Clause 5

Clause 5 of the Bill amends section 10A of the Act which provides for the renewal of competency certificates. Clause 5 provides that applications for renewal of competency certificates must be made at least 90 days before the date of expiry of such competency certificate.

2.6 Clause 6

Clause 6 of the Bill amends section 15 of the Act which provides for licence to possess a firearm for occasional hunting and sports-shooting. Clause 6 of the Bill provides that a fifth licence may be issued in the category of occasional sports shooting or occasional hunting in order to accommodate the licensing of percussion cap-and-ball firearms where a person has already licensed four firearms in that category.

2.7 Clause 7

Clause 7 of the Bill amends clause 16 of the Act by inserting new subsections.

Subsection (5) is inserted to provide that a semi-automatic rifle or a semi-automatic shotgun may only be registered to a person who has maintained a dedicated status as a hunter or sports-shooter for at least two years and continues to hold such status. A maximum of two semi-automatic rifles or semi-automatic handguns may be licenced in terms of this clause, unless compelling reasons are provided by the applicant for such additional firearms. Clause 7 also provides that a written motivation must also be made for more than the number of licences contemplated in subsection (5) and section 15 of the Act for occasional hunting and sports-shooting.

2.8 Clause 8

Clause 8 of the Bill amends section 17 of the Act by providing that a firearm which may be possessed in a private collection is a firearm approved by an accredited collectors association to which the private collector is a member in good standing and where such firearm is demonstrated to be part of the said private collector's approved field of interest. The requirement in section 17(2) of the principal Act that an application in terms of section 17 must be accompanied by a sworn statement or solemn declaration by the chairperson of an accredited association is qualified in that the proposed amendment provides that such chairperson must state that the applicant is a member in good standing and that the applicant has confirmed to the association that he or she complies with the requirements of the Act.

2.9 Clause 9

2.9.1 Clause 9 of the Bill amends section 23 of the Act which provides for identification marks on firearms. The clause provides that, in addition to the information provided for in section 23 of the Act, no firearm licence may be issued unless the firearm is applied with microdots in the prescribed manner and containing such information as may be prescribed. The microdots must comply with the requirements of standard specification SANS 534-1 and contain the model and manufacturer's serial number and such other information as may be prescribed.

2.9.2 The clause also adds subsection (8) that provides for the application of microdots and the affixing of a serial number in the prescribed manner to muzzle loading firearms which are imported or kept in a dealers' stocks. It is made clear that such "affixing" does not imply marking of the firearm itself.

2.10 Clause 10

Clause 10 of the Bill provides that that if the application of the renewal of a licence is made before the expiry of the licence, that the licence remains valid until the application has been decided. A penalty is provided for if the application is made in less than 90 days from the expiry date of the firearms licence.

2.11 Clause 11

2.11.1 Clause 11 of the Bill inserts a new section 23A to provide for the compulsory

application of microdots in the prescribed manner on all new firearms registered in terms of the Act and that the microdots must comply with the requirements of standard specification SANS 534-1 before the firearm may be licenced by the Registrar. An obligation is also placed on the applicant to submit a certificate issued by an accredited service provider that microdots have been applied to the firearm together with the application for a licence.

2.11.2 Holders of firearm licences issued prior to the coming into operation of the Firearms Control Amendment Act, 2015, are required to have microdots that comply with specification SANS 534-1 applied in the prescribed manner containing the prescribed information within six months of the Firearms Control Amendment Act, 2015, being put into operation. A certificate of microdot application issued by the accredited service provider must also be submitted in the prescribed form to the Registrar within six weeks after the expiry of the six months, failing which the Registrar may terminate the firearm licence in accordance with the procedures set out in section 28 of the Act.

2.11.3 Clause 11 furthermore provides for the insertion of a new section 23B in the Act, which provides for the ballistic sampling of all firearms licensed in terms of the Act, inclusive of firearms for self-defence, occasional and dedicated sports shooting and hunting, collection, subject to the ability of the firearm to be safely fired and the availability of ammunition, as well as firearms intended for business purposes, including for purposes of the rendering of security services. The Act provides for the publication by the Minister in the Gazette of dates to comply with this section as well as the power to extend these dates.

2.12 Clause 12

Clause 12 of the Bill seeks to amend section 31 of the Act by the deletion of the words "in a collection" after the word "ammunition", thereby including all ammunition to be included in the section that provides its sale or donation to be done without the intervention of a dealer.

2.13 Clauses 13 to 19

Clauses 13 to 19 of the Bill amends section 36, 39, 46, 50, 53, 56 and 59 of the principal Act by making consequential amendments relating to references to muzzle loading firearms.

2.14 Clause 20

Clause 20 of the Bill amends section 84 of the principal Act by providing that the Minister may prescribe the manner in which a firearm must be carried by a security officer in the performance of duties.

2.15 Clause 21

Clause 21 of the Bill amends section 91 of the Act which provides for the restriction on possession of ammunition. Clause 21 of the Bill amends section 91 of the Act by making the restriction applicable not only to a holder of a licence but also to a private collector, an accredited training service provider or a professional hunter. Clause 21

therefore provides that the holder of a licence, a private collector, an accredited training service provider or a professional hunter may not possess more than 200 cartridges unless the Registrar authorises the possession of cartridges in excess of 200 cartridges, in respect of each licensed firearm on good cause shown. The term “on good cause shown” is expanded on with relation to the submission of proof of the frequency of the use of the firearm, the level of participation in the relevant activity for which the firearm is registered, the number of cartridges used per occasion and any other relevant factors or circumstances.

2.16 Clause 22

Clause 22 of the Bill amends section 96 of the Act which provides for exemptions of Official Institutions from the application of the Act. Clause 20 inserts a cross reference to the new item 1C of Schedule 1 to ensure that item 1C is one of the only provisions that apply to an Official Institution. Item 1C is a transitional provision which provides that an Official Institutions must within one year of the commencement of the Firearms Control Amendment Act, 2015, fully comply with the provisions of Chapter 11 (which regulates the handling of firearms by Official Institutions), and the Heads of Official Institutions must report to the Registrar on progress made on a quarterly basis.

2.17 Clause 23

2.17.1 Clause 23 of the Bill inserts new sections 98A and 98B in the Act, to provide for the application of microdots and ballistic testing of firearms in possession of

Official Institutions. Clause 23 of the Bill also provides that the Head of an official institution must comply with a notice issued by the Minister for the ballistic sampling of all firearms in the custody of that Head, and the results of the ballistic sampling must be placed on the Integrated Ballistics Identification System, for purposes of investigating crimes committed with firearms.

2.17.2 In addition, clause 23 of the Bill authorises the Minister by notice in the *Gazette*, to determine the date by which the firearms in possession of an Official Institution must be ballistically sampled, and microdotted and that the Minister may extend such date by notice in the *Gazette*.

2.18 Clause 24

2.18.1 Clause 24 amends section 124 of the Act which provides for the functions of the Registrar. Clause 24 of the Bill provides for the Registrar to submit quarterly reports to the Minister and Parliament on all losses of firearms issued to members of the Service, the investigation of losses of firearms and ammunition under the control of the Service and disciplinary steps taken and criminal prosecutions instituted against members for such losses.

2.18.2 Clause 24 also adds new subsections (4) and (5) to section 124 of the Act. The new section 124(4) provides for the obligatory designation of a Designated Firearms Officer at each police station, as far as practicably possible, in order to provide focused and undivided attention to control over firearms and ammunition in the possession of the police as well as other official institutions and the private

security industry. The Designation Firearms Officer will ensure compliance with the Act by inspections at Official Institutions, and regular and random inspections at business premises of security service providers. This will also enhance access by the public to services and the speedy processing of applications for competency certificates and licenses.

2.18.3 Clause 24 furthermore provides for approval by the Minister of a list of Dedicated Firearms Officers who will only perform such function at that station, which list must be reviewed annually.

2.19 Clause 25

Clause 25 of the Bill inserts new sections 124A and 124B in the Act. Clause 25 of the Bill imposes duties on commanders and station commissioners with regard to firearms kept at police stations, disciplinary steps to be taken against members who have lost firearms, the reporting of losses of official firearms and ammunition and the investigation of such losses, safekeeping of firearms and ammunition, as well as the regular and random inspections of official registers by the commanders and station commissioners. The station commissioners must effectively supervise and control the duties and functions of the Designated Firearms Officer.

2.20 Clause 26

Clause 26 of the Bill amends section 128 of the Act which establishes the Appeal Board which considers appeals against the decisions of the Registrar made in terms of the Act. Clause 26 provides for the appointment by the Minister of additional

members to the Appeal Board, which currently is supposed to be at least five members. Clause 26 also clarifies the functions of the Appeal Board.

2.21 Clause 27

Clause 27 of the Bill substitutes section 131 of the Act which provides for the administrative work of the Appeal Board. Clause 27 provides for the enhancement of the independence of the Appeal Board by providing that administrative work of the Appeal Board may not be performed by members attached to the Office of the Central Firearms Register and that the Appeal Board must function independently from the Office of the Central Firearms Register.

2.22 Clause 28

Clause 28 of the Bill amends section 140 of the Act provides for the correct reference to the Secretary for the Police Service in the provisions relating to firearm-free zones.

2.23 Clause 29

2.23.1 Clause 29 of the Bill amends section 145 of the Act which provides for the areas on which the Minister may make regulations. Clause 29 inserts new paragraphs (*mA*) and (*mB*) in section 145, in order to allow the making of regulations regarding the consideration and processing of appeals being considered by the Appeal Board and the consideration and processing of applications for competency

certificates and licences to possess firearms.

2.23.2 The clause also inserts new paragraph (*mC*) in order to provide for the application of microdots to firearms and muzzle loading firearms and the information that must be contained in the microdots and new paragraph (*mD*) to provide for the performance of the functions by designated firearms officers.

2.23.3 The clause also increases the penalty for any contravention or failure to comply with the regulations by providing for a fine or imprisonment for a period not exceeding three years or both such a fine and such imprisonment in the case of a natural person and to a fine not exceeding three hundred thousand rands in the case of a juristic person.

2.24 Clause 30

2.24.1 Clause 30 of the Bill amends Schedule 1 to the Act. Clause 30 provides for a correction to the English text of the Firearms Control Amendment Act, 2006, by referring to "subitem" instead of "subsection".

2.24.2 The clause also inserts a transitional provision in respect of the licensing of percussion cap-and-ball firearms. Clause 30 provides for the lawful possession of a percussion cap-and-ball firearm but a person in such possession must, within 18 months of the commencement of the Firearms Control Amendment Act, 2015, apply for a licence to possess such percussion cap-and-ball firearms. There will be no criminal prosecutions within the 18 months of the commencement of the Firearms

Control Amendment Act, 2015. Furthermore, the South African Police Service may dispose of any percussion cap-and-ball firearm surrendered to it by a person who has not applied for licences within the stipulated 18 months.

2.24.3 Clause 30 inserts new items 1C, 1D and 1E in Schedule 1 to the Act. The new item 1C provides that all Official Institutions must, within one year of the commencement of the Firearms Control Amendment Act, 2015, comply with Chapter 11 of the Act.

2.24.4 The new item 1C of Schedule 1 provides for the lawful possession of an action, frame or receiver but a person in such possession must, within 18 months of the commencement of the Firearms Control Amendment Act, 2015, apply for a licence to possess such action, frame or receiver. There will be no criminal prosecutions within the 18 months of the commencement of the Firearms Control Amendment Act, 2015. Furthermore, the South African Police Service may dispose of any action, frame or receiver surrendered to it by a person who has not applied for licences within the stipulated 18 months.

2.24.5 The new item 1E of Schedule gives effect to the interim court order granted in the South African Hunters Association case. Provision is also made for persons who were licensed to possess firearms under the Arms and Ammunition Act, 1969, and never renewed their firearms as required by the Act. In terms of the provision a period of two years which may be extended by the Minister with approval of Parliament for another two years, is provided for the relicensing of such firearms.

2.24.6 It important to point out that High Court in the South African Hunters Association case emphasised that the legislature must take into account the available administrative facilities that are designed to implement the transitional arrangement are in place and must be able to be implemented by the official of the Department. This still also applies to the proposed new item 1E of Schedule 1 to the Act.

2.25 Clause 31

Clause 31 inserts an item 12 in Schedule 1 to the principal Act, after item 11 to make interim provisions in respect of the validity period of competency certificates.

2.26 Clause 32

Clause 32 amends Schedule 4 of the principal Act by the insertion in the Table after section 16(4) of "section 16(9)" in the first column and the insertion of "five years" in the corresponding second column; and by the insertion in the Table after section 29 (2) of "section 30A(7)" in the first column and the insertion of "five years" in the corresponding second column.

2.26 Clause 33

Clause 32 amends Parts 1 and 2 of Schedule 2 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997) to provide for minimum sentences where the victim of a murder had been killed by means of a firearm, a firearm was used to threaten a

victim during a rape, compelled rape or robbery, and also when a person had been in possession of any firearm.

2.27 Clause 34

Clause 34 contains the short title and commencement of the Act, which is to be on a date determined by the President by Proclamation in the *Gazette*.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

3.1 The Bill was drafted by a Task Team consisting of officials of both the South African Police Service and the Civilian Secretariat of Police. The draft Bill was consulted with interested groups including dealers, collectors and trainers. These groups included the following—

3.1.1 The South African Police Service;

3.2.2 The International Firearms Training Academy;

3.3.3 The Professional Hunters Association;

3.4.4 The SA Hunters and Game Conservation Association; and

3.4.5 The SA Sports Shooting Federation.

3.4.6 A draft Bill was also made available on which a huge volume of comments have been received. The provisions relating to percussion cap-and-ball firearms were inserted following representations by the National Association of Arms and Ammunition Collectors of South Africa.

3.3 A further draft Bill was also distributed to accredited firearms associations for

comment after the Bill was revised following a presentation to the Justice Crime Prevention and Security Cabinet Committee in November 2014. Comments in this regard were also received from associations as well as individual members of the public.

4. IMPLICATIONS FOR PROVINCES

None.

5. CONSTITUTIONAL IMPLICATIONS

None. The draft Bill had been provisionally certified by the Office of the Chief State Law Adviser.

6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The appointment of Designated Firearms Officers at each police station and the training of such members will spread the workload and improve the application process as well as access by the public to services. The appointment of additional members to the Appeal Board will enhance the capacity of the Board to deal with appeals more effectively and speedily.

7. FINANCIAL IMPLICATIONS FOR THE STATE

7.1 Additional costs such as the appointment of additional members to the Appeal Board can be met from the budget of the Civilian Secretariat. The Civilian Secretariat budget for the remuneration of all Appeal Board members and administrative support capacity is R4,79 million.

7.2 The costs relating to the appointment of the Designated Firearms Officers and their training will be borne by the South African Police Service. The estimated cost is R5,4 million.

7.3 The South African Police Service has also estimated that the costs to ensure that the Central Firearms Registry is adequately resourced and skilled to deliver on its mandate is R1,3 million.

7.4 The costs relating to the application of microdots on firearms will be borne by the applicant for a firearm licence and the holder of a firearm licence issued before the Firearms Control Amendment Act, 2015, is put into operation. The costs for microdotting is about R450.00 per firearm. The application of microdots and the ballistic sampling of firearms issued to Official Institutions will be borne by the relevant Official Institution. It will be the same per unit as for individuals for microdotting and the ballistic sampling relates mostly to inconvenience for the owner or official institution. As the costs related to the ballistic sampling of all firearms in private possession need to be established it is not foreseen that this obligation will be activated in the following financial year and it will be properly budgeted for in a following financial year. The volume of data would also involve an upgrading of the computer capacity at the Forensic Science Laboratory.

8. COMMUNICATION IMPLICATIONS

It is planned that communication on the introduction of the Bill be coordinated by the Civilian Secretariat and the South African Police Service with the the Government

Communication and Information System.

9. PARLIAMENTARY PROCEDURE

9.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

9.2 The Office of the Chief State Law Adviser considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

9.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

9.4 The issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in

Schedule 4 to the Constitution.

9.5 The Bill amends the Act to accommodate the deficiencies identified in the implementation of the Act and consequential amendments to the Firearms Control Amendment Act, 2006.

9.6 The Bill generally provides the control and licensing of firearms; the verification of applications for firearm licences by an accredited association; the compulsory application of microdots to all new and already licensed firearms; the alignment of the control over muzzle loading firearms with the control over firearms; the period of validity for competency certificates and the period of renewal competency certificates; the designation of a Designated Firearms Officer at each police station to improve the control over firearms in possession of the police and other Official Institutions; monitoring firearms in the possession of private security service providers; the regulation of muzzle loading firearms; the application of microdots and the ballistic sampling of firearms of Official Institutions; transitional provisions in respect of licensing of percussion cap-and-ball firearms; the transitional arrangements for persons who were licensed to possess firearms under the Arms and Ammunition Act, 1969, and never renewed their firearms as required by the Act. In terms of the provision a period of two years which may be extended by the Minister with approval of Parliament for another two years, is provided for the relicensing of such firearms, which means that the relicensing must occur within two years of the commencement of the Firearms Control Amendment Act, 2015.

9.7 The proposed amendments reflected have been carefully examined to

establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

9.8 In the view of the Office of the Chief State Law Adviser, the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.

9.9 The Office of the Chief State Law Adviser is therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 of the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

9.10 The Office of the Chief State Law Adviser is also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.