EXPLANATORY MEMORANDUM TO

THE LYON COURT AND OFFICE FEES (VARIATION) (RESERVED FUNCTIONS) ORDER 2016

2016 No. 1138

1. Introduction

1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this Order is to raise the fees which the Court and Office of the Lord Lyon ("Lyon Court"), charges for reserved functions under Part 1 of Schedule B to the Lyon King of Arms Act 1867 ("1867 Act").

2.2 A Scottish Statutory Instrument ("SSI") will be laid concurrently in the Scottish Parliament which will raise the fees payable in respect of devolved functions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The power under which the Order is being made – namely section 5 of the Public Expenditure and Receipts Act 1968 – provides (amongst other things) that sums specified in relevant enactments can be varied and the power can be exercised to make different provision for different cases. A fee has been introduced in this Order chargeable 'On every patent of crest'. A crest is part of a coat of arms, appearing on top of the helmet, which itself is on top of the shield (the latter of which is the main part of the coat of arms).

3.2 The fee for a patent of arms is at present £627. The same figure has also always been charged by the Lyon Court for a patent of crest as both elements make up a coat of arms. This is currently part of the fee 'patent of arms' in The Lyon Court and Office Fees (Variation) Order 2008 which is the present Order which sets out the fees for the reserved functions of the Lyon court. As a petitioner for a coat of arms cannot have a crest without a shield of arms, the Lyon Court consider that it should not charge the same fee for both elements of the coat of arms and accordingly feels the fee currently charged should be varied.

3.3 By adding a fee for patent of crest, the Order is on our view varying the sum specified in respect of a patent of arms by making provision for the specific case where a person applies for patent of crest. The proposed new fee for a patent of crest is accordingly a variation of the existing fees that are charged for coats of arms as the crest is a particular section of the coat of arms itself.

3.4 The fee increases being proposed are the first since 2008 and are required to allow the Lyon Court to cover the cost of the functions it undertakes. Incremental increases to fees are proposed for each of the next three years, beyond which the need for further increases will be considered.

Other matters of interest to the House of Commons

3.5 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 1867 Act sets out the fees payable to the Lyon Court in Schedule B. Some of the non-judicial functions of the Lord Lyon, primarily the granting of arms, are reserved matters under the Scotland Act 1998 and are legislated on by the UK Parliament. Fees relating to the reserved functions are located in Part 1 of Schedule B to the 1867 Act. Others, including the judicial functions of the Lord Lyon, are within the devolved legislative competence of the Scottish Parliament. Fees relating to the devolved functions are located in Part 2 of Schedule B to the 1867 Act.

4.2 In 2008, when the fees charged by the Lyon Court for the granting of Coats of Arms were last increased, two fees orders were made – a Statutory Instrument, dealing with the fees payable for reserved functions, was laid in the UK Parliament, and an SSI, for fees payable for devolved functions, was laid in the Scottish Parliament.

4.3 The Secretary of State for Scotland has the power to vary fees paid in respect of the Lyon Court's reserved functions under section 5 of, as read with paragraph 3 to, the Public Expenditure and Receipts Act 1968.

5. Extent and Territorial Application

5.1 The Order extends to Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Lyon Court and Office Fees (Variation) (Reserved Functions) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Lyon Court is a court of law which regulates heraldry in Scotland and is headed by the Lord Lyon King of Arms. The Lord Lyon is the sole authority for granting of Coats of Arms and maintains the public register of All Arms and Bearings in Scotland and the Public Register of All Genealogies and Birthbrieves in Scotland.

7.2 The Lyon Court deem it necessary to increase the fees charged for the granting of Coats of Arms to enable them to cover the cost of discharging their functions. These fees were last increased in 2008 and, prior to that, in 1996. It has been proposed to increase fees for the next three years, in early 2017, 2018 and 2019.

Consolidation

7.3 This Order stands alongside a Scottish Statutory Instrument The Lyon Court and Office Fees (Variation)(Devolved Functions) Order 2016.

8. Consultation outcome

8.1 A joint informal consultation was undertaken on behalf of the Scottish Government and the Scotland Office with organisations and individuals who were known to have an interest in heraldry and genealogy, in particular those who may have wished to present petitions. Consultees included officers of Arms, the Law Society of Scotland, the Society of Messengers-at-Arms and Sheriff Officers and a number of representative bodies. Those who responded were broadly in agreement with the proposals for increases in fees.

8.2 No subsequent amendments were deemed necessary to this Statutory Instrument.

9. Guidance

9.1 This Order stands alongside a Scottish Statutory Instrument *The Lyon Court and Office Fees (Variation)(Devolved Functions) Order 2016*. However, there is no formal guidance necessary.

10. Impact

10.1 There will be a financial impact on individuals and organisations applying for the granting of Coats of Arms and using other services provided by the Lyon Court. Those likely to be affected have been consulted on the proposed changes.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply in a significant way to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Lyon Court will monitor the effects of this Order and use this analysis to determine the need for further increases to charges beyond 2019.

13. Contact

13.1 Stuart Matheson at the Scotland Office (Telephone: 0131 244 9029 or email: stuart.matheson@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.