

NAACCSA

NATIONAL ARMS AND AMMUNITION COLLECTORS CONFEDERATION OF SOUTH AFRICA

PO Box 101804, Moreleta Plaza, 0167

Tel/Fax: 012-6543950

Email: naaccsa@absamail.co.za

13th March 2016

Guidelines for determining the “Collectable” status of Restricted and Prohibited Firearms

1. Introduction :

These Guidelines have been prepared to address the requirements of Section 17(1A) of the FCA of 2000 (as amended) , which reads “(1A) Despite section 4, such prohibited or restricted firearm as may be prescribed may be licensed under this section.

2. Summary :

Registered Private Collectors are permitted to licence collectible firearms in terms of Section 17 of the Firearms Control Act (FCA) of 2000 as amended.

Section 17(1)(a) reads –

“(a) A firearm which may be possessed in a private collection is a firearm approved for collection by an accredited collector's association, based upon such historical, heritage, technological, scientific, educational, cultural, commemorative, investment, rarity, thematic or artistic value determined by the association, of which the private collector is a member in good standing and where such firearm has been demonstrated to be part of the said private collector's approved field of interest or theme or both ”¹

Commented [CD1]: These words are very important in context.

Furthermore , Private Collectors in Category A or B (as applicable) may collect certain Prohibited and/or Restricted firearms under certain strict conditions . This is referred to in Section 17(1A) –

¹ This wording appears in the proposed FCA amendment and is used for completeness

“(1A) Despite section 4, such prohibited or restricted firearm as may be prescribed may be licensed under this section.)

The phrase “as prescribed” is used to denote that there are conditions attached to this provision which are described in the FCA Regulations , and in this case this refers to Regulation 5 and Regulation 15 . The origins , intent , and interpretation of Regulation 15 will be discussed in the next section , but in essence , and following the amendment process in 2006/7 as promulgated in March 2012 , this can be summarised as follows – Restricted and Prohibited firearms which may be licenced by Private Collectors in Category A or B (as applicable) are those which –

- (i) Comply with the requirements of Section 17(1)(a) as described above*
- (ii) Were licenced as collectible items under the previous Arms and Ammunition Act of 1969 , or*
- (iii) Are of significant historical value or importance with attributes described under S17(1)(a) (typically at least 50 years old) , or*
- (iv) Are of significant and demonstrable emerging historical importance with attributes described under S17(1)(a) (typically at least 10 years out of production) , or*
- (v) Are rare , exceptional , or once off items which may not comply to the letter of (iii) and (iv) above , but which could however be deemed collectible under certain circumstances as listed in Regulation 15*

What is clear from the above is that the agreement reached as contained in the amendments focuses on firearms of historical value or importance , or clearly demonstrable emerging historical value or importance .

Modern , current production restricted or prohibited firearms were in general not deemed to be or accepted as collectible and are not included in the intent of these provisions .

3. Background

2006 was a turbulent year for Collectors . Under pressure from various quarters , Government engaged in the first round of amendments of the Firearms Control Act (Act 60 of 2000) , and following a couple of incidents (later proved groundless) involving Museums and Public Collectors , Government decided that the collection of working firearms was problematic , with particular emphasis on restricted and prohibited firearms (“no private person should be allowed to own a ‘machine gun’ or an ‘Assault rifle’ – quote”)

As a result the first draft of the amendments published in Government Gazette 28545 envisaged that ALL collectors firearms should be “inoperable” i.e. should not be able to be fired , but would not as such be de-activated –

“17. Licence to possess firearm in private collection

(1) (a) A firearm which may be possessed in a private collection is any firearm:

(i) approved for collection by an accredited collectors association; and

(ii) made inoperable in accordance with the prescribed specifications.

(b) Despite section 4, such prohibited firearm as may be prescribed may be licensed under this section provided that the provision of sub paragraph (a) are complied with.

An intense process of research , motivations and submissions followed , as a result of which it was accepted that Category C firearms could still be used ‘for collector purposes’ , but Cat A and B would still have to be inoperable .

Furthermore that all collectible firearms would have to be certified by SAHRA as having some degree of heritage value –

“17. (1) (a) A firearm or muzzle loading firearm which may be possessed in a private collection is any firearm or muzzle loading firearm—

(i) approved for collection by an accredited collectors association;

(ii) certified as a collectable item having heritage value by the South African Heritage Resources Authority; and

(iii) complying with any other criteria which the Minister may prescribe in respect of collection of firearms.

(b) Despite section 4, such prohibited or restricted firearm as may be prescribed may be licensed under this section.”

With the final submissions and arguments during the parliamentary hearings on the Bill, the NAACCSA delegation was successful in convincing the Portfolio Committee that –

- the SAHRA approval requirement was unduly restrictive given that not all collectible firearms would necessarily be heritage items
- the collectability attributes which we now see in Section 17(1)(a) (History , heritage , technology etc) be adopted , being a distillation of currently accepted international practice / legislation from the UK , Canada, and Australia amongst others , and
- Certain Restricted and Prohibited firearms be allowed given their value to the “National Estate” , provided they were kept (stored) inoperable , and strictly complied with the requirements of regulation 15 which recognises the current and in some instances future historical value or unique attributes of the firearms

Commented [CD2]: And does not make much sense because they rely on the collectors association is anyway to tell them what is of heritage value!

Commented [CD3]: If possible, I think it would be useful to include here something about the principles that were accepted by the portfolio committee. This section speaks largely to the negative aspects and I am concerned that if it becomes public at some point (as it almost inevitably will, given the need to communicate its content to members), it may create something of a "stir". I think that this could be usefully offset by saying that the portfolio committee accepted and agreed that... [Insert the good stuff].

Note: Section 17(1) (c) now refers to restricted firearms “as prescribed” i.e. as set out in the accompanying regulations , and regulation 15 was consequently amended to include restricted as well as prohibited firearms as promulgated in March 2012 .

Regulation 15 was carefully re-examined and updated to include the provisions of Section 17(1)(a) (history , heritage etc) , and re-accepted against the background of the collection of historic artefacts with rare exceptions where justified .

4. Interpretation of Regulation 15

What is hopefully clear from Section 3 is that the private collection of restricted and prohibited firearms is an EXTREMELY sensitive issue with our stakeholders , and it was only by virtue of the fact that we were able to demonstrate that collectors play a vital part in the conservation of the ‘National Estate’ , and that we have a solid track record in terms of responsible and incident free firearm ownership , that we were able to re-instate our dispensation in this area .

Regulation 15 should therefore be interpreted against this background i.e. items of historical importance , with certain rare exceptions that have similar demonstrable value

As previously stated , current production , plentiful and inexpensive restricted or prohibited firearms cannot qualify in this context .

The requirements of Regulation 15 are included in the NAACCSA Certification of Collectability template and are used here for ease of reference .

More than one criteria may be applicable , and these must be comprehensively motivated in addition to the requirements of Section 17(i)(a) (collectability attributes) (history heritage , technology etc) **and a Field of Interest or Theme that accommodates and solidly supports the motivation**

The first clause of Regulation 15 is not included **here** as it is a transitional provision that deals with items already licenced as collectible firearms under **Act 69 Arms and Ammunition Act 75 of 1969**

Commented [CD4]: Act 69 of...?

(Note: Licences for any other purpose e.g. sports shooting , farm defence, movie making etc would NOT qualify)

6.1 A prohibited firearm and device contemplated in section 4 of the Act or a restricted firearm which is not less than 50 years old, calculated from the date of its manufacture, together with an attribute of its collectability regarding its historical, technological, scientific, heritage, educational, cultural, commemorative, investment, rarity, thematic or artistic value or any other aspect, as may be deemed appropriate by the accredited association and agreed to by the Registrar: *(Regulation 15(b))*

Comment – this regulation covers known and acknowledged firearms of historical importance . Examples might include the Vickers machine gun or MG-15 from ww1 , the German wwII MP-40 and the like , particularly if they come with known provenance

(If the firearm or device or restricted firearm does not readily conform to the set combination of age and attribute of collectability in 6.1 then the following further considerations may apply)

6.2 Its production has been discontinued for at least 10 years with the real likelihood of it becoming of collectable interest from a historic, technological, scientific, heritage, educational, cultural, commemorative, investment, rarity, thematic or artistic perspective: *(Regulation 15(b)(i))*

Comment – this regulation covers known and acknowledged firearms of emerging historical importance . Examples might include later models of the FN-FAL again particularly if it comes with known provenance and read in conjunction with 6.6

6.3 It is part of a commemorative issuance or limited edition: *(Regulation 15(b)(ii))*

Comment – a good example here is the Colt Bulldog re-issue of the famous Gatling Gun of which a limited number are being built , predominantly for museums and the collector market . (Although it might be argued that the Bull Dog is a 'manually operated' firearm it can very easily be driven by mechanical means and would probably be classified as a prohibited firearm)

6.4 It will fit in as part of a demonstrable theme of future value, where a real likelihood of such future value can be sufficiently demonstrated or motivated: *(Regulation 15(b)(iii))*

*Comment – this regulation should actually have read “theme of demonstrable future value” and will probably be corrected to read as such . **Colt's decision to remanufacture a limited number of their Classic Historic firearms could form the basis of such a theme within which** The example of the Colt Bull Dog / Gatling would also qualify here as only 50,000 are being made , the bulk of which are already bespoke , almost certainly guaranteeing its “future value”*

6.5 It has proven or generally accepted association with famous or infamous people or events: *(Regulation. 15(b)(iv))*

Comment – a good example is the otherwise standard AK-47 which was inscribed and presented to the retired Minister of Foreign Affairs by a well-known Southern African leader . Another example is the semi-automatic firearm used successfully by a famous sportsman in international competition and now retired.

6.6 Its current national or international scarcity or rarity based on an acceptable reason: *(Regulation 15(b)(v))*

Comment – this often goes hand-in-hand with other criteria , but an example is the once plentiful South African R1 , the bulk of which were destroyed in

Commented [CD5]: I don't think that this is a good example. In this example you are talking about a specific firearm. The sub-regulation in question those talks to the question of a "theme", which is quite a different thing. I think that this example needs rethinking.

Operation Mouflon , and relatively few have found their way into legitimate private ownership , However the fact that a firearm may / might have been difficult to get into South Africa but is available internationally does not make it "scarce".

- 6.7** It is an unusual or unique design, materials or method of manufacture of historic interest: (Regulation 15(b)(vi))

Comment – this is often read together with 6.3 and 6.10 where a re-creation of an historic firearm may deploy modern and innovative CNC machining or emerging experimental 3-D printing techniques to mimic the labour intensive processes of the original . Another example in the opposite extreme might be a custom built firearm made from "hardware shop and back yard parts" if a legal example of such were encountered.

Commented [CD6]: Perhaps include an example about the first firearms which are 3-D printed, these would always be of significant historical value going forward. (?)

- 6.8** It is a custom or one-off building by a well-known gun maker or gunsmith, with significant value: (Regulation 15(b)(vii))

Comment – this is best considered in conjunction with 6.9 . A well-known South African gun maker commissioned their gunsmith to build a version of the Colt M4 for the South African market . Two prototypes of this firearm exist prior to it going into production , and these prototypes would almost certainly be regarded as of being of national interest as a design and evaluation exercise

However ~~casual~~ generic modifications or casual engraving of a current production firearm would not qualify

Commented [CD7]: Not quite sure about this. Perhaps "run of the mill" or "day-to-day"? Maybe casual is the best word – perhaps think about it for a few minutes.

- 6.9** It is a prototype or part of a limited production run: (Regulation 15(b)(viii))

Comment – see 6.8 above – ~~Flowing from this exercise two prototypes of the "South African M4" were built as a precursor to a production run for the South African Market . These prototypes would almost certainly be regarded as of bbeing of national interest .~~

Commented [CD8]: I don't think that one can simply refer to 6.8. This embraces two different things: (a) a prototype and (b) a limited production run. It does not seem to me that 6.8 actually covers any of these as it speaks rather to a custom or one off building. That is quite different to a prototype or a limited production run. IMHO.

- 6.10** It is a replica of a well-known historical firearm: (Regulation 15(b)(ix))

Comment – It is important to note that this clause refers to a replica of an historical firearm

In this context “replica” means a reproduction or re-creation of a historical firearm specifically produced for the collector’s , museum , or historical re-enactment and movie making market “

A good example is the World War II Fallschirmjaegergewehr 42 or FG-42. Only a few thousand were made and there are so few of them still in existence that they command prices in the order of R1,5m if and when they appear on the collector market . As a result SMG Guns of Decatur, Texas is building new semiauto-only reproductions of the second model FG-42 at a more affordable price (R75 000) ,but even so they have a waiting list of nearly a year . This example could therefore also qualify in conjunction with other clauses (rarity and future value) ..

6.11 It is an investment grade firearm or device of significant value: (*Regulation 15(b)(x)*)

Comment – this clause is most often read in conjunction with other relevant clauses in terms of rarity or scarcity , but something such as a gold plated AK-47 having belonged to a famous figure might also apply. ~~However purely buying a firearm as a ‘currency hedge’ would constitute ‘dealing’ and is not covered here.~~ The key issue here is that firearm was built as an ‘investment grade ‘ firearm (think gold engraved Purdey) , and not that it just happens to be expensive and/or is an appealing currency hedge

6.12 It is a miniature cannon of greater than 13 mm bore which is not a muzzle loading canon: (*Regulation 15(c)*)

Comment – this clause was included to clarify the ownership and requirements for miniature cannon

6.13 It is a breech loading canon which is not less than 50 years old and which is of significant Southern African historical or heritage value under the National Heritage Resources Act, 1999 (Act No. 25 of 1999): (*Regulation 15(d)*).

Comment – this clause was included to address the ownership of historically important heritage ordnance such as the well-known Boer War “Krupp Gun”.

Commented [CD9]: I don't think that one can say it amounts to dealing. That is really stretching the issue far too far. I have bought many classic cars over the years based on an understanding that their prices, although being paid here in Rand, were effectively dollar or pound based. I have held on to them and enjoy them for many years and eventually I sell them (or will sell them) at the increased value because of the depreciating round. I don't think that that makes me a dealer in classic cars. Not for a minute. Nor do I think that the law would consider me to be such – there is case law on the issue which I have looked at previously and the concept of "trading" (which we refer to here as dealing) and the case law is that it is something that one does on an ongoing basis as part of the way you earn your keep, so to speak. It does not apply to the casual hobbyist who buys something here and sells it there.

Commented [CD10]: I think that there are two different things here: (a) an investment-grade item and (b) a device of significant value. One needs to consider these both and how they are different. Take for example the point that I raised earlier today – somebody has paid something approaching R 100,000 for a current production AR derivative. Would that not qualify as a "device of significant value"? I ask because I think it needs more thought as, as it is currently couched by way of explanation, it is almost certainly open to challenge.

-----ooo0ooo-----