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Our reference: Mr Kotze

31 January 2021

Dr Herman Els,

The CEO NATSHOOT,
BY E MAIL,

Dear Herman,

1 FEBRUARY 2021. END OF AMNESTY PERIOD AND YOU HAVE NOT TAKEN PART. WHAT NOW?

Our discussion on 31 January 2021 about the above question, refers.

1. END OF AMNESTY.

- 1.1. The present amnesty provides for the surrendering of illegally possessed firearms without prosecution for the illegal possession thereof. **It will come to an end at 24h00 on 31 January 2021.**
- 1.2. The question is what happens if your white license has expired without you taking part in the amnesty? **The answer is that a person whose white firearm license has (for whatever reason) lapsed**, is according to the Gosa-judgment in the Supreme Court of Appeal, **in illegal possession of such a firearm**. This is a serious offence and, if found guilty, imprisonment can be imposed.
- 1.3. Please bear in mind that there are presently no court orders in place to prevent the Police from arresting a firearm owner because his / her firearm license has expired. In terms of the provisions of the Police Act, the Police must investigate and prevent crimes. They will therefor be within their rights

REGSPRAKTISYN / LEGAL PRACTITIONER: Juan Kotze B.Juris (UP) LLB (SA)

YOUR LEGAL BACK-UP

to arrest and prosecute persons who are in illegal possession of firearms. The question is: **WHAT OPTIONS DO YOU HAVE?**

2. OPTION 1: SURRENDER FIREARM AFTER EXPIRY OF AMNESTY.

- 2.1. A firearm owner can go to the Police on 1 February 2021 (or any day thereafter) and surrender his / her firearm. **Such surrendering will not be covered by the amnesty and the theoretical possibility exist that the owner may be charged with the illegal possession of the firearm.** My opinion is however that the chances are slim that any legal action will be taken against the owner of a firearm whereof the license has expired.
- 2.2. My suggestion is that before a firearm is surrendered, the owner should ask the Police whether they have instructions to prosecute such owners. If they indicate that they will not open a case docket or institute a prosecution, make a note of the officer's name and rank.
- 2.3. If the Police indicate that there is a possibility that they will open a case docket, it is suggested that the **firearm owner urgently obtain legal advice before the firearm is surrendered.** The firearm owner should not make a statement without legal advice being obtained. If a statement is made, facts like how long after the expiry of the amnesty the surrendering took place, whether it was impossible / difficult for the owner to take part in the amnesty and why the amnesty was not used and the owner's intention, will be important factors to include in the statement.
- 2.4. **It must be borne in mind that you that such firearms will be destroyed and that you will not have the opportunity to apply for a new license for the firearm.**

3. OPTION 2: KEEP THE FIREARM AND WAIT FOR A POSSIBLE NEW AMNESTY.

- 3.1. The alternative is that you may decide to keep the firearm and to deal with it in terms of a possible future amnesty. **It must be pointed out that there is presently no reason to believe that a new amnesty will be declared and writer hereof can not give any guarantees in this regard.** YOU WILL THEREFORE BE IN ILLEGAL POSSESSION OF SUCH A FIREARM UNTIL A NEW AMNESTY HOPEFULLY COMES INTO OPERATION.
- 3.2. A new amnesty must be approved by Parliament and **it may take a few weeks if the State wants to defuse the situation by declaring a new amnesty.** During such period a firearm owner will be at risk of being arrested and prosecuted.
- 3.3. If a new amnesty is declared, it will still provide that firearms must be surrendered, because the surrendering of a firearm is a condition in terms of section 139(4) of the Firearms Control Act, 2000. **THERE ARE NO ALTERNATIVES AVAILABLE OTHER THAN TO SURRENDER THE FIREARM!**

3.4. A new amnesty will in all possibility also provide that the person who is in illegal possession thereof (or maybe only the previous holder of the expired license) may apply for a new licence for the firearm.

4. WILL IT INDEMNIFY THE GUNOWNER IF THE FIREARM IS KEPT IN A SAFE?

Advice is often given that a firearm of which the licence has expired, should not be carried or be in your car but rather “**be locked away safely in the back of your safe**”. **This is not sound legal advice** because it is an offence in terms of section 3 of the Firearms Control Act, 2000 to be **in possession of a firearm** without a (valid) license. If a person is in control of the firearm (because it is in his / her safe), such person will still be regarded as being in possession of the firearm.

5. MAKING OF NOTES.

I suggest that the firearm owner should (whatever option is exercised) make notes of all the relevant facts, for instance whether he / she tried to take part in the amnesty, the length of the queues, waiting time or effect that Covid - 19 regulations had on the process. Photographs that were taken of queues, local newspaper reports or notes must be kept for possible future use.

6. SUMMARY.

It should be clear that **persons who are in possession of firearms with expired white licensed are at risk to be prosecuted irrespective of what they do**. Every firearm owner will have to take their own decision and run the risks (or get the benefits) from either of the options.

7. ASSURANCE.

7.1. NATSHOOT has already made representations to the Minister of Police and the Commissioner of Police to declare a new amnesty and has made proposals to ensure that firearm owners are treated fairly.

7.2. NATSHOOT will protect its members interests and will keep members informed of developments.

Yours faithfully.

JUAN KOTZE.

PS. It is important to ensure that firearm licenses are renewed timeously.

Members should strive towards responsible and accountable firearm ownership.

Don't disarm yourself by allowing your firearm licence to expire!