

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

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Verwysing	
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**DIVISIONAL COMMISSIONER
VISIBLE POLICING AND
OPERATIONS
HEAD OFFICE**

All Provincial Commissioners
SOUTH AFRICAN POLICE SERVICE

**MINISTER OF POLICE AND OTHERS V FIDELITY SECURITY SERVICES (PTY) LIMITED
[2002] ZACC 16: IMPLICATIONS OF THE JUDGEMENT**

1. On 27 May 2022, the Constitutional Court handed down a judgement in the above-mentioned matter. The Fidelity judgement in the Constitutional Court followed the hearing of the matter in the High Court and the Supreme Court of Appeal.
2. The Constitutional Court made a distinction between ownership and possession of a firearm.
3. The court held the fact that a firearm's licence has previously expired does not make it a prohibited firearm. It ruled that Fidelity would therefore be entitled to apply for new licences in respect of the firearms whose licences expired based on this aspect.
4. According to the Constitutional Court, any person who is in possession of a firearm with an expired licence would be allowed to apply for a new licence in respect of that firearm and this is not limited to a licence in terms of section 20 of the Act (licence for business purposes).
5. Paragraph 4 above means that although the application was originally brought by Fidelity, the principle applies to any person who may be affected by the ruling of the Constitutional Court.
6. The Constitutional Court emphasised that possession of a firearm without a valid licence or other authorisation to possess is unlawful possession and constitutes an offence.
7. However, DFOs need to take into consideration the Constitutional Court directives in the matter of SA Hunters against the National Commissioner of Police **not to criminalise quite a number of citizens**. In other words, the Constitutional Court **does not expect SAPS to prosecute holders of firearms whose licences expired and wish to rectify the position**.

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8. In order to give effect to the Constitutional Court judgment, DFOs are directed to accept and consider the applications for new licences when submitted by firearm owners.
9. It needs to be emphasised that these applications will follow the same process as new applications for firearm licences, with the distinction that this category will be placed in State Government Department 983 for differentiation.
10. For data integrity, applicants will have to physically present firearms they intend applying for in this category together with a copy/copies of the expired licence(s) to the DFO for inspection and validation. After this a verification certificate will be signed by both the applicant and the DFO.
11. Where the firearm owner is deceased, a copy of the executor's letter and copy of a licence or Identity document of the deceased must be attached. This application will follow the normal estate application route.
12. Further guidelines for the processing of these applications, competency certificates, temporary authorisations and permits are contained in the attached **Annexure A**.
13. The contents of this guidelines must be brought to the attention of all DFO's for compliance.
14. It is kindly requested that all enquiries and certificates confirming receipt of this directive signed by the Provincial Heads: Visible Policing and Operations to be forwarded to Colonel PN Sikhakhane on 012 353 6581/ 082 553 2202 or email address SikhakhaneP@saps.gov.za and Captain ED Mamabolo on 012 353 6104/ 084 9814 932 or email address MamaboloDimakatso@saps.gov.za to this office not later than **18 July 2022**.



**LIEUTENANT GENERAL
DIVISIONAL COMMISSIONER: VISIBLE POLICING AND OPERATIONS
MM MOTLHALA**

Date: 2022-07-01



THE SOUTH AFRICAN POLICE SERVICE

**GUIDELINES AND DIRECTIVE FOR PROCESSING OF EXPIRED FIREARM LICENCE,
COMPETENCY CERTIFICATE, TEMPORARY AUTHORIZATION AND PERMITS**

Division: Visible Policing & Operations

GUIDELINES AND DIRECTIVE FOR PROCESSING OF EXPIRED FIREARM LICENCE, COMPETENCY CERTIFICATE, TEMPORARY AUTHORIZATION AND PERMITS

1. PURPOSE OF THE GUIDELINES

The purpose of these guidelines is to guide members on the implementation of the Constitutional Court ruling relating to processing of expired licences applications.

2. BACKGROUND

On 27 May 2022, the Constitutional Court handed down a judgement in the case of Minister of Police and others v Fidelity Security Services (Pty) Limited [2002] ZACC 16 relating to expired licences of those who failed to renew. The court held that the fact that a firearm's licence has previously expired does not make it a prohibited firearm and can still be licenced.

This directive aims to provide guidance to Designated Firearm Officers (DFO) at all levels for standard processing of those categories of firearm licence applications

3. RESPONSIBILITIES OF THE STATION DESIGNATED FIREARM OFFICER (DFO)

3.1 The station DFO must:

3.1.1 Physically inspect firearms that are being applied for in this category together with a copy/copies of the expired licence(s);

3.1.2 Complete expired licence inspection form attached as per Annexure B

3.1.3 Hand over the application form (SAPS 271) to the applicant and advice on the completion of the form and required supporting documents;

3.1.4 Confirm with the applicant if the competency certificate is still valid, if applicant is not in possession of valid competency certificate, hand over application form (SAPS 517(g) to applicant, to first apply for competency certificate and on receipt of competency certificate, the new application for firearm licence can be handed in;

3.1.5 It must be noted that at no stage should the date stamp be put on the application form during the handing over to the applicant, the date stamp must be placed on the form when it is ready for capturing (all supporting documents and payment made);

3.1.6 Receive application form(s) from the applicant and check for completeness and correctness whilst the applicant is still there;

3.1.7 Complete relevant information on the application form;

3.1.8 Change ownership of firearm on the system to Government Department 983, on Enhanced Firearm Registration System (EFRS).

3.1.9 Write SAPS 86 number on the application form on the provided space.

3.1.10 Give application(s) back to the applicant to make payment at the Finance office of the station;

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- 3.1.11 On receipt of application(s) back from finance, Capture application on the EFRS system within 72 hours;
- 3.1.12 DFO must check payment receipt and confirm payment received on the EFRS;
- 3.1.13 Confirm on the checklist that the payment receipt is attached on the application;
- 3.1.14 The DFO should then declare on function 28, status 1 that the application was quality checked and required documents attached to the application.
- 3.1.15 Forward the application and all supporting documents to Provincial office within 25 working days from date of receipt from the applicant.

4. Responsibilities of the Station Finance Personnel

4.1 The station finance personnel must:

- 4.1.1 Receive application and payment from the applicant;
 - 4.1.2 Capture payment on the POLFIN on purpose code "FIREARM PRODUCTS (STATE INCOME)" with the following information;
 - 4.1.3 Applicant's identification number or passport number;
 - 4.1.4 Applicant's Initials and Surname or Company;
 - 4.1.5 SAPS 86 number written by DFO on the application form;
 - 4.1.6 Use relevant product code, as per predefined list also available on POLFIN function Q.4:10. the following created product codes on POLFIN, can be used:
 - 4.1.7 Only one 'Taking Number' can be used with one SAPS 86 number, kindly ensure that the correct application type is captured on the system;
 - 4.1.8 Stamp and sign the receipt;
 - 4.1.9 Attach the receipt on the relevant application;
 - 4.1.10 Hand back the application to the applicant;
 - 4.1.11 Any exception(s) must be reported in writing on a weekly basis to the Provincial Financial Head/ Divisional Support Head. These may include instances such as POLFIN year-end closure, Eskom electricity cut-off, station(s) that does not have operational service point or any scenario beyond human control. The weekly reports will be subjected to inspection and must be filed and kept secure; and
- 4.2 Manual receipts must be captured as soon as the system is available.

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5. Responsibilities of the Provincial Designated Firearm Officer (DFO)

- 5.1 The Provincial DFO must: Receive applications from the station DFO;
 - 5.1.1 Reconcile the number of applications received with the EFRS;
 - 5.1.2 Conduct quality check for the completeness and correctness of information on each application;
 - 5.1.3 Send incomplete applications back to the station including applications without proof of payment and mark them on the forwarding schedule;
 - 5.1.4 Acknowledged receipt of complete applications on the forwarding schedule and hand back signed forwarding schedule together with incomplete applications to the station DFO;
 - 5.1.5 Verify completeness of the application and supportive documents
 - 5.1.6 The Provincial DFO will then declare on function 28, status 2 that the application was quality checked and required documents attached to the application.
 - 5.1.7 Compile new forwarding schedule for applications to be forwarded to CFR under the signature of a commissioned officer.
 - 5.1.8 Forward applications to CFR within 15 working days from date of receipt from the station DFO.

6. Responsibilities of Central Firearm Register (CFR)

- 6.1 Application Verification Section (AVS) must:
 - 6.2 Receive application from Provincial DFO;
 - 6.3 Reconcile the number of applications receive with the EFRS;
 - 6.4 Conduct quality check for the completeness and correctness of each application;
 - 6.5 Update status of applications on the EFRS;
 - 6.6 Send incomplete applications back to Provincial DFO including applications without proof of payment and mark them on the forwarding schedule;
 - 6.7 Acknowledged receipt of applications on the forwarding schedule and hand back signed forwarding schedule together with incomplete applications to the Provincial DFO;
 - 6.8 Verify completeness of the application and supportive documents
 - 6.9 Then AVS section will then declare on the function 28, status 3 that the application was quality checked and required documents attached to the application.

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- 6.10 Forward applications to the relevant section within 10 working days from date of receipt from the Provincial DFO;
- 6.11 The Sections within CFR must process and finalise application within 50 working days from date of receipt from AVS.
7. **General Finance Provision (Capture application on the system within 72 hours);**
- 7.1 When capturing type of payment, the system will give two options, MANUAL, ELECTRONICAL; choose ELECTRONICAL and capture POLFIN generated receipt number on the provided space (receipt number);
- 7.2 In instances where a MANUAL payment was made because of different reasons from Finance office, the option for MANUAL payment can be used and be updated to ELECTRONICAL as soon as the system is available. Application without ELECTRONICAL (POLFIN) payment will not be able to be finalized on the system;
- 7.3 DFOs to note that POLFIN RECEIPT number can only be used once for one application number therefore ensure that all information captured on the system is correct;
- 7.4 If the POLFIN RECEIPT number could not be validated on the EFRS system, a system error will be displayed "NO RECORDS FOUND (NO POLFIN RECORD)"
- 7.5 If the POLFIN RECEIPT number was validated on the EFRS system, the application number will be displayed (issued);
- 7.6 A window 'Message from webpage' will appear in red with a system message "WRITE APPLICATION NUMBER DOWN"
- 7.7 The DFO must write application number on the application form at the provided space in red ink;
- 7.8 Complete forwarding schedule with confirmation of number of pages on the application and forward to the Provincial office; and
- 7.9 No applications should be forwarded to Provincial office/ CFR without POLFIN payment processed.
8. **REVIEW**
- 8.1 These guidelines will be reviewed when circumstances necessitate.

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