

REPUBLIC OF SOUTH AFRICA

ARMS AND AMMUNITION AMENDMENT BILL

(As introduced)

(MINISTER FOR SAFETY AND SECURITY)

[B 107—96]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP WAPENS EN AMMUNISIE

(Soos ingedien)

(MINISTER VIR VEILIGHEID EN SEKURITEIT)

[W 107—96]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Arms and Ammunition Act, 1969, in relation to the definitions; to make different provision in section 8 in relation to the possession of arms with the consent of licence holders, in certain circumstances and for particular purposes; to confer upon courts of regional divisions the power to impose certain penalties which at present exceed their jurisdiction; and to substitute certain outdated words and expressions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 75 of 1969, as amended by G.N. No. R. 2407 of 8 December 1978, section 1 of Act 16 of 1978, section 1 of Act 19 of 1983, section 1 of Act 60 of 1988, section 1 of Act 56 of 1991, section 1 of Act 79 of 1991 and section 1 of Act 117 of 1992 5

1. Section 1(1) of the Arms and Ammunition Act, 1969 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of “Commissioner”;
- (b) by the insertion after the definition of “magistrate” of the following definition: 10
“ ‘member of the Service’ means any ‘member of the Service’ as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);”;
- (c) by the substitution for the definition of “Minister” of the following definition: 15
“ ‘Minister’ means the Minister **[of Law and Order]** for Safety and Security;”;
- (d) by the insertion after the definition of “Minister” of the following definition:
“ ‘National Commissioner’ means the National Commissioner of the Service;”;
- (e) by the substitution for the definition of “policeman” of the following definition: 20
“**[‘policeman’]** ‘police official’ means any member of **[a police force established under any law]** the Service;”;

- (f) by the deletion of the definition of “State”; and
- (g) by the insertion after the definition of “prescribed” of the following definition:

“‘Service’ means the ‘Service’ as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);”.

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Amendment of section 8 of Act 75 of 1969, as amended by section 3 of Act 19 of 1983, and section 1 of Act 177 of 1993

2. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any person not being under the age of 18 years and who is not a disqualified person may have an arm in respect of which another person is a licence holder in his or her possession without holding any licence—
- (a) during a particular period while he or she is on land which belongs to or is lawfully occupied by that licence holder, if such possession during that period is authorised in writing by that licence holder;
 - (b) in or on a particular place in order to store that arm there for a particular period, if that licence holder beforehand authorises such possession in a document which describes that arm and place in such detail that they can be identified, specifies that period, is signed by that licence holder and is endorsed by a person acting on the authority of the National Commissioner.”.

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Amendment of section 39 of Act 75 of 1969, as amended by section 6 of Act 16 of 1978, section 7 of Act 19 of 1983, section 23 of Act 60 of 1988, section 10 of Act 30 of 1990, section 4 of Act 79 of 1991 and section 16 of Act 177 of 1993

3. Section 39 of the principal Act is hereby amended by the addition of the following subsection—

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“(4) Notwithstanding any provision of any law to the contrary, a court of a regional division referred to in the Magistrates’ Court Act, 1944 (Act No. 32 of 1944), shall have power to impose any penalty referred to in this section.”.

Substitution of section 41 of Act 75 of 1969, as amended by section 11 of Act 30 of 1990

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4. The following section is hereby substituted for section 41 of the principal Act:

“Powers of police official to search and seize

- 41.** (1) If any [policeman] police official has reason to believe—
- (a) that an offence under this Act has been committed by means of or in respect of any article which he or she has reason to believe to be in or at or on any place, including any premises, building, dwelling, flat room, office, shop, structure, vessel, aircraft or vehicle or any part thereof, or to be in possession of any person;
 - (b) that any person [whom] who he or she has reason to believe to be a person contemplated in section 11(1) is in possession of or has, at any place as aforesaid, access to any arm or ammunition;
 - (c) that any arm or ammunition which he or she has reason to believe to be required for the investigation of any offence or any alleged offence, is in or at or on any place as aforesaid or in the possession of any person,
- such [policeman] police official may at any time without warrant enter upon and search such place or search such person and seize any such article or arm or ammunition.
- (2) In searching a woman the provisions of section 29 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall *mutatis mutandis* apply.

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- (3) Any article or arm or ammunition seized—
- (a) under subsection (1)(a) shall be dealt with as if it has been seized under the provisions of the said Criminal Procedure Act;
 - (b) under subsection (1)(b) shall be dealt with as if it had been seized in pursuance of a warrant issued under section 11(2);
 - (c) under subsection (1)(c) may be retained by any **[policeman]** police official for a period not exceeding thirty days, whereupon it shall be returned to the person entitled thereto or be dealt with as provided in paragraph (a) of this subsection.”.

Substitution of certain words and expressions in Act 75 of 1969 10

5. The principal Act is hereby amended by the substitution, wherever it occurs in any provision thereof where such substitution is not effected in terms of any other provision of this Act—

- (a) for the word “Commissioner” of the expression “National Commissioner”;
- (b) for the word “policeman” of the expression “police official”; and
- (c) for the expression “South African Police” of the expression “the Service”.

Short title and commencement

6. This Act shall be called the Arms and Ammunition Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ARMS AND AMMUNITION AMENDMENT BILL, 1996

1. The main objective of the Arms and Ammunition Amendment Bill, 1996 (“the Bill”), is to provide for the insertion of a number of new provisions into sections 8 and 39 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969) — “the Act” — for the following reasons:

Section 8 deals with cases where a non-licence holder may be permitted to be in possession of an arm (as defined in the Act) in certain circumstances. The South African Police Service are aware that this section is at present grossly abused and misused to put criminals in unlicensed possession of arms on a large scale, on the particular pretence that such unlicensed possession is necessary for personal protection.

It is proposed in Clause 2, in a new subsection (1) of section 8, that the existing provision relating to unlicensed possession of an arm for purposes of personal protection or benefit be reviewed. Furthermore, it is proposed that the present provision, providing that a non-licence holder may possess an arm with the consent of the licence holder in the immediate vicinity of the licence holder, be deleted. Provision is made that a non-licence holder of at least 18 years of age may possess an arm with the written consent of a licence holder while on any land belonging to or lawfully occupied by such holder. Furthermore, provision is made that circumstances in which the transfer of unlicensed possession may take place, be strictly limited to cases where such arms are to be stored with the written permission of the licence holder and the said permission has been endorsed by a person acting under the authority of the National Commissioner. In