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REPUBLIC OF SOUTH AFRICA

FIREARMS CONTROL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of 2011)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B —2011]

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BILL

To amend the Firearms Control Act, 2000 (Act No. 60 of 2000) (the principal Act), and the Firearms Control Amendment Act, 2006 (Act No. 28 of 2006), in order to provide for the validity period of competency certificates which are not linked to licenses; to provide for the limitation on the use of temporary permits issued in terms of section 21 of the principal Act; to provide for consequential amendments to both Acts in respect of muzzle loading firearms in order to align control over muzzle loading firearms to control over firearms in respect of the marking, trading, manufacturing, possession in private and public collection; work of a gunsmith on muzzle loading firearms; the display and safekeeping of muzzle loading firearms; to provide for the designation of a Designated Firearms Officer at each police station in order to strengthen the control over firearms in possession of the police, other Official Institutions and private security service providers and to improve the processing of applications for competency certificates and firearm licences; to provide for the Minister of Police to appoint additional members to the Appeal Board, to provide for the strengthening of the independence of the Appeal Board and the functions of the Appeal Board; to provide for powers of the Minister to prescribe matters pertaining to the processing of applications for firearm licences and competency certificates; to provide for the number of cartridges that may be possessed by dedicated hunters, professional hunters and dedicated sports persons; to provide for transitional provisions in respect of cap and ball revolvers, including provision for an additional licence in the category of occasional hunting and sports shooting, in order to accommodate the licensing of cap and ball revolvers; and to provide for matters connected therewith.

Be it enacted by the Parliament of the Republic of South Africa, as follows:—

1. Amendment of section 1 of Act 60 of 2000

Section 1 of the Firearms Control Amendment Act, 2000 (Act No. 60 of 2000), hereinafter referred to as the principal Act, is hereby amended, by—

- (a) the insertion, after the definition of “Appeal Board” of the following definition:

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“cap and ball revolver” means a handgun with a cylinder or any number of rotating barrels which, when loaded, is capable of discharging more than two shots in succession, before requiring the reloading of the cylinder, or barrels through the muzzle or directly into the cylinder with separate components consisting of a –

(aa) measured charge of black powder or equivalent propellant;

(bb) projectile which may be a metal ball, bullet, sabot or shot, functioning as such;

and ignited by a percussion cap;”;

(b) the substitution for the definition of “Minister” of the following definition:

“Minister” means the Minister ~~[for Safety and Security] of Police;”.~~

Amendment of section 10 of Act 60 of 2000, as amended by Act 28 of 2006

2. Section 10 of the principal Act is hereby amended by the insertion, after subsection (3) of the following subsections:

“(4) Any competency certificate issued to a person to whom no license has been issued to possess a firearm, or a competency certificate referred to in section 32(2) of the Act, shall remain valid for a period of five years from the date of issuing thereof.

(5) An additional licence or permit may be issued ~~to a holder~~ of a valid relevant competency certificate, in which case the validity period of the competency certificate shall be determined by the date of ~~the~~ first licence.

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(6) Any competency certificate issued in terms of the Act-

(a) to a person to possess a firearm ; or

(b) to any natural person before 10 January 2011 to trade in firearms,

and which was valid on that date shall lapse after five years, from the date on which the competency certificate was issued.”.

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Amendment of section 15 of Act 60 of 2000

3. Section 15 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(3) (a) Subject to paragraphs (b), (c) and (d), no person may hold more than four licences issued in terms of this section: Provided that a fifth license may be issued to a person in respect of a cap and ball revolver.”.

Amendment of section 21 of Act 60 of 2000

4. Section 21 of the principal Act is hereby amended by the insertion of the following new subsection:

“(7) A permit in terms of this section may not be issued where an application to possess a firearm is pending.”.

Substitution of section 23 of Act 60 of 2000

5. The following section is hereby substituted for section 23 of the principal Act:

“Identification marks on firearms and muzzle loading firearms

23. (1) No firearm licence or competency certificate for a muzzle loading firearm may be issued unless the firearm or muzzle loading firearm bears the manufacturer's serial number or any other mark by which the firearm or muzzle loading firearm can be identified.

(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, and in the case of a muzzle loading firearm on the barrel thereof.

Amendment of section 36 of Act 60 of 2000

6. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Registrar may issue a temporary authorisation to a dealer to trade in firearms, muzzle loading firearms and ammunition at premises other than those specified in the dealer's licence.”.

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Amendment of section 39 of Act 60 of 2000

7. Section 39 of the principal Act is hereby amended by-

(a) the substitution for subsections (1) and (2) of the following subsections:

“(1) A dealer may trade in firearms, muzzle loading firearms or ammunition only on premises specified in the dealer's licence.

(2) A dealer may not permit any person to trade in firearms, muzzle loading firearms or ammunition on his or her behalf unless that person is in possession of the appropriate competency certificate.”.

(b) the substitution for paragraph (a) of subsection (5) of the following paragraph:

“(a) any firearms, muzzle loading firearms or ammunition that the dealer may have in stock;

Substitution of section 46 of Act 60 of 2000

8. The following section is hereby substituted for section 46 of the principal Act:

“Requirements for manufacturer's licence

46(1) A manufacturer's licence may be issued to a person who is a fit and proper person to manufacture firearms, muzzle loading firearms or ammunition.

(2) The Registrar may only issue a manufacturer's licence to-

(a) a manufacturer of firearms or muzzle loading firearms if the firearms or muzzle loading firearms are manufactured in a factory registered in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993); or

(b) a manufacturer of ammunition if the ammunition is manufactured in a factory licensed in terms of the Explosives Act, 1956 (Act 26 of 1956).”.

Amendment of section 50 of Act 60 of 2000

9. Section 50 of the principal Act is hereby amended by-

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

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“(1) The Registrar may issue a temporary authorisation to a manufacturer to display firearms, muzzle loading firearms and ammunition at premises other than those specified in the manufacturer's licence.

- (b) the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

“(3) A temporary authorisation to display firearms, muzzle loading firearms and ammunition must specify-“.

Amendment of section 53 of Act 60 of 2000

10. Section 53 of the principal Act is hereby amended by-

- (a) the substitution for subsections (1) and (2) of the following subsections:

“(1) A manufacturer may manufacture firearms, muzzle loading firearms or ammunition only on premises specified in the licence.

(2) A manufacturer must apply or affix such serial number or any other mark to any firearm or muzzle loading firearm manufactured by the manufacturer as may be prescribed.”.

- (b) the substitution for paragraph (a) of subsection (5) of the following paragraph:

(a) any firearms, muzzle loading firearms or ammunition that the manufacturer may have in stock;”.

Amendment of section 56 of Act 60 of 2000

11. Section 56 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) If a notice contemplated in subsection (2) is issued, the former holder of the licence must dispose of any firearms, muzzle loading firearms and ammunition in his or her possession through a dealer or in such manner as the Registrar may determine.”.

Amendment of section 124 of Act 60 of 2000 as amended by Act 43 of 2003

12. Section 124 of the principal Act is hereby amended by the insertion of the following new subsections:

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(3) A Designated Firearms Officer must be designated at each police station and must, in addition to such firearm-related duties assigned to him or her by the Registrar or the Head of the Central Firearms Register, perform the following duties—

- (a) receive and process all applications for competency certificates and licenses;
- (b) ensure compliance with Chapter 11 of this Act by police members, including undergoing prescribed competency testing, and that official firearms are only issued to members who have passed the prescribed tests and have been issued with the prescribed permit to be in possession of firearms;
- (c) perform inspections at Official Institutions within the police station area to ensure compliance with Chapter 11 of this Act;
- (d) perform regular and random inspections at the business premises of security service providers registered in terms of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), to ensure compliance with this Act, in particular in respect of the safe-keeping and issuing of firearms to employees;
- (e) ensure that firearms kept in the station are kept safely in accordance with prescripts, including national instructions made under the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (f) ensure that-
 - (i) losses of official firearms are reported speedily;
 - (ii) losses of firearms are investigated immediately;
 - (iii) that disciplinary steps are taken against members who have lost firearms;
 - (iv) that firearms are not re-issued to members against whom any of the above actions are still pending;
 - (v) and to ensure that steps are taken to recover losses caused by the negligent loss of firearms by members;
 - (vi) ensure that firearms kept as exhibits at the police station are kept safely and in accordance with prescripts, including relevant national instructions; and

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(vii) ensure that regular and random inspections of official registers for the booking in and out of firearms to police members are performed and also to personally perform such inspections.

(4) A Designated Firearms Officer must be responsible solely for issues relating to the administration and compliance of this Act.

Amendment of section 128 of Act 60 of 2000

13. Section 128 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

(2) The Appeal Board, subject to subsection (3), consists of at least five members who must be appointed by the Minister and who, when viewed collectively, must as far as possible be broadly representative of the population of the Republic.

(3) If the Minister deems it necessary in view of the workload of the Appeal Board or other exceptional circumstances, he or she may , appoint an additional member or members to the Appeal Board.

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(4) The Appeal Board must-

(a) consider appeals against decisions of the Registrar;

(b) consider any representation made;

(c) determine the appeal procedure;

(d) ensure that appeals are dealt with expeditiously;

(e) identify systemic problems that result in appeals; and

(f) submit reports on systemic problems to the Minister, at least once every year.

(g) invite a person or persons with a sound knowledge of firearms to assist the Board on technical aspects of firearms where this is necessary.

Substitution of section 131 of Act 60 of 2000, as amended by Act 43 of 2003

14. The following section is hereby substituted for section 131 of the principal Act:

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“131.(1) The administrative work of the Appeal Board must be performed by such members of the South African Police Service, or any other employee of the South African Police Service as may be designated by the National Commissioner: Provided that members employed at the Office of the Central Firearms Register may not be designated to perform the administrative work of the Appeal Board.”

(2) The Appeal Board must function independently of the Office of the Central Firearms Register.”

Amendment of section 145 of Act 60 of 2000

15. Section 145 of the principal Act is hereby amended by the insertion of the following new paragraph in subsection (1):

(mA) the consideration and processing of applications for competency certificates and licenses to possess firearms;

Substitution of section 59 of Act 60 of 2000

16. The following section is hereby substituted for section 59 of the principal Act:

“Prohibition of certain work

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

- (a) alter the mechanism of a firearm so as to enable the discharging of more than one shot with a single depression of the trigger;
- (b) alter the calibre of a firearm or muzzle loading firearm;
- (c) alter the barrel length of a firearm or muzzle loading firearm;
- (d) alter or remove the serial number or any other identifying mark of a firearm or muzzle loading firearm; or
- (e) perform such other work as may be prescribed.”

Substitution of section 13 of Act 28 of 2006

17. The following section is hereby substituted for section 13 of the Firearms Control Amendment Act, 2006:

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“Substitution of section 17 of Act 60 of 2000

13. The following section is hereby substituted for section 17 of the principal Act:

“Licence to possess firearm or muzzle loading firearm in private collection

17. (1) (a) A firearm or muzzle loading firearm which may be possessed in a private collection is any firearm or muzzle loading firearm approved for collection by an accredited collector's association, based upon such historical, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value determined by the association.

(b) **[Despite section 4, such prohibited firearm as may be prescribed may be licensed under this section]** Where a firearm or muzzle loading firearm is approved for collection as a heritage item as defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999), such approval is subject to confirmation by the South African Heritage Resources Agency or any of its appointed agents.

(1A) Despite section 4, such prohibited or restricted firearm as may be prescribed may be licensed under this section.

(2) The Registrar may issue a licence 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 and qualifies to collect the firearm, prohibited firearm, restricted firearm, or muzzle loading firearm.

(3) The holder of a licence issued in terms of this section-

- (a) must store the firearm or muzzle loading firearm at the place specified in the licence; and
- (b) may only display the firearm or muzzle loading firearm in accordance with such safety measures as may be prescribed.

(3A) Before a prohibited or restricted firearm is stored in terms of subsection (3) (a), it must undergo such reversible non-damaging procedure as may be prescribed in order to ensure that no cartridge can be loaded into or discharged from that firearm.

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(4) A firearm in respect of which a licence has been issued in terms of this section may be used where it is safe to use the firearm and for a lawful purpose.

Substitution of section 15 of Act 28 of 2006

18. The following section is hereby substituted for section 15 of the Firearms Control Amendment Act, 2006:

Amendment of section 19 of Act 60 of 2000

“15. Section 19 of the principal Act is hereby amended—

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

“(1) The Registrar may issue a licence to possess a firearm or muzzle loading firearm in a public collection, a permit to possess ammunition in a public collection, or both such permit and licence, to a public collector or an accredited museum.

(b) by the substitution in subsection (2) for paragraph (a) and (b) of the following paragraphs respectively:

“(a) such prohibited and restricted firearm as may be prescribed may be licensed under this section; and

(b) the holder of a permit issued in terms of this section may possess projectiles, rifle grenades and cartridges manufactured to be discharged by prohibited firearms if the propellant, high explosive and primer of the projectiles, rifle grenades and cartridges have been removed or deactivated.”.

(c) by the substitution for subsection (4) of the following subsection:

“4. A firearm, prohibited firearm and restricted firearm in respect of which a licence has been issued in terms of this section and ammunition in respect of which a permit has been issued in terms of this section, may only be displayed-

(a) in an accredited museum or by an accredited public collector; and

(b) in accordance with such safety measures as may be prescribed.”; and

(d) by the insertion after subsection (4) of the following subsection:

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“(4A) Before a prohibited or restricted firearm is displayed in terms of subsection (4), it must undergo such reversible non-damaging procedure as may be prescribed in order to ensure that no cartridge can be loaded into or discharged from that firearm.

Substitution of section 26 of Act 28 of 2006

19. The following section is hereby substituted for section 26 of the Firearms Control Amendment Act, 2006:

“Amendment of section 91 of Act 60 of 2000

26. Section 91 of the principal Act is hereby amended by the substitution of paragraph (a) of subsection (2) of the following paragraph:

- “(a) (i) a dedicated hunter, **[or]** dedicated sports person or a professional hunter who holds a licence issued in terms of this Act; or
- (ii) any other holder of a licence issued in terms of this Act, authorised in writing by the Registrar, on good cause shown by a person referred to in subparagraphs (i) and (ii), to possess [more than] the number of cartridges in excess of 200 cartridges for a firearm in respect of which he or she holds a licence, **[on good cause shown;]** specified in the written authorisation and which number must be commensurate with the cause shown; or”.

Amendment of Schedule 1 of Act 60 of 2000, as amended by section 52 of Act 28 of 2006

20. Schedule 1 to the principal Act is hereby amended by—

- (a) the substitution for sub-item (3) of item 1A in the English text of the Act, of the following sub-item:
- (3) The period referred to in **[subsection]** sub-item 1 may be extended by the Minister for such period as the Minister may determine by notice in the *Gazette*.”.
- (b) the insertion after Item 1A, of the following Items:

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“Transitional provisions and surrendering of cap and ball revolvers

1B.(1) Any person who possesses a cap and ball revolver—

- (a) must before the expiry of 18 months from the date of commencement of this Act apply for a firearms licence to possess such cap and ball revolver;
- (b) may lawfully possess such cap and ball revolver until the expiry of the period mentioned in paragraph (a), or if an application has been made for a licence to possess such cap and ball revolver upon expiry of the said period, until such application has been decided; and
- (c) has not applied for a firearm licence in respect of that cap and ball revolver before the expiry of the period referred to in paragraph (a), must surrender such cap and ball revolver to a police station.’.

(2) No prosecution may be instituted during the period referred to in sub-item (1) against any person found in possession of a cap and ball revolver without being in possession of a license.

(3) The South African Police Service may dispose of any cap and ball revolver surrendered to it in terms of paragraph (c) in accordance with the provisions of the Act.

(4) A receipt must be issued to the person who surrenders a cap and ball revolver contemplated in paragraph (c).”.

Compliance by Official Institutions

1C. All official institutions must within one year of the commencement of the Firearms Control Amendment Act, 2011, be fully compliant with the provisions of Chapter 11, and Heads of Official Institutions must report to Parliament on progress made on a quarterly basis.”.

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Short title and commencement

21. This Act is called the Firearms Control Amendment Act, 2011, and comes into operation on a date determined by the President in the *Gazette*.

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POSSIBLE ADDITIONAL AMENDMENTS TO ADDRESS THE FOLLOWING:

1. Schedule 1 (s 1(2)(a) of principal Act

An owner who did not renew his/her 1969 licence, but who had “disposed” of the firearm by giving or selling it to a third party, would still be in illegal possession when the transitional period ended (originally 1 July 2009). This date was postponed by Court in SA Hunters & Game Conservation Association –v- Minister of Police. In this case, it was ruled that all 1969 licences will be deemed legal until such time as the main case between the parties had set a new date to replace the original transition date.

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2. Definition of “Secretary for Safety and Security” to mean “Secretary of Police”.

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3. inherited firearms

Create a new category of owners. Licencing of inherited firearms to be coupled with a competency certificate in the name of the beneficiary.

4. Obligation to re-application for competency after 5 years if holder wishes to continue possession and ownership.

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MEMORANDUM ON THE OBJECTS OF THE FIREARMS CONTROL AMENDMENT BILL, 2011

1. BACKGROUND AND PURPOSE

1.1 In the process of the putting into operation of the Firearms Control Amendment Act, 2006 (Act No. 28 of 2006), some deficiencies in the Act had been noted, namely a that some consequential amendments are required in order to align the control over muzzle loading firearms with the control over firearms. Submissions were also made by the National Association of Arms Collectors of South Africa, pertaining to a lack of transitional provisions in respect of cap and ball revolvers. Although the same could be provided for in regulations, the impact of licensing cap and ball revolvers on

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the number of firearms which may be possessed can only be addressed through legislative amendment.

1.2 A Task team appointed by the Minister of Police in the meantime investigated the Central Firearms Register and made recommendations to the Minister in order to address the backlog in respect of the issuing of firearm licences as well as the volume of litigation instituted against the Department as a result of such backlog. In following up the report of the Task Team, some sections of the Firearms Control Amendment Act, 2006 were put into operation, namely sections 1(b), 1(i), 2, 4, 8, 9, 10, 18 and 52. These sections pertain to the issue of renewing competency certificates as well as the regulation of muzzle loading firearms.

1.3 Whilst the amendment of the principal Act as well as the Firearms Control Amendment Act, 2006, is necessary there was a critical review of all issues pertaining to the principal Act, and other amendments also included, such as the alignment of the validity period of all licences for the possession of firearms to 10 years which will reduce the administrative burden on the Central Firearms Register, providing for a validity period for competency certificates which are not linked to licenses, the designation of a Designated Firearms Officer at each police station to improve control over firearms in possession of the police and other Official Institutions and private security service providers.

2. PROVISIONS OF THE BILL

2.1 **Clause 1** substitutes the definition of “Minister” and defines a “cap and ball revolver” as a handgun with a cylinder or any number of rotating barrels which when loaded, is capable of discharging more than two shots in succession, before requiring the reloading of the cylinder, or barrels through the muzzle or directly into the cylinder with separate components consisting of a –

- (aa) measured charge of black powder or equivalent propellant;
- (bb) projectile which may be a metal ball, bullet, sabot or shot, functioning as such;

and ignited by a percussion cap”.

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2.2 **Clause 2** The Bill provides in clause 2 that competency certificates which are not linked to licences will remain valid for a period of five years, that a person may use an existing competency certificate to apply for another firearms licence, but that the validity period of the competency certificate shall be determined by the date of issuing of the original licence.

2.4 **Clause 3** Provides that an additional licence (in addition to the four licences provided for in section 15 of the Act in respect of occasional hunting and occasional sports shooting), may be issued in respect of a cap and ball revolver in view of the requirement to license a cap and ball revolver.

2.5 **Clause 4** provides that section 21 permits may not be issued where applications for firearms licences are pending.

2.6 **Clauses 5 to 11 and 16 to 18** are amendments consequential to the alignment of control over muzzle loading firearms with that of firearms in respect of the marking, trading, manufacturing, possession in private and public collection; and work of a gunsmith on muzzle loading firearms.

2.7 **Clause 12** provides for the designation of a Designated Firearms Officer at each police station in order to provide a focused and undivided attention to control over firearms in the possession of the police as well as other official institutions and the security industry. It will also enhance access by the public to services and the speedy processing of applications for competency certificates and licenses.

2.8 **Clause 13** provides for the appointment by the Minister of an additional member or members to the Appeal Board as well as for functions of the Appeal Board.

2.9 **Clause 14** provides for the enhancement of the independence of the Appeal Board by providing that administrative work of the Appeal Board may not be performed by members attached to the Office of the Central Firearms Register and that the Appeal Board must function independent from the Office of the Central Firearms Register.

2.10 **Clause 15** provides that the Minister may prescribe matters relating to the consideration and processing of applications for competency certificates and firearms licences.

2.11 **Clause 19** provides for a rewording of section 91(2)(a) of the principal Act to make it clear that in all cases where a professional hunter, dedicated hunter or dedicated sports person and holders of other categories of licences issued in terms of the Act are in possession of more than 200 cartridges, that a written authorisation

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from the Registrar is required on good cause shown, and that the number so authorised is commensurate to the cause shown.

2.12 **Clause 20** provides for a correction to the English text of the Firearms Control Amendment Act, 2006 (reference to “section” instead of “Item”), and also inserts a transitional provision in respect of the licensing of cap and ball revolvers, namely to provide 18 months of grace to license cap and ball revolvers, without fear of prosecution.

2.13 **Clause 21** is the short title of the Act and provides for the commencement of the Act on a date determined by the President by Proclamation in the *Gazette*.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was drafted by a Task Team consisting of officials of both the South African Police Service and the Secretariat of Police. The draft Bill was consulted with interested groups including dealers, collectors and trainers. The provisions relating to cap and ball revolvers were inserted following representations by the National Association of Arms and Ammunition Collectors of South Africa (NAACSA).

4. IMPLICATIONS FOR PROVINCES

None.

5. CONSTITUTIONAL IMPLICATIONS

None.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The appointment of Designated Firearms Officers at each police station will have an effect on identifying and training of members, but this will spread workload and improve effectiveness as well as access by the public to services. The appointment of additional members to the Appeal Board is seen as a temporary measure to address backlogs.

6. FINANCIAL IMPLICATIONS FOR THE STATE

Additional costs such as the appointment of additional members to the Appeal Board can be met from existing budgets.

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7. COMMUNICATION IMPLICATIONS

None.

8. PARLIAMENTARY PROCEDURE

8.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

8.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.