

PAUL GOLDSRING
**SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)
FOR ENGLAND AND WALES**

**Directions as to the listing and conduct of applications for
warrants of entry to premises under Schedule 6, part 1 of the
Water Industry Act 1991**

Where warrants for entry to premises are sought by water and sewerage undertakers, water and sewerage licensees, their representatives or agents under schedule 6, part 1 of the Water Industry Act 1991, the following procedure must be followed:

Listing and procedure

Uncontested cases will be assigned to a court by the Heads of Legal Operations by applicant. This also applies to emergency applications. Existing assignments will continue.

Senior legal managers will determine frequency and hearing slots based on predicted volumes, which may change from time to time.

Allocation to judiciary

Practice Direction 5.14 on the deployment of cases between district judges (MC) and justices of the peace will apply.

Definitions

‘The Act’ refers to the Water Industry Act 1991 throughout.

‘Undertaker’ refers to a water or sewerage undertaker within the meaning of the Act.

Notice

In order to comply with EHCR Articles 6, 8 and Article 1 of the First Protocol, applicants will send a notice to the occupier informing them of their right to apply for a contested hearing. This notice will also serve as the statutory notice under paragraph 7(3) of Schedule 6 of the Act.

No notice is required in the event of a genuine emergency, or where criminal activity is suspected and it is necessary to avoid disclosing the investigation. The applicant must satisfy the court of this.

No notice is required where the applicant satisfies the justice that the giving of notice would defeat the object of the proposed entry.

Otherwise notice of 21 days before the application is made is required for applications on the grounds of safety, tampering or criminal activity (and water utilities applications under Sched 6 of the Water Industry Act 1991).

The notice must inform the occupier of their right to request a hearing at a courthouse other than the assigned courthouse, a list of which will be provided by HMCTS and which may change from time to time. The occupier will be required to provide basic case management information with their request.

If a hearing is adjourned there is no requirement for a second notice.

Where a contested hearing is requested, the applicant will contact the listing office at the selected court to fix the hearing with reference to the case management information provided by the customer.

HMCTS may for good reason fix a hearing at a courthouse other than the one requested.

Hearings

Uncontested hearings will be held by live link. Contested hearings may be held by live link, in accordance with Magistrates' Courts Rule 3B.

There is no requirement for applications to be heard in open court. However, for convenience in listing (for example where applications are combined with other types of business) they may be held in public.

Applications

Applications will be made by submitting the relevant data in a CSV file to the assigned court office and paying the prescribed fee.

Each CSV file will be accompanied by a further file which comprises the written Information for each case, to be confirmed on oath. This will be filed by the court officer.

Acknowledgment

The Chief Magistrate is grateful for the assistance of and the Justices' Legal Advisers and Court Officers' Service (formerly the Justices' Clerks' Society) in the preparation of these directions.

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The information the court must establish

Justices and judges must scrutinise the applications in light of the requirements of the Act. The key questions are whether the applicant or their principal has a right or power under the Act, whether there are reasonable grounds for the exercise of it, and whether one or more of the conditions in paragraph 7(2) of Schedule 6 of the Act applies.

It is recommended that courts do not hear each application individually. Experience with energy warrants of entry has shown that the relevant evidence is the same in the vast majority of cases. Thus the oral Information should be provided generically for every case on the list, followed by more detailed scrutiny of a sample of cases, from which the justice/judge can assess the validity of the applications.

In particular it is not necessary to require individual evidence of matters which are the same in each case, for example service of notices. Scrutiny should take the form of an examination of a dip sample of cases (see below). If the court is satisfied in relation to the cases sampled, the remaining applications can be granted *en bloc* following confirmation of the information on oath.

It is recommended that the court sample five applications for lists of under 100 cases and 10 for lists over that. Justices/judges must be provided with the application list, either digitally or printed, from which to draw the samples.

In general, for all applications (*en bloc*):

- The applicant is applying on behalf of the undertaker as an employee or agent
- The applicant is authorised by the undertaker to apply (documentary evidence)
- If the warrant is granted, the undertaker will designate [the applicant] [someone else] to execute the warrant
- Their evidence is [partly] based on computer systems which were operating normally when the data was obtained
- The undertaker provides water or sewerage services to the occupier.
 - Notice has been sent to each occupier notifying them of the intention to apply for a warrant and their right to ask for a court hearing at least 10 business days before the date of hearing

Or

- Notice has not been sent as notice would defeat the object of the warrant
- [Where notice has been given] none of the occupiers on the list has responded asking for a court hearing
- The relevant premises are not domestic premises.
- The undertaker has reasonable grounds to exercise a right or power under the Act in relation to each set of premises to disconnect supply.

In each case either

- The exercise of that right or power to disconnect has been refused

Or

- Refusal is reasonable apprehended

Or

- The premises are unoccupied

Or

- The occupier is temporarily absent

Or

- Entry is urgent

Or

- Application for admission would defeat the object of the entry
- The purpose for the warrants (e.g. debt, to fit a meter, to carry out a survey *et al*) (there may be different purposes for different cases on the list and there)

Additional information for debt cases

- **Either**

- Each occupier is liable to pay charges to the undertaker for the supply of water to the premises and
- The undertaker or their agent has sent by post or email a written demand for payment to each occupier and
- Payment in each case has not been made within 7 days of the day after that demand

Or

- Each occupier is liable to pay charges to a water supply licensee and
- The licensee has sent by post or email a written demand for payment to each occupier and
- Payment in each case has not been made within 7 days of the day after that demand and
- In each case the water supply licensee has requested the relevant undertaker to disconnect the service pipe or otherwise cut off the supply
- As a result there is a right of entry under section 61 of the Act to disconnect the supply.
- Notice has been sent by to each occupier notifying them of the intention to apply for a warrant and their right to ask for a court hearing at least 15 business days before today
- All outstanding debts exceed £200 taking into account payments made after the notice was sent

Additional information for disconnection cases

- If on entry the agent becomes aware that someone is living in the premises they will investigate further.

Additional information where the warrant is sought to enter under section 169 (surveys for reservoirs or boreholes)

- The Secretary of State has authorised the entry

Questions for sampled cases

All applications

Question	Notes
When was the HR notice sent (if it was)?	If sent, must be at least 15 business days before the date of hearing
When did customer move in or register with the retailer?	
What type of contact details do you have?	i.e. address, phone, email

How many contact attempts have you made and how?	E.g. telephone, site visit For 'defeat the object' cases, there may properly have been none.
Date of last site visit and outcome	
Are there any signs of someone living in the premises?	Any details known, particularly are they the customer or a third party
Does the property share a meter, and if so is it with another business or residential?	If residential, what is to be done to protect residents?

Additional questions for applications other than debt

What is your purpose for entering?	E.g. to install a meter, to prevent contamination
What are your grounds for applying for a warrant?	E.g. entry has been refused, premises deserted
If no notice was given, why would it defeat the object?	E.g. occupier is by-passing the meter and would remove the by-pass

Additional questions for debt cases

What dates were bills sent?	Must be at least 28 days before the date of hearing
How much is owed?	Must be over £200 (proportionality)
Has anything been paid?	
What is the date of last meter reading?	
What is the age of the debt?	
What is the date of last payment?	

Additional questions for disconnection cases

Are you aware of any high or medium risk vulnerability?	If some of the customers are medium risk, how was that assessed
Are you aware of any livestock in the premises?	If yes, what arrangements have been made for them?

Paul Goldspring

Senior District Judge (Chief Magistrate) for England and Wales

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Pointers on Vulnerability

High Risk – Do not disconnect

- Occupier requires a continuous supply of water for health reasons

- Households with a very elderly occupant (75+), without support in the house;
- Households with children under 2
- Households with chronic/severe or terminal health conditions (such as cancer, cardiovascular/ respiratory disease (COPD such as emphysema, chronic bronchitis) and organ failure).

Medium Risk – Further assessment required by suppliers on a case-by-case basis

Age: Children 5 and under

Other serious medical/health Conditions (such as neurological diseases (Parkinson's, Huntington's, cerebral palsy), respiratory conditions, nutritional issues (such as malnutrition) and mobility limiting conditions (osteoporosis, muscular dystrophy, multiple sclerosis)).

Serious mental/developmental health conditions (such as clinical depression, Alzheimer's, dementia, learning disabilities difficulties, schizophrenia).

Temporary situations (such as pregnancy, bereavement).