

REPUBLIC OF SOUTH AFRICA

FIREARMS CONTROL AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary
of Bill published in Government Gazette No. 24767 of 25 April 2003) (The English
text is the official text of the Bill)*

(MINISTER FOR SAFETY AND SECURITY)

[B —2003]

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.

B I L L

To amend the Firearms Control Act, 2000, so as to change certain technical expressions; to provide for the deletion and insertion of certain lexical expressions; to exclude forms prescribed under the said Act from forming part of the regulations; to provide for apprenticeship to a gunsmith; to provide for the exemption of members of the South African Police Service, the South African National Defence Force, the South African Correctional Services, a municipal police service and a registered security service provider from the application of certain provisions of the Act while on duty; to empower the Minister to prescribe measures in terms of which the public may be notified that certain premises are declared firearm-free zones; to provide in the transitional provisions for the continuation of an existing registration certificate to trade as a gunsmith; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 60 of 2000

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

(a) by the substitution for the definition of "airgun" of the following definition:

“ ‘airgun’ means any device manufactured to discharge a bullet or any other projectile of a **[caliber]** calibre of less than 5.6 mm (.22 **[calibre]** calibre), by means of compressed gas and not by means of burning propellant;”;

(b) by the substitution in the definition of "firearm" for paragraph (d) of the following paragraph:

"(d) device manufactured to discharge a bullet or any other projectile of **[.22 calibre]** a calibre of 5.6 mm (.22 calibre) or higher at a muzzle energy of more than 8 joules (6 ft-lbs), by means of compressed gas and not by means of burning propellant; or”;

(c) by the deletion of the definition of "security company”;

(d) by the substitution for the definition of “security officer” of the following definition:

“ ‘security officer’ means a security officer as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);”;

(e) by the insertion after the definition of “security officer” of the following definition:

“ ‘security service provider’ means a security service provider as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);” and

(f) by the addition of the following subsection, the existing section becoming subsection (1):

"(2) A form which may or must be prescribed under this Act, and any information which may be prescribed under this Act to accompany an application, need not form part of any regulations made under this Act, but must be available at the office of the Registrar and at such other places as the Registrar may determine. "

Amendment of section 4 of Act 60 of 2000

3. Section 4 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) For purposes of subsection (1)(f)(iii), the incidental alteration of the length of the barrel of a firearm by a gunsmith in the ordinary course of a gunsmith's work which does not have as an objective the alteration of the length of the barrel of that firearm must not be regarded as an alteration **[as]** contemplated in that subsection."

Amendment of section 9 of Act 60 of 2000

4. Section 9 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (o) of the following paragraph:

"(o) has not been convicted, whether **[inside]** in or outside South Africa, of an offence involving sabotage, terrorism, public violence, arson, intimidation, rape, kidnapping or child stealing, whether committed in or outside South Africa;"

Amendment of section 16 of Act 60 of 2000

5. Section 16 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) **[any]** semi-automatic shotgun manufactured to fire no more than five shots in succession without having to be reloaded; or".

Amendment of section 18 of Act 60 of 2000

6. Section 18 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) The Registrar may, subject to such **[regulations]** conditions as may be prescribed, issue a permit in terms of this section to a private collector if the application is accompanied by a sworn statement or solemn declaration from the chairperson of an accredited collectors association, or someone delegated in writing by him or her, stating that the applicant is a registered member of that association."

Amendment of section 20 of Act 60 of 2000

7. Section 20 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

"(d) a person who is accredited as a game **[hunter]** rancher";".

Amendment of section 23 of Act 60 of 2000

8. Section 23 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The identification number must be stamped and the mark affixed in the prescribed manner on the barrel and the frame, or the barrel and the receiver, of the firearm.".

Amendment of section 59 of Act 60 of 2000

9. Section 59 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"No person may, without being the holder of a gunsmith's licence or being registered as an apprentice to such holder—".

Amendment of section 80 of Act 60 of 2000

10. Section 80 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Registrar may suspend an import, export or in-transit permit if the Registrar has information in a sworn statement or on solemn declaration that the holder of the permit has committed an offence in terms of this Act for which a sentence of imprisonment for a period of five years or

more may be imposed."

Amendment of section 98 of Act 60 of 2000

11. Section 98 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The head of an Official Institution may impose conditions on the possession and use of the firearms and ammunition under the control of that Official Institution and may issue instructions to employees of that Official Institution prescribing conditions relating to the acquisition, storage, transport, carrying, possession, use and disposal of such firearms and ammunition."

Amendment of section 104 of Act 60 of 2000

12. Section 104 of the principal Act is hereby amended by the substitution for the heading of the following heading:

"Effect of declaration of unfitness."

Amendment of section 105 of Act 60 of 2000

13. Section 105 of the principal Act is hereby amended by the substitution for the heading of the following heading:

"Proof of declaration of unfitness."

Amendment of section 115 of Act 60 of 2000

14. Section 115 of the principal Act is hereby amended by—

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

"(1) For purposes of any inquiry or investigation relating to the application of this Act and subject to subsection (4), the Registrar or any person authorised in writing by the Registrar may—

(a) at any reasonable time and without prior notice, enter any business or industrial premises; or

(b) at any reasonable time and on reasonable notice, enter any dwelling,

on or in which anything relating to the subject-matter of the inquiry or investigation is or is suspected to be."

(b) the substitution in subsection (4) for the words preceding paragraph (b) of the following words:

"without warrant by a police official contemplated in paragraph (a) of the definition of "police official" in section [(1)] 1 if—".

Amendment of section 117 of Act 60 of 2000

15. Section 117 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (b) of the following words:

"[where it is proved that the firearm or ammunition was found]

buried in or hidden on land used for residential purposes and the person was, at the time—"; and

(b) the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) the person was driving, or was a passenger in, a vehicle other than a vehicle designed or **[licenced]** licensed to convey more than 20 passengers;"

Amendment of section 120 of Act 60 of 2000

16. Section 120 of the principal Act is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

"(7) It is an offence to discharge a firearm, an antique firearm or an airgun in a **[built up]** built-up area or any public place, without good reason to do so."; and

(b) by the substitution in subsection (9) for paragraph (b) of the following paragraph:

"(b) alter or erase any **[words, figures or letters]** word, figure or letter on or from any competency certificate, licence, permit or authorisation, without the Registrar's permission;"

Amendment of section 124 of Act 60 of 2000

17. Section 124 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The **[Register]** Registrar must—".

Amendment of section 140 of Act 60 of 2000

18. Section 140 of the principal Act is hereby amended by the addition of the following subsection:

"(4) The Minister may prescribe measures to be taken regarding the demarcation of and placing of signposts on premises constituting a firearm-free zone in order to notify the public that the premises are declared a firearm-free zone.".

Insertion of item 4A in Schedule 1 to Act 60 of 2000

19. Schedule 1 to the principal Act is hereby amended by the insertion after item 4 of the following item:

"Existing registration certificate to carry on trade of gunsmith

4A. Subject to item 11, any registration certificate to carry on the

trade of gunsmith, issued in terms of regulation 14(4) of the regulations made under the previous Act, which was valid immediately before the date of commencement of this Act, remains valid for one year from that date, unless it is terminated, cancelled or surrendered in terms of this Act."

Substitution of item 11 of Schedule 1 to Act 60 of 2000

20. Schedule 1 to the principal Act is hereby amended by the substitution for item 11 of the following item:

"Renewal of licence

11. (1) (a) The holder of a licence, permit, certificate or authorisation contemplated in item 1, 2, 3, 4, 4A or 5 must apply for the corresponding licence, permit, certificate or authorisation in terms of this Act within the period determined by the Minister by notice in the *Gazette*.

(b) Different periods may be determined in terms of paragraph (a) in respect of—

- (i) different licences, permits, certificates or authorisations; and
- (ii) holders whose surnames start with different letters of the alphabet, or whose dates of birth fall in different months.

(c) The period contemplated in paragraph (a) must end before the end of the relevant period contemplated in item 1 (1) and may not exceed the periods contemplated in item 2, 3, 4, 4A or 5.

(d) If an application for the renewal of a licence, permit, certificate or authorisation has been lodged within the period provided for in this section, the licence, permit, certificate or authorisation remains valid until the application is decided.

(2) An application for a licence, permit, certificate or authorisation contemplated in subitem (1) must in addition to any requirement in terms of this Act be accompanied by—

- (a) a certified copy of the existing licence, permit, certificate or authorisation;
and
- (b) such other information as may be required.

(3) For purposes of this item, section 9(2)(r) does not apply.

(4) Any holder of a licence, permit, certificate or authorisation who fails to apply for the renewal of his or her licence, permit, certificate or authorisation before the end of the period determined by the Minister in terms of subitem (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment."

Amendment of Schedule 3 to Act 60 of 2000

21. Schedule 3 to the principal Act is hereby amended—

- (a) by the substitution for the words in the third row second column of the following words:

“Arms and Ammunition Amendment Act, [**1969**] 1973”; and

(b) by the addition of the following rows:

“Act No. 8 of 1995	Arms, Ammunition and Armaments Transitional Regulations Act, 1995	The whole
Act No. 15 of 1999	Arms and Ammunition Amendment Act, 1999	The whole”.

Amendment of Schedule 4 to Act 60 of 2000

22. Schedule 4 to the principal Act is hereby amended by the deletion of the rows referring to section 20(8), section 70(5), section 147(3) and section 147(4).

Short title and commencement

23. This Act is called the Firearms Control Amendment Act, 2003, and comes into effect on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE FIREARMS CONTROL
AMENDMENT BILL, 2003**

1. Parliament adopted the Firearms Control Act, 2000 (Act No. 60 of 2000) ("the Act"), during 2000. Only certain provisions of the Act were put into operation, namely the definition of "firearm" and section 140 of the Act, dealing with the declaration of firearms free zones. In terms of the priorities of the South African Police Service, and because of the high incidence of the use of firearms in violent crime, it is imperative that the rest of the Act also be put into operation as soon as possible. Draft regulations for the Act have been published for public comment, in order to comply with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). In drafting the regulations it was noted that there were some errors in the text of the Act, which need to be rectified before the Act is put into operation. These errors are of a technical and lexical nature, and the purpose of the amendments is to ensure legal certainty and a proper interpretation of the Act.

2. In addition to the abovementioned amendments of a technical or lexical nature, the Bill also seeks to achieve the following:

2.1 It is proposed that section 1 of the Act be amended to exclude forms which may or must be prescribed under the Act from forming part of the regulations made under the Act. The reason for the proposal is that of the current draft regulations, approximately 250 pages consist of forms.

2.2 Section 59 of the Act provides that only the holder of a gunsmith's licence may exercise certain specified functions. It is proposed that the section be amended to include persons registered as apprentices to such holders. The Bill also seeks to amend Schedule 1 to the Act (the transitional provisions) in order to provide for existing registration certificates to carry on the trade of a gunsmith. Such certificates (issued under the previous Act (the Arms and Ammunition Act, 1969 (Act No. 75 of 1969)) will remain effective for one year after the commencement of the Act before they must be renewed in terms of the (new) Act.

2.3 Section 84 of the Act regulates the carrying of a firearm in a public place. The Bill seeks to exempt members of the South African Police Services, the South African National Defence Force, Correctional Services and registered security officers from the requirement that an official firearm issued to them must be completely covered when they are on duty. This amendment is required because the Act binds the State and, in practice, police officials and the other functionaries mentioned above cannot keep their firearms covered in the execution of their duties.

2.4 Section 140 of the Act deals with firearm-free zones. The section will be difficult to enforce without proper demarcation to inform the public that the premises in question are firearm-free zones. It is proposed that the Minister be empowered to prescribe measures in terms of which the public may be notified that certain premises have been declared to be firearm-free zones.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. CONSULTATION

Most of the proposed amendments were identified during the finalisation of the draft regulations.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the South African Police Service are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.