

REPUBLIC OF SOUTH AFRICA

FIREARMS CONTROL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
the Bill and prior notice of its introduction published in Government Gazette No. 41881
of 31 August 2018)*
(The English text is the official text of the Bill)

(Dr P J Groenewald, MP)

[B 40—2018]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Firearms Control Act, 2000, so as to provide for additional opportunities to apply for the renewal of a licence for a firearm or to surrender or dispose of a firearm; to provide for an administrative fine to be imposed where an application for the renewal of a licence for a firearm was made later than the 90-day period for application provided by the Act; to provide for an administrative fine to be imposed where surrender or disposal of a firearm was made after expiry of the licence for that firearm; to provide for a deemed validity of a licence for a firearm; to provide for notification by the Registrar where an application for renewal was declined or where a licence for a firearm has expired; to provide for proof of an application for renewal of a licence for a firearm to be produced in the event of an inspection or request of a police official or authorised person; to provide for the application of the additional opportunities for renewal of licenses for firearms, to licenses issued before the commencement of the Firearms Control Amendment Act, 2018, and to provide for transitional provisions in that regard; and to provide for matters connected therewith.

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

Amendment of section 24 of Act 60 of 2000

1. Section 24 of the Firearms Control Act, 2000 (hereinafter referred to as the “principal Act”), is hereby amended—

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

“(1) (a) The holder of a licence issued in terms of this Chapter who wishes to renew the licence must, not more than 180 but at least 90 days before the date of expiry of the licence, apply to the Registrar for its renewal.”

(b) The holder of a licence issued in terms of this Chapter, who fails to apply for the renewal of that licence within the period provided for in paragraph (a), must submit an application for renewal to the Registrar before the date of expiry of that licence, in the form and manner contemplated in subsections (2) and (3).

(c) The holder of a licence issued in terms of this Chapter, who failed to apply for the renewal of that licence before the expiry of such licence, must—

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- (i) surrender the firearm in question to the Registrar;
- (ii) dispose of the firearm in question through a dealer: Provided that the holder of the licence must submit proof of such disposal to the Registrar in the prescribed manner; or
- (iii) submit an application for renewal of that licence to the Registrar in the form and manner contemplated in subsections (2) and (3).”;
- (b) by the insertion after subsection (3) of the following subsections:
- “(3A) A person who submits an application for renewal of a licence contemplated in subsection (1)(c)(iii), must in addition to the requirements set out in subsections (2) and (3) show—
- (a) good cause why the application was not made before the expiry of the licence in question; and
- (b) that the holder of the licence in question, at all times, save for failing to comply with subsection (1)(a), complied with the Act.
- (3B) (a) The Minister may prescribe an administrative fine for—
- (i) an application submitted in terms of subsection (1)(b);
- (ii) surrendering a firearm as contemplated in subsection (1)(c)(i);
- (iii) disposing of a firearm as contemplated in subsection (1)(c)(ii); and
- (iv) an application for renewal of a licence for a firearm submitted in terms of subsection (1)(c)(iii).
- (b) The administrative fine contemplated in paragraph (a) is payable upon submission of the relevant application for renewal of a licence for a firearm or surrendering or disposal of the firearm, as the case may be.
- (3C) Neither the fact of an application being submitted in terms of subsection (1)(b) or (c)(iii), nor the imposition of an administrative fine contemplated in subsection (3B), disqualifies the applicant from the renewal of the relevant licence.”;
- (c) by 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)]—**
- (a) before the expiry of that licence, the licence remains valid until the application is decided; or
- (b) after the expiry of that licence, but prior to the expiry of the period contemplated in section 28(1A), the licence is deemed to be valid until the application is decided, or the firearm is surrendered or disposed of, as the case may be.”; and
- (d) by the addition after subsection (4) of the following subsection:
- “(5) If the application for renewal of a licence for a firearm is declined, the Registrar must notify the holder of the relevant licence thereof and must require that holder to within 60 days—
- (i) surrender the firearm in question to the Registrar; or
- (ii) dispose of the firearm in question through a dealer: Provided that the holder of the licence must submit proof of such disposal to the Registrar in the prescribed manner.”.

Amendment of section 28 of Act 60 of 2000

2. Section 28 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:
- “(1A) (a) The Registrar, or a person designated by the Registrar, must, where a licence has been terminated in terms of subsection (1)(a), require the affected holder of the licence, by registered mail requiring signature upon delivery, to within 60 days of receipt of that registered letter—
- (i) surrender the firearm in question to the Registrar, subject to the administrative penalty contemplated in section 24(3B)(a)(ii);
- (ii) dispose of the firearm in question through a dealer subject to the administrative penalty contemplated in section 24(3B)(a)(iii): Provided that the holder of the licence must submit proof of such disposal to the Registrar in the prescribed manner; or
- (iii) submit an application for renewal to the Registrar in the form and manner contemplated in section 24(2), (3) and (3A) and

subject to the administrative penalty contemplated in section 24(3B)(a)(iv).

(b) Where the registered mail contemplated in paragraph (a) could for a period of 21 days not be delivered, the Registrar must instruct a sheriff, contemplated in the Sheriffs Act, 1986 (Act No. 90 of 1986), to, at the cost of the affected holder of the licence, serve a notice on that holder of the licence to, within 60 days, comply with one of the actions set out in paragraph (a)(i), (ii) or (iii) and to provide the Registrar with a return of service to that effect.

(c) Where a police official, in the presence of a holder of a licence issued in terms of this Chapter, determines that the licence was terminated, that police official must require the affected holder of the licence to within 60 days comply with one of the actions set out in paragraph (a)(i), (ii) or (iii) and must in writing report to the Registrar the details of the holder of the licence and the date on which the notice was so given.”; and

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

“(5) If [**the firearm is not disposed of**] within 60 days—

(a) the firearm is not disposed of as contemplated in subsection (1A) or (4);

(b) the firearm is not surrendered as contemplated in subsection (1A); or

(c) no application for renewal as contemplated in subsection (1A) has been submitted to the Registrar,

[**it**] the affected firearm must be forfeited to the State and the former holder of the licence must surrender it immediately at such place and in such manner as the Registrar may determine.”.

Amendment of section 106 of Act 60 of 2000

3. Section 106 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to section 107, any holder of a licence, proof of application for renewal of a licence, permit or authorisation issued in terms of this Act must—

(a) produce the licence, proof of application for renewal of a licence, permit or authorisation for inspection within seven days of being required to do so by any police official or by any person authorised by the Registrar;

(b) maintain the licence, proof of application for renewal of a licence, permit or authorisation in such a state that it can be produced in an undefaced and legible condition; and

(c) produce the firearm in respect of which the licence, proof of application for renewal of a licence, permit or authorisation is issued within seven days of being required to do so by any police official or by any person authorised by the Registrar.”.

Amendment of section 107 of Act 60 of 2000

4. Section 107 of the principal Act is hereby amended—

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

“(1) Any person who carries with him or her a firearm must at the request of a police official or any person authorised by the Registrar produce the licence, proof of application for renewal of a licence, permit or authorisation, as the case may be, in respect of such firearm for inspection.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) If a person fails to comply with subsection (1) or (2), the police official or authorised person may seize the firearm without a warrant and keep the firearm in custody until the licence, proof of application for renewal of a licence, permit or authorisation is produced or the firearm is disposed of in terms of this Act.”.

Transitional provision

5. (1) The Firearms Control Amendment Act, 2018, applies to a licence issued in terms of Chapter 6 of the principal Act before the commencement date of the Firearms Control Amendment Act, 2018.

(2) Where a licence issued in terms of Chapter 6 of the principal Act expires within 90 days from the commencement date of the Firearms Control Amendment Act, 2018, or has expired prior to such commencement date and the firearm and ammunition to which such licence applies, are still in the possession of the person to whom the licence was issued, or if seized has not yet been destroyed in terms of the principal Act, the person who holds or held that licence for a firearm must within 90 days of the commencement date of the Firearms Control Amendment Act, 2018—

- (a) surrender the firearm in question to the Registrar;
- (b) dispose of the firearm in question through a dealer: Provided that holder of the licence must submit proof of such disposal to the Registrar in the prescribed manner; or
- (c) submit an application for renewal of such licence to the Registrar, in the form and manner contemplated in section 24(2), (3) and (3A).

(3) The actions contemplated in subsection (2) are subject to the administrative fines contemplated in section 24(3B)(a)(i), (ii), (iii) or (iv), respectively.

Short title and commencement

6. This Act is called the Firearms Control Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE FIREARMS
CONTROL AMENDMENT BILL, 2018**

1. INTRODUCTION

- 1.1. The Constitutional Court in the matter of *Minister of Safety and Security v South African Hunters and Game Conservation Association [2018] ZACC 14* found that the wording of section 24 of the Firearms Control Act, 2000 (Act No. 60 of 2000) (“the Act”), is constitutional. What the Constitutional Court however did not address was the fact that the Act does not provide for any method by which the failure to apply for renewal of a licence at least 90 days before the expiry of that licence—which requirement is administrative in nature—can be remedied.

2. OBJECTS OF THE BILL

- 2.1. The purpose of the Firearms Control Amendment Bill, 2018 (“the Bill”), is to clarify that the application for renewal of a licence for a firearm is an administrative action and that failure to comply with the requirements of the Act should attract an administrative fine. It is however acknowledged that the control of firearms is integral to enhance the safety and security of all in South Africa and to balance this interest, the Bill provides for clear measures to apply for renewal and should a person fail to apply within these periods, a method to surrender or dispose of the firearm.

3. CONTENTS OF THE BILL

- 3.1. Clause 1 amends section 24 to allow for additional opportunities to apply for a renewal of a firearm licence or to surrender or dispose of a firearm. Each additional opportunity attracts an administrative fine to be prescribed, to serve as a deterrent for late applications. Clause 1 further provides that during these additional opportunities and until the period provided by the Registrar when notifying a holder of a licence that the licence has expired, the licence remains valid or is deemed valid until the application is finalised, or the firearm has been surrendered or disposed of. It further provides that the lateness of the application and the administrative fine imposed do not disqualify the applicant from succeeding with the renewal application.
- 3.2. Clause 2 amends section 28 so that the Registrar is required to inform a holder of a licence of the possible actions to take when the affected licence has expired. It further provide for the methods in which such notice may be made.
- 3.3. Clauses 3 and 4 provide for amendments to sections 106 and 107 of the Act so that proof of an application for renewal will also suffice in the event of an inspection or request of a police official or authorised person.
- 3.3. Clause 5 is a transitional provision making the additional opportunities to apply for renewal of a firearm licence or to surrender or dispose of a firearm available to all licenses issued before the commencement of this proposed Amendment Act, as well as to provide an opportunity specifically to the holder of a licence that was issued before the commencement of this proposed Amendment Act, where that holder failed to timeously apply for renewal of the licence. The administrative fines as prescribed are applicable.

4. FINANCIAL IMPLICATIONS FOR THE STATE

- 4.1. None

5. PARLIAMENTARY PROCEDURE

- 5.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no

provisions to which the procedures set out in section 74 or 76 of the Constitution apply.

- 5.2 The Member is 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.

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