

Scottish Courts and Tribunals Service



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Dear Ms Don

Thank you for your letter of 6 February 2023.

As you will be aware, an energy company can make an application for a utility warrant under the Rights of Entry (Gas and Electricity Boards) Act 1954 for a number of different reasons. This includes seeking a warrant to gain access to a customer's home to install a pre-payment meter ("PPM") if that customer has defaulted on their bill. The role of the courts under this legislation is to consider whether, or not, an application for such a warrant made by an energy company should be granted. In granting a warrant, a court needs to be satisfied that the relevant statutory tests have been met.

Whilst this legislation applies to England, Wales and Scotland, I should make it clear that the courts in Scotland process applications for warrants made by energy companies for PPMs differently to the courts in England and Wales. In Scotland, the courts do not consider applications for warrants in bulk. Each warrant is considered on its individual merits by a justice of the peace. If any application is opposed it is withdrawn from consideration and a new application should be made by the energy company to a sheriff.

I note that the Committee has been provided with a copy of the utilities warrant checklist which was provided to Justices of the Peace for Tayside, Central and Fife Sheriffdom. The same document is available in all sheriffdoms and is used by justices of the peace in processing an application for a warrant to install a PPM. Please find enclosed the current document and checklist (Flag A) together with a Protocol (Flag B). The Protocol was developed by a previous SCTS working group in 2015-16 in conjunction, and with the agreement, of the energy companies. However, it is important to point out that these documents do not supersede the relevant statutory tests set out in the 1954 Act and should be read alongside those.

In relation to your request for sight of the "human rights letter", SCTS does not have a sample letter which can be provided. Each energy company produces its own "human rights letter". The onus is on an energy company to ensure that they are providing

information to the courts, based on the facts and circumstances of each case that it considers may satisfy any relevant statutory tests which need to be met for a justice of the peace to grant a warrant, and any other information which it may be asked to provide as part of its application.

SCTS has been responsible for the administration of utility warrants in Scotland since court unification in 2008-09. SCTS maintain a register to record the total number of applications for utility warrants submitted to courts by energy companies. Details of the number of applications made and warrants granted for the last year, along with the caveats to this information, is undernoted. This information does not contain a breakdown of the specific types of utility warrants which are applied for by these companies. Energy companies can make an application for a utility warrant for other reasons, beyond seeking access to install a PPM. This is because this register was created and is used for the purpose of recording and processing the relevant court fees relating to all types of utility warrants. Information is not specifically held on this Register (nor can it be extracted from it) on the number or type of warrants granted or refused by courts in Scotland.

I am aware that Ofgem, the energy regulator, is currently carrying out a review and call for evidence into the practices of energy companies in relation to PPMs. In the interim, it has been reported that numerous energy companies will not seek a utility warrant to gain access to homes to install PPMs. It is a matter for the Government which has responsibility for this policy area to consider the outcome of any investigation, whether reform is needed and whether or not legislation needs to be brought forward to Parliament. Whilst it is inappropriate for SCTS to comment on whether that should be done, in terms of improving court processes which flow from the 1954 Act, SCTS has set up a short term internal working group in order to review and improve the administration of utility warrants in Scotland, implement an updated nationwide code, and improve data collection and the type of information recorded about utility warrants.

This Working Group was established on 9 January and is aiming to provide an internal report by end March 2023. Bearing in mind the constitutional position of the courts, if there is further information arising from that review which I consider is appropriate to share with the Committee, I am happy to do to.

I hope the information provided will assist in your consideration of this matter.

Yours sincerely

Eric McQueen
Chief Executive

Undernoted: No of warrants lodged and granted from January to October 2022

Number of warrants lodged	32,471
Number of warrants granted	4,822
*Not inclusive of all court locations	

**Please note that the figure provided in respect of the number of warrants granted should be read with caution. As set out above, our recorded information concerning utility warrants is for SCTS operational purpose only, rather than statistical reporting research purposes. The number of warrants SCTS has recorded has having been granted is only in respect of a small number of court locations.*

Utilities Warrants Checklist/Guidance for Justices

Name of applicant	<i>This is the person attending from the utility or debt collection company. These should be checked for each applicant on each occasion that they appear</i>
ID seen	
Oath or affirmation	
Letter(s) of Authority	
For each warrant applied for ...	
Supply address	<i>Must be clear and unambiguous</i>
The address is in the court's area or the application is on safety grounds	<i>The companies have been advised to apply to the court local to the address.</i>
Company applying for warrant is current supplier of gas/electricity at the address given	
If the warrant is sought on safety grounds or because of suspected theft or fraud and the Justice believes the reasons given the warrant should be granted at this point: informing the occupier of the application may defeat the object of the entry.	
There is a debt alleged in respect of the premises.	
Debtor's name	
Reasonable efforts have been made to obtain consent of the occupier of the premises.	<i>The company should have attended on at least two occasions. On the first visit, a card should be left with the date and time of the next visit and a contact telephone number, in case the date and time is not suitable.</i>
If occupier is unknown then reasonable efforts have been made to find out who is the owner or occupier.	<i>If the confirmed occupier is not the debtor what is the justification for the warrant?</i>
A copy of the letter sent advising the debtor of the application (the "Human Rights" letter) presented with the application together with the certificate of posting or the recorded delivery slip or declaration of deliver by an employee is dated more than 15 days before the application is being considered.	<i>Ideally the applicant will be able to show that the letter has been received but this is NOT required. The date of posting the letter must be at least fifteen days prior to the date you are considering the application. This is because the 'debtor' must have fourteen days within which to take action. If the delivery date is available you may wish to consider if the debtor has had sufficient time to respond.</i>

<p>Please note that for domestic customers there is a cap of £150 per property on the charges that can be levied in relation to applying for and executing a warrant.</p>	
<p>No application for a hearing has been received and no-one has turned up in person on the day of the application.</p>	<p><i>If a hearing has been requested then the warrant should have been withdrawn by the applicant. To refuse the warrant would mean you had in fact considered it, which would not be within the terms of the protocol and subject to challenge. If the applicant does not withdraw the warrant, then mark it as 'not considered' rather than refused.</i></p>
<p>For domestic premises the intention is to fit a pre-payment meter.</p> <p>Vulnerability.</p> <p>Proportionality.</p>	<p><i>Occupied domestic premises should not normally be cut off but this is a matter for the applicant. You may alter the warrant to restrict the action that can be taken however, the warrant is to enable the applicant to gain entry to the premises and their action, once there, can only be determined by them.</i></p> <p><i>The applicant is obliged in terms of their supply licence to ensure that vulnerable domestic customers are adequately protected. You may wish to confirm the position with the applicant.</i></p> <p><i>The applicant is obliged under the terms of their supply licence to adopt the principle of proportionality in relation to domestic customers. You may wish to consider the level of outstanding debt and the potential for additional costs being levied when considering whether or not this principle has been applied.</i></p>
<p>If the Justice believes that the appropriate procedure has been followed, that there are good grounds for entry and that appropriate action is intended then the warrant should normally be granted.</p>	

FLAG B: PROTOCOL FOR THE GRANT OF WARRANTS UNDER SECTION 2 OF THE RIGHTS OF ENTRY (GAS AND ELECTRICITY BOARDS) ACT 1954 IN PURSUANCE OF CIVIL DEBT

1. A utility company shall make all reasonable efforts to obtain the consent of the occupier of the premises (hereinafter referred to as 'the occupier') to the exercise of the rights of entry specified in the Rights of Entry (Gas and Electricity Boards) Act 1954 ('the 1954 Act) s1(2).
2. If no such consent is forthcoming and the utility company intends to seek a warrant under section 2 of the 1954 Act, it shall inform the occupier of that intention by letter sent by first class recorded delivery post or by first class post for which a certificate of posting has been obtained. The utility company can also deliver the letter by hand. Such hand delivery will require to be certified by the signature of two employees confirming same.*
3. The letter shall also inform the occupier, who must be named wherever possible, that, within 15 days of posting the letter, they may indicate their opposition to the application in respect of the grant of the warrant. A request for a hearing must be made in writing to the utility company. The letter sent to the occupier must clearly indicate that failure to indicate their opposition to the application for the grant of a warrant within the stipulated time will be taken to mean that the occupier does not oppose the application for a warrant taking place.
4. If no request for a hearing is received by the utility company within 15 days the utility company may apply to a justice of the peace for a warrant in accordance with section 2 of the 1954 Act. The information provided to the justice, under oath, must demonstrate that all reasonable steps have been taken to inform the occupier of their right to a hearing but that no such hearing was requested. A copy of the letter sent together with either the recorded delivery receipt or the certificate of posting or the personal declaration by the company employee must be provided to the justice.
5. If the occupier does inform the utility company within 15 days of the posting of the letter of their intention to request a hearing, the utility company must withdraw the application before the justices of the peace and submit a Summary Application to the Sheriff under section 2 of the 1954 Act.
6. In addition to the preceding paragraphs, a warrant should only be granted by a justice of the peace IF he or she is satisfied, on sworn information in writing that it is in the interests of justice so to do.

*service of documents on the occupier is defined in the Electricity Act 1989 s109 and in the Gas Act 1986 s46.