Meeting with Lt Gen Sitole re relicensing

By: Hubert Wentzel
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At the commencement of the meeting on 17 November 2015 shortly after 9:00 it was quite clear that Gen Sitole had carefully prepared himself by reading the circular of 21 August and consulted with his subordinates. I indicated that, despite having asked him to convene a special stakeholders' meeting, Fred and I were there representing our respective associations. Gen Sitole apologized by stating that he had been under the impression that it was a meeting with "representatives" of the forum. He nevertheless was of the view that the meeting must continue and that he expected us to give feedback to the forum. I informed that that had been the idea all the time.

We indicated that we needed to discuss the abovementioned circular and some general aspects pertaining to the non-functioning of the CFR. Regarding the circular we indicated that it was flawed and that wrong interpretations could lead to unlawful arrests, seizure of firearms, claims against the police and other unintended consequences. We further indicated that the relicensing matter was high on the agenda and a solution was urgently sought. We also indicated that the sms system of notification to renew licenses was flawed since not everyone received or receives such notifications.

He informed that a sms transmission system is in place in terms of which all licensees should receive sms messages 90 days prior to the expiration of a particular license regarding such renewal. We informed that although it might be in place, not all licensees receive such messages. Since it is possible that the CFR records might not be up to date with relevant information we agreed to communicate to all stakeholders his request to ensure that members of the various associations update their contact details at the CFR. He also requested that, where possible, stakeholders should play a role in comparing their database with that of the CFR. He acknowledged that systems do not talk to each other and that associations might not necessarily have such particulars available. [Although it was not mentioned in the meeting, we at NAACCSA are extremely cautious with data and other information pertaining to members, their addresses, contact details and firearms. We do not want such information to fall into wrong hands.] The comparison of data on members also presupposes the opportunity to actually get into the CFR and to be allowed to talk to some of the staff members, which is extremely difficult at present. We further confirmed that an offer of assistance from some of the stakeholders with IT work was indeed made

We also discussed the 90-days sms notification period and he took note that it served very little purpose to only receive such notice on the 90th day before expiration of the license. We, however, agreed that the period (120 days or even longer) needs to be discussed at the Stakeholders' Forum. Until then the 90-days' notice remains in force. Gen Sitole was also of the view that a task team needs to consider other technological means to communicate relevant information (such as renewal notices) to license holders.

Gen Sitole then observed that, apart from mistakes regarding validity periods, the mentioned circular was, based on their opinion, in accordance with the law, albeit the major shortfall was that it did not provide guidance to DFOs, hence could (and probably would) lead to inconsistent application. Fred then pointed out that it has already done so and referred to the Free State Provincial Commissioner's instructions which are contrary to those of the Western Cape and that in other provinces even different procedures are followed. We gave examples of inconsistencies by referring to some DFOs who had, as long as two years (and other periods) after the expiry of licenses, accepted applications for renewal and where licenses had been issued. He agreed that inconsistencies were a major problem and indicated that there soon will be held a DFO's conference/workshop where these and other matters will be discussed.

Gen Sitole then stated that he had given instructions that the circular will be placed in abeyance (not withdrawn or repealed at this stage) and be substituted by another one. He reiterated that the instructions, and all those that derived from it, such as the Free State's, will henceforth not be enforced. In our presence he phoned Maj Gen Mamotheti who indicated that the fresh circular had not yet been sent out but probably will be by this afternoon. It was clear that, as a police officer, he was concerned about the presence in civilian hands, of official police correspondence. In this regard he also requested me to communicate with Mamotheti with a view of preparing a media release regarding the new circular.

Since we have not had sight of the fresh circular I am stating only what he conveyed to us. I accordingly do not vouch for the correctness of the it and I suggest that we disclose to our members only after we had perused the circular or the media release. Be that as it may, Gen Sitole stated as follows:

1. If, for instance, a license expires on 30 June and the owner applies for renewal thereof on 28 June, the DFO must accept the application for renewal (SAPS518a) and although the person will be in possession of an unlicensed firearm on 1 July, s/he would not be expected to surrender to the police such firearm. [What his justification for this statement is I do not know since the presumption of validity is applicable only to an applicant who has applied for renewal "not less than 90 days before expiry thereof".] In essence any such application will be treated as if the application was made in time but the merit of the late application will be considered as part of the process of relicensing. The present license will be deemed to remain valid until the relicensing process is finalized.
2. Had the application been submitted in time but, due to administrative problems with SAPS it was only processed after 30 June it will still be regarded as a valid application for renewal. The old license will be deemed to be valid until such time as the relicensing process is finalized.
3. If the person, however, applies for the renewal on 2 July, s/he is obliged to apply for a new license (SAPS271) and surrender the firearm to the police.
4. On a question whether the owner could surrender the firearm to a licensed dealer he stated yes, provided there will not be liability for the state (SAPS). It was obvious that the liability was (rightly so) a serious issue for SAPS/the Minister. [It must be borne in mind the police may incur liability if a person should use an unlicensed firearm during domestic violence or injure another while he handled a firearm in a state of intoxication or even when he shoots a violent criminal with a firearm that is in his/her possession but not legally licensed as the license has expired] he also did not deal with the issue as to whether a dealer was legally entitled to accept an unlicensed firearm for safe keeping.
5. Gen Sitole accepted the possibility that there may be valid reasons for the late submission of renewal applications, such as illness, extended overseas travels, work or visits and stated that, in his view such applications should be accepted. However, the consistency of application of what constitute "valid reasons" remains a contentious issue. Be that as it may, under such reasonable circumstances late applications for renewals could be accepted and processed and will be assessed on the merit in each case

No discussion took place regarding the validity of the "green licenses" issued under the previous Act which are subject to the court order of 26 June 2009 in the SAHGCA and others' case. The *status quo* accordingly, remains.

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