

- 9 In *Barrington's Case* (1830) 85 Commons Journals 196 (18 March 1830), evidence on oath having been taken and fully considered previously, the House refused a trial at the bar of the House, although it was questioned whether an address ought to be voted without a full public inquiry (see *Mirror of Parliament* (1830) 1702, 1863, 1897). On the subsequent proceedings in the House of Lords a petition for trial at the bar of the House was granted (see 62 Lords Journals 599 at 602 (4 June 1830)).
- 10 *Barrington's Case* (1830) 85 Commons Journals 196 (18 March 1830). For the terms of the reply see 62 Lords Journals 915, and 85 Commons Journals 653 (22 July 1830). This appears to be the only case in which the proceedings were carried to a final conclusion.

(2) PUBLIC DOCUMENTS

906. Public documents. The monarch's wishes or commands in executive matters are made known to the nation, or to the individuals particularly concerned, by means of various documents, of which the most formal are (1) Orders in Council¹; (2) warrants, commissions or orders under the sign manual²; or (3) proclamations, writs, letters patent, letters close, charters, grants, and other documents under the Great Seal³.

Apart from the prerogative power of the monarch executive authority is often expressly conferred on the Crown and its ministers by statute, and by virtue of the statutes conferring the powers is exercised by means of various written instruments, of which the most important are (a) Orders in Council; and (b) orders, schemes, warrants, regulations or rules⁴.

- 1 As to Orders in Council see para 907 post.
- 2 As to the sign manual see para 908 post.
- 3 As to use of the Great Seal see para 909 post. An Order in Council or a royal warrant issued under prerogative powers may place a duty on a minister to carry out its provisions, but this duty is owed only to the Crown and a subject cannot enforce the performance by legal proceedings: *Griffin v Lord Advocate* 1950 SC 448; *R v Secretary of State for War* [1891] 2 QB 326, CA. In *Griffin v Lord Advocate* supra, it was left undecided how far these principles apply in relation to an Order in Council made under statutory powers.
- 4 This statement of types of instruments is not intended to be exhaustive; eg regulations may empower a minister to give directions to particular persons. As to what instruments are statutory instruments and subject to the provisions of the Statutory Instruments Act 1946 see STATUTES.

907. Orders in Council. Orders in Council are the general medium by which the manifold statutory powers conferred upon the Crown are exercised¹, although they may also be employed in expressing the wishes of the Crown with regard to matters falling within its discretionary authority by virtue of the prerogative². They are formulated by the various ministers or departments concerned with the particular matter to which the orders relate, and their general policy is determined by the Cabinet³; they are expressed to be made by the monarch by and with the advice of the Privy Council at meetings of the Privy Council, which are held at such times as the exigencies of public business require, and are signed by the Clerk of the Council⁴. Orders in Council may, but need not, be statutory instruments⁵.

- 1 For the various matters to which such orders relate see the current Index to Government Orders.
- 2 Eg legislation for Crown colonies, regulations with regard to trade and commerce in time of war etc. For the relation of such prerogative Orders in Council to international law, as administered by prize courts see FOREIGN RELATIONS LAW; WAR. As to the enforcement of Orders in Council see para 906 note 3 ante.
- 3 As to the Cabinet see paras 402–413 ante.
- 4 As to the Privy Council generally see paras 521–526 ante.
- 5 See further para 525 note 9 ante. As to statutory instruments generally see STATUTES.

908. Sign manual. Orders, warrants and commissions under the sign manual are used under the powers conferred by the common or statute law, and relate to a variety of matters, such as the appointment of executive officers¹, circuit judges and recorders², and the authorisation of the performance of executive acts³.

In some cases the sign manual, warrant or order requires the addition of one of the secretarial seals⁴. Where such confirmation is not necessary, sign manual documents are usually required to be countersigned by a Secretary of State or other responsible minister or ministers⁵.

1 Eg governors of overseas territories; first commissions in land forces: see para 901 ante.

2 For examples of appointments of circuit judges and recorders under the royal sign manual see eg the London Gazette, 20 May 1996.

3 Eg warrants for affixing the Great Seal to executive documents, countersigned by the necessary minister (see para 912 post); pardons, countersigned by the Secretary of State (Criminal Law Act 1967 s 9: see para 824 ante); orders for the issue of public money by the Treasury, counter-signed by two or more of the Treasury Commissioners (see the Exchequer and Audit Departments Act 1866 s 14; Treasury Instruments (Signature) Act 1849 s 1 (as amended)). As to the Treasury Commissioners see para 513 ante. As to the Treasury generally see paras 512–517 ante.

4 As to secretarial seals and authority for sealing see paras 357 ante, 912 post. As to grants by the Admiralty and Treasury see para 852 ante.

5 See note 2 supra. As to the office of Secretary of State see para 355 et seq ante.

909. Use of Great Seal of the United Kingdom. Since the date of the Union with Scotland on 1 May 1707 it is expressly provided that the Great Seal of the United Kingdom is to be used for sealing writs to elect and summon the Parliament of Great Britain, and for sealing all treaties with foreign princes and states, and all public acts, instruments and orders of state which concern the whole of the United Kingdom, which includes Great Britain and Northern Ireland¹, and in all other matters relating to England as the Great Seal of England was used prior to that date².

- 1 As to the Union of Great Britain and Ireland into one kingdom see the Union with Ireland Act 1800 art 1. For the construction of references to the United Kingdom in enactments passed before the establishment of the Irish Free State (now the Republic of Ireland) see the Irish Free State (Consequential Adaptation of Enactments) Order 1923, SR & O 1923/405, art 2. In every public document issued after the passing of the Royal and Parliamentary Titles Act 1927 the expression 'United Kingdom' means, unless the context otherwise requires, Great Britain and Northern Ireland: Royal and Parliamentary Titles Act 1927 s 2(2) (amended by the Interpretation Act 1978 s 25(1), Sch 3). As to Irish seals see para 911 post.
- 2 Union with Scotland Act 1706 art 24. As to the Union between England and Scotland see paras 51, 53 ante.

910. Scottish seals. As from the date of the Union with Scotland on 1 May 1707 the privy seal, signet, casket (casket) signet of the Justiciary Court, quarter seal, and seals of courts then used in Scotland were directed to be continued, but were to be altered and adapted to the state of the Union as the monarch should think fit¹. The seals and the keepers of them are subject to regulations made by Parliament¹.

As from that date a seal is directed always to be kept in Scotland and made use of in all things relating to private rights or grants which usually passed the Great Seal of Scotland prior to the Union, and which only concern offices, grants, commissions and private rights within that kingdom².

1 Union with Scotland Act 1706 art 24. As to the Union between England and Scotland see paras 51, 53 ante.

2 Ibid art 24. Until such seal should be appointed by the monarch, the Great Seal of Scotland then existing was directed to be used for such purposes: art 24.

911. Irish seals. Following the establishment of the Irish Free State, provision was made for a Great Seal of Northern Ireland¹ which was to be kept in the custody of the governor and to be used for all matters in Northern Ireland for which the Great Seal of Ireland was formerly used². Upon the abolition of the office of governor³ the custody of the seal passed to the Secretary of State⁴.

¹ As to Northern Ireland see paras 67–86 ante.

² See the Irish Free State (Consequential Provisions) Act 1922 (Session 2) s 1 (as amended), Sch 1 para 2(4).

³ I.e. by the Northern Ireland Constitution Act 1973 s 32(1).

⁴ Ibid s 40(1), Sch 5 para 4.

912. Authority for sealing. A warrant under the sign manual¹, countersigned by the Lord Chancellor², or by one of the principal Secretaries of State³, or by the Lord High Treasurer or two of the Treasury Commissioners⁴, is a necessary and sufficient authority for passing any instrument⁵ under the Great Seal of the United Kingdom⁶, according to the tenor of the warrant⁷.

Any instrument which might on 28 July 1884 be passed under the Great Seal by the fiat or under the authority or directions of the Lord Chancellor, or otherwise without passing through any other office, may continue to be so passed⁸.

¹ As to the mode of signing in the case of illness or absence of the monarch see CROWN LANDS AND PRIVILEGES. The documents sent to the monarch from the Crown Office are (1) the warrant for attaching the Great Seal; (2) the instrument itself; and (3) the docket, or short note of the contents of the instrument: see 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I p 63. This docket is different from that which is required in the case of letters patent.

² 'Lord Chancellor' means the Lord High Chancellor of Great Britain and, if there is a Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom, the Great Seal Act 1884 is to apply as if such Lord Keeper or Lords Commissioners were substituted for the Lord Chancellor, and a warrant may be countersigned by any two of such Lords Commissioners: Great Seal Act 1884 s 4. By the Lord Keeper Act 1562 (repealed) the Lord Keeper of the Great Seal was declared to have the same authority as the Lord Chancellor. The office is now obsolete. By the Great Seal Act 1688 Lords Commissioners of the Great Seal are declared to have the same powers as the Lord Chancellor or Lord Keeper of the Great Seal: Great Seal Act 1688 s 1. As to the Lord Chancellor see paras 477–497 ante.

³ As to the office of Secretary of State see para 355 et seq ante.

⁴ As to the Lord High Treasurer and the Treasury Commissioners see paras 512–513 ante.

⁵ 'Instrument' includes any letters patent, letters close, writ, commission and grant, and any document required to be passed under the Great Seal of the United Kingdom: Great Seal Act 1884 s 4.

⁶ The Great Seals of Scotland and Northern Ireland are authorised to be used in certain circumstances: see paras 910–911 ante. As to the seal of the Duchy of Lancaster see CROWN LANDS AND PRIVILEGES.

⁷ Great Seal Act 1884 s 2(1). The passage of documents under the Great Seal formerly required more complicated processes and authorities. These included inter alia the affixing of the Privy Seal, which was abolished by s 3 (repealed).

⁸ Ibid s 2(1) proviso. In the following cases the royal sign manual is not required: (1) the fiat of the Lord Chancellor is sufficient for commissions of the peace, writs of summons to peers to attend the House of Lords on succeeding to the title, and for the old writs of *dedimus* giving power to administer oaths, supersedeas staying the exercise of a jurisdiction, and *mittimus* authorising the removal of records from one court to another (which writs were issued under the Great Seal: see para 919 post); (2) the warrant of the Speaker of the House of Commons is sufficient for writs for by-elections; (3) Orders in Council are used in the case of writs for the summons of a new Parliament, for charters incorporating towns (see however para 882 ante), and for warrants from the Foreign and Commonwealth Office (formerly the Colonial Office) (see 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I pp 68–69). Letters patent signifying the royal assent to bills are signed by the monarch before sealing (see the Royal Assent Act 1967 s 1(1); Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730 (as amended)); and it seems, the same practice is observed as to commissions to open Parliament (see 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I p 68).

913. Preparation of documents. The Lord Chancellor¹ may from time to time make rules relating to the preparation of warrants and instruments², and the manner in which

instruments are to be passed under the Great Seal³; but every warrant must be prepared by the Clerk of the Crown in Chancery⁴. A committee of the Privy Council⁵ may by order make, and when made from time to time revoke, add to or alter, rules⁶ prescribing the mode in which documents⁷ are to be prepared, whether to be printed or written or partly printed and partly written and whether to be printed or written on paper, parchment or any other fitting material⁸. The form in which documents are to be worded may be prescribed by rules made by Order in Council⁹.

- 1 For the meaning of 'Lord Chancellor' in these provisions see para 912 note 2 ante. As to Lord Chancellor see paras 477–497 ante.
- 2 For the meaning of 'instrument' see para 912 note 5 ante.
- 3 Great Seal Act 1884 s 2(2). Such rules may be revoked or varied by the Lord Chancellor: s 2(2). All earlier rules so made are now consolidated in the Crown Office (Preparation and Authentication of Documents Rules) Order 1988, SI 1988/1162.
- 4 Great Seal Act 1884 s 2(2).
- 5 The committee consists of the Lord Chancellor, the Lord Privy Seal and a principal Secretary of State acting in case of difference according to the opinion of any two of them: see the Crown Office Act 1877 s 4. As to the Privy Council see paras 521–526 ante.
- 6 The rules, which may be revoked, added to or altered, must be laid before both Houses of Parliament: *ibid* s 5 (amended by the Statute Law (Repeals) Act 1986 s 1(1), Sch 1 Pt XII). As to the laying of documents before Parliament see further STATUTES.
- 7 'Document' means any writ, commission, letters patent, letters close, or document of such a character, or belonging to such a class, as would at the date of passing of the Crown Office Act 1877 be required to be or usually would be authenticated by being passed under the Great Seal: s 7.
- 8 *Ibid* s 5(3).
- 9 *Ibid* s 3(1). Rules are to be laid before Parliament as mentioned in note 6 supra: see s 3 (as amended). All previous subordinate legislation is now replaced by the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730 (as amended), which allows appropriate modifications to be made to the prescribed wording of writs of summons and dissolution, commissions of the peace, letters patent and royal assents under the Great Seal necessitated by the circumstances to be provided for in the document; and amends the prescribed forms of words to be used in the commissions signifying the royal assent in cases where an Act has been passed in accordance with the provisions of the Parliament Acts 1911 and 1949.

914. Wafer Great Seal. Impressions of the Great Seal made, as directed by a committee of the Privy Council¹, on embossed paper, wax, wafer or any other material when attached to or embossed on documents², confer the same validity in all respects as if the document itself had been authenticated by or passed under the Great Seal³. The committee may by order make, and when made from time to time revoke, add to or alter, rules⁴ prescribing the documents to which a wafer Great Seal is to be attached⁵; but it is not necessary to the validity of a document to prove that attachment or embossing of a wafer Great Seal was authorised and no evidence to the contrary may be received⁶.

- 1 As to the composition of the committee of the Privy Council see para 913 note 5 ante. As to the Privy Council see paras 521–526 ante.
- 2 For the meaning of 'document' see para 913 note 7 ante.
- 3 Crown Office Act 1877 s 4. Provision is also made for the use of wafer Privy Seals; see s 4. The need for the use of the Privy Seal was, however, abolished by the Great Seal Act 1884 s 3 (repealed).
- 4 As to the power to revoke, vary, add to or alter rules, the laying of rules before Parliament, and the validity of rules see the Crown Office Act 1877 s 5 (as amended); and para 913 note 6 ante.
- 5 *Ibid* s 5(2). Earlier rules are now consolidated in the Crown Office (Preparation and Authentication of Documents Rules) Order 1988, SI 1988/1162, which makes no reference to letters patent for inventions. Letters patent for inventions were listed in the Rules dated 22 February 1878 r 1. A patent sealed with the seal of the Patent Office has, however, the same effect as if sealed with the Great Seal: see the Patents Act 1949 ss 19(1), 21(1).
- 6 Crown Office Act 1877 s 5(3) proviso (a). Engrossing may in all cases be dispensed with, and, so far as seems to the committee convenient, printing must be adopted: s 5(3) proviso (b).

915. Misuse of Great Seal. Making or preparing a warrant for passing an instrument¹ under the Great Seal, or procuring an instrument to be passed under that seal, otherwise than as provided by the Crown Office Act 1877 or the Great Seal Act 1884² is an offence³.

1 For the meaning of 'instrument' see para 912 note 5 ante.

2 As to authority for sealing see para 912 et seq ante.

3 Great Seal Act 1884 s 2(3). See also the Criminal Law Act 1967 s 1(1), abolishing the classification of offences as felonies or misdemeanours; and CRIMINAL LAW vol 11(1) (Reissue) para 42.

916. Royal proclamations. In general, proclamations may legally be made and issued only by the authority of the Crown, and must be passed under the Great Seal¹, and no private person may make and issue a proclamation, unless the practice is warranted by custom², or unless he is expressly authorised to do so³. Breach of this provision is punishable by fine and imprisonment⁴.

Rules⁵ may be made by Order in Council making regulations as to the manner of publication of royal proclamations and as to the towns to which copies of such proclamations are to be sent and, generally, as to the best mode of making such proclamations known to the public⁶. Any royal proclamation is valid in law as respects England, Scotland and Northern Ireland if it is published in the London Gazette, the Edinburgh Gazette and the Belfast Gazette respectively⁷. Copies of proclamations may be sent to High Sheriffs, Sheriffs, Lord Mayors and Mayors in England and Wales⁸.

When legally made and issued a royal proclamation is to be judicially noticed, and is of the same validity as an Act of Parliament⁹. Any breach of its provisions is punishable by fine and imprisonment¹⁰.

1 *Keyley v Manning* (1630) Cro Car 180.

2 An instance of such a custom is the proclamation issued by members of the Privy Council and others announcing the accession of a new monarch, as to which see CROWN LANDS AND PRIVILEGES. As to the Privy Council see paras 521–526 ante.

3 *Proclamations' Case* (1611) 12 Co Rep 74 at 76; *Knightly's Case* (1530) Bro Abr, Proclamations, pl 10 (where Sir Edmund Knightly, acting as executor, made and issued a proclamation that the creditors of the deceased were to come in and prove by a certain day; he was fined and imprisoned because he did it publicly and without authority).

4 *Knightly's Case* (1530) Bro Abr, Proclamations, Pl 10.

5 The rules, which may be revoked, added to or altered, must be laid before both Houses of Parliament: see the Crown Office Act 1877 s 3 (as amended). As to laying of documents before Parliament see further STATUTES.

6 *Ibid* s 3(2). See also the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730 (as amended).

7 Crown Office Act 1877 s 3 proviso (3); Government of Ireland (Miscellaneous Adaptations) (Northern Ireland) Order 1923, SR & O 1923/803, art 3. On important occasions, such as a declaration of peace, the issue of the royal proclamation is sometimes accompanied by various forms and ceremonies.

8 See the Crown Office (Forms and Proclamations Rules) Order 1992 r 3.

9 Such proclamations are acts of subordinate legislation, as to which see para 7 note 11 ante; and STATUTES.

10 *Proclamations' Case* (1611) 12 Co Rep 74 at 75.

917. Use of proclamations. Proclamations may legally be used to call attention to the provisions of existing laws¹, or to make or alter regulations over which the Crown has a discretionary authority, either at common law or by statute². Thus, the Crown may by proclamation summon or dissolve Parliament³, declare war or peace⁴, and promulgate blockades and lay embargoes on shipping in time of war⁵.

The fact that martial law is in force would, it seems, be notified by means of proclamations if such a course were rendered necessary by a state of war⁶ and there is authority for their use to restrain persons from leaving the realm in time of war, in order

to prevent their rendering assistance to the enemy⁷; but these and other similar prerogatives in time of war, being created for the public safety, are strictly limited by necessity⁸.

Proclamations may also legally be used when the Crown is authorised by statute to put in force statutory provisions which would otherwise remain dormant⁹.

- 1 Eg in the case of war between two states friendly to the United Kingdom, to the provisions of the Foreign Enlistment Act 1870, as to which see CRIMINAL LAW. See eg the Proclamation of Neutrality dated 11 February 1904, SR & O 1904/201, issued in connection with the Russo-Japanese War.
- 2 1 Bl Com (14th Edn) 269–270; Bac Abr, Prerogative, D, 8; *Proclamations' Case* (1611) 12 Co Rep 74.
- 3 See PARLIAMENT.
- 4 As to declarations of war and treaties of peace see paras 809–810 ante; and FOREIGN RELATIONS LAW.
- 5 See further para 817 ante.
- 6 As to martial law generally see para 821 ante.
- 7 See 1 Bl Com (14th Edn) 270; Fitz Nat Brev 85; 3 Co Inst 179.
- 8 See the speech of Lord Erskine in 1808 (10 Parliamentary Debates 961).
- 9 Eg the Criminal Law and Procedure (Ireland) Act 1887 (repealed). As to prohibiting the importation or exportation of explosives, arms, ammunition etc see para 818 ante. As to proclamations declaring that a state of emergency exists see para 822 ante.

918. Restrictions on proclamations. Under the general rule which restrains the Crown from legislating apart from Parliament, it is well settled that the monarch's proclamation, unless authorised in that behalf by statute, cannot enact any new law, or make provisions contrary to old ones¹. The monarch's proclamation may not restrict the liberties of the subject in matters upon which the law is silent². Thus it has been held that the King could not by proclamation prohibit the erection of new buildings in and about London, or the making of starch from wheat, for that would be to alter the law of the land³. Where, in order to prevent famine, and Parliament not being assembled, an embargo was laid on all ships laden with wheat and flour in time of peace, contrary to express statutory provisions, it was found necessary to indemnify by statute the advisers of the Crown, and all persons acting under the proclamation⁴.

- 1 *Re Grazebrook, ex p Chavasse* (1865) 4 De GJ & Sm 655 at 662; *Grieve v Edinburgh and District Water Trustees* 1918 SC 700. It was provided by 31 Hen 8 c 8 (Proclamation by the Crown) (1539) that certain proclamations issued with the advice of the council were to have the force of statutes, but this provision was repealed by 1 Edw 6 c 12 (Treason and Felony) (1547) s 5 (repealed). Proclamations were, however, frequently issued and enforced by the Star Chamber until 1640, when that court was abolished (see para 376 ante).
- 2 *Proclamations' Case* (1611) 12 Co Rep 74 at 75.
- 3 *Proclamations' Case* (1611) 12 Co Rep 74 at 75. This opinion was given by the two Chief Justices and two Barons of the Exchequer after conference with the Privy Council. See also the same case as reported in 2 State Tr 726: 'The King cannot create any offence which was not an offence before, for then he may alter the law of the land in his proclamation in some high point... The law of England is divided into three parts: the common law, statute law, and custom; but the King's proclamation is none of these... The King has no prerogative but that which the law of the land allows him'. As to the right of the Crown to legislate in British settlements having no representative government see COMMONWEALTH vol 6 (Reissue) para 989.
- 4 See 7 Geo 3 c 7 (Indemnity) (1766) (repealed). This was the last occasion upon which the Crown attempted to legislate by proclamation. The Crown's action was later defended by Lord Camden on the ground of necessity (see 19 Parliamentary History p 1248), but it constituted an exercise of the suspending power forbidden by the Bill of Rights: see para 376 ante. As to the history and citation of the Bill of Rights see para 35 note 3 ante.

919. Writs under the Great Seal. Writs under the Great Seal are in the form of a command to do or abstain from doing a certain thing, and are used for a variety of purposes, such as for summoning a person to the House of Lords¹, and thus conferring a new peerage, or confirming an already existing one², for summoning a new Parliament³.

or for by-elections⁴. Writs of *dedimus*, *supersedeas* and *mittimus* were also issued under the Great Seal⁵. Writs of summons in actions are not so issued, but are under the seal of the officer of the office out of which they are issued⁶.

Writs under the Great Seal directed to particular persons for particular purposes are sometimes closed up and sealed on the outside, and are then known as writs close, or letters close, and are recorded in the close rolls⁷.

1 As to the House of Lords see para 204 ante; and PARLIAMENT.

2 See 1 BI Com (14th Edn) 400; and PEERAGES AND DIGNITIES.

3 See para 912 note 8 ante. As to the persons to whom the writs are directed see PARLIAMENT.

4 See para 912 note 8 ante; and PARLIAMENT.

5 As to use of the Great Seal see para 909 ante. These were the old writs of *dedimus potestatem* giving power to administer oaths, *supersedeas* staying the exercise of a jurisdiction, and *mittimus* authorising the removal of records from one court to another.

6 RSC Ord 6 r 7(3); and see PRACTICE AND PROCEDURE. Writs of habeas corpus are issued out of the Crown Office except where they affect minors, in which case they are issued out of the Principal Registry of the Family Division: see Ord 57 r 5(1); Ord 54 r 11. Writs of subpoena in aid of an inferior court or tribunal issue out of the Crown Office but otherwise are issued out of either the Central Office or the appropriate district registry: see Ord 38 rr 14, 19. Certain writs may now be issued out of Chancery chambers: Ord 57 r 5(1). See also para 306 ante.

7 *le literae clausae*, as distinguished from letters patent, which are recorded on the patent rolls: see 2 BI Com (14th Edn) 346; and para 849 note 3 ante.

920. Letters patent and other documents under the Great Seal. Letters patent are used for ratifying treaties with foreign powers¹, for conferring titles or dignities², for creating and conferring offices³ and for conferring authority to perform particular functions⁴. Grants are used for creating or passing franchises⁵ and other rights of property. Charters are used for creating corporations⁶. All these documents are issued under the Great Seal, and documents authorising the making and ratification of treaties are passed under the Great Seal under the authority of a sign manual warrant⁷.

Where the Crown acts on the advice of the Privy Council, as in grants of charters to towns or other bodies, it is said to be necessary that an Order in Council should be made before the issue of the warrant. An Order in Council may itself be sufficient following upon a royal proclamation, as in the case of the issue of writs for a new Parliament⁸.

1 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I p 66. As to treaty-making powers generally see para 801 ante.

2 See 1 BI Com (14th Edn) 400; and PEERAGES AND DIGNITIES. For the form of letters patent for the creation of peers see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730 (as amended).

3 Eg the creation of the office of governor of a dependent territory (see para 901 note 7 ante); and the appointment of judges (see COURTS).

4 Eg royal assent to bills by commission: see the Crown Office (Forms and Proclamations Rules) Order 1992 (as amended).

5 As to franchises see para 879 ante.

6 See CORPORATIONS.

7 As to the sufficiency of a sign manual warrant see para 912 ante; and as to the necessity for passing the treaties themselves under the Great Seal see para 801 ante.

8 See 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I p 69.

921. Clerk of the Crown in Chancery. The duties and powers of the Clerk of the Petty Bag, other than those relating to solicitors and to the administration of justice¹, were transferred in 1874 to the Clerk of the Crown in Chancery, and are now performed by and vested in the clerk or his officers in such manner as the Lord Chancellor² may from time to time direct³. The duties and powers so transferred include all those relating to any writs or letters patent passed under the Great Seal⁴. All the duties and powers of the Clerk

of the Patents were also transferred to the Clerk of the Crown in Chancery or his officers in such manner as the Lord Chancellor may from time to time direct⁵.

It continues to be lawful for Her Majesty from time to time under the royal sign manual⁶ to appoint a fit person to fill the office of Clerk of the Crown in Chancery, and the Clerk of the Crown in Chancery continues to perform the duties of the office of Keeper or Clerk of the Hanaper⁷. The statutory and other duties of the Secretary of Presentations were transferred to the Clerk of the Crown in Chancery, or to such of the Lord Chancellor's officers as he may direct, in 1890⁸.

The salary of the Clerk of the Crown in Chancery is such as the Treasury⁹ may assign to him, and the salaries of the Clerk of the Crown in Chancery and of his officers, and the expenses of his office, are paid out of money provided by Parliament¹⁰.

The Clerk of the Crown in Chancery and his deputy are officers both of the House of Lords and the House of Commons¹¹.

- 1 As to the nature of these duties see the Great Seal (Offices) Act 1874 s 5 (as amended).
- 2 'Lord Chancellor' means the Lord High Chancellor of Great Britain or the commissioners for executing the office of such Lord High Chancellor: *ibid* s 3. See also para 912 note 2 ante. As to the Lord Chancellor see paras 477–497 ante.
- 3 *Ibid* s 5 (amended by the Statute Law Revision (No 2) Act 1893). If any doubt arises as to whether any duty or power of the Clerk of the Petty Bag is or is not transferred to the Clerk of the Crown in Chancery such doubt is to be determined by the Lord Chancellor, whose decision is final: Great Seal (Offices) Act 1874 s 5 (as so amended).
- 4 See *ibid* s 5 (as amended). As to the use of wafer seals in lieu of the Great Seal see the Crown Office Act 1877 ss 4, 5 (as amended); and para 914 ante. As to the preparation and wording of documents to be passed under the Great Seal see ss 3(1), 5(3); and para 913 text and notes 8–9 ante.
- 5 Great Seal (Offices) Act 1874 s 6 (amended by the Statute Law Revision Act 1883; and the Statute Law Revision (No 2) Act 1893). Nothing in the Great Seal (Offices) Act 1874 applies to the Clerk of the Commissioners of Patents so far as related to letters patent under the Patent Law Amendment Act 1852 and the Acts amending it: Great Seal (Offices) Act 1874 s 6 (as so amended).
- 6 As to the royal sign manual see para 908 ante.
- 7 Great Seal (Offices) Act 1874 s 8 (amended by the Statute Law (Repeals) Act 1973). Writs relating to the business of the subject were originally kept 'in hanaperio' (in a hamper).
- 8 Crown Office Act 1890 s 1(2). The Lord Chancellor may make regulations respecting the passing and preparation of instruments prepared or issued by the Clerk of the Crown in Chancery under the transferred powers: see s 1(3). This power does not appear to have been exercised.
- 9 As to the Treasury see paras 512–517 ante.
- 10 Great Seal (Offices) Act 1874 s 8 (amended by the Statute Law Revision (No 2) Act 1893).
- 11 See Erskine May *Parliamentary Practice* (21st Edn, 1989) pp 191–192. As to his role as an officer of the House of Lords see PARLIAMENT. His role as an officer of the House of Commons is confined to elections; see further ELECTIONS. As to the House of Commons see PARLIAMENT.

922. Fees. The Lord Chancellor¹, with the concurrence of the Treasury², may from time to time by order appoint the fees to be taken in the office of or by the Clerk of the Crown in Chancery³, or by any of his officers, or by any person performing the duties of messenger or pursuivant of the Great Seal⁴ or gentleman of the chamber attending the Great Seal or purse-bearer to the Lord Chancellor or chaff wax sealer or deputy sealer, and may from time to time by order increase, reduce, add to or abolish such fees for the time being taken in such office or by such officer⁵. No fees other than those so appointed are to be taken in the office of the Clerk of the Crown in Chancery⁶. By virtue of orders made under this power, fees in cash⁷ must be paid in the office of the Clerk of the Crown in Chancery upon the making and sealing of various grants, writs, commissions and other executive documents⁸.

- 1 For the meaning of 'Lord Chancellor' in this context see para 921 note 2 ante.
- 2 As to the Treasury see paras 512–517 ante.
- 3 As to the Clerk of the Crown in Chancery see para 921 ante.

- 4 All duties and powers required to be performed by or vested in the messenger or pursuivant of the Great Seal are performed by and vested in such officer as the Lord Chancellor may from time to time direct: Great Seal (Offices) Act 1874 s 4 (amended by the Statute Law Revision Act 1883; the Parliament (Elections and Meetings) Act 1943; and the Statute Law (Repeals) Act 1995). As to use of the Great Seal of the United Kingdom see para 909 ante.
- 5 Great Seals (Offices) Act 1847 s 9 (amended by the Statute Law Revision Act 1883; and the Statute Law (Repeals) Act 1995).
- 6 Great Seal (Offices) Act 1874 s 9 (as amended: see note 5 supra).
- 7 See the Treasury Order dated 30 June 1891, made under the Public Office Fees Act 1879, prescribing the mode of collecting fees in the Crown Office in Chancery.
- 8 See the Order dated 20 June 1871 appointing fees to be taken in the office of the Clerk of the Crown in Chancery; the Orders dated 18 July 1871 appointing fees to be taken in the Great Seal Patent Office and in the office of the Lord Chancellor's Secretary of Presentations; the Order dated 8 August 1881 as to fees in respect of warrants for letters patent. See also the Crown Office Fees (Election Papers) Order 1922, SR & O 1922/1393; the Crown Office Fees (Judicial Appointments) Order 1936, SR & O 1936/610; the Crown Office Fees (Honours and Dignities) Order 1937, SR & O 1937/497; and the Crown Office Fees Order 1994, SI 1994/600.

(3) OATHS OF OFFICE AND JUDICIAL OATHS

923. Oaths to be taken. As soon as may be after their acceptance of office the following executive officers and members of the judiciary must take the oath of allegiance and official or judicial oath, in the form and manner prescribed¹: First Lord of the Treasury², Chancellor of the Exchequer³, Lord Chancellor⁴ (as an executive officer), Lord President of the Council⁵, Lord Privy Seal⁶, Secretaries of State⁷, President of the Board of Trade⁸, Lord Steward⁹, Lord Chamberlain¹⁰, Earl Marshal¹¹, Master of the Horse¹², Chancellor of the Duchy of Lancaster¹³, Paymaster General¹⁴, Minister of Agriculture, Fisheries and Food¹⁵, any Minister of State who is eligible for a salary under the Ministerial Salaries Act 1975¹⁶, Lord Chancellor of Great Britain (as a member of the judiciary)¹⁷, Recorder of London¹⁸, Justices of the Peace for counties and boroughs¹⁹, district judges (including a district judge of the principal registry of the Family Division)²⁰, Master of the Queen's Bench Division²¹, Master of the Chancery Division²², Registrar in Bankruptcy of the High Court²³, Taxing Master of the Supreme Court²⁴, Admiralty Registrar²⁵, Lord Chief Justice²⁶, Master of the Rolls²⁷, President of the Family Division²⁸, Vice Chancellor²⁹, Lord Justice of Appeal³⁰, puisne judge of the High Court³¹, circuit judges³², recorders³³ and the Master of the Court of Protection³⁴.

Any person who objects to being sworn may be permitted to make his solemn affirmation instead of taking an oath, and this applies in relation to a person to whom it is not reasonably practicable without inconvenience or delay to administer an oath in the manner appropriate to his religious beliefs as it applies in relation to a person objecting to be sworn³⁵.

If any officer specified declines or neglects, when an oath required to be taken by him is duly tendered, to take such oath, he must, if he has already entered on his office, vacate it and if he has not entered office he must be disqualified from entering it; but no person may be compelled, in respect of the same appointment to the same office, to take such oath more than once³⁶.

- 1 For the prescribed forms of oath see the Promissory Oaths Act 1868 ss 2–4. Where in any oath under the 1868 Act the name of the present monarch is expressed, the name of the monarch of the United Kingdom for the time being is to be substituted: s 10. As to the mode of taking the oaths see para 924 post.
- 2 Ibid s 5, Schedule Pt I (amended by the Statute Law Revision Act 1953; the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II; the Post Office Act 1969 s 141, Sch 11 Pt II; the Secretary of State for the Environment Order 1970, SI 1970/1681, art 5(3), Sch 4; and the Statute Law (Repeals) Act 1977). The office of First Lord of the Treasury is held by the Prime Minister: see para 395 ante.