

- 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 Council<sup>1</sup>; (2) warrants, commissions or orders under the sign manual<sup>2</sup>; or (3) proclamations, writs, letters patent, letters close, charters, grants, and other documents under the Great Seal<sup>3</sup>.

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 rules<sup>4</sup>.

- 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 exercised<sup>1</sup>, 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 prerogative<sup>2</sup>. 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 Cabinet<sup>3</sup>; 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 Council<sup>4</sup>. Orders in Council may, but need not, be statutory instruments<sup>5</sup>.

- 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 officers<sup>1</sup>, circuit judges and recorders<sup>2</sup>, and the authorisation of the performance of executive acts<sup>3</sup>.

In some cases the sign manual, warrant or order requires the addition of one of the secretarial seals<sup>4</sup>. 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 ministers<sup>5</sup>.

- 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 Ireland<sup>1</sup>, and in all other matters relating to England as the Great Seal of England was used prior to that date<sup>2</sup>.

- 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, casset (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 fit<sup>1</sup>. The seals and the keepers of them are subject to regulations made by Parliament<sup>1</sup>.

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 kingdom<sup>2</sup>.

- 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 Ireland<sup>1</sup> 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 used<sup>2</sup>. Upon the abolition of the office of governor<sup>3</sup> the custody of the seal passed to the Secretary of State<sup>4</sup>.

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 manual<sup>1</sup>, countersigned by the Lord Chancellor<sup>2</sup>, or by one of the principal Secretaries of State<sup>3</sup>, or by the Lord High Treasurer or two of the Treasury Commissioners<sup>4</sup>, is a necessary and sufficient authority for passing any instrument<sup>5</sup> under the Great Seal of the United Kingdom<sup>6</sup>, according to the tenor of the warrant<sup>7</sup>.

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 passed<sup>8</sup>.

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 Chancellor<sup>1</sup> may from time to time make rules relating to the preparation of warrants and instruments<sup>2</sup>, and the manner in which

or for by-elections<sup>4</sup>. Writs of *dedimus*, *supersedeas* and *mittimus* were also issued under the Great Seal<sup>5</sup>. 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 issued<sup>6</sup>.

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 rolls<sup>7</sup>.

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 powers<sup>1</sup>, for conferring titles or dignities<sup>2</sup>, for creating and conferring offices<sup>3</sup> and for conferring authority to perform particular functions<sup>4</sup>. Grants are used for creating or passing franchises<sup>5</sup> and other rights of property. Charters are used for creating corporations<sup>6</sup>. 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 warrant<sup>7</sup>.

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 Parliament<sup>8</sup>.

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 justice<sup>1</sup>, 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 Chancellor<sup>2</sup> may from time to time direct<sup>3</sup>. The duties and powers so transferred include all those relating to any writs or letters patent passed under the Great Seal<sup>4</sup>. All the duties and powers of the Clerk