



Evidence and Powers of Attorney Act 1940

1940 CHAPTER 28

An Act to empower certain officers and other persons to administer oaths and take affidavits, to facilitate the proof in criminal proceedings of documents intercepted in the post, and to make further provision as respects powers of attorney. [13th June 1940.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Authority to administer oaths

- (1) The Lord Chancellor may by order provide for empowering officers of His Majesty's naval, military and air forces, holding such ranks or appointments as may be specified in the order, to administer oaths and take affidavits during any war in which His Majesty is engaged for all or any purposes for which an oath may be administered or affidavit taken by a commissioner for oaths appointed under section one of the Commissioners for Oaths Act, 1889.
- (2) The Secretary of State may by order provide for empowering persons serving in the diplomatic, consular or other foreign service of a Power which, by arrangement with His Majesty, has undertaken to represent His interests in a country in which He has for the time being no diplomatic or consular representatives appointed on the advice of His Government in the United Kingdom, to administer oaths and take affidavits for all or any of the purposes aforesaid.
- (3) Any such order may prescribe—
 - (a) the classes of persons to whom oaths may be administered or from whom affidavits may be taken in pursuance of the order;
 - (b) the places or circumstances in which an oath or affidavit may be so administered or taken;

- (c) the facts to be stated in the jurat or attestation by any person by whom any oath or affidavit is so administered or taken.
- (4) Any document purporting to have subscribed thereto the signature of any person in testimony of any oath or affidavit being administered or taken before him, and containing in the jurat or attestation a statement of the facts required to be stated therein by an order under this section, shall be admitted in evidence without proof of the signature being the signature of that person or of the facts so stated.
- (5) As from the date on which an order made under subsection (1) of this section comes into force, the Commissioners for Oaths (Prize Proceedings) Act, 1907, shall be repealed.

2 Proof in criminal proceedings of documents intercepted in post

- (1) In any criminal proceedings instituted, whether before or after the commencement of this Act, during the war period—
 - (a) a certificate certifying that any document or documents annexed to, or otherwise identified by, the certificate constituted or formed part of a postal packet which was examined by an authorised examiner on a date specified therein; or
 - (b) a certificate certifying that any photographic copy or copies so annexed or identified is or are a true copy or true copies, made by an authorised photographer, of any document or documents which constituted or formed part of such a postal packet as aforesaid,
 shall, if purporting to be signed by a person being a competent officer, be admissible as evidence of the matters so certified, without proof of the signature being the signature of that person or of his official capacity.
- (2) In this section—
 - (a) the expression " authorised examiner " means a person authorised by or on behalf of His Majesty to examine (whether within or without the United Kingdom) postal packets which have been despatched by post;
 - (b) the expression " authorised photographer " means a person authorised as aforesaid to photograph (whether within or without the United Kingdom) such postal packets as aforesaid;
 - (c) the expression " competent officer " means a person holding any such appointment or office (whether within or without the United Kingdom) concerned with the examination of postal packets as may be specified in an Order of His Majesty in Council;
 - (d) the expression " document " includes an envelope or other outer covering of a postal packet;
 - (e) the expression " postal packet " has the same meaning as in the Post Office Act, 1908, but does not include a telegram while in the course of transmission by telegraph.
- (3) His Majesty may by Order in Council direct that the foregoing provisions of this section shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to the Isle of Man, any of the Channel Islands, any colony, any British protectorate, or any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised By His Majesty's Government in the United Kingdom.

3 Powers of attorney executed by certain persons

- (1) No instrument creating a power of attorney, being an instrument to which this section applies, shall be of any effect unless it is attested by at least one witness and unless and until the instrument either—
 - (a) has been deposited in the central office of the Supreme Court under section two hundred and nineteen of the Supreme Court of Judicature (Consolidation) Act, 1925; or
 - (b) has been registered in Scotland in the books of council and session; or
 - (c) has been deposited in the proper office of the Supreme Court under section forty-eight of the Conveyancing Act, 1881, as it applies to Northern Ireland.
- (2) Rules of court may provide that no instrument to which this section applies shall be deposited or registered as aforesaid unless it is presented by a solicitor and there is produced at the time of its presentation—
 - (a) an affidavit sworn by that solicitor proving that he caused the instrument to be engrossed and sent to the donor for execution and that he believes that the signature of the person executing the instrument as the donor is the signature of that person; and
 - (b) an affidavit verifying the execution of the instrument, sworn by the attesting witness or one of the attesting witnesses :

Provided that no rule made by virtue of this subsection as respects the Supreme Court shall apply to an instrument creating a power of attorney under section one of the Execution of Trusts (Emergency Provisions) Act, 1939, or any corresponding enactment of the Parliament of Northern Ireland.
- (3) A statement in writing by the donor of a power of attorney (whether or not contained in the instrument creating the power) that the instrument creating the power is not an instrument to which this section applies shall, in favour of a person dealing with the donee of the power, be conclusive evidence of that fact.
- (4) For the purpose of the following enactments (which impose penalties for making false statements in a statutory declaration), namely—
 - (a) section five of the Perjury Act, 1911;
 - (b) section two of the False Oaths (Scotland) Act, 1933;
 - (c) section twenty-one of the Statutory Declarations Act, 1835;any such statement as is mentioned in the last foregoing subsection shall be deemed to be a statutory declaration.
- (5) This section applies to instruments executed after the commencement of this Act during the war period either—
 - (a) outside the United Kingdom by a member of His Majesty's naval, military or air forces, or a person engaged in the nursing service or other auxiliary service of any of those forces; or
 - (b) by a British subject in territory which is under the sovereignty of, or in the occupation of, a Power with which His Majesty is at war, not being territory in the occupation of His Majesty or of a Power allied with His Majesty.

4 Proof of instruments creating powers of attorney

- (1) A document purporting to be—

- (a) an office copy of an instrument deposited in the central office of the Supreme Court under section two hundred and nineteen of the Supreme Court of Judicature (Consolidation) Act, 1925; or
- (b) an extract of an instrument creating a power of attorney registered in Scotland in the books of council and session; or
- (c) an office copy of an instrument deposited in the proper office of the Supreme Court under section forty-eight of the Conveyancing Act, 1881, as it applies to Northern Ireland;

shall, in any part of the United Kingdom, without further proof be sufficient evidence of the contents of the instrument and of the fact that it has been so deposited or registered.

- (2) Subsection (4) of the said section two hundred and nineteen and subsection (4) of the said section forty-eight are hereby repealed.

5 Application to Scotland

In the application of sections one and two of this Act to Scotland the following modifications shall be made:—

- (1) section one shall have effect as if there were added at the end of subsection (1) the following words— “ or by a judge ordinary, magistrate, justice of the peace or notary public ” ;
- (2) for subsection (1) of section two, the following subsection shall be substituted :—

“(1) In any criminal proceedings instituted, whether before or after the commencement of this Act, during the war period—

- (a) a certificate certifying that any document or documents specified therein and attached thereto constituted or formed part of a postal packet which was examined by an authorised examiner on a date specified therein; or
- (b) a certificate certifying that any document or documents so specified and attached is or are a true photographic copy or true photographic copies, made by an authorised photographer, of any document or documents which constituted or formed part of such a postal packet as aforesaid,

shall, if purporting to be signed by a person being a competent officer, be competent and sufficient evidence of the matters so certified, without proof of the signature being the signature of that person or of his official capacity, and any document so certified as a photographic copy shall be held as equivalent to the original.”

6 Application to Northern Ireland

In the application of section one of this Act to Northern Ireland, for the reference to a commissioner for oaths appointed under section one of the Commissioners for Oaths Act, 1889, there shall be substituted a reference to a commissioner to administer oaths appointed under section seventy-four of the Supreme Court of Judicature Act (Ireland), 1877.

7 Provision as to orders

Any Order in Council or order made under this Act may be revoked or varied by a subsequent Order in Council or order made in like manner.

8 Short title and interpretation

- (1) This Act may be cited as the Evidence and Powers of Attorney Act, 1940.
- (2) In this Act the expression "war period " means the period during which the Emergency Powers (Defence) Act, 1939, is in force.