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Dear Firearm Owner,

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Dear Sir/ Madam,

**AMNESTY. EXPIRED WHITE LICENCE:
THE QUESTION IS : TO PLAY OR NOT TO PLAY?
IT IS YOUR DECISION.**

1. INTRODUCTION.

- 1.1. Writer hereof is a director of NATSHOOT (National Hunting and Shooting Association), which is an accredited hunting and shooting association in terms of the Firearms Control Act (Act 60 of 2000) ("The Act").
- 1.2. I am specializing in firearms law and have advised clients over the past 16 years on the interpretation of the Act and had to follow the judgments that from time to time changed the legal position of firearm owners.

2. PURPOSE OF DOCUMENT.

- 12.1. In view of the present firearms amnesty that has been declared for the period 1 December 2019 until 31 May 2020, **(AND THE UNCERTAINTY AS TO WHAT THE LEGAL POSITION WILL BE AFTER THE AMNESTY)**, I have drawn this synopsis in order to assist firearm owners to decide what they want to do in respect of their firearms.
- 12.2. To understand your rights and take an informed decision, it is important to briefly look at the legal developments that had taken place over the past few years.

3. OLD ORDER LICENCES.

The Arms and Ammunition Act (Act 75 of 1969) ("The Old Act") provided that all firearms had to be licenced and that it was an offence to possess a firearm without a licence. In the early years, the licences were pasted into the large blue identity book. It was later replaced by a green credit card licence. Such licenses

had no expiry date and it was not necessary to renew such firearm licences. The consequence was that the licensee was the owner of the firearm for as long as he/ she lived and wanted the firearm.

4. INTRODUCTION OF NEW ACT.

The Firearms Control Act came into operation on 1 July 2004 and replaced the Old Act. In summary, it had the following provisions;

- 4.1. All firearms which were licenced in terms of the Old Act had to be renewed in terms of the Firearms Control Act;
- 4.2. If the old licence was not renewed by 30 June 2009, such licence would lapse and the owner would be in illegal possession of such a firearm.

5. PRESENT STATUS OF GREEN LICENCES

5.1. SA Hunters and Game Conservation Association challenged the constitutionality of the transitional provisions of the Firearms Control Act in the North Gauteng High Court. On 26 June 2009, Judge Prinsloo gave an **interim order** ("the Prinsloo order") which provided that all firearm licences that had been issued in terms of the Old Act (green licences) will remain valid pending the outcome of the main application.

5.2. The main application has until present not been finalized and the **interim order** is therefore still in operation. The Police accept that firearm owners **who have never taken part in the relicensing system**, are still in lawful possession of such firearms.

5.3. The old order licences were cast in uncertainty when Genl Pahlane issued a directive during February 2016 stating that **the Prinsloo -order was only applicable to firearm owners who had never renewed their licences in terms of the Firearms Control Act**. In other words, (according to the Police) once you have applied for a new licence in terms of the Firearms Control Act, the old green licence terminated and became irrelevant.

5.4. This interpretation has been challenged by some firearm owners associations, who claim that the Prinsloo order is applicable to **all firearms that had been licenced in terms of the Old Act (irrespective whether it had migrated to the New system or not)**. The Police have since February 2016 until present rejected this argument. This complicated legal dispute still needs to be finally decided and will affect the rights of thousands of firearm owners. This will probably only happen after 1 June 2020.

6. RELICENSING.

The Firearms Control Act also provides that:

- 6.1.1. A person must have a competency certificate to possess a specific type of firearm before a licence can be issued by the Police;
- 6.2. Firearms can be licenced for the following reasons and the license is valid for the following periods:
 - Section 13: Self Defence -five years;
 - Section 14: Possession of a restricted firearm for self defence: -2 years
 - Section 15: Occasional Sportshooting or Occasional Hunting - 10 years ;
 - Section 16: Dedicated hunting or Dedicated Sportshooting -10 years;

- Section 17: Private Collectors - 10 years.
- 6.2.1. The licence has to be renewed at least 90 days before the expiry of the license;
 - 6.2.2. A firearm licence lapses on the expiry date if it is not renewed in terms of the Firearms Control Act;
 - 6.3. It is a serious criminal offence, with compulsory minimum sentences to be in possession of unlicensed firearms;

7. FAILURE TO RENEW FIREARM LICENCES.

7.1. For various reasons firearm owners failed to renew their firearm licences timeously and were facing the possibility of being in unlawful possession of their firearms which impacted on their ability to sell or transfer the firearms to a another person or a dealer.

7.2. **SA Hunters and Game Conservation Association** challenged the constitutionality of sections 24 and 28 of the Firearms Control Act (which provides for the relicencing of firearms) and the matter was heard in the North Gauteng Provincial Division. On 4 July 2017 judge Tolmay found in SA Hunters favour and ordered that the relicencing provisions of the Firearms Control Act were unconstitutional and that all licences that had lapsed before the order, as well as those (valid) licenses that would in future expire, will be deemed to be valid until the matter is heard by the Constitutional Court.

7.3. The Tolmay -judgment was widely interpreted that it was not necessary to renew firearm licences. Some Police stations also refused to accept applications for the renewal of firearm licences on the basis that “there was a court order that provided that it is not necessary to renew firearm licences”.

7.4. The matter was only brought to finality on 7 June 2018 when the Constitutional Court delivered a judgment on the matter. Judge Froneman overturned the Tolmay- decision and ruled that the relicencing provisions in the Firearms Control Act are in fact constitutional. The Honourable judge also stated that it was a privilege to possess a firearm and that firearm owners must comply with the provisions of the Act, even if the provisions are harsh. The Court also found that once a licence had expired, that the owner of such a firearm was in illegal possession thereof and that such firearms had to be handed to the Police for destruction.

7.5. During the 11 month period that the Tolmay -judgment applied, approximately 300 000 firearm owners failed to renew their then still valid licences. This “Tolmay disadvantaged group” never received any opportunity to renew their now expired licences. The total amount of expired licences presently stand at approximately 400 000. These firearm owners can not renew, sell or transfer the firearms and their only option is to hand it to the police for destruction.

7.6. It is important to note that the question about the validity of green licences (which had migrated to the Firearms Control Act), was never decided in the Constitutional Court. That dispute therefor remains to be decided.

8. POLICE'S ACTIONS AFTER CONSTITUTIONAL COURT JUDGMENT.

8.1. Immediately after the Constitutional Court Judgment, the Police started to make plans to confiscate the thousands of firearms that were now in illegal possession as a result of the fact that their licences had expired. They also started to make threats to arrest and prosecute such firearm owners.

8.2. The firearm owners whose licenses have expired, were unwilling to hand their firearms to the Police for destruction because they believed, (especially after the conviction of Col Prinsloo of the theft of some 2 400 confiscated/ surrendered firearms), that the Police were not able to safely keep such firearms. There were also various other incidents that supported this impression.

9. GOSA APPLICATION.

9.1. In order to prevent the Police to threaten firearm owners with expired licences, **GOSA** brought an application to challenge the Pahlane -interpretation (that only green licences that had not migrated, were valid) and to force the Registrar of Firearms to apply section 24(6) of the Act which provides for an extension of time periods on good cause shown. They also challenge the Police's ability to implement the Act and in particular their ability to safely keep firearms. The main application is still to be heard.

9.2. On 27 July 2018 Judge Prinsloo gave an **interim order** which prohibits the Police to implement plans to confiscate firearms and take it in or demand that it should be handed over solely on the basis that such firearm's licence had expired. This **interim order** presently keeps the wolves from the doors of firearm owners whose licenses have expired.

9.3. The Police have obtained leave to appeal the **interim order** and at this stage it is difficult to predict what the outcome of the appeal against the interim order, or the outcome of the main case, will be. If either of them fall, the Police will be entitled to confiscate firearms of which the licences have lapsed and may prosecute owners of such firearms for the illegal possession thereof.

10. AMNESTY.

10.1. The Minister of Police declared an amnesty in respect of **illegal firearms** which will run from 1 December 2019 until 31 May 2020. The Police represented to parliament that the amnesty will be in the public's interest and that it will lead to a reduction in serious violent crime and that the amnesty would not be aimed at firearm owners who have failed to renew their licences. Without approving the notice (as is required by section 139 of the Act) Parliament approved the amnesty and requested that the Minister should develop a program which will allow firearm owners, with expired licences, to renew their licences. It is clear that Parliament was misled.

10.2. In terms of the amnesty and the Police's interpretation of what are illegal firearms, all firearms with expired licences, **must be surrendered at Police stations for destruction**. It also provides that new applications for firearms can be made in respect of firearms that had been surrendered. The Minister also made it clear that after the amnesty, **the Police will go from house to house**

to get such firearms... and that firearm owners who don't comply, will be arrested and prosecuted. All indications are that the Government wants to use the amnesty to lay its hands on those firearms with expired licences in order to have it destroyed. The Minister also on various occasion said that he believes that private citizens should not possess firearms.

10.3. The amnesty further provides that anyone who surrenders a firearm, may apply for a new licence, (not a renewal of the old licence) which application must be submitted within 14 days after the firearm had been surrendered. This process could not work, because the Police required a valid competency certificate **when the application for a new licence was submitted.** Most firearm owner's competency certificates had expired with their firearm licences and it would take them at least 3 to 4 months to obtain a new competency certificate. By then the opportunity to apply for a new licence in terms of the amnesty would have passed and the owner will be obliged to surrender the firearm to the Police for destruction.

10.4. It was clear that the Police abused the amnesty process to unfairly disarm firearm owners with expired licences. During December 2019 **NATSHOOT** brought an urgent application to have the amnesty set aside on the technical ground that the notice was not approved by parliament as is required by section 139 of the Act. As a result of the application, the Police amended their policy to provide that an application for a new competency certificate can be submitted simultaneously with the application for a new license under the amnesty. **NATSHOOT** settled the application and the amnesty must be regarded to be lawful.

10.5. As a result of the new policy in respect of competency certificates, the amnesty can now be implemented. It remains to be seen whether the Police, who has limited credibility and whose publicity about the amnesty is driven by Gunfree SA, can convince the public that they can safely keep the firearms that had been surrendered and that a fair licencing process will be followed.

11. DIFFERENT GROUPS OF FIREARM OWNERS.

11.1. GROUP 1. Firearm owners who only have Old Order green licences or whose white licences have not expired, are not affected by the amnesty.

11.2. GROUP 2. Persons who have a green licence, but have taken part in the renewal process process (and whose licences have now expired), find themselves in a difficult position as a result of the Pahlane -interpretation. It must be accepted that the Police won't change their position and regard such firearms as being in illegal possession. There is no possibility that the Court will give a judgment in the **GOSA** main application before the end of the amnesty on 31 May 2020. Such owners must accept that they will after 1 June 2020 be targeted by the Police.

11.3. GROUP 3. Persons with only expired new order white licences must accept that the Police consider such firearms to be in illegal possession and that they will after 1 June 2020 be the target for possible arrest and prosecution.

12. POINTS TO BEAR IN MIND.

- 12.1. The Police want to reduce the amount of firearms in private possession;
- 12.2. There will be an attempt this year to amend the Firearms Control Act to provide that Self Defence will not be a reason to possess a firearm;
- 12.3. The Police and Civilian Secretary of Police (who is responsible for the legal amendments) don't want to communicate with the organized firearm owners associations and firearm owners' interests are not taken into account;
- 12.4. The organized firearm owners associations and accredited shooting and hunting associations have no opportunity to influence or oversee the amnesty process. It appears that only Gunfree South Africa has the Minister's ear. During the previous amnesty a National Amnesty Board was created where representatives of the firearm owners played an oversight role in the amnesty process;
- 12.5. All firearms surrendered will have to be IBIS tested before a licence can be approved. All indications are that the Police don't have the capacity to ensure that it will be done within a reasonable time, (of say 6 months). If only a few thousand (not even hundreds of thousands) firearms are surrendered with an application for a new licence, one should expect that a firearm may be in Police custody for up to 2 years (or longer);
- 12.6. The criteria for new licence applications as part of the amnesty are uncertain. The Police has an appetite for excess firearms and it should be expected that an applicant will have to prove that there are valid reasons for not timeously renewing their licence and that they were not negligent;
- 12.7. The organized firearms industry have no mechanism to ensure that issues which cause delays and bottlenecks in the amnesty process are identified and solved. NATSHOOT has suggested that a nodal point be created, but this was also not acceptable to the Police. Associations are therefore (at this stage) not in a position to assist members who run into problems during the amnesty process;
- 12.8. The safekeeping of all firearms can, in view of the Police's poor track record cannot be guaranteed.

13. OPTIONS AVAILABLE.

- 13.1. Group 2. Must ensure that they renew their licences timeously;
- 13.2. Group 3: Must accept that they will be targeted and will face serious criminal charges if they don't surrender the firearm and apply for a new licence for the firearm. The alternative is to hope for the best with the GOSA application to declare all green licences to be evergreen.
- 13.3. It must be stressed that if the GOSA interim order is uplifted, or the main application is unsuccessful, it must be accepted that the Police will also use the argument that they had the opportunity to apply for new licences, but preferred to remain in illegal possession.

13.4. Group 3: The same as in Group 2 applies, except that they don't have the green licence argument to fall back on. There seems to be no legal sympathy for the Tolmay -prejudiced group. If your licence has expired, you are (according to the Police) in illegal possession.

14. AMNESTY AS AN OPPORTUNITY TO LICENSE ESTATE FIREARMS.

14.1. If the estate has been wound up and the executor has been released, the amnesty may create an opportunity for the transfer of a firearm that may have been in an heir's possession for many years.

14.2. If the estate has not been finalized and the executor or administrator still exist, it is suggested that you rather use the usual transfer method with an SAP 271-form, which is signed by the executor. In such an event, the firearm needs not to be handed in at the Police.

14.3. You will have to prove that the firearm was previously licensed in the deceased's name.

15. UNWANTED FIREARMS.

If you don't want your firearm of which the license has expired, you can surrender it to the Police for destruction any time - you don't need an amnesty for that.

16. POSSIBILITY OF MARCHES AND PUBLIC PROTESTS.

16.1. There is presently a lot of talk about public demonstrations and even protests in order to sway Government's mind about the surrendering of firearms during the amnesty, or to come up with another idea that only provides for a relicencing of firearms.

16.2. I can not guarantee the success of such actions. In my opinion, the problem can only be solved with an amendment of the Firearms Control Act and a change of heart from Government and the Police. The truth unfortunately is that Government will never get an easier opportunity to disarm the public.

16.3. You must accept that you may run a risk to have a serious clash with the law if you take part in an illegal protest. Please make sure that the organisers of the march has received the necessary permission, that it will be properly controlled and that other protesters comply with the law, before you take part in such actions.

16.4. On the other hand, if you don't apply for a new licence for your firearm, you may also have a confrontation with the Police. Accept that you will probably be alone if the Police confront you and not too many people will come to your rescue.

16.5. **Don't expect anyone else to make the decision for you.**

17. RULES TO BEAR IN MIND IF YOU WANT TO APPLY FOR A NEW LICENSE IN TERMS OF THE AMNESTY.

17.1. Such firearm must be surrendered to the Police (at any but 46 Police stations) to be kept pending the outcome of the new licence application; Suggestions:

- Don't hand the firearm in with a magazine or telescope;
- You may not possess ammunition for a firearm which is illegally in your possession. Rather give the ammunition to someone who has a licence for that caliber. Ammunition that has been handed in will not be returned when your new licence is (hopefully) approved.

17.2. The new licence application must be submitted within 14 days after the firearm has been surrendered:

Suggestions:

- That you first obtain all your supporting documents, ie. proof of membership of accredited hunter- or shooters associations, proof of paid up membership fees, proof of active participation, endorsement letters, testimonials etc, before you surrender the firearm pending your application for a new licence or a new competency certificate;
- If you are concerned about damage or theft of the firearm, take photographs of the firearm or even obtain a valuation thereof.

17.3. You must have a valid competency certificate before the new licence be approved. An application for a new competency certificate can also be submitted simultaneously with the application for a new licence;

Suggestions:

- Make sure whether you will need a new or renewal or a further competency before you submit the firearm;
- Make sure that your safe complies with the requirements.

17.4. Only the person who surrenders the firearm can apply for a new licence.

Suggestions:

- If the owner (whose license has expired) doesn't want to hand the firearm in for destruction or to apply for a new licence, the firearm can in theory be given to another person who can hand it in and apply for a new licence;
- Make sure you have a copy of the owner's licence and a letter stating that he has given / sold it to you.

17.5. The prescribed SAPS 548- form must be completed.

Suggestion:

At the time of surrendering the firearm, tell the amnesty officer that you want to apply for a new licence. Make sure he makes a note in red ink on the form to clearly indicate that an application for a licence will be made;

17.6. Don't sign any form to confirm that you are surrendering the firearm for destruction.

17.7. The Police presently want to take in "unwanted" and "excess" firearms.

There is no definition of which firearms are regarded as being "excess firearms".

It is however expected that the Police will argue that the fact that you failed to relicence the firearm, is indicative that you are not fit to possess the firearm or that it is an ‘unwanted’ or “excess firearm”.

Suggestion:

- Cover these aspects in your motivation and even attach the document ‘LEGAL UNCERTAINTY OR DISPUTES ABOUT THE INTERPRETATION OF THE LAW IN RESPECT OF FIREARMS’, (which is available on the facebook page: Juan Kotze Attorneys), to show that there was a lot of uncertainty about the legal position and that you were not negligent in your failure to timeously renew your firearm licence.

18. CONCLUSIONS:

- 18.1. Accept that there is a mega- trend to limit private firearm ownership;
- 18.2. Accept that our Government wants to disarm the public (**YOU!**);
- 18.3. Firearms in your possession with an expired white licence, is an illegal firearm;
- 18.4. Support your club / firearm owners association in their efforts to protect your firearm rights;
- 18.5. It will not become easier to obtain licences for firearms;
- 18.6. Accept that whatever decision **you** take, will have implications.
- 18.7. Make your decision NOW.

19. PRAYER.

“Genl Cele, Please protect us, and don’t deliver us to evil.”

Yours faithfully,

JUAN KOTZE

PS. I agree with what Judge Manama said in a recent judgment:

“It is clear that there is a general problem with firearm control in this country.”