

From Martin Hood:  
Dear Everybody

Most of you will be aware of the Constitutional Court decision of earlier today.

The Constitutional Court, in dismissing the application of SA Hunters and Game Conservation Association, upheld the constitutionality of Sections 24 and 28 of the Firearms Control Act. This means that you are compelled to relicence your firearm in terms of Section 24 and if you fail to do so, the possession of your firearm is illegal and you are criminalised.

The Judgment of the Constitutional Court is short, simple and to the point. It is also a final Judgment and any criticism of the Judgment is of no purpose or consequence.

What we need to consider now, is the consequences of the Judgment and if you have an expired licence, and what you can do.

The Constitutional Court ruled that the life of your licence is finite as determined by the Act and if you do not renew the licence, your licence terminates, the firearm becomes illegal and possession thereof is criminalised i.e. you become a criminal. The Constitutional Court pointed out, however, that if you intend to surrender the firearm to the police on an expired licence, you cannot be prosecuted, because handing in the firearm is a solution to the illegal possession. Froneman J specifically stated "I can see no legal obstacle to hand in a firearm over to the police after termination." (of the licence)

This means that the safest most precautionary approach to take, is to surrender your firearm to the police for destruction if you have an expired licence.

The other alternative, which comes without any guarantees at this stage, is to wait for the proposed amnesty that the police are busy trying to finalise and put before Parliament and apply for a licence in terms of such amnesty. This comes, however, with some potential risks inasmuch as your possession of a firearm on an expired licence remains illegal until you have handed it in to the police and applied for an licence in terms of the amnesty.

Under no circumstances and as a result of this Judgment, should anybody with an expired licence carry and/or use their firearm until they have been granted a licence in terms of the proposed amnesty.

In summary therefore you can:

- 1) Immediately surrender your firearm to the police for destruction and avoid being criminalised; or
- 2) You can keep your firearm, not use it or carry it and wait for the proclamation of the amnesty to surrender your firearm in terms of the amnesty and to apply for a licence in terms of the amnesty.

I do not know exactly when the amnesty will be proclaimed.

The Judgment does not change the status of green or old Act licences which remain valid.

\*FIREARM AMNESTY\* Latest from the South African Gunowners' Association (SAGA)

Sent as received...

SAGA SOUTH AFRICA  
2018 FIREARM AMNESTY

Issued by SAGA on 19 February 2018

Parliament, via the Portfolio Committee on Police, endorsed the 2018 Firearm Amnesty on the 14th February 2018.

The Amnesty, except for some unforeseen critical issue, will soon be Gazetted and is expected to be in effect from 1 June until 30 November 2018

Despite a number of concerns, from amongst others, members of the Portfolio Committee on Police, and firearm lobbygroups (including SAGA), the Minister of Police has persisted with the Amnesty.

Broadly speaking, the concerns raised dealt with the practicalities of whether or not firearms handed into SAPS in terms of the Amnesty can be safely secured.

These questions appear to be well founded having regard to the fact that the number of firearms lost or stolen from many police stations indicates that the SAPS themselves have a serious problem with safekeeping of firearms.

Even more concerning are the documented cases in which SAPS personnel have been convicted of selling large volumes of unlicensed firearms directly to criminals.

This would indicate that there is little guarantee that firearms handed to SAPS under the 2018 Amnesty may also not be at risk of finding their way directly into the hands of gangs and criminals.

Firearms Officers at SAPS stations around the country are traditionally under-resourced and battle to cope with their workload under the Firearms Control Act.

Therefore, a separate capacity, the Amnesty Officer, has been created to properly receive, document and safeguard firearms handed in under the Amnesty conditions.

A valid concern exists as to who will occupy such a responsible position (and what standards of security clearance and vetting will be applied to such appointment) and what oversight will be exercised over the function.

A key debate issue over the last year in Parliament, questions whether the main purpose of the Amnesty, which is apparently the reduction of illegally

possessed firearms and the prevention of crime, amongst others, will ever be achieved.

Criminals are unlikely to inexplicably shun a life of crime and take advantage of the Amnesty to hand in their illegal firearms.

Despite many direct questions and requests for information, SAPS are either unwilling or unable to provide useable statistics or records as to whether any firearms in previous amnesties have ever been unequivocally linked to crimes or criminal activities.

Therefore the success or failure of previous Amnesties is unclear and SAGA finds no reason to support this latest Amnesty.

Despite these clear concerns, the Amnesty is however upon us and inter alia covers a number of situations, and such persons who fall into the categories below, may take advantage of the Amnesty:

1. Possess stolen firearms or ammunition
2. Possess firearms which were lawfully or unlawfully imported and never licensed
3. Possess firearms which were lawfully imported by a foreigner who visited the country, then donated or sold but never licensed
4. Possess firearms from a deceased estate, either as heir or as Executor, which have never been licensed in the deceased's name or relicensed in the heir's name
5. Failed to renew their firearm licence or permit
6. Were declared unfit to possess a firearm but are still in possession of the firearm/s
7. Possess firearms where the import/export/temporary authorisation has lapsed
8. Wish to voluntarily surrender firearms which are no longer needed
9. Possess business firearms where the business has ceased trading
10. Official and non-official institutions wishing to surrender obsolete, redundant or discarded firearms
11. Those with licences issued in terms of the repealed Arms and Ammunition Act, No. 75 of 1969, or issued in terms of any other authority under previous firearm legislation, may apply afresh for a firearm licence in terms of the Firearms Control Act
12. Possess ammunition under an ammunition collector's permit in terms of the previous Act and not having applied to become a collector under the new regime

Note further that in terms of the Amnesty, a person who surrenders a firearm or ammunition is indemnified against prosecution only for the unlawful possession of such firearm and ammunition. If the police investigations reveal a link between the surrendered firearm and another crime (e.g. murder, robbery, theft), the police may approach you for an explanation. In fact you could be arrested and prosecuted.

With respect to category number 5 above, although persons with expired firearm licences would be entitled to surrender and reapply (not apply to renew) for a licence for such firearm/s within fourteen (14) days of surrendering the firearm, SAGA does not at this stage advise its members or anyone with a firearm with an expired licence to do so, because we are still waiting on the outcome of the judgement of the Constitutional Court case of 7th February 2018, which case dealt specifically with Section 24 and Section 28 and expired firearm licences. The judgement could however be handed down by the 1st June 2018 and this would provide more clarification herein.

When the Amnesty is in effect from the 1st June 2018, those persons who do possess firearms in the other categories above (or in circumstances not envisaged above), may wish to take advantage of the Amnesty, and should you wish to do so, please note the following:

1. A written Amnesty application form must be completed by the applicant.
2. The firearm must be surrendered to a Designated Amnesty Officer at ANY police station (excepting the three mentioned in the Amnesty notice), who must issue a receipt for the firearm and ammunition.
3. When surrendering the firearm and ammunition should you wish to do so, you must at the same time notify the Designated Amnesty Officer in writing that you intend on applying for a firearm licence for the firearm.

SAGA will put an example of such a notification on its website.

4. Should you wish to apply for a firearm licence for the firearm/s that you have surrendered, such application must be lodged, within fourteen (14) days of surrendering the firearm, to the relevant SAPS Designated Firearms Officer. Please note that the relevant Designated Firearms Officer "means the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides, and if an application under these Regulations pertains to a business of the applicant, the Designated Firearms Officer responsible for the area in which the business is or will be situated, as the case may be".
5. The firearm will be sent for ballistic testing.

We believe that those with firearms in category 11 above do not have to surrender the firearm to SAPS and may just re-apply for a new licence, but we will confirm this in due course in a following newsletter.

SAGA will post the SAPS presentation on the Amnesty and the Amnesty Notice, as soon as it is gazetted, to our website and Facebook page.

We will continue to keep our members informed concerning the 2018 Firearm Amnesty as developments occur.

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