



COMMENTARY ON AND OBJECTION TO

THE DRAFT FIREARMS CONTROL AMENDMENT BILL 2021

Prepared for AfriForum by Adv. Johan Hamman

1. Introduction

- 1.1 This commentary on and objection to the proposed amendment to the Firearms Control Act 60 of 2000 is submitted on behalf of AfriForum NPC (AfriForum). AfriForum currently has approximately 285 000 members.
- 1.2 The members of AfriForum are situated across the Republic of South Africa in all provinces. The members come from a wide range of socio-economic backgrounds and they are employed or conducting business or searching for opportunities in a wide range of sectors in the South African economy.
- 1.3 Some of these members reside in rural settings far away from stations of the South African Police Service (SAPS), often on badly maintained roads. Other members reside in urban and metropolitan areas, which create their own challenges with crime prevention and safety.
- 1.4 A large number of AfriForum's members also lawfully own firearms for hunting, sport shooting and recreational purposes. Some of them also derive income from activities associated therewith.
- 1.5 Among others, AfriForum advances and protects important constitutional rights and freedoms. These constitutional rights include the rights stipulated in sections 10, 11, 12, 18, 21, 22, 23, 25, 31, 32, 33 and 34 of the Constitution of the Republic of South Africa, 1996.
- 1.6 AfriForum is opposed to the entire draft Bill (except for minor cosmetic clarifications) and believes that the current system is already unduly restrictive in respect of the rights of firearms owners. It appears that the draft Bill is also an attempt by the Minister of Police to hide the SAPS's own inability to properly maintain and operate the current system. The backlog in processing applications, renewals and applications for amnesty by the SAPS is by now common knowledge.
- 1.7 AfriForum will comment on various provisions in the draft Bill in the order that it was published. As has already been alluded to, the draft bill is objected to its entirety and these submissions attempt to focus on the most relevant contentions.

2. Ad substitution of the preamble

- 2.1 It is clear from the preamble that the amendment seeks to violate constitutional rights and in particular the right to life, the right to bodily integrity and the right to livelihood of various individuals in the firearm and ammunition trading sector. The same applies to those who are involved in the hunting industry.
- 2.2 The amendment to the preamble is indicative of the whole incorrect approach and false narratives on which the intended amendments are based.

3. Ad intended amendment to section 1

- 3.1 AfriForum is concerned that the SAPS will be unable to manage and maintain a database of ballistics. It is already clear that the SAPS is unable to manage the existing database and pending applications.
- 3.2 It should be borne in mind that certain types of firearms (such as shotguns) create difficulties in ballistic testing. In fact, only the shells can possibly be examined in the case of shotguns.
- 3.3 A further problem is created by the inclusion of muzzle-loading firearms in the licencing system. These will obviously also have to be ballistically tested.
- 3.4 A skewed system that is not accurate will place a burden on firearm owners and will possibly also lead to various false accusations.
- 3.5 It should be borne in mind that especially sport shooters or hunters who use rifles with high-velocity cartridges require the replacement of barrels from time to time. This will further result in the ballistic system becoming dysfunctional sooner rather than later.
- 3.6 Various difficulties are created in relation to the definitions of “dedicated hunter” and “dedicated sportsperson”.
- 3.7 People who participate in these actions may be dormant in their activities from time to time and therefore may not always participate actively. It is concerning that they will have to “qualify” to engage in hunting or sport shooting and may only do so “in the prescribed manner”. This person must also be a member of an accredited association.
- 3.8 It is submitted that these inclusions in the definitions amounts to over-regulation and violates the constitutional rights enshrined in section 18 of the Constitution. In this regard, even the wording of the current Firearms Control Act may be unconstitutional. Certain classes of hunters or sportspersons cannot be compelled to belong to one association or another. For example, any person can actively dedicate themselves and participate in regular hunting and sport shooting without any affiliation if they choose to do so. The European Court of Human Rights held that forced association of hunters in French law had violated the right not to be compelled to join an association in instances where the objectives or associations may be at odds with a person’s convictions (*Chassagnou v France* (2000) 29 EHRR 615).
- 3.9 This commentary does not detract from the good work that various associations are doing across South Africa in advancing the rights of firearm owners. The public should, however, be free to choose whether they want to associate with such organisations, and membership cannot be compelled merely on the number of firearms that a person may own, which would also force a person to remain affiliated with the organisation concerned.

- 3.10 The inclusion of additional muzzle-loading firearms in the system will further create an undue administrative burden that the SAPS simply cannot manage. One must remember that these firearms, which now require incorporation in the licencing system, are found countrywide. Often the origins of these firearms are undocumented. This will create various difficulties in uploading muzzle-loading firearms to the system for the first time.
- 3.11 In relation to the definition of “professional hunter”, it is important to note that professional hunters do not always conduct their activities for reward.
- 3.12 Regarding the definition of “restricted firearm”, it is submitted that the Minister should not be given powers to decide and promulgate a list of such firearms.

4. Ad intended amendment to section 2

- 4.1 This amendment to the purpose of the Act is of great concern to AfriForum. Initially, the purpose of the Act was to “enhance the constitutional rights to life and bodily integrity”. These are indeed very important considerations.
- 4.2 It appears that the proposed amendment seeks to take away the right of private citizens to defend themselves in the current South African climate where violent crime is endemic.
- 4.3 It should be borne in mind that, if a person carries a firearm for self-defence, it levels the playing field when another armed person attacks them – at least to some degree. If people live far from towns or where various impediments such as traffic jams can delay SAPS reaction, it is of the utmost importance that they should be able to defend themselves. In various cases, self-defence will be the only option available.
- 4.4 Women or people with physical disabilities often rely on firearms for protection when they are confronted with violent attackers who are larger or stronger.
- 4.5 The right to self-defence is recognised internationally, among others by the Rome Statute of the International Criminal Court.
- 4.6 The proposed amendment flies in the face of the right to life and bodily integrity that are enshrined in sections 11 and 12 of the Constitution.
- 4.7 It is therefore submitted that Parliament should not allow this amendment to pass.

5. Ad intended insertion of sections 2a and 2b

- 5.1 The principles and objects which the amendment seeks to insert in the Act are misplaced. Indeed, firearm possession is required as a way of realising important constitutional rights. These include the right to life and bodily integrity. In various cultures, hunting is also a cultural activity protected under the Constitution in terms of the right to cultural life.

- 5.2 For various people, including South African citizens, the ownership and use of firearms also relate to their trade and a way of generating an income for themselves. These rights should not be unduly restricted and the constitutional right in terms of section 22 of the Constitution should be protected in this regard.
- 5.3 It also appears that the proposed amendments are not in line with the realities and/or based on incomplete information before proper consultation. In fact, firearm ownership reduces crime and creates a safer environment for those who lawfully utilise these.
- 5.4 There is already a comprehensive regulatory framework that provides for safekeeping and storage of firearms, and licencing. It should not be necessary for a person who possess a firearm to advance “a valid reason for possessing” this firearm. Shotguns and self-loading firearms play an important role in sport shooting and self-defence. Self-loading shotguns are also actively used in wing shooting.

6. Ad intended amendment to section 3

The aspect of muzzle-loading firearms has already been discussed in paragraph 3.10 above.

7. Ad intended amendment to section 4

- 7.1 The inclusion of the new proposed subsection (e) to the effect that no imitation of items such as a projectile from a gun or canon may be kept, is absurd. It is well known that old canon shells in various bars across the country are filled with wooden tips and used as ornaments or alcohol dispensers. This poses no safety risk to anyone. It is also absurd if this amendment is also aimed at including for example toy guns because these resemble firearms. It also makes no sense to insist that no deactivated firearm of any kind may be kept.
- 7.2 It is once again contended that the Minister should not have the power to declare any ammunition as prohibited.

8. Ad intended amendment to section 5

- 8.1 The aspect of muzzle-loading firearms has already been discussed in paragraph 3.10 above. The SAPS will be unable to handle the administrative burden that this proposed amendment creates.
- 8.2 It makes no sense to restrict deactivated, restricted or prohibited firearms. Such firearms clearly pose no risk to anyone if they have been properly and permanently deactivated.

9. Ad intended amendment to section 6

This proposed amendment is further indicative of the undue burden that the Bill will create if passed. It is virtually impossible for anyone to “constantly” supervise another younger person for a period of twelve months if one is employed, for example. Under South African law, anyone who attains the age of eighteen is deemed to be an adult and responsible for their actions. These people must be allowed to apply for competency certificates without restriction.

10. Ad intended amendment to section 7

This proposed amendment is not aligned with the realities in various juristic entities. Often the firearm licences administration task is assigned to someone who does not necessarily hold an executive or managerial position. The legislation should not interfere in a company’s internal affairs.

11. Ad intended amendment to section 8

This amendment would also create an unnecessary burden. The aspect of members being forced to belong to one association or another has already been addressed above. It is burdensome if the chairperson or authorised office bearer of an association must verify the use, purpose and category of every firearm that is applied for.

12. Ad intended amendment to section 9

- 12.1 Various persons already have the status of dedicated hunters, dedicated sport shooters or professional hunters. It does not make sense to insist that they should apply for competency certificates *post factum* to operate as such. This once again only increases the administrative burden on a system that already struggles to function properly.
- 12.2 It would also be an impossible task to licence everyone who wants to manufacture ammunition (reloading). Once again, numerous persons already own reloading equipment across the country and all of this equipment is undocumented. It also poses no threat. Unlawful possession of any ammunition, whether reloaded or manufactured, is in any event prohibited and regulated. The fact that persons are deemed to be adults at the age of eighteen has already been discussed. The age restriction is improper.
- 12.3 It should be borne in mind that interim protection orders in terms of the Domestic Violence Act 116 of 1998 or the Protection from Harassment Act 17 of 2011, are regularly granted on an *ex parte* basis. It would therefore be unfair for these orders

to directly lead to a suspension in the processing of any application. Although such orders are often valuable, it is an unfortunate occurrence that these Acts are regularly abused. Often these orders are reversed on return dates. Some of these orders often relate to alleged financial abuse (such as not maintaining a spouse), which should have no bearing on any application for a competency certificate or licence to possess any firearm or any related licence.

- 12.4 An absolute prohibition on competency certificates for individuals who are convicted of violence should also be excluded from the draft Bill. There should be discretion in this regard. In various instances, this will obviously lead to a justified refusal.

13. Ad intended amendment to section 10

- 13.1 It has already been contended that it makes no sense to require a competency certificate for dedicated sportsperson or dedicated hunter status.
- 13.2 It is submitted that the period of validity of competency certificates should not be altered in terms of the draft Bill. Currently, the period of validity coincides with the validity for a firearm in the specific class, which makes sense. It would not make sense if, for example, a competency certificate expires, but a licence for a firearm attached to it is still valid – this will create havoc, especially in the period of transition after the draft Bill is enacted.

14. Ad intended amendment to section 10a

It is contended that it should be made clear that a person can still apply for the extension or renewal of any competency certificate(s) simultaneously with the firearms' licence(s) concerned.

15. Ad intended insertion of section 11a

This proposed section introduces a heavy burden, which appears to be based on the misconception that firearms in civilian hands should be avoided at all costs. It should never be necessary for an applicant to satisfy the Registrar and provide written proof and evidence in this regard.

16. Ad intended amendment to section 12

Additional licences in respect of firearms are necessities when persons reside on the same premises. In some cases, this may not necessarily be in one dwelling, but for example in two dwellings in close proximity on agricultural or smallholdings. This is especially necessary for firearms that are owned for self-defence, but also

for other firearms. It creates a further undue burden if the person must then also obtain additional competencies such as those of professional hunters or professional sport shooters.

17. Ad intended repeal of sections 13 and 14

- 17.1 The repeal of the sections for firearms for self-defence, and for restricted firearms for self-defence is a travesty. This constitutes a gross violation of the constitutional right to life and bodily integrity. This irrational deletion will likely lead to loss of life.
- 17.2 It is important that people of all walks of life must have access to appropriate firearms to defend themselves. It is well known that violent crime in South Africa is spiralling out of control. Criminals even use fully automatic firearms, which means that private citizens should in fact be equipped with semi-automatic firearms, at the very least.

18. Ad intended amendment to section 15

- 18.1 The proposed amendment discriminate on the basis of monetary means if only people who own property qualify for occasional hunting or sport shooting licences. Furthermore, documentary proof of permission of an owner or lawful occupier of the property is also a pointless requirement. Such permission will likely not be indefinite, whereas a licence spans years.
- 18.2 The proposed insertion of subsection 3A is unduly restrictive. A person should not be limited to the extent that any firearms that they may hold in terms of this section must be reduced by the number of any firearms that they hold in terms of any other section. It may create a system where certain firearms are expropriated in violation of section 25 of the Constitution. This will especially be impermissible if no compensation is payable.

19. Ad intended amendment to section 16

- 19.1 The objection of having to belong to a society as being in violation of section 18 of the Constitution has already been addressed. This requirement may even cause the existing sections that apply to dedicated hunters and sports shooters to be inconsistent with the Constitution. Most societies do not host hunting events of their own.
- 19.2 The limitation of six licences in terms of this section is, once again, unduly restrictive and possibly inconsistent with section 25 of the Constitution if firearms are to be disposed of without compensation.
- 19.3 The restriction of not having more than two licences in respect of handguns, semi-automatic rifles, or pump-action or semi-automatic shotguns also does not make

sense. For example, some hunters may only want to hunt birds, or prefer only shotguns of various gauges. It will also create an administrative burden if all applications have to be accompanied by written confirmation by the relevant associations.

- 19.4 It will be difficult – if not impossible – for associations to continuously report to the SAPS those members who may not have renewed their membership or whose membership may have been suspended. This would make it a possibility that internal strife with an organisation can lead to one having to surrender your firearms. This is a gross violation of the affected member's rights.
- 19.5 It makes no sense to require that the number of firearms that a person holds under this section should be reduced by the number of firearms that the person holds under any other section. This is especially of concern if the right to own firearms for self-defence is restricted or prohibited when this proposed amendment is ratified, because most people will then have to register existing firearms for self-defence in terms of other sections.

20. Ad intended amendment to section 16a

- 20.1 Professional hunters mostly derive their income from hunting activities. It does not make sense to limit them to eight licences. Professional hunters regularly accompany groups of more than eight hunters and must accommodate the needs of all these clients by providing them all with firearms.
- 20.2 Once again, the specifics in relation to the composition and the fact that no more than two licences per person may be kept for handguns, semi-automatic rifles, or pump-action or semi-automatic shotguns is irrational. For example, some professional hunters only hunt birds and therefore only use shotguns. It is absurd to remove the wording from the Act that such firearms may not be used for a lawful purpose.
- 20.3 Similar arguments to those already advanced in respect of dedicated sport shooters and dedicated hunters apply here, in terms of being compelled to belong to an association. It also creates a heavy burden if the association has to report on the status of membership.
- 20.4 It furthermore unduly restricts the rights of professional hunters if other licences that they may have are also subtracted from the limited number of licences in terms of the amendment. This violates the constitutional rights of professional hunters in terms of section 22 of the Constitution.

21. Ad intended repeal of section 17 and 18

It would be a major historical and cultural travesty if private collectors were no longer allowed to collect firearms and ammunition. These firearms and ammunition

are normally for older types of weapons which are in any event unpopular with criminals. These firearms are important to preserve cultural heritage. It is well known that public collections often struggle from lack of funds. The solution is in permitting private collectors to fulfil this role by collecting firearms and keeping collections at private expense.

22. Ad intended amendment to section 20

- 22.1 Restrictions should not be imposed on licences to possess firearms for business purposes. Various people own a living in sectors where it is essential to use firearms. This includes the security sector.
- 22.2 People who work in the security sector across the country are exposed daily to extreme levels of violence. They should therefore also have rational unencumbered access to semi-automatic firearms.
- 22.3 To impose restrictions here may once again violate constitutional rights in terms of section 22 of the Constitution.

23. Ad intended insertion of section 20a, 20 b, 20c and 20d

The establishing of alternative bodies and forums merely adds to the already bulky administration that the SAPS has proven incapable of managing. This will result in another dysfunctional structure, and more frustration and backlogs. It will also be a waste of public funds.

24. Ad intended amendment to section 21

- 24.1 It is submitted that there is a need for a temporary licence system, especially since the current application process has proven to be ineffective. This should especially be the case for firearms that are used for self-defence.
- 24.2 The validity period of any authorisation should be until the application for a final license has finally been decided, if such a temporary authorisation coincides with a formal application to possess a firearm.

25. Ad intended substitution of section 22

- 25.1 This section is unjustifiably restrictive. Previously, persons older than 21 years could allow another person to use their firearm under their immediate supervision. The requirement that a person must be 21 years old and has had a licence for more than three years is already nonsensical. Anyone who acquire firearms under the current Act must prove their proficiency in relation to the law and the handling of the firearm in advance. They therefore should not be required to have a licence for

three years or longer before being allowed to let someone else use their firearm in their presence. There are also various people younger than 16 who are extremely proficient at using firearms safely.

- 25.2 These young people can also participate in various sport shooting disciplines locally and abroad. Younger people also hunt with their parents as part of a cultural experience.
- 25.3 Unfortunately, people who are younger than 16 are also not safe from criminals and must occasionally use firearms for their own safety. This requires them to be trained in the handling of the firearm and to have experience.

26. Ad intended amendment to section 23

The aspect of muzzle-loading firearms and the additional administrative burden that it will bring has already been canvassed.

27. Ad intended insertion of section 23a

- 27.1 The burden and the fact that the SAPS will simply be unable to execute this provision has already been discussed (see paragraph 3).
- 27.2 The SAPS has already proven unable to manage ballistic testing in respect of firearms handed in under amnesty. It will be impossible for the SAPS to roll out such facilities (where ballistic tests can be conducted) at every police station where there is a designated firearms officer (DFO).
- 27.3 It will also create a heavy burden if a firearm is to be retested for every renewal or passing of ownership.
- 27.4 It is interesting to note that the shortage in cartridges has already been listed in the Bill as a reason for possibly being exempted from the ballistics requirement.
- 27.5 It also seems that the drafters of the proposed amendment are unaware of the fact that sport shooters and hunters who use high-velocity calibres often have to change firearm barrels as well. This will create further difficulties in terms of ballistics and more administration.

28. Ad intended amendment to section 24

We welcome the clarification of subsection (4). The Bill should also state that the administrative fine (if imposed) can only be paid retroactively. The fact that it is only ascertained later whether such fine should be imposed means that the non-payment of this fine cannot derail the decision in any application process.

29. Ad intended amendment to section 25

The short messaging service (SMS) has already been proven incapable of adequately keeping firearm licence holders informed.

30. Ad intended amendment to section 26

The short messaging service (SMS) has already been proven incapable of adequately keeping firearm licence holders informed.

31. Ad intended amendment to section 27

AfriForum objects to a reduction in the validity period of any class of firearm. Once again, this only increases the administrative burden that the SAPS already cannot cope with.

32. Ad intended amendment to section 28

- 32.1 We submit that it should be made even clearer that a firearm may still be sold even after the termination of its licence. The requirement for ballistic tests is once again a burdensome restriction.
- 32.2 The SAPS will likely end up derailing the sixty days process. It is also important to note that there is no provision that enables a longer time period in this regard.

33. Ad intended amendment to section 31

AfriForum objects to this proposed amendment. People should be able to trade firearms privately without the intervention of a dealer. There is nothing “unsafe” in this regard. While the licence application of the new buyer is underway, the previous owner must still keep the firearm safely locked away.

34. Ad intended amendment to section 35

- 34.1 We welcome the provision that a dealer’s licence will be deemed valid as long as an application for renewal has been submitted before the termination of the licence by effluxion of time.
- 34.2 The legislation should make it clear, however, that since a decision whether to impose an administrative fine will only be taken later, the non-payment of such a fine is no reason for delaying a decision in respect of the renewal.

35. Ad intended amendment of section 38

The short messaging service (SMS) has already been proven incapable of adequately keeping firearm licence holders informed.

36. Ad intended amendment of section 45:

- 36.1 AfriForum objects to this proposed amendment, as it will unduly restrict all sport shooters and hunters. It is well known that the shooter is more accurate when doing a proper load development while reloading, which best suits the firearm in question.
- 36.2 Reloading also reduces the cost of ammunition, which is necessary if one has to extensively train for sporting tournaments or hunting sessions.
- 36.3 Reloading of ammunition does not contribute to crime in any way.
- 36.4 It should also be borne in mind that there is currently a myriad of undocumented reloading equipment across South Africa in the hands of innocent civilians who are merely trying to advance their sporting skills or hunting adventures.

37. Ad intended amendment to section 49

We welcome the clarity provided in subsection (4). Once again, the mere fact that an administrative fine can be imposed after considering an explanation tendered should not delay any application for renewal of a manufacturers' licence from being processed.

38. Ad intended amendment to section 52

The short messaging service (SMS) has already been proven incapable of adequately keeping firearm licence holders informed.

39. Ad intended amendment to section 53

All aspects in relation to muzzle-loading firearms have already been discussed.

40. Ad intended amendment to section 63

We welcome the clarity in subsection (4). The fact that an administrative fine may be imposed should not delay or derail an application for renewal of a gunsmith licence.

41. Ad intended amendment to section 66:

The short messaging service (SMS) has already been proven incapable of adequately keeping firearm licence holders informed.

42. Ad intended amendment to section 67

The objection of subsections (6) and (7) are objected to. The Registrar should always be able to exempt gunsmiths from certain requirements if needs be.

43. Ad intended amendment to section 73

- 43.1 It would create the possibility that the Registrar may disturb market forces if the Registrar can unilaterally restrict types of ammunition for import and export.
- 43.2 All hunters and sport shooters and people who own firearms for self-defence have to carry these firearms. It would therefore make no sense to compel them to acquire a permit for every occasion that they do so. This would create a further administrative burden that the SAPS simply will be unable to cope with.

44. Ad intended amendment to section 74

People should be free to import firearms and to bring these with them to South Africa. A mechanism should be created to treat these firearms as dealer stock while the owner is awaiting a licence. There should not be any restrictions on the type of firearm to be imported in this way, as long as they can be lawfully licenced.

45. Ad intended insertion of section 74a

People should be able to export firearms, especially on a temporary basis for hunting or sport shooting purposes. Normally, the process would involve an application for an import permit from the country of destination at their border post. The criterium that the import permit of the other country should be in place first may therefore affectively lead to an embargo on firearms export.

46. Ad intended amendment to section 86

This is once again a provision that severely erodes the rights of people who own firearms. It is regularly necessary to transport more than three firearms simultaneously in case of long hunting trips where various species will be hunted, or to participate in various sport shooting disciplines. Firearm dealers must also transport numerous firearms at the same time.

47. Ad intended amendment to section 91

- 47.1 The proposed restriction of 100 cartridges per licence will severely impede self-defence, as well as hunters and sport shooters. Firearm owners acquire more rounds intentionally, especially if they know that they live far from dealers or that their work schedule does not permit regular visits during office hours.
- 47.2 The limit on ammunition will also unduly restrict the business activities of professional hunters and curtail the training and preparation of sport shooters and hunters.
- 47.3 If the Registrar is inundated with applications for exemption from this requirement, it will create a further administrative burden that the SAPS simply cannot cope with. The current limit of only 200 rounds per firearm is already restrictive.

48. Ad intended amendment to section 93

AfriForum has already indicated its objection to the restrictions on the reloading of ammunition by licence holders (see paragraph 36.1 – 36.4). This poses no danger and merely leads to more accurate sport shooters and hunters. In-hunting reloading also enables a person to pick the best projectiles to ensure the effective and most humane killing of animals.

49. Ad intended insertion of section 98a and 98b

The poor ability of the SAPS's to deal with ballistic testing has already been highlighted.

50. Ad intended amendment to section 102

- 50.1 It is irrational to merely suspend the licence of licence holders when they are charged with an offence involving an element of violence. There is a presumption of innocence in our law in all criminal matters. The aspects of orders in terms of the Domestic Violence Act 116 of 1998 and Protection from Harassment Act 17 of 2011 has already been discussed. These orders are generally granted on an *ex parte* basis without any input from the respondent. Unfortunately, these acts are constantly being abused even though they are often necessary. A person cannot forever be deemed unfit to possess a firearm because of the confirmation of any possible order. Domestic disputes between two people are often resolved after a divorce or breakup. Some disputes also relate to financial abuse, such as not paying maintenance. This should have no bearing on firearm ownership.
- 50.2 To immediately compel a person to surrender firearms after an order is granted, is also at odds with the Domestic Violence Act itself. Section 7(2) of this Act itself states that the court may sanction the removal of firearms if it deems it

appropriate. This should not automatically ensue and there is already a sufficient mechanism in law for such occurrences. At the very least, a judicial officer should decide whether firearms should be removed. A similar provision appears in Section 10(3) of the Protection from Harassment Act. The proposed amendment will therefore lead to a contradiction in legislation.

- 50.3 We submit that the provisions in its proposed form will violate the constitutional rights enshrined in section 33 and 34 of the Constitution if firearm licences are suspended by the mere issuing of interim orders. The aspect of people who are younger than 16 being able to handle firearms and the fact that this should be advanced have already been discussed.

51. Ad intended amendment to section 104

This section will increase the administrative burden that the SAPS already struggles to cope with. There exist a shortage of DFOs at various stations and it can be expected that the additional listed requirements will disqualification even more people from these positions.

52. Ad intended insertion of section 124a and 124b

Station commanders have long been failing in their duties to exercise control over police stations; let alone DFOs. It is doubtful if most station commanders will be able to provide appropriate supervision, as they are not completely acquainted with the provisions of the Firearms Control Act.

53. Ad intended amendment to section 128

It does not make sense that appeals can only be determined according to guidelines that are issued by the Minister. It is to be expected that the increase in the size of the Appeal Board will lead to a wastage of public funds.

54. Ad intended amendment to section 139

It makes no sense to delete the provision that a new licence may be applied for under amnesty. The Constitutional Court has already ruled that people with expired licences can merely hand these in (without an amnesty) and shouldn't be prosecuted – see *Minister of Safety and Security v SA Hunters* 2018 (10) BCLR 1268 (CC). An amnesty provision without a possibility to obtain a new licence would thus be redundant. There is a presumption in our law that the legislator will not enact such provisions. If the amnesty section should be amended, it should rather state that a person may retain possession of their firearm while awaiting the outcome of a new application under an amnesty.

55. Ad intended amendment to section 145

We have already discussed the various aspects in relation to all the additional competency requirements that are to be introduced. Such wide powers should not be awarded to the Minister. Offences cannot be created in a Regulation. This is completely impermissible.

56. Ad intended amendment to section 147

A curator *ad litem* should not have the authority to act in relation to firearms and ammunition of a person to whom they are appointed. A *curator bonis* may have these powers.

57. Ad intended the insertion of section 147a

This section will once again create an administrative burden that the SAPS cannot cope with. Instead of notifying the Registrar, executors should only be obliged to possibly inform the DFO where they are situated. This section should also indicate that no licence will lapse while the firearm is in the hands of the Registrar to enable the transfer thereof.

58. Ad intended amendment to section 148

When a licence for an inherited firearm is refused, there should be an opportunity to appeal this refusal and attempt court action, or to submit a new application.

59. Ad intended amendment to section 149

No obligation should be imposed on the Registrar to destroy certain firearms because of possible delayed reaction from the South African Heritage Resources Agency.

60. Ad intended amendments to schedule

- 60.1 The aspects in relation to muzzle-loading firearms have already been discussed. The 18-month transition period allowed for cap-and-ball and other firearms are also insufficient if the SAPS's administrative capacity is considered. Once again, any provision that must be destroyed without compensation would be a violation of section 25 of the Constitution.
- 60.2 In respect of licences emanating from the Arms and Ammunition Act 75 of 1969, it is contended that not only those firearms under such licences and that have not yet

been renewed in terms of the current Act should be considered for a remaining period of validity. It should also be stated that applications for competency and applications to possess a firearm may be submitted simultaneously.

- 60.3 It is believed that a 2-year period would be too short if administrative capacities are considered. The period should already be increased at this point in time, without the need for a Minister to have it extended only after approval from Parliament.
- 60.4 Competency certificates and existing licences should not only be valid for a determined period. This would amount to expropriation without proper compensation if a person were no longer entitled to own the firearm after the expiry of the period.

61. Concluding remarks

- 61.1 AfriForum is opposed to the proposed Amendment Bill in its entirety. Important constitutional rights are being violated. Moreover, it is quite clear that this Bill was drafted without proper consultation and based on false narratives, without appreciation for the realities that face South Africans.
- 61.2 It is also contended that the minimal period of 45 days that is allowed for public comment is completely insufficient, especially since such an important issue is at stake. The period must be extended to allow for proper public participation.
- 61.3 We respectfully contend that the proposed Bill should be rejected.