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**THE ROLE OF NATIONAL AND  
INTERNATIONAL SPORTS-SHOOTING,  
HUNTING AND COLLECTORS ORGANISATIONS  
IN TERMS OF THE FIREARMS  
CONTROL ACT 60 OF 2000**

## **1 Introduction**

The aim of this note is to examine the role of national and international sports-shooting, hunting and collectors organisations in the application of the Firearms Control Act 60 of 2000, as distinguished from the accredited organisations referred to in that Act.

The Firearms Control Act finally came into operation on 1 July 2004 (Proc 28 in GG 26374 of 2004-05-28). The regulations made by the Minister of Safety and Security under section 145 of the Act came into operation on the same date (reg 114; GN R345 in GG 26156 of 2004-03-26).

Some provisions of the Act and some regulations made under it, particularly those relating to accreditation (see par 3 2 below), had already come into operation on 1 July 2003 (R52 and R957 in GG 25153 of 2003-06-30).

The Act repeals the whole of the Arms and Ammunition Act 75 of 1969 which previously regulated the possession of arms and ammunition. The new Act introduces an intricate scheme for the control of firearms quite unlike that provided for by the previous Act. The introduction of the new Act was accompanied by some controversy (and not a little drama). The Act attracted the attention of the High Court even before it came into operation. In *South African Gun Owners Association v State President of the Republic of South Africa* (TPD 2004-06-30 case number 16620/04) a seemingly ill-advised application by seven firearms-related organisations to interdict the new Act from coming into operation a few days before it was set to do so, was dismissed with attorney-and-client costs.

The new Act and the regulations issued in terms thereof raise many new questions, some of them likely to remain unanswered for some time.

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## 2 The Arms and Ammunition Act

To fully comprehend the implications of the new Act, it is necessary to examine the background provided by the previous Act. The 1969 Act provided that no person was allowed to possess a firearm without a licence issued by the Commissioner of the South African Police (s 2 read with s 3(1)). This Act itself allocates no functions to hunting, sports and collectors organisations, but the Act empowered the Minister of Law and Order to make regulations, *inter alia*, relating to the declaration of persons as collectors of arms, *bona fide* sportsmen (sic) and *bona fide* hunters (s 43(1)(kA)). (The relevant regulations appeared in GN R787 in GG 15652 of 1994-04-22 as amended by GN R931 in GG 15734 of 1994-05-06.) Persons who sought to be so declared had to apply for such declaration in terms of regulation 20 in the case of collectors, and in terms of regulation 27 in the case of hunters and sports persons. Collectors had to provide proof of membership of an organisation of which the primary *bona fide* object was to promote the collection of arms and which had been approved by the Commissioner in his discretion (reg 20(2)(e)). This requirement applied *mutatis mutandis* to sports persons, but not to hunters (reg 27 as amended by reg 3 of GN R931). Collectors and *bona fide* sports persons, but not hunters, therefore had to be members of collectors or sports organisations. The legislation did not allocate any functions or duties to the aforementioned organisations and imposed no obligations on them. All that was thus required was, firstly, proof of membership of the organisation, secondly, that the primary object of the organisation was to promote the collection of arms, or sports, as the case might be, and thirdly, that the organisation had been approved by the Commissioner. In practice, the individual who sought to be declared as a collector or a *bona fide* sports person would attach a letter or certificate of membership from the organisation to the application (form 318, Annexure L to the regulations). There was no provision for any procedure in the Act or regulations or any form in the annexures to the regulations, for an application by the organisation for its approval by the Commissioner.

In conclusion, then, the collectors or sports organisation played no direct or active role in the control of firearms other than to lend credence to the claim of the collector or sports person that they were indeed collectors or *bona fide* sports persons. Indirectly they might have played a role. If the relevant organisation for some reason lost the approval of the Commissioner, the basis of the individual's declaration as collector or *bona fide* sports person would have fallen away. The Commissioner could withdraw the status of the collector, sports person or hunter, although discontinuation of membership of an approved organisation was not listed expressly amongst the grounds for such withdrawal (reg 24). The legislation made no direct or express provision for the consequences of loss of such status, or in the case of an organisation, the loss of the approval of the Commissioner.

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It must also be noted that the legislation made no direct or express provision for a system of accountability by the organisation to the Commissioner.

In regard to *bona fide* hunters, membership of an organisation was not a requirement, and such organisations played no role in the scheme designed by the legislation.

### **3 The Firearms Control Act**

#### *3.1 Two different kinds of organisations*

The Firearms Control Act weaves a web far more intricate than that of the 1969 Act. (The Act and regulations add up to some 400 pages.)

The new legislation distinguishes between “accredited” associations or organisations (ss 16(2) and 17(2) as well as regs 4(1) and 5(1)) and “national” or “international” associations or organisations (regs 4(1)(f) and 5(1)(c)). The legislation uses the words “association” and “organisation”. The difference between the two words may have some significance, but for the sake of convenience the term “organisation” will be used herein to denote both. (In the case of hunting, the legislation refers to an “association” (reg 4(1)); in the case of sports-shooting it refers to an “organisation” (reg 4(1)); in the case of collectors it uses the word “association” (reg 5(1)); in the case of the national or international collectors body, it uses the words “association or organisation” (reg 5(1)(c)).

It must be noted that the aim of this enquiry is to examine the role of the “national” or “international” organisations referred to in regulations 4(1)(f) and 5(1)(c), and not that of the “accredited” organisations. For the purposes hereof reference to national or international organisations denotes those referred to in the last mentioned regulations, and not the accredited organisations. (The accredited organisation may itself be a national organisation. It is not inconceivable that, for instance, an existing (accredited) national (‘national’ in the ordinary sense of the word) organisation which practices a particular discipline of sports-shooting/hunting/collecting, may want to form an umbrella-type “national” organisation for the purpose of reg 4(1)(f) or 5(1)(c), specifically in order to meet the requirements of these regulations, or for other purposes.) To understand the role of the national and international organisations, it is necessary to first consider the functions of the accredited organisations.

#### *3.2 The accredited organisation*

It is evident that the 2000 Act seeks to increase control over firearms (see the short title of the Act). The 2000 Act, like the 1969 Act, requires a licence for

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the possession of a firearm (s 3). The Act provides for licences to be issued for purposes of self-defence (s 13), hunting and sports-shooting (s 15) and collecting (s 17). (It must be noted that this inquiry is restricted to the position regarding licences for private individuals for the aforementioned purposes and not for business or public purposes. See for instance ss 19 and 20.)

A private individual will not be able to acquire licences in terms of the new Act for more than four firearms without gaining the status of a “dedicated” hunter or sports person (sic) or collector (see s 13(3), 15(3), 16 and 17). (Seemingly, a person can acquire a fifth licence in terms of section 14, but not in terms of section 13.) A “dedicated” hunter or sports person is one who, amongst meeting other requirements, is a member of an “accredited” hunting or sports-shooting organisation (s 1). A (private) collector is one who amongst meeting other requirements, is a member of an “accredited” collectors organisation (s 1). Accreditation of the organisation must take place in terms of section 8 and the relevant regulations. Regulation 2 contains the general provisions for the accreditation process. Regulations 4 and 5 set out specific provisions applicable to the accreditation of hunting and sports-shooting organisations, on the one hand, and (private) collectors organisations, on the other hand.

Regulations 2, 4 and 5 impose heavy burdens on the accredited organisations for which they are accountable to the Registrar of Firearms. (The National Commissioner of the South African Police Service is the Registrar (s 1 read with s 123). The Registrar is responsible for the Central Firearms Register (s 124).) The Registrar may cancel an accreditation if there is a failure to comply with any criterion for accreditation (s 8(3)).

The duties of the accredited hunting or sports-shooting organisation include providing for the category of dedicated membership in its founding document, training requirements for its members that comply with the South African Qualifications Authority Act 58 of 1995 and the Skills Development Act 97 of 1998, evaluation of and recording of the activities of its members, and annual reports to the Registrar reflecting its membership (reg 4).

The accredited collectors organisation similarly has a number of obligations, including processes for the evaluation and categorisation of its members, and also annual reports to the Registrar with regard to its membership (reg 5). In addition the burden falls on the accredited collectors organisation to approve a firearm for the purpose of collecting (s 17(1)(a)).

In the case of the dedicated sports person or hunter or collector, a licence may be issued for hunting, sports-shooting or collecting upon declaration by the accredited organisation that the applicant for the licence is a member of that organisation (ss 16(2) and 17(2) respectively).

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Unlike licences issued in terms of the 1969 Act, licences issued in terms of the 2000 Act must be renewed periodically (s 27). The Registrar may cancel a licence if the holder of the licence no longer qualifies to hold the licence (s 28(2)(a)).

It is evident that the accredited organisation is accountable directly to the Registrar with regard to the matters provided for in the legislation. It is furthermore evident that there is a direct link between the Registrar and the accredited organisation, and that the accredited organisation serves as a tool in the hands of the Registrar through which to control the individual firearm licence holder. The validity of the firearm licence issued to the individual depends on the link between himself, the accredited organisation and the Registrar.

The continued holding of the licence depends on continued membership of the accredited organisation, and the continued accreditation of the organisation.

An interesting consequence of the scheme designed by the legislation, is that at least some of the actions of the accredited organisation are likely to constitute “administrative action” for the purpose of the Promotion of Administrative Justice Act 3 of 2000 (s 1(i)(b) – with the resultant implications; see generally in this regard, just by way of one source, Hoexter *The New Constitutional and Administrative Law II* (2002) 3, 89-92, 98, 103 and 114-121).

Having established the role of the accredited organisation, one can turn one’s attention to the national or international organisation.

### 3 3 *The national or international organisation*

Regulation 4, which governs the accreditation of hunting and sports-shooting organisations, stipulates as one of a number of requirements that such organisations must submit documentary proof of membership of a national or international association or organisation which, to the satisfaction of the Registrar, has the primary *bona fide* object to promote responsible hunting or sports-shooting (reg 4(1)(f)). Regulation 5, which governs the accreditation of collectors organisations, contains a similar requirement, save that the object of the national or international organisation must be to promote responsible collecting of firearms. There are a number of features regarding the national or international organisations that must be remarked upon:

3 3 1 Unlike the accredited organisations, the national or international organisations are not mentioned in the Act, but only in the subordinate legislation.

3 3 2 Unlike the accredited organisations, they are not directly accountable

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to the Registrar in terms of the scheme of the legislation.

- 3 3 3 There is no provision in the Act or the regulations for any procedure to approach the Registrar directly for any form of registration or approval, much less accreditation, of the national or international body.
- 3 3 4 The sole reference to such organisations are those in regulations 4(1)(f) and 5(1)(c), whilst substantial portions of the legislation are allocated to the accredited organisations.
- 3 3 5 The legislation allocates no role, function or duty to the national or international organisation, whilst imposing heavy burdens on the accredited organisation.
- 3 3 6 The legislation not only imposes formidable obligations on the accredited organisation, but also clothes it with certain powers such as the determination of collectable firearms (s 17(1)(a)), categorisation of the various classes of collectors (reg 5(1)(d)) and the training, assessment and evaluation of members (regulations 4(1) and 5(1)), to provide just a few examples. In fact the very status of the collector or dedicated hunter or sports person is determined by the accredited organisation, not the national or international association. Regulation 5(1)(d) is a very creative measure to create categories of trustworthiness of persons and to endow the accredited collectors association with decision making powers which might not be contemplated in the empowering provisions of the Act. (This is nevertheless not the focus of the present discussion.)
- 3 3 7 The process of proving compliance with the requirement of membership of the national or international organisation is in the hands of the accredited organisation, not in the hands of the national or international organisation. It is part of the accreditation application by the organisation that seeks accreditation. The application form for accreditation as a collectors, hunting or sports-shooting organisation (form SAPS519, annexure A to the regulations) does not even contain any reference to the national or international organisation. Presumably it would be sufficient for the organisation that applies for accreditation, to attach to the application the founding document of the national or international organisation together with a certificate of membership thereof.
- 3 3 8 With regard to the international organisation, there is the consideration that such bodies are unlikely to have their headquarters in South Africa so that simply as a matter of jurisdiction, such a body would be beyond the reach of the Act. The requirement (in regs 4(1)(f) and 5(1)(c)) of a national organisation stands next to that of an international organisation as an alternative at the same level. If the function of the international organisation is such that it does not require it to be subject to the jurisdiction of the South African law, then it is axiomatic that the function of the national organisation is

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such that it does not require it to be subject to the jurisdiction of the South African law either.

These considerations lead to the inescapable conclusion that the role of the national or international organisation is something quite different to that of the accredited organisation.

The first conclusion that can safely be drawn then, is that it is the accredited organisation, not the national or international organisation, that provides the link between the Registrar and the collector, dedicated hunter and dedicated sports person; further that it is the accredited organisation that determines the various criteria for its members for purposes of the Act; that it is the accredited organisation that is accountable to the Registrar; that it is the accredited organisation that serves as the tool through which the Registrar fulfils his or her functions in terms of the legislation (s 124 read with s 125), that it is the accredited organisation which controls the collector, dedicated hunter and dedicated sports person; conversely, that it is not the national or international organisation that fulfils these functions. It is axiomatic that if the intention was that the national or international organisation should fulfil these functions, then it would have been the national or international body which would have been required to accredit.

A further question arises: if the abovementioned functions are not those of the national or international organisation, and certainly no functions or duties are allocated to them by the legislation, then do they have any role to play with regard to the legislation whatsoever? Indeed why is there any point in stipulating the requirement of membership of such a body at all?

For the purposes of considering this last issue, one needs to bear in mind that the shooting sports include a variety of different disciplines having nothing in common other than that a firearm is used to engage some form of target. To put it differently, they may have as little in common as rugby, soccer and golf have with each other, other than that each of these require a ball to be placed at a particular location, but that is where the commonality ends. Collectors organisations may likewise be disparate groups of individuals whose interests may differ vastly (or even conflict, especially since there is inevitably some commercial value to collecting). Hunting by its very nature may vary from solitary activities to those that are practised by way of social gathering. In addition, different forms of hunting may have as little in common as rugby, soccer or golf.

If every local club of sports shooters, hunters or collectors were to apply for accreditation, the Registrar would have to deal with hundreds, possibly thousands of different little accredited organisations. If each little club were to accredit, it would place an undue, possibly an impossible, burden on the resources of such clubs, and, indeed, it would result in an inefficient system

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of administration for the Registrar.

It is clear that the legislature does not and could not, seek to exercise control over firearms in the hands of collectors, dedicated sports persons and hunters through one single national organisation for sports shooters, or one for hunters, or one for collectors. As pointed out, it could in any event not do so through an international organisation. Apart from the fact that such a requirement would likely fall foul of the constitutional right to freedom of association (s 18 of the Constitution of the Republic of South Africa Act 108 of 1996), the use of the indefinite article “a” with reference to national or international organisation confirms the interpretation that it is not required that all collectors or dedicated hunters or sports persons belong to a single national or international organisation each. There could therefore be more than one national or international organisation for the different groups of accredited organisations, that is more than one national or international organisation for the hunters, more than one for the sports persons, and more than one for the collectors.

One would expect that the Registrar, for reasons of efficient administration, would raise objection to too great a fragmentation of the different groups of accredited organisations. The danger thereof is probably not too great due to the necessity for organisations to pool resources. In the case of the shooting sports, there would by and large already be some national or international organisations already in place.

Having demonstrated that the public authorities will likely have to deal with at least a substantial number of accredited organisations (even if not hundreds of fragmented little groups), one arrives at at least two good reasons for the requirement of national or international organisations.

The first is this, that the existence of a national or international organisation provides some credence to the existence of the accredited organisation, in the sense that it will not be a case of being here today and gone tomorrow, resulting in a loss of control by the Registrar.

The second reason is the constitutional imperative that public authorities must adhere to the principles of responsive government, public participation, accountability, transparency and the provision of information to the public (s 195 of the 1996 Constitution; see also in this regard the preamble to the Promotion of Administrative Justice Act 3 of 2000, as well as section 4 thereof with regard to the duties of public authorities that take administrative action affecting the public). Particularly the national organisations, but possibly also the international organisations, would provide convenient vehicles to public authorities to carry out their obligations in this regard.

If the responsibility of compliance with the Act and the regulations, lies



with the accredited organisation, and not with the national or international organisation, then the authority for such compliance lies with the accredited organisation as well, and not with the national or international organisation. An attempt by the accredited organisation to pass its functions to the national or international organisation, would amount to abdication of authority (“passing the buck”); an attempt by the national or international organisation to exercise the functions conferred upon the accredited organisation, would amount to usurpation of authority, unlawful dictation or unlawful referral (resulting in “rubber-stamping” by the accredited organisation) (in this regard see generally Hoexter 129, 137). A clause in the constitution of the national or international association which purports to bind the exercise of the discretion of the accredited association in this respect, can, it is submitted, not relieve the accredited association of either the power or the duty to apply its own mind to the matter. The final authority and responsibility with regard to the functions conferred by the legislation upon the accredited organisation, therefore rests with the accredited organisation and not with the national or international organisation.

#### **4 Conclusion**

The role of the national or international organisations is quite different to that of the accredited organisations. Whilst the legislation imposes a number of obligations and confers a number of powers on the accredited organisations, the legislation does nothing of the kind with regard to the national or international organisations. Whilst the accredited organisations serve directly as a mechanism through which the scheme of control over firearms is exercised, the national or international organisations play no direct role in this regard. At most the national or international organisations serve a secondary or subsidiary purpose, namely to lend credence to the existence of the accredited organisation, and to serve as a convenient vehicle for public authorities through which to comply with the principles of transparency, accountability and democratic responsive government. The final authority and responsibility with regard to the functions conferred by the legislation, lies with the accredited organisation, and not with the national or international organisation.

Eugene van der Berg  
*University of Port Elizabeth*