

Interest (Scotland) Bill

Consultation Response Paper

This response paper should be read in conjunction with the Scottish Government's consultation document and draft Bill on interest on debt and damages.

It is not necessary to answer all of the questions and you can focus on those in which you have a particular interest.

Please tick the response that most closely matches your opinion. Some questions invite you to expand on your answer and space is provided to do so. If you wish to do so you can also use the space at the end of this document to make additional comments.

Your Details

Name: Colin Greig
.....

Job Title: Accountant
.....

(if applicable)

Address: Room W314 Fife House, North St, Glenrothes, Fife

Postcode:KY7 5LT.....

Your Organisation's Details

Title of Organisation: Fife Council.....
(if applicable)

Type of Organisation:Local Authority.....

(individual, business, advice organisation,
professional body,
legal body, statutory body)

Address: ...Fife House, North St, Glenrothes, Fife
.....
.....

Postcode:KY7 5LT.....

We will make all responses available to the public in the Scottish Government library unless confidentiality has been requested. Responses from those who reply in confidence will only be included within numerical totals and names and text will not appear in the list of respondents or in any published analysis.

Confidentiality:

Yes	
-----	--

Deadline for Responses: Friday 4 April 2008

Completion and Submission of Responses

It would be helpful to have your response by e-mail. However to help those who want to comment but do not have e-mail facilities we will be happy to accept written submissions too. Your two options for completing and submitting your response are:

Email submissions: Helen.grosset@scotland.gsi.gov.uk

Written Submissions: Family Law and Administrative Justice
Civil Justice, Law Reform and International Directorate
2 West, St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Telephone 0131 244 4837
Fax 0131 244 8325

Acknowledgements

All responses will be acknowledged either in writing or electronically.

Additional Copies of the Consultation Document and Response Paper

Further copies of the consultation document and the response document are available from the above address or can be downloaded from the Scottish Executive's web site at www.scotland.gov.uk/Publications/2008/01/interestondebt

For further information, or if you would like the consultation document or this paper in another format or language, please contact the above address. We will try to meet your needs.

Questions

Ref	Question	Yes	No	Don't know	Comments
Q1	Do you agree that utility debts should be exempt from the statutory interest regime? Please provide reasons for your answer.	x			Workability of the legislation and administrative burden on those applying/providing services.
Q2	Do you agree that rent arrears due to public sector landlords should be exempt from the statutory interest regime? Please provide reasons for your answer.	x			Cost of calculation could cost more than the interest increasing the administration burden and taking resources away from service provision.
Q3	Are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.	x			Welfare services to the elderly, vulnerable and at risk.
Q4a	Do you think the draft Bill will have an effect on the provision of insurance for individuals? If yes, what do you think that effect would be?	x			Possibly put costs up if greater risk of higher damages being paid out.
Q4b	Do you think the draft Bill will have an effect on the provision of insurance for businesses? If yes, what do you think that effect would be?	x			Possibly put costs up if greater risk of higher damages being paid out.
Q4c	Do you think the draft Bill will have an effect on the insurance industry? If yes, what do you think that effect would be?		x		
Q5a	Do you think that statutory interest should run on late payments under contracts of employment?		x		Potential administrative burden. 30 day time limit will exclude vast majority of claims. Excessive cost associated with calculating miniscule claims.

Ref	Question	Yes	No	Don't know	Comments
Q5b	If so, do you think that the statutory interest should run from the date on which payments are due?				
Q6	Do you think that statutory interest should begin to run 30 days after the end of the period in respect of which the service under the contract is remunerated?	x			The date of commencement of interest should be the date on which the debt falls due, in line with Commercial Debt interest. If this is not agreed in advance the Bill should dictate an arbitrary period, not necessarily the same period for all contracts.
Q7	If you think that statutory interest should run on late payments under contracts of employment, do you think there are any particular circumstances when interest should not run on late payments? If so, then what would these be?		x		Payroll is a contentious area but could be excluded in the contract of employment if not in the bill itself due to the cost of calculating penalty interest on small amounts. Should not apply where fault lies with employee e.g. not submitting claim timeously or following procedures correctly.
Q8a	Should the rate of statutory interest be simple interest? Please provide reasons for your answer.	x			Simple interest should be used charging interest on interest is contentious and likely to prove ineffectual. The interest on Commercial Debt is simple and this should set the precedent.
Q8b	Should the rate of statutory interest be compound interest? Please provide reasons for your answer.		x		
Q9a	Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.	x			Courts should have the right to reduce or waive interest charges in the interests of justice and equity. Taking into account the conduct of parties in this context and protect from unjust enrichment.
Q9b	Should the draft Bill contain provisions for limited judicial discretion in awarding		x		

	interest? Please provide reasons for your answer.				
Q10a	Should the draft Bill allow for any retrospective effects?		x		
Q10b	If so, what should have retrospective effect and why?				
Ref	Question	Yes	No	Don't know	Comments
Q11	Should there be a difference in transitional arrangements for contractual debts, non-contractual debts or damages? If so, please give reasons.		x		Best to limit confusion and unify the position for all debts and damages.
Q12	Do you think the draft Bill will have an effect on individuals? Please provide reasons for your answer.		x		Will only be marginal impact and protection in some instances.
Q13	Do you think the draft Bill will have an effect on businesses? Please provide reasons for your answer.			x	
Q14	Do you think the draft Bill will have an effect on backdated pay? Please provide reasons for your answer.	x			If salaries included in provisions would add to administration burden and potentially outcome of pay negotiations.
Q15	Do you think the draft Bill should exempt backdated pay from the statutory interest regime? Please provide reasons for your answer.	x			Make administration simpler and not impact on pay negotiations.
Q16	Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.	x			If bill includes salaries puts pressure on employers to agree pay within strict timescales and could change bargaining dynamics.
Q17	Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for	x			Could lead to greater pressure from employers to agree and or lead to implementation without agreement.

	your answer.				
Q18	Do you think the draft Bill will have an impact on equal pay claims?	x			If applies yes will put claims up if retrospective but in itself will not be enough to make someone take a claim.
Q19	If yes, what would be the likely financial impact on your organisation or the organisations you represent?				Would put up value of any outstanding claims.
Ref	Question	Yes	No	Don't know	Comments
Q20	Do you think the draft Bill should exempt equal pay claims from the statutory interest regime? Please provide reasons for your answer.	x			Retrospective effect would impact on costs of claims not resolved prior to the bill which could be unfair.

Please use this section if you wish to make additional comments

Overall the draft bill represents a welcome harmonisation of the law however the public sector exemptions must be very explicit and cover both sums due and payable by us in all cases for benefits.

- Given the workability issues surrounding interest on commercial debts we would emphasise that all issues relating to local taxation and benefit administration should be exempt from the proposals.
- Payroll although potentially contentious would not be greatly affected as the vast majority of payments are all made on time. It would only be payments such as requests for payments missed on payroll etc that may be affected and these are usually all picked up well within 30 days. All other third party payroll payments already have statutory deadlines (such as tax/arrestments). The 30 day clause could result in a higher cost of calculation than payment made in many cases if the Bill provisions applied.
- As pensions are already required by statute to pay interest on late payments (at the rate of 1% above bank base rate) this would not have any impact or at least only minimal impact on pensions.

Colin Greig
Performance and Service Support, Fife Council