

- 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 Ie 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