

MJ Hood & Associates

A T T O R N E Y S

6 May 2020

Ref: M Hood/md/S0665
DD 5/5, DR 5/5, DT 6/5 R10

**THE MINISTER OF SAFETY AND SECURITY
7TH FLOOR WACHTHUIS
PRETORIA**

BY HAND

PER E-MAIL: nkabinde@saps.org.za / GaehlerSMK@saps.gov.za

**NATIONAL COMMISSIONER
7TH FLOOR WACHTHUIS
229 PRETORIUS STREET
PRETORIA**

BY HAND

PER E-MAIL: sitolek@saps.gov.za

Dear Sir

**RE: INTERPRETATION AND APPLICATION OF COVID LOCKDOWN
RULES AS PER THE MINISTER OF COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS 29 APRIL 2020
REGULATIONS GOVERNMENT GAZETTE NUMBER 43258**

1. We act on behalf of the South African Arms and Ammunition Dealers Association and we have been instructed to address you on what is more fully set out below.
2. Our client is the industry body that represents a large number of firearm dealers in all provinces in the Republic of South Africa.
3. It has been recognised by the High Court as the legitimate representative of the firearm dealing industry in South Africa.

Partner: Martin John Hood *BA LLB*
Jnr Associate Attorney: Mouné Watkins *LLB*
Attorney: Nicos Pouyoukas *BCom LLB*
Candidate Attorney: Jordan Letzler *LLB*

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BACKGROUND

4. In terms of the original lockdown regulations, essential services were defined inter alia as private security services, wild life management, anti-poaching, animal care and veterinary services, amongst others.
5. These regulations were published initially in Government Notice number 318 of the 18th of March 2020 and were subsequently amended by Government Notices 398 of the 25th of March, 419 of the 26th of March and 446 of the 2nd of April 2020, and which ultimately were repealed by Government Gazette number 43258. This letter is addressed to you in terms of that gazette.
6. It follows that during what has been termed as the Level 5 lockdown, any service provider that supported an essential service provider would be allowed to supply goods to that essential service provider, subject to the issue of a CIPC essential services permit.
7. Even at Level 5, firearm dealers constituted part of the supply chain to essential service providers, and could supply essential goods and services.
8. To put matters simply, and by way of example if a business was manufacturing hand sanitizer that manufacturer would be entitled to be supplied by its suppliers, the ingredients to make hand sanitizers and the packaging thereof. To interpret the regulations in any other way would be nonsensical.
9. It follows by way of example that a security service provider would be entitled to purchase ammunition at Level 5, if it had the requisite permit and if the supplier of the ammunition had the requisite

permit, in addition to being a licenced dealer in terms of the Firearms Control Act 2000.

10. On the 29th of April 2020 the Minister of Cooperative Governance and Traditional Affairs amended the regulations and introduced a Level 4 lockdown and expanded the list of goods and services to those contained in table 1 entitled Alert Level 4 which included farming, hunting, wild life management, anti-poaching, animal care and veterinary services, manufacturing, security services as well as licencing and permitting in terms of part O, on page 27 of Gazette 43258.
11. It is trite that the numerous proclamations of regulations and the expeditious manner in which the regulations have been drafted, have created a situation where the regulations are often confusing or lack clarity and are subject to different interpretations.
12. Our client's members have been advised that they are entitled to open and trade and are entitled to supply only the industries or sectors listed in table 1 entitled Alert Level 4, including anti-poaching, wild life management, security and hunting industries. To be clear, our client's members understand that under Level 4 conditions this entitlement does not yet extend to the general opening of businesses to the public, it extends only to support essential and permitted industries, sectors and activities listed in table 1 entitled Alert Level 4.
13. The writer has been advised by his client and numerous firearm dealers that *inter alia*:

a) Brigadier Bopape, the head of the Central Firearms Registry;

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- b) Colonel Similane, a senior member of the Central Firearms Registry;
 - c) Colonel Paulos, the Provincial Designated Firearms Officer Gauteng;
 - d) Colonel van Lill the Western Cape FLASH;
 - e) Colonel Leon Grundling of SAPS Legal Services Western Cape;
 - f) Colonel Lesige of the Central Firearms Registry

have all advised that firearm dealers are not entitled to trade at all and that firearms and ammunition are not essential services.

14. Copies of two communications confirming this, from Colonel Grundling of SAPS Legal Services and Colonel Lesige, are attached as Annexure **"A"**.

15. This is patently incorrect in that, by way of example:-

- a) The security industry and other essential services such as municipalities and organs of state can purchase ammunition only from licenced dealers.
- b) The security industry is obligated to provide training in terms of Regulation 21 of the Firearms Control Act on an annual basis and it is a criminal offence for an employer not to provide that training to its employees timeously. The Firearms Control Act limits the amount of ammunition a business licence holder may possess to 200 rounds only. It follows logically that to provide training ammunition must be purchased.

c) A security officer must be equipped in terms of occupational health and safety legislation with adequate equipment in order for him to fulfil his or her function safely, which includes where appropriate firearm and ammunition, holster, etc.

d) Wild life management, anti-poaching and hunting likewise require access to ammunition, and related components such as primers and propellant in order to provide their essential services. These may only be purchased from licenced firearm and ammunition dealers. They also need observation and other equipment available through the same dealers.

16. Please note that we have not touched upon the issue of clothing which is also permitted and which many firearms dealers wholesale and retail as part of their business activities, but it follows in the writer's view that they would most certainly be entitled to sell winter hunting clothing to any of the abovementioned industries.

FIREARM LICENCING, RELINCENCING AND APPLICATIONS FOR COMPETENCY CERTIFICATES

17. We have received copies of numerous requests for an extension of the amnesty and such requests have detailed the unintended consequences of the lockdown on SAPS firearms services, most pertinently in the writer's letter, delivered to your office, by hand, on the 25th of March 2020, to which the writer has not had the courtesy of a response. A copy of this letter is again attached as Annexure **"B"**.

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18. You have also been addressed by *inter alia* the South African Gun Owners Association, the National Hunting and Sport Shooting Association and the South African Wingshooters Association where you have acknowledged same, but have made no commitments concerning the extension of the amnesty or when firearm licencing and related services will be made available to the public.
19. Designated Firearm Officers at most police stations are closed and the South African Police Services are not providing the services that are mandatory and compulsory in terms of the Firearms Control Act 60 of 2000.
20. It is of great concern to the industry that persons who have to comply with the Firearms Control Act are, in many instances either criminalised should they not comply (for example by renewing a firearm licence) or they will be financially penalised in that they will be in possession of an unlicensed firearm (because the licence has expired) and they will be compelled to destroy that firearm in a manner that constitutes an unconstitutional expropriation of property in circumstances where the owner of a firearm was willing, prepared and able to comply with the Firearms Control Act but was prevented from doing so by your decision not to provide mandatory services required by the Firearms Control Act.
21. These mandatory services include *inter alia*:-
- a) Acceptance of new licence applications.
 - b) Acceptance of amnesty applications.
 - c) Acceptance of new competency applications.
 - d) Acceptance of applications to renew competency certificates.
 - e) Applications to renew firearm licences.

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22. In terms the regulations contained in Gazette No. 43270 on page 27 heading "O", it is clearly mandated that licensing and permitting services fall under Level 4. This would include the services set out in paragraph 21 of this letter.
23. Our clients and the writer have received numerous reports from SAPS that the abovementioned services will not be available until Level 2 is achieved in the lockdown process.
24. Bramley police station is the most recent example given to the writer.
25. In the meantime, people will have firearm licences that expire and notwithstanding a variety of legal cases, your attitude remains that if a licence expires, it becomes unlawful and there is no way to revive or renew it even if the expiry is not the fault of the licence holder.
26. The security industry must only issue a firearm to a person in possession of a competency certificate and the responsible person of a security company can be punished by up to 25 years in jail for issuing a firearm to someone who does not have a valid competency certificate. Security officers cannot renew their competency certificates because of SAPS refusal to provide these services.
27. The attitude of the South African Police Services is clearly erroneous in that members of the public cannot comply with the obligations imposed upon them in terms of the Firearms Control Act as is set out in this letter and will be prejudiced and criminalised through no fault of their own.

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28. We draw you attention to Government Gazette 432270 where regulations have been issued by the Minister of Transport, Mr FA Mbalula on the 4th of May 2020.
29. In terms of these regulations, more specifically paragraph 6 thereof, the Minister of Transport has extended the validity of learner's licences, driving licences, motor vehicle licences, temporary permit and road worthy certificates that have expired for a period of 30 days from the date of publication of the regulations.
30. Our instructions are to call upon you to publish a similar notice, *inter alia*:-
- a) Extending the validity of all competency certificates and firearm licences that may expire during the lockdown period, alternatively which fall into the 90 day window as is set out in Section 24 of the Act and;
 - b) To issue a directive to all police stations that designated firearm officers must provide the services set out the Firearms Control Act to allow the submission of new licence applications, the renewal of competency certificates, new applications for competency certificates and amnesty applications.

FIREARM DEALERS

31. We are instructed to demand that you in your capacity as Minister of Police immediately issue an instruction to the South African Police Services that licenced firearm dealers may trade in goods and provide services in accordance with the regulations, specifically as part of the supply chain that supports essential and permitted industries, sectors and activities at all levels of the Risk Adjusted Strategy.

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32. Should you not issue such directive, and should you not issue regulations extending the time period for submissions of the various processes set out in this communication, for not less than 30 days, and should you not issue a directive directing that the South African Police Services must make the services, required in terms of the Firearms Control Act, available to members of the public, by close of business on Monday the 11th of May 2020, our instructions are to bring an urgent court application for interdictory relief against you.

33. All of our client's rights are reserved.

Yours faithfully,


M J HOOD & ASSOCIATES

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Encl.

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"A"

Martin Hood

From: Zita Smyth
Sent: Wednesday, May 6, 2020 9:13 AM
To: Martin Hood
Subject: From: WC:Legal Services Operational Support

From: WC:Legal Services Operational Support
Sent: 04 May 2020 02:50 PM
To: WC:FLASH Operational Support <VisserG2@saps.gov.za>
Subject: FIREARMS CONTROL ACT: CIPC CERTIFICATES

FOR ATTENTION: LT COL VISSER

1. The acceptance of the CIPC certificates are limited to essential service providers only, not to services claiming that they are an essential service.
2. The Commission agreed that, as these are computer generated certificates, SAPS needs to verify the validity thereof for use by an essential service provider only, meaning that even if the company is a legitimate company, but not an essential service provider, the company may not operate during lockdown and must cease to operate.
3. No consideration was given by the CIPC to whether the service being provided by the company indeed falls within the essential services prescribed by the Regulations.
4. Firearm Dealers/business are not included in the list of essential services and may therefore not operate.
5. The list of clothing referred to is not in essential or permitted goods to be sold – even if it was it must be limited to baby clothing etc. or clothing not obtainable at other places. If there is a specific item like a jacket they wish to sell as they see it as an essential item not obtainable elsewhere then the only item they can sell would be that specific jacket and nothing else however they are not a retail store selling clothing – they are firearm dealers selling accessories - and could therefore not operate.
6. Should the company/person continue or proceed to operate he must be warned to cease operations and that they could be charged if they continue operating.
7. The hunting is limited to Agriculture and culling of wildlife – not recreational or sport hunting.

Regards

Colonel LJ Grundling
Legal & Policy Services: Operational Support
Western Cape
Office : 021 417 7272
Fax : 021 417 7278
Cell : 082 5223251
Internal e-mail: WC:Legal Service Operational Support
External e-mail: GrundlingLeon@saps.gov.za

Martin Hood

From: Zita Smyth
Sent: Wednesday, May 6, 2020 9:07 AM
To: Martin Hood; zita-ann@hotmail.com
Subject: COL. LESIGE RE: ESSENTIAL TRADE SERVICES

1:25

LTE 

< All Inboxes

2 Messages



Lesige Pule - Lieutenant Co... 11:47 AM

To: C Klintworth Cc: S Colonel >



RE: Essential trade services

Good morning Sir

Please take note that firearms cannot be sold during Lockdown and are not listed on National Disaster as essential commodities.

Kind regards

Lt Col Lesige

"B"

MJ Hood & Associates

A T T O R N E Y S

25 March 2020

Our Ref: M Hood / rm
(amended md 25/3 R2)

BY HAND

**THE MINISTER OF SAFETY AND SECURITY
7th FLOOR,
WACHTHUIS
231 PRETORIUS STREET
PRETORIA**



Dear Sirs

**RE: FIREARM AMNESTY AS PER GOVERNMENT GAZETTE 42858 27
NOVEMBER 2019**

1. The writer acts on behalf of a number of organisations that operate within the firearm industry such as the South African Arms and Ammunition Dealer's Association, the Professional Hunters Association, the Confederation of Hunting Associations of South Africa, the Clay Target Shooting Association and others.
2. The writer specialises in firearm law.
3. The writer has received queries from a number of persons who are outside of the Republic of South Africa and who had the best intentions to return to South Africa to comply with the amnesty and hand in firearms in terms of the amnesty and to submit new applications for such firearms.
4. With the travel ban imposed, particularly from persons travelling in Western Europe due to the coronavirus epidemic, it has made the compliance with the amnesty problematic because people cannot

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travel to the Republic of South Africa in order to comply with the amnesty.

5. In addition to this, the writer has been requested to provide advice on whether a family member may hand in a firearm to comply with the amnesty on behalf of another family member. This has happened in circumstances where the expired licence holder is overseas and unable to travel.
6. The writer's advice is that in order to gain access to such a firearm, there would be a contravention of the provisions of Regulation 86 of the Firearms Control Act.
7. This makes the accessing of a firearm safe by any one other than the licence holder illegal.
8. Secondly a family member who is in effect performing a "favour" on behalf of another family member will be obligated to apply for amnesty by virtue of the fact that they hand in the firearm to SAPS.
9. It has also been drawn to the writer's attention that training courses are being cancelled due to the concern over the coronavirus. This means that people who need to apply for competency certificates and who need to complete new unit standards that came into effect at the end of 2008 are unable to do the training. This prevents them from obtaining a training provider certificate and a statement of results from the PFTC which precludes in lodging an amnesty application.
10. All of the above, the writer would respectfully submit, is an unintended consequence of the manner in which the amnesty has been proclaimed and some of the unintended consequences act as a disincentive to apply in terms of the amnesty.
11. The coronavirus has created practical difficulties in fully complying with the amnesty timeously in terms of the time frame set out in the original notice.
12. Bearing the above in mind, and the fact that the South African Police Services may well have or may well develop other priorities in policing the consequences of the coronavirus, we would urge the Minister to reconsider the time frame and conditions of the amnesty and to extend it for at least another six months.

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13. The writer has also received numerous queries relating to the renewal of competency certificates and the renewal of licences that are going to expire either during the lockdown period (i.e. they will be lodged late) or the 90 day time period commences within the lockdown period).
 14. We urge you to consider some sort of suspension of all time limits relating to these processes by virtue of the fact that many designated firearm officer quite rightfully will not be performing firearm duties.
 15. The writer is more than willing to meet with the Minister or senior officials to explain the contents of this letter in detail or to assist in the convening of a consultative meeting between interested parties.
 16. Please treat this as urgent and acknowledge receipt.

Yours faithfully



M J HOOD & ASSOCIATES

Email: martin@mjhood.co.za

