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Contact: Alan McIntosh

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17th December 2022

Natalie Don
Convenor
Social Justice and Social Security Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Natalie

Re: Rights of Entry (Gas and Electricity Boards) Act 1954

I am writing to raise my concerns in relation to how Warrants are obtained through the Scottish Courts under the Rights of Entry (Gas and Electricity) Boards Act 1954. These allow energy firms the power to access people's homes (including the right to open shut and lockfast places) to install prepayment/smart meters for gas and electricity supplies; or to disconnect energy supply for energy bill arrears.

I have enquired into the process used to do this with the Scottish Courts and Tribunal Service, the Judicial Institute of Scotland, and the Scottish Civil Justice Council. I have also recently written about it in The Herald as an Agenda piece on the 12th of December 2022 (Scottish Courts are failing energy customers).

What I have been able to find out from the Judicial Institute of Scotland, is there is some guidance being used in the Sheriff Courts, that was developed in Glasgow and variations of this are likely to be used across Scotland's Sherifffdoms. This guidance is that applications for Warrants should be treated as summary applications, that is civil law applications. I have attached a copy of the guidance being used in Tayside, Central and Fife Sherifffdom for your information.

I have not been able to source any similar guidance for the Justice of the Peace Courts, where the vast majority, if not all applications, are being made by energy firms. I have also been advised in some localities there are large numbers of applications being made.

My concern is I understand significant numbers of Warrants are being issued under the 1954 Act, but there appears to be very few hearings held in front of Justices of the Peace or Sheriffs.



Advice Talks Ltd (SC533215)
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Advice Talks Ltd (SC533215) is registered with the Information Commissioners Office (ZB190131) and is authorised by the Financial Conduct Authority to provide Debt Counselling and Adjusting Services (Registration Number: 951248). Alan McIntosh is an Approved Money Adviser for the purposes of the Debt Arrangement Scheme. You can get further free advice and assistance by visiting the Money & Pensions Service's [MoneyHelper](#) site.

I believe this is because the current process being used is not adequate, as you will see from the applications forms in the Guidance. These only require Energy firms to confirm they have sent a letter to their customer 15 days before applying for a Warrant using First Class Recorded Delivery. These letters, however, which are required under s109 of the Electricity Act 1989 and s46 of the Gas Act 1986, only advise people that the Energy firm is wanting entry to their home (which they can refuse). They do not intimate that a Warrant has been applied for, although they may intimate a Warrant may be applied for.

What is more concerning is there does not appear to be a prescribed form for these letters, so it is not clear if they are advising people where they can get advice and assistance or when a Warrant will be applied for, or how the person can challenge that application. In addition, 15 days appears a very short period of notice for someone to get advice and assistance and intimate back to the energy firm or the Court (if they know how to) that they object to a Warrant being granted.

Although the Right of Entry (Gas and Electricity Board) Act 1954 is a reserved matter, it is clear how applications are processed and dealt with is a matter for the Scottish Courts. Section 2 of the Act does require the Court to be satisfied that the energy firms right to gain entry is reasonably required.

There are a various reasons why this may not be the case. For example, the level of debt may be quite low, so granting a Warrant to install a prepayment meter may be a disproportionate act. The debt may be genuinely in dispute. There may vulnerable children or adults in the home; or there may be people in the home who require a constant energy supply to operate medical equipment.

My concern is where they may be reasonable grounds for not granting Warrants, the courts may not be getting that information supplied to them by the Energy firms or the energy customers, as they are not aware a Warrant has been applied for and how they can object to it being granted.

I strongly believe there is an urgent need for the current guidance being used to be reviewed and replaced with national guidance by the Scottish Courts and Tribunal Service.

I believe this should include guidance on:

- People being notified when an application is made, using a prescribed form that advises people not only where they can get advice and assistance, but how they can challenge the application.
- A minimum period of 21 days' notice to be provided to energy customers once the application has been applied for, to allow them to respond, should they wish to.
- The current application forms to be revised to include a pre-action checklist for energy firms to complete before submitting to the court. This should include:
 - Confirmation people have been advised where they can get free advice and assistance
 - That reasonable efforts have been made to enter a repayment plan with the consumer, to avoid the need to apply for a Warrant.
 - Confirmation of whether the debt owed is in dispute or not; and
 - Whether the household is on the Energy Firm's Priority Service Register, and where so, the reasons why (if known).



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It may be when a household is on the Energy Firm's Priority Service Register, a Warrant should not be granted without a hearing before a Judge (similar to the current requirement in all eviction and repossession cases for there to be hearings before an eviction or repossession order is granted, regardless of whether the tenant or homeowner responds to the notice they were served).

I hope you and your committee will consider these matters and possibly consider in your busy schedule, whether there is a need to take further evidence from different stakeholders, including those who have experienced disconnections by energy firms.

I appreciate these are matters for the Scottish Courts and the Judicial Institute of Scotland and whether a Warrant should be granted is one of judicial discretion on a case-by-case basis; however, I do feel the processes that are currently being used could be improved on.

I have been advised by the Judicial Institute of Scotland there is no plans to review the current approach, which I feel is unfortunate, due to the energy crisis we are currently facing and applications for warrants are no doubt on the increase.

Yours sincerely

Alan McIntosh
Managing Director



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