

The Society of Scottish Armigers

Compiled by John A. Duncan of Sketraw, FSA Scot.

New Clan's and the Derbhfine

Information Leaflet No.12
New Clan's and the Derbhfine



History and The Court of the Lord Lyon.

The Court of the Lord Lyon is the heraldic authority for Scotland. It deals with all matters relating to Scottish Heraldry and Coats of Arms and maintains the Scottish Public Registers of Arms and Genealogies. The Lord Lyon King of Arms is also responsible for State Ceremonial in Scotland.

The office of Lyon King of Arms dates from the 14th century. The earliest official record is of the appointment of a Lyon by King Robert the Bruce in 1318, but the office may be older. The position incorporates the ancient Celtic office of High Sennachie who was responsible for verifying the genealogy of the King of Scotland and for crowning the King at his coronation.

The Lord Lyon is the sole King of Arms in Scotland. He is Head of the Heraldic Executive and the Judge of the Court of the Lord Lyon which has jurisdiction over all heraldic business in Scotland.

He is assisted by Her Majesty's Officers of Arms, all of whom are members of the Royal Household. There are three senior Officers of Arms (Albany Herald, Rothesay Herald and Ross Herald) and three junior Officers of Arms (Unicorn Pursuivant, Carrick Pursuivant and Bute Pursuivant).

The Officers of Arms may be consulted on matters of heraldry and genealogy by members of the public and may represent their clients before the Lyon Court. The Officers of Arms also take part in ceremonial occasions.

An Act of the Scottish Parliament of 1592 gave the Lord Lyon responsibility for prosecuting as a criminal offence anyone who uses unauthorised Arms. The Court has its own Procurator Fiscal, an independent official prosecutor.

In 1672 a further Act of the Scottish Parliament authorised the creation of the Public Register of All Arms and Bearings in Scotland. This Register is maintained by the Lyon Clerk and Keeper of the Records and contains an official copy of every Coat of Arms granted in Scotland since 1672.

What is a clan? - From the Court of the Lord Lyon

The clan system is closely bound up with Scottish heraldry. The best definition of a clan provided by a heraldic authority is contained in Nisbet's "System of Heraldry", published in 1722: 'A social group consisting of an aggregate of

distinct erected families actually descended, or accepting themselves as descendants of a common ancestor, and which has been received by the Sovereign through its Supreme Officer of Honour, the Lord Lyon, as an honourable community whereof all of the members on establishing right to, or receiving fresh grants of, personal hereditary nobility will be awarded arms as determinate or indeterminate cadets both as may be of the chief family of the clan.'

A clan is therefore a community which is both distinguished by heraldry and recognised by the Sovereign. At the head of this honourable community is the chief. He is the only person entitled to display the undifferenced shield of Arms, ie without any marks of dependency upon any other noble house.

Chiefship is a title of honour and dignity within the nobility of Scotland. Any claimant to such a title must establish, to the satisfaction of the Lord Lyon representing the Sovereign, that he or she is entitled to the undifferenced arms of the community over which they seek to preside. It is the determining of chiefship which is among the Lyon Court's central work.

Many of the cases which have come before the Lyon Court in the last 50 years have related to the chiefships of clans. There are now about 140 clans that have chiefs recognised by the Lord Lyon.

A clan or family, which has a recognised chief or head confers noble status on the clan or family which gives it a legally recognised status and a corporate identity. A family or name group which has no recognised chief has no official position under the law of Scotland.

Lyon Court Guidelines for the holding of a derbhfine meeting

There are generally five circumstances in which a meeting of the derbhfine might take place.

- (1) Where the appointment of a Clan Commander is sought.
- (2) Where a blood link to a past Chief is very likely but is not conclusively proved and it is wished to propose a particular person to be confirmed as Chief.
- (3) Where the main line of descent from a past Chief has died out and it is wished to confirm the Representer of another line as Chief.
- (4) Where no identifiable descendant from the last known Chief can be found and it is wished to propose a particular person to be confirmed as Chief
- (5) Where a "clan" which has never had a Chief seeks the appointment of a "Chief".

Various factors need to be considered in relation to each of these. In the case of (1) the genealogy of the applicant is not particularly relevant. What is important is that the applicant has the support of the clan. In the case of (2) and (3) it is more likely that there will not be a derbhfine but that Lyon will be asked to confirm the applicant as Chief for aught yet seen, but the clan may wish the derbhfine to meet. It is important that there should be no known likelihood of a competing claim.

In the cases of (2), (3) and (4) it is important that there should be general support from the members of the clan and also that sufficient time has been allowed for any competing claims to emerge and to be dealt with.

In the case of (5) there is also the question of whether the group should be accorded the status of a clan.

Historical position

Two factors have applied in the past. Firstly there has been a rule of thumb that a 20 year period should elapse between the appointment of a Commander and the meeting of the derbhfine to consider a proposal for a Chief. Secondly the traditional function of a meeting of the derbhfine is a forum to discuss what to do rather than to consider a specific proposal. Both of these factors require further consideration.

The 20 year period between the appointment of a Commander and a proposal for Chief has not always been applied in the past but has been frequently referred to in discussions with applicants. Many existing Commanders understand it to apply to them. Twenty years seems a very long time in an age of rapid communication. Five years is probably too short to allow a Commander to establish himself, get an organisation going, make himself known to clan members worldwide and allow clan members to judge whether the Commander is the right person for the job. But 10 years should be sufficient time for all this to happen. Twenty years seems unreasonably long.

It will be important, if an application is made for a Commander to be considered for Chief, to know what activities the Commander has undertaken since his appointment and whether there is any dissatisfaction with him as well as whether any alternative candidate may have emerged. In judging whether the members of the clan are satisfied it will be important to bear in mind that in a number of cases the Commander may have pushed himself forward and may have discouraged other candidates from coming forward as alternatives.

The traditional role of a meeting of the derbhfine as a forum for general discussion is probably now out of date. At a time when most clan members would have been in Scotland, would have known a large proportion of their kinsmen and would have found it relatively easy to meet together, it made sense to consider calling the principal men in a clan together for a general discussion. But now that clan members are scattered all over the world, exist often in substantial numbers and know only relatively few of their kinsmen, it is difficult for members of the derbhfine to be confident that they know the wishes of the clan members in general. It is also unreasonable to expect people to travel from distant parts of the world to a clan meeting without their being given a clear idea of why they are being asked to attend and it is desirable for those who are unable to attend to be able to make their views known. It therefore seems sensible for the role of a meeting of the derbhfine to change to one which has a specific clear purpose and also for a means to be provided for those unable to attend to make known their views.

Procedure to be followed in future

(1) In future there will normally be a minimum period of 10 years between the appointment of a Commander and an application for a person to be considered for Chief. A Commander will normally be appointed for a 5 year period and re-appointment for a further 5 years will be considered by Lyon without any further

derbhfine being required. Where a 20 year period has been either set down or advised in the past, this will no longer apply.

(2) The following rules must be observed in the conduct of any meeting of the derbhfine. These are designed to ensure that members of a clan generally are aware of what is proposed and have an opportunity to make their views known.

(i) One of HM Officers of Arms, or a person approved by Lyon, must be appointed to supervise the meeting of the derbhfine. This must be arranged before any notice under (iv) below. The fee charged by the supervising officer will be a matter for the clan.

(ii) The supervising officer's role is to act as an impartial Chairman and to make an objective report to Lyon.

(iii) The members of the derbhfine will be as provided for in Lyon's 1992 Rules a copy of which is annexed. However these new Rules will also provide a means whereby non-armigerous and non-landed clan members can express their views. The supervising officer and the derbhfine will be made aware of these views but the derbhfine will not be bound by them.

(iv) Notice of any meeting of the derbhfine, in a form approved by the supervising officer, must be given not less than 6 months prior to the date set for the meeting, in all clan and clan association journals or newsletters and on any clan or clan association website.

(v) The notice must state the date and place of the meeting and the purpose for which it is to be held including the name(s) of any candidate(s) to be proposed for appointment. It must give the name and address of the supervising officer to whom further enquiries are to be directed.

(vi) A further notice must be given not less than 6 weeks prior to the meeting by public advertisement in a national newspaper circulating in Scotland and the same notice must also be posted on the clan and clan association websites.

(vii) The notices referred to in (vi) must give details of the arrangements for views to be submitted by non-armigerous and non-landed clan members. The supervising officer will require to decide how this is to be done but it should probably involve a paper containing the name, address and signature of the sender being sent to the supervising officer. It is recognised that the collection of views of clan members is not an exact science. It is not the intention that the supervising officer should have to decide whether a person who submits a view is or is not a member of the clan. The purpose of this mechanism is to provide a means for the rank and file to express their views. The derbhfine and Lyon will have to decide what weight to give to them.

(viii) At the meeting of the derbhfine the supervising officer will, prior to any decision being taken, inform the members of the derbhfine of the result of any views by non-armigerous and non-landed members which have been submitted under (vii) above.

(ix) Non-members of the derbhfine may attend and speak but will leave the meeting before any decisions are taken and members of the derbhfine itself will

be the only people to take part in any decision of the derbhfine.

(x) The report submitted to Lyon by the supervising officer will include details of the various steps taken under the above procedure and in particular, in addition to the decision and views of the derbhfine, will refer to (and if need be comment on) the views of the non-members of the derbhfine as expressed under (vii). The report will be confidential to Lyon and should contain such information as the supervising officer regards as being of importance to Lyon in reaching a decision.

February 2002.

AD HOC DERBHFINE

1. As from 1st May 1992 where a Chiefship or Commandership is to be determined by means of an ad hoc derbhfine it will be necessary for any candidate selected and recommended to the Lord Lyon King of Arms to have been domiciled and habitually resident in Scotland for a period of three years before such recommendation and submission and he, or she, must be so domiciled or resident at the time recommendation and submission is made.

2. To avoid any possibility of last minute picking of an ad hoc derbhfine I have decided that before any person can take part in a derbhfine a Warrant authorising the preparation of Letters Patent of Arms, or an Interlocutor authorising Matriculation of Arms, must have been signed in favour of such a person at least a year and a day before they take part in the derbhfine.

3. It should be borne in mind that membership of the derbhfine shall consist of those who are in right of a Scottish Coat of Arms (matriculated within the last three generations to cover the holding of the Armorial Bearings on apparenancy), or owning at least a small holding of land outwith a Burgh but which is not a mere building plot. The owner of the Armorial Bearings, or of the land, will not require to be domiciled/resident in Scotland.

4. It is emphasised that the Armorial Bearings must be Scottish and that those with a Scottish surname, but with Arms granted by the English Kings of Arms, or by the Heraldic Authority of any other State, will not be acceptable.

5. With regard to those with compound surnames, it is the last name of the compound surname that will determine the Family or Clan to which the owner of the compound surname belongs (see Findings in Fact (14) and (15) and Findings in Law (2) and (3) in the Petition of Sir Hugh Vere Huntly Duff Munro-Lucas-Tooth, Baronet, 1965 - Scots Law Times - Lyon Court Reports p.3).

6. Eldest sons of armigers who have a right to the Arms differenced by a label of three points may not vote. The position is frequently found where a tutor or guardian has matriculated Arms for a younger pupil/minor child and in such circumstances such tutor or guardian will not be in a position to record a vote on behalf of their child. Keeping in mind the terms and provisions of 'The Age of legal Capacity (Scotland) Act 1991' the vote of an armigerous child will be receivable on that child attaining 16 years of age. If Armorial Bearings have been matriculated for such a child for a period of a year and a day before the sixteenth birthday that child will be in a position to vote on attaining the age of 16 years.

7. Lyon will only receive a nomination following a derbhfine provided that derbhfine has been supervised by an Officer of Arms or by another person

approved by Lyon who will submit to Lyon a Report on the conduct of the proceedings.

8. Where a person has been appointed a Commander for a period of time following a recommendation from an ad hoc derbhfine such a person may be re-selected under the old regulations. It would seem unreasonable for such people to have to seek re-submission under the new rules.

April 1992.