

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

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**DIE AFDELINGSKOMMISSARIS
THE DIVISIONAL COMMISSIONER**

**SIGBARE POLISIERING
VISIBLE POLICING**

**PRETORIA
0001**

2011-02-24

- A. **ALL DIVISIONAL COMMISSIONERS**
- B. **ALL PROVINCIAL COMMISSIONERS**
- C. All Heads
HEAD OFFICE
- D. All Commanders
SAPS COLLEGES AND TRAINING CENTRES
- E. All Section Heads
HEAD OFFICE
- F. **ALL DEPUTY NATIONAL COMMISSIONERS**
- G. The Chief of Staff
MINISTRY OF POLICE
- H. The Secretary
NATIONAL SECRETARIAT OF POLICE

**INSTRUCTION 2/2011: APPLICATION/ENFORCEMENT OF THE SECOND-HAND
GOODS ACT, 1955 (ACT NO 23 OF 1955)**

A-E 1. **BACKGROUND**

- 1.1 Increasingly more enquiries is received by this office from second-hand goods dealers, associations and SAPS members regarding the application of the Second-Hand Goods Act, 1955 (Act No. 23 of 1955).
- 1.2 It is therefore deemed prudent to inform officers and members dealing with second-hand goods of the application of the said legislation.

2. APPLICATION OF LEGISLATION

For ease of reference, the following issues of concern will be dealt with in the form of questions and answers:

2.1 **Has the Second Hand Goods Act, 1955 (Act No. 23 of 1955) been repealed and is the Second-Hand Goods Act, 2009 (Act No. 6 of 2009) already in operation?**

- The 1955 Act is still in operation. The 2009 Act will come into operation during 2011 after the regulations for the implementation of the 2009 Act is in place.

2.2 **Who must apply under the 1955 Act for a certificate?**

- There is a common misconception that the SAPS issues a licence or a permit to trade. This is untrue. The SAPS issues a certificate under section 4 when the Cluster commander is satisfied that the applicant is a person of good character and the premises are suitable and adequately equipped. The Act has no other requirements. Any person who deals in second-hand goods must apply, except of course for the part of the industry exempted in section 2(1) which provides as follows:

"This Act shall not apply to a duly licensed auctioneer who sells second-hand goods by public auction, and the provisions of sections three, four and eight shall not apply to a factory as defined in the Factories, Machinery and Building Work Act, 1941 (Act 22 of 1941), nor to any person carrying on the business of selling manufactured articles, in so far as he accepts in part payment for any such article sold by him, an article of a kind normally dealt in by him in his business, nor to any person who acquires second-hand goods solely for his own use in connection with the manufacture or repair of articles normally dealt in by him in his business.

2.3 **What is the situation with the registers: must it be separate, must it be in a specific format and may dealers keep it on a computer?**

- Section 6 of the 1955 Act provides that **"Every dealer shall keep in the prescribed form ... registers of his transactions in second-hand goods..."**. Section 6(4) provides that an acquisition and disposal register must be kept separately. The regulations that prescribe the registers were promulgated on 23 February 1963 and provide that the registers must **"substantially** be in the form prescribed there. The format prescribed there is therefore not compulsory, but a guideline. The **only** requirement is that the register must contain (a) the number assigned to the goods (see, however, section 6(3) regarding metals); (b) the date and hour of acquisition or disposal; (c) the name and address of person selling or buying the goods; (d) how much was paid; (e) full description of goods (identification marks, colour etc); and (f) in case of a motor vehicle, the engine, chassis and registration numbers.
- A further question is whether these registers may be kept on a computer. As the 1955 Act is silent, one must refer to the Interpretation Act, 1957 (Act No.

33 of 1957). Section 3 of the Interpretation Act stipulates that the expression "in writing" shall include all manners of keeping a register in a visual format. These registers may therefore be kept on computer where the words appear or are represented on a screen. To use an extreme example: a dealer who keeps his record on the back of a cigarette box complies with the Act as long as all the prescribed information – (a) to (f) above – is kept in a visual format.

- Certain goods are excluded from the register requirement. These dealers must still apply for a certificate, but do not have to enter the transactions pertaining those classes of goods in the register. They are:

| GOODS | POSITION REGARDING REGISTERS |
|---|--|
| CLOTHING | • <i>Not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |
| JEWELLERY | • <i>Not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |
| MOTOR VEHICLE, MOTOR VEHICLE PART OR ACCESSORY; MOTOR CYCLE, MOTOR CYCLE PART OR ACCESSORY | • Acquisition or disposal of second-hand vehicles, parts and accessories (including motor cycles) must be entered into the prescribed registers. Tyres are excluded from the operation of the Act and acquisition or disposal does not have to be entered into the prescribed registers |
| BICYCLE, PART OR ACCESSORIES | • <i>Not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |
| OFFICE OR HOUSEHOLD EQUIPMENT (Examples: Television sets; video machines; carpet cleaners; hi-fi; kitchen utensils; cellular phones; furniture; garden tools; fax machines; computers etc.) | • Excluded from the operation of the Act and acquisition or disposal does not have to be entered into the prescribed registers. Sewing machines are <i>not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |
| PHOTOGRAPHIC OR OPTICAL INSTRUMENT OR ANY PART THEREOF (Camera; camera lens; microscope; telescope etc) | • <i>Not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |
| WROUGHT ARTICLE CONSISTING WHOLLY OR PRINCIPALLY OF GOLD | • <i>Not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |
| WROUGHT ARTICLE CONSISTING WHOLLY OR PRINCIPALLY OF SILVER | • <i>Not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |
| WROUGHT ARTICLE CONSISTING WHOLLY OR PRINCIPALLY OF STEEL | • Excluded from the operation of the Act and acquisition or disposal does not have to be entered into the prescribed registers |
| ANTIQUE | • Excluded from the operation of the Act and acquisition or disposal does not have to be entered into the prescribed registers |
| FERROUS METAL, LEAD, COPPER, TIN, ALUMINIUM, BRASS OR ZINC OR ANY ARTICLE OR SUBSTANCE ARTICLE CONSISTING WHOLLY OR PRINCIPALLY OF ON OR MORE OF THESE METALS | • Ferrous metals, tin and zinc are excluded from the operation of the Act and acquisition or disposal does not have to be entered into the prescribed registers. Copper, aluminium and brass are <i>not</i> excluded from the operation of the Act and acquisition or disposal must be entered into the prescribed registers. |


2.4 **What are the requirements for a certificate?**

- The requirements are very simple: The delegated functionary (see the Provincial Delegation of Authority) must be satisfied that the applicant is of good character and the premises are suitable and adequately equipped. The SAPS are not mandated to take the place of a local authority, SARS or the Department of Trade and Industry by demanding electrical certificates, VAT certificates, export permits etc
- Furthermore, the refusal of a certificate under section 4 is an obvious infringement on the constitutional rights of a person to trade and the SAPS must therefore be mindful of the manner in which the 1955 Act is interpreted, especially in light of the Constitution, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) and our obligations under section 13 of the SAPS Act.

3. **CONCLUSION**

- 3.1 It is clear that the SAPS must act reasonably and within the constraints of the law, as unreasonable and unlawful actions may result in civil claims against the Minister of Police.
- 3.2 The overly zealous manner in which some stations interpret and apply the 1955 Act does not have a positive effect in the fight against crime.
- 3.3 The SAPS will make a difference in the fight against property related crime if focus is placed on bringing real criminals in the second-hand trade to book in a lawful manner instead of expending energy on issues outside our functions.
4. Your co-operation in addressing second-hand goods in South Africa is appreciated.
5. Please ensure that the above information is disseminated to all personnel at all levels.

F-H 1. Copy for your information


MAJ-GEN
LIEUTENANT GENERAL
DIVISIONAL COMMISSIONER: VISIBLE POLICING
EJ MOTHIBA
B. LUKE