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**GUIDANCE NOTE
CHIEFS OF CLANS AND FAMILIES
SUCCESSION OF CHIEFS
FAMILY CONVENTIONS
NOMINATION OF HEIR**

Background

1. For a significant part of its long history large parts of Scotland have been organised in clans and families. These clans and families centred upon kindred groups but their power extended further, particularly in the cases of clans, to encompass all those living in the geographical areas they dominated which altered over time.
2. These clans and families were led by chiefs, their power sustained by their own personal authority and the support of great magnates and landed gentry all coming to be recognised by the ordinary people. As chiefs came to be granted land by charters from the Crown their power and prestige increased and their position came to be universally recognised.
3. Clans and families became a building block of Scottish society encompassing blood, social, marital, martial, commercial, legal, cultural and emotional ties. Over time and at different times in different parts of Scotland economic, industrial, social and political change weakened some of those ties – for example the martial, commercial and legal ties – until the clans and families became principally organisations bound by kindred, social, cultural and emotional ties.
4. Scottish clans and families are organic groupings inextricably connected to Scotland, its culture, law, history and society. Many have a chief. Some, at present, do not because the genealogical connection to past chiefs has been lost and await the day a chief is identified or selected.
5. While a clan or family association, society or other corporate body may be created that body is created only in support of a clan or family. That body is not itself the clan or family. That is an important distinction. The chiefship of a clan or family is regulated by the Lord Lyon King of Arms by regulation of arms. The Lord Lyon does not regulate the leadership of associations, societies or other corporate bodies created in support of a clan or family. That is an internal matter for the association, society or corporate body itself. Any chief recognised by the Lord Lyon as chief of a clan or family is chief of all who bear the name of the clan or family and not only those belonging to a particular body.

Succession

6. The *ad hoc derbhfine* was an ancient process for choosing a successor to the late head of a royal house or great family. This process was adopted within the Scottish clan system for the purpose of selecting a chief involving selection by the great and the good of the clan of an individual from a group falling within the chiefly bloodline. That group essentially comprised all members of the clan, male or female, who could trace their ancestry to the most recent great grandfather in the chiefly line. With social and economic change this process fell into disuse in or around the 13th and 14th Centuries.

7. Since at least the 16th Century to be recognised as chief of a clan or family has required an individual to be entitled to bear the undifferenced arms of the clan or family (i.e. the principal arms of the clan or family that descend from one chief to the next in undifferenced form through the generations) and so be “Chief of the Name and Arms” of the clan or family. It is for the Lord Lyon to determine who has legally succeeded and is entitled to bear the undifferenced arms of a clan or family.

8. To be recognised as entitled to bear the undifferenced arms an individual must establish the right by descent from the original grantee or in some cases from an ancient user of the arms and fall within the destination of the original grant of arms (*Maclean of Ardgour v Maclean* 1941 SC 613). To do that an individual requires to satisfy the Lord Lyon, on the balance of probabilities, by evidence (commonly, birth, marriage and death certificates, entries from Parish Registers and the like) that the individual descends through each generation from the grantee or ancient user of the arms. The individual must also bear (whether historically or by formal change of name) as sole surname the name of the clan or family.

9. Where the undifferenced arms have descended through the same family for many generations it may be relatively straightforward to prove entitlement to bear the undifferenced arms. For example, where a chief has matriculated the undifferenced arms in the *Public Register of All Arms and Bearings in Scotland* it may be that the heir need prove only descent from the late chief to prove entitlement to the arms and so to the chiefship.

10. The task is more difficult where the chief of a clan or family has been unknown for some time, perhaps decades or centuries. In such circumstances an individual need prove not only that person’s own descent from the original grantee or ancient user through each and every generation but also that any and all superior lines of descent have been extinguished in accordance with the law applicable to establishing such extinctions.

11. For example, where in one generation there were six brothers and the person making the claim is descended from the sixth and youngest brother, that person would require to satisfy the Lord Lyon not only of that person’s own descent but also that all lines descending from the five older brothers – each of whom would have a senior and so superior claim to the undifferenced arms – has been extinguished. This task must be carried out through all the relevant previous generations.

Family Convention

12. Where a hereditary chief cannot be identified and a clan or family is without a chief there is a process – known as a family convention – by which a commander may be appointed by the Lord Lyon to lead the clan or family. The Lord Lyon may appoint a commander at the request of the clan or family. The purpose of the appointment of a commander is to allow time and space for the clan or family to raise its profile, build itself up, publicise itself and for a potential candidate to be hereditary chief to be identified. One of the principal responsibilities of a commander is to seek to identify any

potential hereditary claimant to the chiefship. If it is not possible to identify a potential claimant who can prove descent from the chiefly line the commander should seek to encourage suitable candidates who may have wide support from the clan or family to come forward as a candidate for the chiefship (see paragraph 18 below).

13. The purpose of a family convention is to allow the clan or family to identify a suitable candidate to be commander. If a family convention is to result in the appointment of a commander by the Lord Lyon the Lord Lyon requires that it must be overseen by a supervising officer (usually one of the Officers of Arms) appointed by the Lord Lyon to chair the family convention and to ensure that it is run efficiently, effectively and fairly.

14. The supervising officer works with the clan or family to make certain that the procedures adopted (for example in giving notice of and advertising the family convention; ensuring participation of people with an interest whether in person or remotely; allowing all participating in the family convention by whatever means to have a say) are understood by all concerned, are transparent and are fair. At the end of the family convention the supervising officer reports to the Lord Lyon.

15. On receipt of the supervising officer's report the Lord Lyon would likely only appoint a commander where the clan or family clearly coalesces around a single candidate. Recognising a commander where a clan or family was divided between two or more candidates would be likely to promote the fracturing of the clan or family rather than its unity. Given the role of a commander and the links of clans and families with Scotland and its people it is generally preferred that a candidate for commander reside within the United Kingdom.

16. A commander is generally appointed for a five year term. The appointment can be renewed at the discretion of the Lord Lyon so long as the commander wishes to continue to serve as commander and can show that the clan or family supports re-appointment. As noted above one of the main functions of a commander is to seek out and encourage to come forward any potential claimant to the hereditary chiefship.

17. If such a candidate comes forward, proves entitlement to bear the undifferenced arms and is recognised as Chief of the Name and Arms of the clan or family by the Lord Lyon then the commandership comes to an end.

18. If no such candidate comes forward there is a mechanism for the Lord Lyon to recognise a person as Chief of the Name and Arms of the clan or family even where that person cannot prove descent from the chiefly line. However, the Lord Lyon is only likely to do so if there has been a commander in position for at least ten years. While a person who served as commander could be recognised as chief in this way with the support of the clan or family there is no expectation that a person who served as commander will be a candidate for the chiefship. Other candidates may have better qualifications or greater support among the clan or family. If, during the period of the commandership no person comes forward to make up title to the undifferenced Arms (i.e. no hereditary chief is identified) it is then possible for the clan or family to seek a further family convention chaired by a supervising officer appointed by the Lord Lyon to nominate a chief for the approval of the Lord Lyon. Once a chief is recognised by the Lord Lyon in this way that chief's heirs constitute the new hereditary line for the chiefship and the commandership comes to an end.

19. Even once a chief is recognised on the basis of the available evidence as being entitled to be Chief of the Name and the Arms of the clan or family or has been recognised by the Lord Lyon as chief there is a 20 year period (the long prescription period) during which that individual's claim to be

chief may be challenged. Once the long prescription period expires the incumbent chief's right to the chiefship is immune from challenge. However, on any chief's death the succession re-opens and a person with a legitimate claim and the evidence to support it may petition the Court of the Lord Lyon to prove entitlement to bear the undifferenced arms. Such a claim must be proved with evidence.

20. Given the resources of the Court of the Lord Lyon the Lord Lyon would be likely to appoint a supervising officer to chair and oversee a family convention only where the clan or family demonstrates that it has fairly wide support and that it has structures in place in different locations. For example, where a clan or family has supportive associations, societies or other bodies in place fostering local or national or international connections.

Nomination

21. An incumbent chief has the right to vary the original destination of the coat of arms and to nominate as successor any individual who is a direct descendant of the original grantee of the chiefly arms or of an ancient user of the chiefly arms and who falls within the destination of the arms. Such a nomination can only have effect once confirmed by the Lord Lyon.

22. A nomination may have early effect if the incumbent chief also resigns the chiefship and the nominee petitions the Court of the Lord Lyon to matriculate the undifferenced arms at which point the Lord Lyon will proceed to consider and determine the petition. If such a nomination is to have later effect – for example on the death or mental incapacity of the incumbent chief – it is advisable that such a nomination be intimated to the Court of the Lord Lyon for entry in the *Register of Intimations of Succession to Arms*.

23. Where such a nomination is made it can be confirmed or rejected by the Lord Lyon only at the point where the succession opens (such as the resignation of the arms by the incumbent chief or the incumbent chief's mental incapacity or death) and the nominee petitions the Court of the Lord Lyon to succeed to the undifferenced arms. It is only at this point when the petition is advertised and any potential objection is made known or rival claimant comes forward that all of the relevant competing evidence can be placed before the Lord Lyon for the Lord Lyon's determination of the claim.

24. This note is for guidance only. It is not intended to be an exhaustive statement of the law. Its purpose is to address practical matters regularly raised with the Court of the Lord Lyon.

25. If you have any questions about, or arising from, this guidance note you should address them to the Lyon Clerk at lyonoffice@gov.scot.

**THE COURT OF THE LORD LYON
16 December 2021**