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Our reference: Mr Kotze / Mr de Kock

8 June 2018.

Dr Herman Els,  
NHSA

**CONSTITUTIONAL COURT JUDGMENT:**

**NEED TO HAND IN FIREARMS WITH EXPIRED "WHITE" LICENCES ISSUED IN TERMS OF THE FIREARMS CONTROL ACT (FCA) IF FIREARM HAD PREVIOUSLY BEEN LICENSED IN TERMS OF THE ARMS AND AMMUNITION ACT (ACT 75 OF 1969) OR WHERE THE "WHITE" FCA LICENCE HAS EXPIRED.**

1. Our discussion pursuant to the Constitutional Court's judgment yesterday and about the Police's threat to arrest and prosecute firearm owners whose licenses have lapsed, and who refuse to hand such firearms in for destruction, refers.

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REGSPRAKTISYNS / LEGAL PRACTITIONERS: Juan Kotze B.Juris (UP) LLB (SA)

Francois de Kock LLB (UP)

**YOUR LEGAL BACK-UP**

2. The question is what the legal position of someone is who possessed a firearm in terms of the Arms and Ammunition Act (Act 75 of 1969) (“The Previous Act) and had been issued with a “Green license” before 1 July 2004, the commencement date of the FCA.
3. It is pointed out that Judge Prinsloo in the **S A Hunters and Game Conservation Association case vs the Minister of Safety and Security** (case 33656/09 North Gauteng High Court, Pretoria) on 29 June 2009 made the following interim order:

***“All firearm licences contemplated in sub -item 1 of Schedule 1 of the Firearms Control Act (Act 60 of 2000) shall be deemed to be lawful and valid pending adjudication of the main application.”***
4. The firearms contemplated are those in respect of which “green licences” had been issued or pasted in the old blue ID book in terms of the Previous Act. The main application has not yet been disposed of and the order is still in place.
5. On 3 February 2016 a directive was issued by Acting National Commissioner, Lt General Pahlane, wherein he stated that the 2009 court order only referred to firearm owners who haven’t “migrated” to the New Act by applying for a renewal of their licenses in terms of the Firearms Control Act. In other words, the Police interpreted the order to mean that **if a licence that had been issued in terms of the FCA has expired, the old green license was also no longer valid.**

6. As a result of the confusion created by the Police's interpretation, we have obtained the legal opinion of Adv Herman Van Eeden SC (whose opinion is attached hereto) who states as follows in his legal opinion:

***“8. If a licence issued in terms of the New Act has expired, the owner of the firearm will remain in valid possession of that firearm if he or she has a green licence. Such owner will then have one valid licence, whereas he or she previously had two valid licences. The owner is under no lawful obligation to surrender such firearm, even if the renewal of a licence in terms of the New Act is refused because the renewal application was not made timeously. Such a refusal would however, be foolhardy and the owner should successfully defend any prosecution in respect of the possession of such a firearm.”***

7. We therefore hold the opinion that the mere fact that a gunowner's "white license" has lapses, doesn't mean that he is in unlawful possession of such firearm and obliged to hand the firearm in to avoid the possibility of being prosecuted. **If the firearm was licensed in the gunowner's name in terms of the Old Act (before 1 July 2004), he will still be in lawful possession and not be obliged to hand it in for destruction.**

8. If the gunowner is not in possession of the licence, he should complete an SAP 273- form (see NATSHOOT website under "SAPS license forms") and request his DFO to print him a duplicate license to possess a firearm.

9. **If you never had a green license and your white license has expired, you will be at risk if you possess the firearm because you don't have a valid licence.** It is pointed out that even if the firearm is kept in your safe (and not carried on your person) you will still in terms of the law be **in illegal possession** of the firearm.
10. Although there have been many reports in the press about an amnesty, the provisions thereof (and whether it will in fact be declared) are uncertain. **Anyone who keeps a firearm without a valid licence waiting for the amnesty, does so at his own peril.**

Yours faithfully.

JUAN KOTZE

FRANCOIS DE KOCK