

3 November 2016

Debbie Wakker
President
Pistol New Zealand

Dear Debbie

Re: Safe and security requirements under the Arms Act 1983

Thank you for your instructions in regards to this matter.

The legal requirements are in relation to conditions pursuant to s 33 a (1) of the Arms Act 1983.

Regulation 19 of the Arms Regulations 1992 concerns security precautions for standard firearms.

The legal requirements in regards to the possession and storage of MSSAs, restricted weapons and pistols are contained in s 28 of the Arms Regulations 1992.

The Arms Act 1983 and Arms Regulations 1992 focus on the individual firearm owner's responsibility to adhere to the requirements of the Arms Act 1983 in order to meet their obligations. *Lincoln v The Commissioner of Police*, 2013 HC, 1813, confirmed that "... that licence holder will observe ..." the security provisions in the Regulations.

If a person wishes to possess a MSSA, restricted weapon or pistol they will need to apply for an endorsement to possess that firearm pursuant to s 30 or 30 (b) of the Arms Act 1983.

If they then wish to take physical possession of this MSSA, they will need to meet the statutory requirements for that endorsement pursuant to s 28 (c) of the Arms Regulations 1992.

If that person were unable to meet the requirements in s 33 a (1) of the Arms Act 1983, it would be seen as a potential breach of a condition of that endorsement (s 33 (2) custody and use). This may then lead to a revocation of the endorsement pursuant to s 33 b (1) (b). A revocation of an endorsement must have grounds and evidence, and follow a natural justice procedure as outline in *Fewtrell v Police* 1996, AP 164/96. If a decision was made to revoke an endorsement, then this could be appealed to the District Court on an originating application pursuant to s 62 of the Arms Act 1983.

If the licenced firearms holder, who was a fit and proper person, presented to a member of the police a safe or steel cabinet which was objectively of “sound construction” and the police either (i) refused to inspect it; or (ii) refused to issue a license or endorsement, because it did not, for the time being, meet their specific policy and specific definition of “sound construction”, the onus would then shift to the police to prove that the safe was in fact not of sound construction, as the firearms licence holder has met the requirements under the Act accordingly.

The police must act reasonably at all times, and imposing conditions, policies and rules surrounding the definition of what is, or is not, “sound construction” is unreasonable. They cannot, in effect, change or make up the law.

You have indicated that several of your members have had “*inspections*”, for various reasons, of their security and have been told by the police that the safe or steel cabinet “*does not now meet the required standard*”. This is absolute nonsense as the law in regards to safes and security of firearms has not changed since 1992.

My opinion is that the courts would take an extremely dim view of this type of action and statements by the police, given that these safes have previously been approved by a member of the police in writing, both generally or “in a particular case”, as required by s 28 (c) of the Arms Regulations 1992. It would be a difficult argument to make that these safes did not now meet these requirements. I believe that the police would fail in any opposition and incur costs ordered against them.

Clearly from the wording in regulation 28(c), the words “sound construction” can be taken in their ordinary natural meaning on an objective test.

An objective test is one where, if 12 people taken randomly from the New Zealand population in 2016 were asked to examine a “safe or steel cabinet” and then asked the question “do you think it is of sound construction?”, and they all answer “yes I would describe this as being “sound”, then the criteria under regulation 7 is met.

The police could not then impose a higher standard than this that was originally envisaged by parliament in passing this regulation. That would be ultra vires (beyond their authority).

“**certificate of compliance**”. There is no such requirement at law in the Arms Act 1983 or Arms Regulations 1992 that refers specifically to this being a requirement.

The “**pol67n**”. This document is a police issued and generated guideline only. It is not the law in regards to security requirements for an endorsed licence.

Regulation 28 (c) does not specify that it needs to be any particular member of the police, and therefore any member of police can, on a case by case basis, approve both the “sound construction” and method of attachment to a property for this section.

Nowhere in regulation 28 (c) does it refer to the necessity of completing a “form” generated by the police at all (as it does in s 30 (a) (2)) or meeting many of the other “requirements” being imposed. The “in writing” can be done on the back of an

envelope. Parliament specifies where the police are to generate a form that is to be used, such as in s 30 (a) (2), but this is totally absent from regulation 28 (c).

The requirement to complete a pol67n form, and the other “*must have*” requirements before an inspection can occur is legal nonsense, and can be considered to be a breach of statutory duty of the police to fulfill their legal obligations under the Act.

Conclusion/Summary in regards to security for pistols, restricted weapons and MSSA’s

- 1) An engineer’s certificate in regards to a safe is not a legal requirement.
- 2) A safe does not need to be made of 6 mm steel or any particular thickness at all; it needs to be “sound”.
- 3) A safe or steel cabinet needs to be objectively of “sound construction”.
- 4) It does not need to have 5 lever locks (this is not specified in law).
- 5) Any member of police (eg. a local constable) can approve an individual safe (or generally). They cannot refuse this request, as it would be a breach of statutory duty. It does not have to be a Police Arms Officer.
- 6) The Police cannot refuse to issue/renew a firearms licence or endorsement on the basis that they believe that a safe or steel cabinet is not up to their defined standard – only if you are not a fit and proper person.
- 7) The word “in a particular case” used in regulation 28 (c) means an assessment made on a case-by-case basis (ie. each steel safe or cabinet is inspected as to its “soundness” and cannot be bound by any particular policy).
- 8) The police are placing all the emphasis on the requirements for the word “generally” in regulation 28, which still needs to be reasonable and have both a factual and logical basis.

Other considerations on “A category” or standard firearms

- 1) There is no lawful mechanism or lawful right for the police to inspect your “A category” firearms or storage at all at any time.
- 2) It is a condition of your licence that you must, as a fit and proper person, comply with the security provisions outlined (**Regulation 19**). **Regulation 29** does not apply to “A category” firearms. There is no such thing legally as the police “*doing an audit*” or “*doing a security inspection for renewal of a firearms licence*” at all.
- 3) No police approval is required for “A category” security at all, and so they do not have the legal ability to prescribe what is or is not acceptable under the Act.
- 4) The police have no legal right to photograph your guns or security at any time during an “inspection” or licence renewal process at all, only upon the execution of a valid search warrant or warrantless search under the Search and Surveillance Act 2012. If they say that they are going to do this or ask to do this, then ask them this question “***under which statutory enactment are you requiring me to do that?***”
- 5) The police have no legal right to record serial numbers and details of standard (“A category”) firearms.
- 6) If this has already been done to you, write immediately to them asking for all photos and records taken to be destroyed in 7 days. If they do not comply then

file a complaint with the Privacy Commissioner and the IPCA. They have no lawful right, or mechanism, to keep this information.

If you have any questions concerning this opinion please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nicholas Taylor', written in a cursive style.

Nicholas Taylor
Barrister-at-law