



01 June 2020

APPLICATION FOR FURTHER FIREARM AMNESTY PERIOD: FOLLOW-UP MEETING

TABLE OF CONTENTS

1. INTRODUCTION.....	1
2. PAST FIREARM AMNESTIES IN SOUTH AFRICA	1
3. FIREARMS CONTROL ACT, 2000	2
4. FIREARM AMNESTY DECEMBER 2019 TO MAY 2020	3
5. REQUEST FOR FURTHER PERIOD OF AMNESTY	3
5.1. Committee meeting of 27 May 2020	4
5.2. Summary of previous research information note (27 May 2020)	5
5.2.1. Changes to the conditions of amnesty	5
5.2.2. Changes in the police stations excluded from amnesty.....	6
5.2.3. Renewals and amnesty during national Covid-19 lockdown	6
6. REFERENCES.....	6

1. INTRODUCTION

On 27 May 2020, the Portfolio Committee on Police agreed to the proposed further period of a firearm amnesty, but resolved that a follow-up meeting should be scheduled to engage further on the matter. The follow-up meeting was scheduled for 03 June 2020.

This paper is in preparation of the scheduled follow-up meeting and provides an overview of the legislative framework for firearm amnesty in South Africa and background information on the lead-up to the 2019/20 amnesty (01 December 2019 to 31 May 2020).

The paper further provides an overview of the previous Committee meeting held on 27 May 2020 and highlights the concerns that were raised by Members of the Committee.

2. PAST FIREARM AMNESTIES IN SOUTH AFRICA

In South Africa, there have been three firearm amnesties in the past in 1994, 2005 and 2010. The first amnesty was in 1994 to mark South Africa's transition to democracy. This amnesty ran for only 24-hours. A much larger amnesty was declared in 2005, when 100 006 firearms were handed over, of which more than half were illegal weapons. During the 2010 amnesty, 32 169 firearms were handed over to the police, of which 27% were illegal firearms. While the 2010 amnesty was declared 'a success' by the then Minister of Police, it is difficult to obtain reliable data on the amnesty.¹

With the inception of the Firearms Control Act, 2000 (Act 60 of 2000) (FCA) in 2003, it promised to be an effective way of firearm control, administered by the South African Police Service (SAPS). The Central Firearm Register (CFR) was established to process and monitor

¹ <https://www.news24.com/Archives/Witness/Firearm-amnesty-32169-guns-taken-20150430>
https://www.westerncape.gov.za/sites/www.westerncape.gov.za/files/the_effect_of_firearm_legislation_on_crime_western_cape.pdf



firearm ownership through applications and renewals. However, the CFR has been plagued with many challenges, which led to a near collapse of the information technology system behind the CFR. A Turnaround Strategy was adopted to address service delivery challenges and allegations of fraud and corruption within the system.

On 28 August 2019, a draft notice to declare a firearm amnesty was referred to the Portfolio Committee on Police for consideration and report. Section 139(2)(a) of the Act provides that an amnesty can only be declared with the approval of Parliament.

3. FIREARMS CONTROL ACT, 2000

In South Africa, a firearm amnesty is governed through sections 138 and 139 of the FCA. It states -

138 Definition

In this Chapter 'amnesty' means an indemnity against prosecution for the unlawful possession of a firearm or ammunition.

139 Amnesty

(1) *The Minister may, by notice in the Gazette, declare an amnesty if-*

- (a) *the amnesty may result in the reduction of the number of illegally possessed firearms in South Africa; and*
- (b) *it is in the public interest to do so.*

(2) *A notice contemplated in subsection (1)-*

- (a) ***will only be valid if it is approved by Parliament;***
- (b) *must specify the period during which persons may apply for amnesty; and*
- (c) *must specify the conditions under which amnesty may be granted.*

(3) *A person who surrenders a firearm or ammunition in compliance with a notice published in terms of subsection (1), may not be prosecuted in relation to-*

- (a) *the firearm, for having been in possession of that firearm without the appropriate licence, permit or authorisation; or*
- (b) *the ammunition, for having been in possession of that ammunition without having been in lawful possession of a firearm capable of discharging the ammunition.*

(4) (a) *A person who surrenders a firearm in compliance with a notice published in terms of subsection (1) may apply in terms of this Act for a licence in respect of that firearm. (b) If a licence is granted, the firearm and ammunition, if any, surrendered in terms of this Act must be returned to the holder of the licence.*

(5) *The Registrar must dispose of any firearm or ammunition surrendered in compliance with a notice in terms of subsection (1) in such manner and after the expiry of such period as may be prescribed.*

The FCA does not allow the extension of an amnesty and the requested 'extension' of the current amnesty must be viewed as a new amnesty.



4. FIREARM AMNESTY DECEMBER 2019 TO MAY 2020

The current amnesty started in 2017. In March 2017, the previous Minister of Police tabled a draft notice for the declaration of a firearm amnesty, which was set to commence on 01 April 2017 and end on 30 September 2019. However, between March 2017 and February 2018, the Portfolio Committee on Police (5th Parliament) met four times on the proposed amnesty. Ultimately, on 14 February 2018, the Committee disapproved the amnesty based on the proposed dates and concerns about the capacity of SAPS to handle the intake of firearms.

On 15 August 2019, the Minister of Police wrote to the Speaker of the National Assembly on the declaration of an amnesty. The Speaker referred the application to the Portfolio Committee on Police for consideration and report on 28 August 2019.² The proposed dates for the amnesty was for a six-month period from 01 October 2019 to 31 March 2020.

The Committee agreed to the amnesty in principle, but requested that the dates of the amnesty be changes because, at the time, the proposed dates (01 October 2019 to 31 March 2020) no long longer applied.

On 28 August 2019, a draft notice to declare a firearm amnesty was referred to the Portfolio Committee on Police for consideration and report with new dates form 01 December 2019 to 31 May 2020. At the time, the Committee did not approved the amnesty and requested the Department to come back with additional information. The amnesty was approved by the the Committee on 31 October 2019 and approved by the National Assembly on 21 November 2019. The amnesty dates were gazetted on 27 November 2019. However, the gazetted notice did not include the 46 stations that were to be excluded from the amnesty³, but rather only the 3 stations mentioned during 2017/18.

After Members of the Committee raised concerns about the omission, the Minister gazetted an amended notice on 13 December 2019 to name the 46 police stations that cannot accept firearms and ammunition during the amnesty.

5. REQUEST FOR FURTHER PERIOD OF AMNESTY

On 19 May 2020, the Minister of Police wrote to the Speaker of the National Assembly to request a declaration for a further period of amnesty, as a result of the impact of the state of disaster declared under the Disaster Management Act, 2005 (Act No. 53 of 2005). The Minister indicated that the intended notice (to be gazetted) is included.

The Speaker referred the notice to declare a further amnesty to the Portfolio Committee on Police for consideration and report on 26 May 2020.⁴

² ATC No 51 – 2019 First session of the 6th Parliament, published on 28 August 2019.

³ Briefing to the Portfolio Committee on Police. Firearm Amnesty 2019/20 dated 23 October 2019.

⁴ ACT No 60, published on 26 May 2020. The notice was referred to the Select Committee on Security and Justice on 25 May 2020



5.1. Committee meeting of 27 May 2020

The Portfolio on Police met on 27 May 2020 to discuss the proposed amnesty. The SAPS presented the **successes of the amnesty** to date, which include:

- With the 2010 amnesty, SAPS had received roughly 33 000 firearms and 46 000 pieces of ammunition. (Thus, the 2019/20 amnesty was not as successful as the previous amnesty).
- 19 500 firearms were surrendered, peaking at 5 154 in March 2020 and reduced to 385 in April (due to the lockdown) and increased again to 3 194 in May 2020. It should be noted that the lockdown was still in place in May.
- The current firearms amnesty had not been as successful as previous ones, as it had only yielded 19 500 firearms compared to the mid-30 000s achieved previously.
- Of these 19 500 firearms, 16 564 were amnesty-related, 2 141 were voluntarily surrendered and 795 were estate firearms.
- 6 891 cases were sent for analysis by the Integrated Ballistic Information System (IBIS) of which only 33 analysis reports were generated.
- 10 704 applications for firearms licenses were received.

Although the amnesty was agreed to, various **concerns and objections** were raised, which necessitated a further engagement (date set for 03 June 2020). The issues raised during the meeting were:

- Members raised concern on the limited time available to engage on the proposed amnesty and that it would not allow a thorough discussion.
- Members asked why the extension request had been brought so close to the intended start date of the amnesty, as both houses of Parliament must approve the amnesty and then the NA must adopt the report of the Committee prior to the commencement of the amnesty.
- Relevant documentation was not received timeously. It was agreed that the documentation was sent to Members when it was received from the SAPS, which was very late the previous evening.
- The success of the amnesty to date was questioned when compared to previous amnesties.
- Concerns were raised on the finalisation of only 33 reports from the 6 891 cases sent for IBIS testing.
- Impact on the national Covid-19 lockdown and restrictions on the movement of people impeded taking advantage of the amnesty. The SAPS also have limited capacity due to the extraordinary deployment of the SAPS under the lockdown regulations.
- Members questioned the legality of approval of the amnesty without the intended notice for publication.



- Suggestions were made that the notice should include additional information on the conditions of the amnesty, for example the out-of-court settlement with the National Hunting and Shooting Association.
- Members asked whether a further period of 6 months would be sufficient to achieve the outcomes of the amnesty.

5.2. Summary of previous research information note (27 May 2020)

This section provides a summary of the information included on the Parliamentary Research Unit's Information note on the amnesty dated 27 May 2020. The information note included the changes to the conditions of the amnesty, the changes in the exempted police stations and firearm renewals and impact of the Covid-19 lockdown.

5.2.1. Changes to the conditions of amnesty

In the Government Gazette notice of 27 November 2019, one of the conditions under which amnesty was granted included - (d) An application contemplated in section 139(4)(a) of the said Act shall not apply to illegal firearms where documentary proof of previous ownership cannot be produced. *[Section 139(4)(a) reads "A person who surrenders a firearm in compliance with a notice published in terms of subsection (1) may apply in terms of this Act for a licence in respect of that firearm".]*

In the Minister's application for extension, the above-mentioned condition (d) is removed.

The removal of this condition resulted from an urgent court application by the National Hunting and Shooting Association (NHSA) against the Minister of Police to have the amnesty set aside for various reasons. One of which were the renewal of lapsed firearm licenses. However, an out of court settlement was reached on the issue in which the SAPS changed its administrative process for the application for new firearm licences under the amnesty on 06 January 2020. The amended process allows firearm owners to submit their applications for the renewal of expired competency certificates together with their applications for firearm licences during the amnesty period, which ends on 31 May 2020. *The press statement of the NHSA can be accessed at <<https://natshoot.co.za/nhsa-info/newsletters/nhsa-newsletter/2020/vol-16-01>>*

People with lapsed firearm licences now have three options under the amnesty:

- to hand in the firearm with SAPS and to apply for a new licence and the renewal of competency (if applicable);
- to hand in the firearm with SAPS for destruction; or
- to wait for the result of the Gun Owners of South Africa (GOSA) main court case, which interdicts the SAPS from forcibly taking firearms from people with expired licences (did not apply within 90 days before expiry). *Additional information on this issue can be provided if needed.*



5.2.2.Changes in the police stations excluded from amnesty

On 23 October 2019, the SAPS made a presentation to the Portfolio Committee on Police, in which it stated that 46 police stations would be excluded from the amnesty process based on a risk assessment on the readiness of all provinces to implement the amnesty.⁵ The stations mentioned were not included in the Government Gazette notice dated 27 November 2019, but rather only the three stations mentioned during 2017/18. After Members of the Committee raised concerns about the omission, the Minister gazetted an amended notice on 13 December 2019 to name the 46 police stations that cannot accept firearms and ammunition during the amnesty.

The proposed firearm amnesty is set to run from 01 June 2020 to 30 November 2020 lists only 28 police stations that will be exempt from the amnesty, which is a significant decrease from the original 46 exempted police stations. The SAPS indicated that many of the previously excluded stations' risk profile improved and were thus included in the proposed amnesty.

5.2.3.Renewals and amnesty during national Covid-19 lockdown

The SAPS has also issued a directive on 07 May 2020 regarding the renewal of firearm licenses that lapsed during the national lockdown, which prevented firearm owners from applying for renewal within the 90 days before the date of expiry. Under level 5 of the national lockdown, licensing was not listed as one of the essential services and as a result, normal processes of licensing were suspended. However, if a license has already expired during the lockdown period, the firearm owner must apply for a new licence.

The directive further acknowledges that the period of amnesty could not be fully utilised by firearm owners because of the lockdown and that the Minister will approach Parliament to approve an extension to the amnesty period.

6. REFERENCES

Announcements, Tablings and Committee Reports (ATC) (No 51 - 2019)

Brand South Africa (2010) Firearms amnesty 'a success' [Internet] Available from: <<https://www.brandsouthafrica.com/governance/services/gun-130410>> [Accessed on 02 September 2019]

Firearms Control Act, 2000 [Act no 60 of 2000].

Gould, C and Kirsten, A (2015). Will fewer firearms make South Africa safer? ISS Africa. [Internet] Available from: <<https://issafrica.org/iss-today/will-fewer-firearms-make-south-africa-safer>> [Accessed on 09 March 2017].

Minister of Police (2018) Declaration of amnesty in terms of section 139 of the Firearms Control Act, 2000 (Act 60 of 2000).

⁵ Briefing to the Portfolio Committee on Police. Firearm Amnesty 2019/20 dated 23 October 2019.



Minister of Police (2019) Declaration of amnesty in terms of section 139 of the Firearms Control Act, 2000 (Act 60 of 2000).

Ndaliso, C (2010) Firearm amnesty: 32 169 guns taken. [Internet] Available from: <<https://www.news24.com/Archives/Witness/Firearm-amnesty-32169-guns-taken-20150430>> [Accessed on 02 September 2019].