

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1

2.1.1 Clause 1 of the Bill seeks to amend section 1 of the Act by inserting the definitions in the Bill that relate to "Authority" to indicate that it refers to the Private Security Industry Regulatory Authority; "Automated Ballistic Identification System", "ballistic sampling", "percussion/cap and ball firearm", "prohibited firearm" and "Service".

2.1.2 The clause further substitutes the definitions of "dedicated hunter", "dedicated sportsperson", "firearm", "Minister", "muzzle loading firearm", "occasional hunter", "occasional sports person", "professional hunter", "public collector" and "restricted firearm".

2.2 Clause 2

The clause seeks to amend section 2 of the Act by substituting paragraph (a) in the "Purpose of Act" to provide that the purpose is to restrict access to firearms by civilians and to comply with regional and international instruments of firearms control.

2.3 Clause 3

The Clause 3 inserts section 2A that deals with the principles of the Act and section 2B that deals with the objects of the Act.

2.4 Clause 4

The clause deletes section 3(2) of the Act which provides that no person may possess a muzzle loading firearm unless issued with the relevant competency certificate. This deletion is a consequence of the amendment of the definition of "firearm" that now includes "muzzle loading firearm".

2.5 Clause 5

The clause amends section 4(1) of the Act by providing that any grenade, rifle grenade and any de-activated restricted or prohibited firearm are also prohibited devices and firearms and may not be possessed. Furthermore the clause provides that the Minister may declare any specified type of ammunition to be prohibited ammunition.

2.6 Clause 6

The clause amends section 5 of the Act by deleting "a muzzle loading firearm" as a device that is not regarded as a firearm. This is a consequential amendment as a result of the substitution of the definition of a "firearm".

2.7 Clause 7

2.7.1 The clause amends section 6 of the Act by inserting subsection (1A) that provides that a competency certificate, licence, permit or authorisation may be issued to an applicant for a firearm who is between the age of 18 and 21 years if there are compelling reasons to do so.

2.7.2 The clause also inserts subsection (1B) that provides that if a person between the age of 18 and 21 years applies for a firearm licence, permit or authorisation, he or she must have been under the supervision of a person who is over the age of 21 years and who has held a firearm licence for at least three years.

2.8 Clause 8

The clause amends section 7 of the Act by inserting subsection (1A) that provides that a representative of a juristic person must hold an executive or managerial position in that juristic person.

2.9 Clause 9

This clause amends section 8 of the Act by providing for the chairperson or authorised office bearer of an accredited association to verify the application made by a member of the accredited association regarding the use, purpose and category of the firearm applied for, as well as the motivation for the application. The new subsections (8) to (9) provide that the Registrar must consider the verification by the accredited association when considering the application of a member of that association, but the Registrar may also verify such information independently and may also refuse of the application on good cause.

2.10 Clause 10

2.10.1 The clause seeks to delete subsection (4) that currently provides for the coming to the end of a disqualification of a person who became or was declared unfit to possess a firearm in terms of the Act or the previous Act upon the expiry of a period of five years from the date on which the person became or was declared unfit.

2.10.2 The clause further amends section 9(5) by providing that the Registrar may allow a person between the age of 18 years and 21 years to apply for a competency certificate if there are compelling reasons. In addition, the subsection seeks to delete the inclusion of being a private collector of firearms as a compelling reason.

2.10.3 The clause further seeks to add subsection (7) that provides for the Registrar to temporarily suspend the processing of an application for a competency certificate where the applicant for a competency certificate has been issued with an interim protection order in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), or the Protection from Harassment Act, 2011 (Act No. 17 of 2011), until the final determination of the interim protection order.

2.10.4 The addition of subsection (8) provides that the applicant must disclose to the Registrar if the applicant has had any protection order served on him or her and any failure to do so is a criminal offence.

2.10.5 In terms the new subsection (9), a competency certificate may not be issued to a person who has been convicted for any offence which has an element of violence or sentenced to imprisonment without the option of a fine.

2.11 Clause 11

2.11.1 Clause 11 of the Bill amends section 10 of the Act by providing that a competency certificate must now specify whether it also relates to a dedicated sports person, a dedicated hunter or a professional hunter, amongst the other purposes for which a firearm is required by the applicant. The clause also inserts subsection (1)(c) in order to provide that the competency certificate must specify the period of validity of the competency certificate and any other information as may be prescribed. The clause also amends section 10 providing that a competency certificate shall remain valid for a period of 5 years from the date of issue, unless terminated or renewed in terms of the Act

2.11.2 The clause further deletes subsection (3) that provides for the lapsing of a competency certificate after ten years from the date of its issue.

2.12 Clause 12

2.12.1 Clause 12 of the Bill amends section 10A of the Act which provides for the renewal of competency certificates by seeking to provide that applications for renewal of competency certificates must be made at least 90 days before the date of expiry of such competency certificate.

2.12.2 The clause also deletes subsection (2) that provides that a holder of a competency certificate relating to a muzzle loading firearm who wishes to renew the competency certificate must apply for renewal at least 90 days before the date of its expiry.

2.13 Clause 13

Clause 13 seeks to insert a new section 11A in the Act that provides that an applicant must state that he or she intends to possess the firearm for any one or more of the reasons set out in the Act; and must provide written proof and evidence to the satisfaction of the Registrar in relation to the requirements set out in the Act and prescribed for requiring a firearm

2.14 Clause 14

2.14.1 Clause 14 amends section 12 of the Act that deals with additional licences.

The clause seeks to delete in subsection (1) the reference to the provisions of section 13 (that relates to a licence to possess a firearm for self-defence purposes) and the provisions of section 14 (that relates to a licence to possess restricted firearms for self-defence). Subsection (1) is further sought to be amended by providing that the Registrar may issue an additional firearm licence for occasional hunting and sports-shooting as well as a licence for dedicated hunting and dedicated sports-shooting to a family member who resides in the same household as the holder of such licence.

2.14.2 The clause further seeks to amend subsection (3) by providing that if the holder of the licence and the holder of the additional licence are no longer residing in the same household, the holder of the additional licence must return the licence to the Registrar, failing which a criminal penalty is provided for.

2.15 Clause 15

2.15.1 Clause 15 seeks to repeal sections 13 and 14 of the Act. Section 13 provides for a licence to possess a firearm for self-defence purposes. The consequence of the repeal of section 13 is that the Registrar may not issue a licence to any natural person who needs a firearm for self-defence.

This clause also seeks to delete section 14 of the Act that provides a licence to possess a restricted firearm for self-defence. The consequence of the deletion of section 14 is that a semi-automatic rifle or shotgun, which cannot readily be converted into a fully automatic firearm or a firearm declared by the Minister in the *Gazette* to be a restricted firearm, may not be issued to any natural person who requires it for self-defence.

2.16 Clause 16

2.16.1 Clause 16 of the Bill amends section 15 of the Act which provides for a licence to possess a firearm for occasional hunting and sports-shooting. The clause provides that a firearm licence for occasional hunting or sport-shooting purposes may be only be issued if the applicant is the owner or lawful occupier of property where occasional hunting or occasional sport-shooting will take place or if the applicant produces documentary proof of permission by the said owner or lawful occupier to engage in occasional hunting or occasional sport-shooting on the said property.

2.16.2 The clause further inserts a new subsection (3A) that limits the number of firearm licences that a person may hold in terms of section 15 by providing that the number of firearm licences that a person may hold in terms of this section must be

reduced by the number of firearms licences that the person holds in terms of any other section under the Act.

2.17 Clause 17

2.17.1 Clause 17 of the Bill seeks to amend section 16 of the Act, which deals with licences for dedicated hunting and dedicated sports-shooting purposes, by providing in section 16(1) that a firearm licence may be issued for a handgun, rifle or shotgun which is not prohibited, instead of a handgun, rifle or shotgun which is not fully automatic.

2.17.2 The clause seeks to also amend subsection (2) by the adding that the sworn statement or solemn declaration made by the chairperson of an accredited hunting or sports-shooting organisation must state that the applicant has actively participated in hunting or shooting events of the association and that the applicant has, during the preceding 24 months complied with the requirements of being awarded with a dedicated hunter or dedicated sports-person status.

2.17.3 The clause further inserts subsections (5) to (13) to the section, These provisions provides for a limitation on the number of licences that a person may hold in terms of this section. In principle, a person may not hold more than six licences in terms of this section. A dedicated hunter or dedicated sports-shooter may not hold more than two licences each in respect of a handgun, semi-automatic rifle or semi-automatic shotguns. A semi-automatic rifle or a semi-automatic shotgun may only be registered if the applicant has maintained a dedicated status as a sports-shooter or hunter for a period of at least two years and continues to hold such status. The

application for a licence must be accompanied by a written motivation containing the minimum specified information and the motivation must be supported by the chairperson of the relevant hunting or sports-shooting association. The association must also provide a report to the Registrar on the status of all its members.

2.18 Clause 18

Clause 18 amends section 16A of the Act, which deals with licences for professional hunting, by adding subsections (5) to (12) to the section. The proposed amendments seek to restrict the number of licences issued to a professional hunter to not more than eight licences. The application must be accompanied by a written motivation containing the minimum specified information as provided for in subsection (7) and the motivation must be supported by the chairperson of the professional hunting association. The association must also provide a report to the Registrar on the status of all its members.

2.19 Clause 19

2.19 Clause 19 of the Bill seeks to repeal sections 17 and 18 of the Act. Section 17 deals with firearm licence for private collection. Section 18 of the Act provides for a permit to possess ammunition in a private collection.

2.20 Clause 20

2.20.1 Clause 20 seeks to amend section 20 of the Act that provides for licence to possess firearms for business purposes. The clause amends subsection (1) by including a restricted firearm for which a firearm licence may not ordinarily be issued,

subject to exceptions. The clause provides that a restricted firearm may be issued to a security service provider, a game rancher, a person who is accredited to conduct business in hunting and any person who is accredited to use firearms for such other business as determined by the Registrar. The Registrar must consider the exceptions by taking into account the factors, including a genuine need for the use of a firearm that is provided for in the clause.

2.20.2 The clause adds subsections (8) to (13) in section (20). In terms of subsection (8), the Private Security Industry Regulatory Authority must inform the Registrar of any change in circumstances that relate to the status of the registration or ownership of a security service provider, or any other material change or reason that impacts on the licencing, re-licencing or disposal of firearms in the possession of such security service provider. The association that accredits a trainer in the use of firearms, a person who provides firearms for use in theatrical, film or television productions, a game rancher, a person who conducts business in hunting or such other business purpose must inform the Registrar of any change in circumstances relating to the status of the registration or ownership of the business of the accredited person.

2.20.3 Subsection (9) provides that the Registrar must, at the request of the Private Security Industry Regulatory Authority submit a list of all firearms registered to a particular security service provider within 30 days of the request.

2.20.4 Subsection (10) makes it an offence for a security service provider to hire out or permit any other person to use a firearm issued under this section for any purpose other than the purpose for which the licence was issued. Subsection (11) provides

that the Registrar may not issue a firearm licence to a security service provider until written proof of the award of a contract to render a security service that require the use of firearms is furnished. However, subsection (12) authorises the Registrar to issue a letter to a security service provider that a firearm licence will be issued upon the award of the contract. The Registrar may terminate a licence if he or she is informed of the circumstances under subsection 8(a).

2.21 Clause 21

2.21.1 Clause 21 inserts sections 20A to 20D in section 20 of the Act.

2.21.2 The proposed section 20A provides for the establishment of a Consultative Forum. Section 20B provides for the composition of the Consultative Forum, section 20C provides for the functions of the Consultative Forum and section 20D provides for the meetings of the Consultative Forum and administrative support.

2.22 Clause 22

2.22.1 Clause 22 amends section 21 of the Act that provides for a temporary authorisation to possess a firearm by deleting a provision allowing for issuing of temporary authorisations to any person including non-citizens.

2.22.2 The clause further inserts subsection (1A) that authorises the Registrar to issue a temporary authorisation to an executor or administrator of a deceased estate. In terms of subsection (1B), the validity period of a temporary authorisation may not be extended and subsection (1C) provides an exception to subsection (1B)

by providing that a temporary authorisation issued to an executor or administrator of a deceased estate may be extended if the winding-up of the deceased estate is not finalised.

2.23 Clause 23

Clause 23 amends section 22 of the Act that deals with a holder of a licence allowing another person to use a firearm. The amendment is that a person who is at least 21 years of age and the holder of a valid licence for at least three years to possess a firearm may allow any person above the age of 16 years to use that firearm while under his or her immediate supervision.

2.24 Clause 24

Clause 24 amends section 23 of the Act that provides for identification marks on firearms. The clause adds subsection (8) that provides for the affixing of a serial number in the prescribed manner to muzzle loading firearms which are imported or kept in a dealers' stock.

2.25 Clause 25

2.25.1 The clause also inserts section 23A on ballistic sampling. The new section 23A in the Act, which provides for the ballistic sampling of every firearm licensed in terms of the Act, inclusive of firearms for business purposes, business purposes related to the private security industry, occasional and dedicated sports shooting and hunting and public collection, subject to the ability of the firearm to be safely fired and the availability of ammunition. The owner of such firearms must comply with a

programme published by the Minister in the *Gazette* to have the firearms ballistically sampled.

2.25.2 The clause also provides that whenever such firearms licence is renewed or where there is a change of ownership, the original owner must ensure the firearm is submitted for ballistic sampling before the renewal or transfer of ownership takes place. The ballistic sampling of firearms must be arranged in advance and the firearm must be handed back to the owner immediately after the ballistic sampling has been done. The clause also provides that the section must be implemented over a period of time, subject to financial and technical capability to do so.

2.26 Clause 26

2.26.1 Clause 26 of the Bill seeks to amend section 24 of the Act that provides for renewal of firearm licences. The clause substitutes subsection (4) by providing that if the application of the renewal of a licence is made before the expiry of that licence, the licence remains valid until the application has been decided. A penalty is provided for if the application is made in less than 90 days from the expiry date of the firearms licence.

2.26.2 The clause further adds subsections (5) and (6) to the section. The new subsection (5) provides that if an application for the renewal of the licence is made in less than 90 days before the date of expiry of the licence, an administrative fine, may be imposed. The new subsection (6) states that an applicant is not disqualified from obtaining a renewed licence even if the application for renewal was made less than

90 days but before the expiry of the licence and where an administrative fine was imposed.

2.27 Clause 27

Clause 27 amends section 25(2) of the Act by adding a short-messaging system as a means of acknowledging receipt of a notice of a change of address.

2.28 Clause 28

Clause 28 amends section 26(2) of the Act by adding a short-messaging system as a means of acknowledging receipt of a notice of a change of address.

2.29 Clause 29

Clause 29 amends the Table in section 27 of the Act that provides for the period of validity of a licence or permit. The clause deletes section 14 in the Table that relates to licence to possess restricted firearms for self-defence respectively as well the respective periods of validity. The period of validity of a licence to possess a firearm for occasional hunting and sports-shooting, licences for dedicated hunting and dedicated sports-shooting, licences for professional hunting as well as licences for business as a game rancher and in hunting are reduced from ten years to five years. The period of validity of licences to possess a firearm for business purposes (other than as a game rancher and in hunting) is reduced from five years to two years.

2.30 Clause 30

2.30.1 Clause 30 amends section 28 of the Act that deals with terminations of firearms licences.

2.30.2 The clause further inserts a subsection 1A that provides for the procedure for the disposal of the firearms whose licence has terminated.

2.30.3 The clause also substitutes subsection (2) by providing that the Registrar may by notice cancel a licence that is contemplated in subsection (1)(d).

2.30.4 The clause further substitutes subsection (6) by giving the Registrar discretion to extend the periods referred to in subsections (3), (4) and (5)

2.31 Clause 31

2.31.1 Clause 31 of the Bill seeks to amend section 31 of the Act by substituting subsection (2) deleting the words "a muzzle loading firearm" as a result of such firearm being included in the definition of "firearm". In addition, because of the deletion of subsection (3), the subsection is not made "subject to subsection (3)".

2.31.2 The clause deletes subsection (3) which provides that if a person wishes to sell or donate a firearm or muzzle loading firearm to a willing buyer or donee, such sale or donation may be done without the intervention of a dealer.

2.32 Clause 32

2.32.1 Clause 32 seeks to amend section 35 of the Act that deals with renewal of a dealer's licence. The clause substitutes subsection (4) providing that if an

application for renewal of a licence is lodged before the expiry of that licence, the licence remains valid until the application is decided.

2.32.2 The clause adds subsections (5) and (6) to this section. The new subsection (5) provides that if an application for renewal of a licence is not made before the expiry of that licence, and where the date of expiry is less than 90 days from the date of application for renewal, an administrative fine may be imposed. The new subsection (6) states that an applicant is not disqualified from obtaining a renewed licence even if the application for renewal was made in less than 90 days before the expiry of the licence and where an administrative fine was imposed.

2.33 Clause 33

Clause 33 seeks to amend section 38(2) of the Act by adding a short-messaging system as a means of acknowledging receipt of a notice of a change of address.

2.34 Clause 34

Clause 34 seeks to amend section 39 of the Act by deleting subsections (7) and (8). Subsection (7) which provides that the Registrar may on application by a dealer exempt the dealer from the duties to establish and maintain a workstation which links the registers to the central dealers' database. Subsection (8) currently provides that any dealer exempted in terms of subsection (7) must submit weekly returns to the Office of the Central Firearms Register.

2.35 Clause 35

Clause 35 seeks to amend section 42 of the Act that deals with termination of a dealer's licence. The clause substitutes subsection (2) by providing that the Registrar may by notice cancel a licence that is contemplated in subsection (1)(d).

2.36 Clause 37

2.36.1 Clause 37 seeks to amend section 49 of the Act that deals with renewal of a manufacturer's licence. The clause amends subsection (4) by providing that if an application for the renewal of a licence was lodged before the expiry of that licence, the licence remains valid until the application is decided.

2.36.2 The clause also adds subsections (5) and (6) to this section. The new subsection (5) provides that if an application for renewal of a licence is not made before the expiry of that licence, and where the date of expiry is less than 90 days from the date of application for renewal, an administrative fine may be imposed. The new subsection (6) states that an applicant is not disqualified from obtaining a renewed licence even if the application for renewal was made less than 90 days before the expiry of the licence and where an administrative fine was imposed.

2.37 Clause 38

Clause 38 seeks to amend section 52(2) of the Act by adding a short-messaging system as a means of acknowledging receipt of a notice of a change of address.

2.38 Clause 39

2.38.1 Clause 39 seeks to amend section 53 of the Act that deals with the duties of a manufacturer. The clause amends subsection (2) by including muzzle loading firearms to which a manufacturer must apply or affix a serial number or any other mark as may be prescribed.

2.38.2 The clause also seeks to amend subsection (5)(a) by including muzzle loading firearms in a manufacturer's stock that must be produced for inspection.

2.39 Clause 40

Clause 40 seeks to amend section 56 of the Act that deals with termination of a manufacturer's licence. The clause substitutes subsection (2) by providing that the Registrar may by notice cancel a licence that is contemplated in subsection (1)(d).

2.40 Clause 41

Clause 41 amends section 59 of the Act which provides for the prohibition of certain work.

2.41 Clause 42

2.41.1 Clause 42 seeks to amend section 63 of the Act that provides for the renewal of a gunsmith's licence. The clause amends subsection (4) by providing that if an application for the renewal of a licence was lodged before the expiry of that licence, the licence remains valid until the application is decided.

2.41.2 The clause also adds subsections (5) and (6) to this section. The new subsection (5) provides that if an application for renewal of a licence is not made before the expiry of that licence, and where the date of expiry is less than 90 days from the date of application for renewal, an administrative fine may be imposed. The new subsection (6) states that an applicant is not disqualified from obtaining a renewed licence even if the application for renewal was made less than 90 days before the expiry of the licence and where an administrative fine was imposed.

2.42 Clause 43

Clause 43 seeks to amend section 66 of the Act that deals with the notification of a change of circumstances. Clause 43 seeks to amend section 66(2) of the Act by adding a short-messaging system as a means of acknowledging receipt of a notice of a change of address.

2.43 Clause 44

Clause 44 seeks to amend section 67 of the Act that deals with the duties of a gunsmith. The clause seeks to delete subsections (6) and (7). Subsection (6) currently provides that the Registrar may on application by a dealer exempt a gunsmith from the duties to establish and maintain a workstation which links the registers to the central dealers' database. Subsection (7) currently provides that any gunsmith exempted in terms of subsection (6) must submit weekly returns to the Office of the Central Firearms Register.

2.44 Clause 46

Clause 46 seeks to amend section 70 of the Act that deals with termination of a gunsmith's licence. The clause substitutes subsection (2) by providing that the Registrar may by notice cancel a licence that is contemplated in subsection (1)(d).

2.45 Clause 47

Clause 47 seeks to amend section 73 of the Act that deals with the prohibition of import, export or carriage in-transit of firearms and ammunition without permit. The clause adds subsection (3) which provides that the Registrar may restrict the number and type of firearms and ammunition that may be imported and exported in terms of Chapter 8 of the Act.

2.46 Clause 48

2.46.1 Clause 48 seeks to amend section 74 of the Act that provides for the requirements for import, export or in-transit permit. The clause adds subsections (3) to (6) to the section.

2.46.2 The new subsection (3) states that if a non-citizen enters the Republic with a firearm that is lawfully licenced in his or country of origin and who has declared the firearm which is not licenced in terms of the Act, that firearm must be deposited with the Designated Firearms Officer at customs at the port of entry for a permit to be issued.

2.46.3 The new subsection (4) provides that the application for importation of the firearm referred to in subsection (3) must be made in terms of the Act and subsection

(5) provides that if the importation permit is not granted, the firearm and ammunition will remain with the Designated Firearms Officer until disposed of in terms of the Act. The new subsection (6) prohibits the importation of a prohibited firearm in terms of section 74 of the Act.

2.47 Clause 49

2.47.1 Clause 49 inserts new section 74A (1) & (2) that places a limit on the issuing of export permit.

2.47.2 The new subsection 1 provides that an export permit may only be issued after the submission of an import permit for the firearms and ammunition in question by the relevant authority in the country of destination.

2.47.3 The new subsection 2 provides that once a threshold has been determined in terms of section 4(4) of the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002), any application for the export of firearms and ammunition exceeding the quantities as may be prescribed, must first be approved the Conventional Arms Control Committee before the export permit may be issued.”.

2.48 Clause 50

Clause 50 seeks to amend section 81 of the Act that provides for the termination of import, export and in-transit permits. The clause substitutes subsection (2) by providing that the Registrar may by notice cancel a licence that is contemplated in subsection (1)(d).

2.49 Clause 51

Clause 51 amends section 84 of the Act, which provides for the carrying of a firearm in a public place, by providing that the Minister may prescribe the manner in which a firearm must be carried by a security officer in the performance of duties.

2.50 Clause 52

Clause 52 inserts a new section 85A (1), (2) and (3) which prohibits any person other than a dealer from providing storage facility to another person with the exception that a licenced firearm holder may give prescribed written authorisation to another licenced firearm holder to store a firearm for a specified period.

2.51 Clause 53

Clause 53 amends section 86 by providing that no person without a transporter permit may transport more than three (3) firearms at a time.

2.52 Clause 54

Clause 54 of the Bill seeks to amend section 91 of the Act which provides for the restriction on possession of ammunition. The clause amends subsection (1) by reducing the number of cartridges that a licenced firearm holder may possess for each firearm from 200 to 100. The clause further amends subsection (2) by providing that, in addition to a dedicated hunter or a dedicated sportsperson, a professional hunter or an accredited training service provider the Registrar may, on good cause shown by the holder, authorise the possession of more than 100 cartridges for a firearm that is licenced. In determining "Good cause" the Registrar may take into account proof submitted showing the frequency of the use of the

firearm, and the level of participation in the activity for which the firearm is registered, the number of cartridges used per occasion of the particular activity or any other relevant factors or circumstances.

2.53 Clause 55

Clause 55 repeals section 93 of the Act that deals with loading and reloading of ammunition.

2.54 Clause 56

Clause 56 seeks to amend section 96 of the Act that provides for exemptions of Official Institutions from the application of the Act. The clause inserts a cross reference to the new item 1D of Schedule 1 to ensure that item 1D is one of the only provisions that apply to an Official Institution. Item 1D is a transitional provision which provides that an Official Institutions must within one year of the commencement of the Firearms Control Amendment Act, 2021, fully comply with the provisions of Chapter 11(which regulates the handling of firearms by Official Institutions), and the Heads of Official Institutions must report to the Registrar on progress made on a quarterly basis.

2.55 Clause 57

Clause 57 seeks to amend section 98 of the Act that provides for the possession and use of firearms by an Official Institution. The clause adds a new subsection (11) to the section that provides for the Head of an Official Institution to submit a quarterly report to the Registrar on the number and type of firearms that are lost or stolen, the

details relating the loss or theft and remedial measures instituted to prevent a recurrence of the loss or theft.

2.56 Clause 58

This clause seeks to insert new sections 98A and 98B in the Act, to provide for the ballistic sampling of firearms in possession of Official Institutions. The clause also provides that the Head of an Official Institution must comply with a notice issued by the Minister for the ballistic sampling of all firearms in the custody of that Head, and the results of the ballistic sampling must be placed on the Integrated Ballistics Identification System, for purposes of investigating crimes committed with firearms. The clause also authorises the Minister by notice in the *Gazette*, to determine the date by which the firearms in possession of an Official Institution must be ballistically sampled, and that the Minister may extend such date by notice in the *Gazette*.

2.57 Clause 59

Clause 59 seeks to amend the heading of Chapter 12 by including the suspension of a firearm licence in addition to the declaration of persons as unfit to possess firearms.

2.58 Clause 60

Clause 60 seeks to amend section 102 of the Act that deals with a declaration by the Registrar of a person as unfit to possess a firearm. The clause deletes subsections (1)(a) and (1)(aA) and adds subsections (5) to (13) to the section. The new provisions stipulate that the Registrar may suspend a licence in accordance with this section if the Registrar becomes aware that the licence holder has been charged

with any offence that involves an element of violence or served with an interim protection order in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), or the Protection from Harassment Act, 2011 (Act No. 17 of 2011), the nature of which involves an element of violence. A suspension remains valid until the process in terms of section 102 of the Act has been finalised and also until an interim protection order is confirmed or revoked. A person who is served with a notice of suspension must surrender all firearms in his or her possession to the nearest police station for safekeeping. Once an interim protection order is confirmed, the licence holder becomes automatically unfit to possess a firearm.

2.59 Clause 62

Clause 62 seeks to amend section 104 of the Act, which deals with the effect of a declaration of unfitness, by deleting subsection (6). This subsection currently provides that after a period of five years after the declaration of unfitness, the person may apply for a new competency certificate, licence or permit.

2.60 Clause 63

Clause 63 seeks to amend section 120 of the Act which deals with offences. New offences arising out of the amendments have been created.

2.61 Clause 64

2.61.1 Clause 64 seeks to amend section 124 of the Act which deals with the functions of the Registrar. The clause seeks to establish the Office of the Central Firearms Register as a Division of the Service to deal exclusively with the administration of the Act. The clause provides for the Registrar to submit quarterly

reports to the Minister and Parliament on all losses of firearms issued to members of the Service and other Official Institutions, the theft and losses of all firearms and ammunition exhibits surrendered to the Service for destruction, the outcome of investigations into the losses of firearms and ammunition under the control of the Service and disciplinary steps taken and criminal prosecutions instituted against members for such losses.

2.61.2 The clause also adds new subsections (4) to (8) to section 124 of the Act. The new subsections provide for the obligatory designation of a Designated Firearms Officer at each police station, as far as practicably possible, in order to provide focused and undivided attention to control over firearms and ammunition in the possession of the individuals, the police as well as other official institutions and the private security industry. The Designation Firearms Officer is provided with specific functions that will ensure compliance with the Act, including inspections at Official Institutions, and regular and random inspections at business premises of security service providers. This will also enhance access by the public to services and the speedy processing of applications for competency certificates and licences.

2.61.3 The Designated Firearms Officers may not be appointed unless a successful security vetting has been done and provision is made for random integrity testing.

2.62 Clause 65

Clause 65 seeks to insert sections 124A and 124B in the Act. The clause imposes duties on commanders and station commanders with regard to firearms kept at police stations, disciplinary steps to be taken against members who have lost firearms, the reporting of losses of official firearms and ammunition and the investigation of such losses, safekeeping of firearms and ammunition, as well as the regular and random inspections of official registers by the commanders and station commissioners. The station commanders must effectively supervise and control the duties and functions of the Designated Firearms Officer.

2.63 Clause 66

Clause 66 seeks to amend section 125 of the Act which deals with the Central Firearms Register. The clause provides that the Central Firearms Register must now also contain a dedicated database of firearm licences issued to security service providers linked to the database of the Private Security Industry Regulatory Authority, a record of all firearm licences issued to security service providers, a record of the acquisition, transfer, loss, theft or destruction of firearms in the possession of also private security service providers.

2.64 Clause 67

Clause 67 seeks to amend section 127 of the Act that deals with the appointment and functions of Head of Office of the Central Firearms Register. The clause provides for the Registrar, with the approval of the Minister, to appoint a police official on at least the level of a Divisional Commissioner as Head of the Office of the

Central Firearms Register and the Head must report to, and be directly accountable to, the Registrar.

2.65 Clauses 68 to 71

Clauses 68 to 71 of the Bill includes amendments to sections 128 to 130 of the Act which establishes the Appeal Board which considers appeals against the decisions of the Registrar made in terms of the Act. The clauses provide for the appointment by the Minister of additional members to the Appeal Board, which currently is limited to five members. The criteria for the appointment of the members of the Board are provided for, as well the grounds for the disqualification, removal and suspension of a member. The clause also provides for the quorum and rules and procedures of the Appeal Board.

2.66 Clause 72

Clause 72 substitutes section 131 of the Act which provides for the administrative work of the Appeal Board. This clause 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 independently from the Office of the Central Firearms Register.

2.67 Clause 73

Clause 73 inserts sections 131A and 131B in the Act, which provide for the budget of the Appeal Board, the reporting responsibility and the accountability of the Appeal Board to the Minister.

2.68 Clause 74

Clause 74 seeks to amend section 139 of the Act that deals with amnesty that the Minister may declare for possession of unlicensed firearms. The clause deletes subsection (4) that currently provides that a person who surrenders a firearm in compliance with the Minister's notice, may apply for a licence in respect of that firearm and if a licence is granted, the firearm and ammunition surrendered must be returned to the holder of the licence.

2.69 Clause 75

Clause 75 seeks to amend section 140 of the Act. This section deals with firearm-free zones and the amendment seeks to substitute the reference to the Secretary for Safety and Security with the reference to the Secretary for Police Service.

2.70 Clause 76

2.70.1 Clause 76 seeks to amend section 145 of the Act that provides for regulations that may be made by the Minister.

2.70.2 The clause inserts new paragraphs (*mA*) to (*mW*) in section 145, in order to allow the making of regulations flowing from the amendments.

2.70.3 The clause also increases the penalty for any contravention or failure to comply with the regulations by providing for a fine or imprisonment for a period not exceeding three years or both such a fine and such imprisonment in the case of a natural person and to a fine not exceeding R500 000.00 in the case of a juristic person.

2.71 Clause 77

Clause 77 seeks to amend section 147 of the Act that deals with disposal of firearms in the case of death. The clause amends the section heading by including ammunition in the section heading and including ammunition in subsections (1) and (2), to make it clear that on the death of a person the firearm as well as ammunition must be disposed of.

2.72 Clause 78

Clause 78 inserts a new section 147A that relates to deceased estates. This new section provides that the executor or administrator of a firearms licence holder who has died does not commit an offence if the executor or administrator retains possession of the firearm in order to lawfully dispose of the firearm. The executor or administrator is required to notify the Registrar of the death of the licence holder and the place where the firearm or ammunition will be kept. The Registrar may provide a temporary authorisation to a person, who is licenced to possess a firearm, to possess the firearm or ammunition in the deceased estate until the executor or administrator is appointed or if the executor does not have the prescribed safekeeping facilities available. This authorisation will terminate once the estate is finalised.

2.73 Clause 79

2.73.1 Clause 79 seeks to amend section 148 of the Act that deals with inherited firearms. The clause amends the section heading to include ammunition. In addition, the clause deletes references to a muzzle loading firearm and by including ammunition in subsection (1). Subsection (2) is amended by deleting the power of the Registrar to issue a temporary authorisation contemplated in section 21 of the Act and by now providing that the executor or administrator of a deceased estate to remain in possession of the estate firearm until such time the application for a firearm licence is decided.

2.73.2 The clause also adds subsection (3) that states that if no application for a firearms licence is made or if the application is refused, the executor or administrator must dispose of the firearm within a reasonable time.

2.74 Clause 81

Clause 81 seeks to amend Schedule 1 to the Act in order to provide and improve the transitional provisions in respect of existing licences to possess a firearm, licensing of muzzle loading firearms, possession and surrendering of percussion cap-and-ball and other firearms, compliance by Official Institutions, surrendering or licensing of actions, frames and receivers and re-licensing of firearms.

2.75 Clause 82

Clause 82 amends Schedule 4 to the Act in order to improve on offences and penalties.

2.76 Clause 83

Clause 83 substitutes the preamble to the Act to indicate that in terms of the Constitution of the Republic of South Africa, the State has a duty to maintain public order and to protect and secure everyone in the Republic, that the State, being a signatory to regional and international instruments on the control of firearms and ammunition, has a responsibility to enact firearms legislation that complies with regional and international instruments on firearm control and that the uncontrolled presence of firearms constitute major threats to the security of persons and the stability of the State.

3. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

Departments and institutions consulted, responded positively and were supportive of the Bill. These include: Participants of the Firearms Summit; Department of Environmental Affairs; all relevant Divisions of the South African Police Service; Independent Police Investigative Directorate (IPID); Private Security Industry Regulatory Authority (PSIRA); State Security Agency; Firearms Appeal Board; Department of Defence; National Prosecuting Authority; and the Department of Tourism.

4. FINANCIAL IMPLICATIONS FOR STATE

The costs relating to the Appeal Board will be provided for in the budget of the South African Police Service. The other matters provided for in the Bill are factored into the financial and budgetary planning of the police service, within the Medium Term Expenditure Framework. The costs relating to ballistic sampling of firearms will be borne by the licence holder and, where applicable, Official Institutions.

5. CONSTITUTIONAL IMPLICATIONS

The Bill deals with amendments that have constitutional implications. The Office of the Chief State Law Adviser has scrutinized the Bill and have issued a preliminary certificate that the Bill is constitutionally sound.

6. COMMUNICATION IMPLICATIONS

The Firearms Control Amendment Bill, 2021 will be published in the *Gazette* for comment. The GCIS will be consulted on the communication strategy relating to the decision of Cabinet on the publication of the Bill in the *Gazette* for comment. The SAPS and the Civilian Secretariat for Police Service will also communicate the Bill to the public on their respective websites

7. PARLIAMENTARY PROCEDURE

7.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

7.2 The Office of the Chief State Law Adviser considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

7.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

7.4 The issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

7.5 The Bill amends the Act to accommodate the deficiencies identified in the implementation of the Act and consequential amendments to the Firearms Control Amendment Act, 2006.

7.6 The Bill generally provides the control and licensing of firearms; the verification of applications for firearm licences by an accredited association; the alignment of the control over muzzle loading firearms with the control over firearms; the period of validity for competency certificates and the period of renewal competency certificates; renewal of firearm licences on application before expiry of the licence, failure of which attracts an administrative penalty; the designation of a Designated Firearms Officer at each police station to improve the control over firearms in possession of the police and other Official Institutions; monitoring firearms in the possession of private security service providers; the regulation of muzzle loading firearms; the ballistic sampling of firearms of Official Institutions; transitional provisions in respect of licensing of percussion cap-and-ball firearms; The Bill provides for ballistic sampling of the firearm by the Designated Firearms Officer in the event of change in ownership, in which case the original owner must ensure that the firearm is submitted to, before the renewal or before the ownership of the firearm is transferred to any other person; the ballistic sampling of all firearms licensed in terms of the Act, inclusive of firearms for occasional and dedicated sports shooting and hunting, collection, subject to the ability of the firearm to be safely fire and the availability of ammunition, as well as firearms intended or business purposes, including for purposes of the rendering of security services.

7.7 The Bill provides for the transitional arrangements for persons who were licensed to possess firearms under the Arms and Ammunition Act, 1969, and never renewed their firearms as required by the Act. In terms of the provision a period of two years which may be extended by the Minister with approval of Parliament for another two years, is provided for the relicensing of such firearms, which means that the relicensing must occur within two years of the commencement of the Firearms Control Amendment Act, 2020.

7.8 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

7.9 In the view of the Office of the Chief State Law Adviser, the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces.

7.10 The Office of the Chief State Law Adviser is therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 of the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

7.11 The Office of the Chief State Law Adviser is also 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.