

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

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Your Organisation's Details

Title of Organisation: CIPFA Directors of Finance Group
Type of Organisation: Professional Body
Address: As above
.....
.....
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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:

NO	
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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			As mentioned in the consultation document, it is not desirable to increase the level of indebtedness for these essential services. We have recently witnessed large increases in the costs of these services which consumers may already be struggling with – they should not be penalised further. It is assumed that the current powers to charge statutory additions in the case of a summary warrant for recovery of council tax debt will remain unaffected by the draft Bill.
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			Local authorities have a statutory obligation to provide housing for their population. Increasing the level of indebtedness through adding interest to outstanding rent will not help either the tenant or the local authority/housing association. Levels of outstanding debt would rise, matched by increased debt write offs. In practical terms there would be little effect on the allocation of housing resource, but potentially an increased administrative burden for the landlord.
Q3	Are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.	X			Any debt which arises from charges for services necessary to enable a persons normal daily functioning should be excluded eg home care charges, warden service charges. This exclusion should not apply where there is an element of choice over whether to request a service eg hire of public halls.
Q4a	Do you think the draft Bill will		X		The draft Bill is unlikely to have

	have an effect on the provision of insurance for individuals? If yes, what do you think that effect would be?				a significant effect on the provision of insurance to individuals as the majority of insurance agreements already make explicit reference to late payment provisions.
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		Businesses could potentially benefit from the draft Bill where they are insured by policies which do not currently provide for interest to be paid. However the vast majority of insurance agreements make explicit provision for penalties in the event of late payment.
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		The draft Bill will not have a significant impact on the insurance industry. Most insurers seek to resolve property claims within 30 days of the quantified claim being received.
Q5a	Do you think that statutory interest should run on late payments under contracts of employment?		X		Interest should only run on payments where it is solely the fault of the employer – if the employee (or his agent) have contributed to the delay then this should be taken into account (see 9b below). If interest were to become payable there is potential for a massive administrative burden for employers. There is also a potential difficulty in ascertaining what the payable date is for some payments. Both parties to the employment contract would need to be clear at the outset what the pay frequency would be, and what date.
Q5b	If so, do you think that the statutory interest should run from the date on which payments are due?				See below for comment
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	X			30 days is a reasonable period in which employers should be able to make any payments due, and avoid unnecessary bureaucracy.

	contract is remunerated?				
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?				We have answered no at 5A above, therefore will not provide a response to this question. However, if interest were to become payable on late payments under employment contracts, that interest should not run on back-dated pay awards where these have been subject to negotiation. However, it is not unreasonable to expect that from the date of settlement, a specific time period will be allowed for back-dated payments to be made, with interest being payable from the end of this period.
Q8a	Should the rate of statutory interest be simple interest? Please provide reasons for your answer.	X			The guiding principle of the Bill is that the interest awarded should provide realistic compensation for the loss of the use of those funds – interest should not be payable at a punitive rate. Compounding the interest payable is likely to viewed as punitive. (Note – there is a lack of clarity in the published consultation – para 8 states the current judicial rate of interest is 8% - it does not make clear this is 8% <i>over</i> the Bank of England base rate.)
Q8b	Should the rate of statutory interest be compound interest? Please provide reasons for your answer.		X		As above
Q9a	Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.		X		Complete judicial discretion would be inconsistent with the objects of the Bill, and as the SLC point out, may potentially discourage the resolution of claims for interest without recourse to the courts. Circumstances by which late payments arise due to force majeure are no more the fault of the creditor than the debtor, but the onus is on the debtor to

					<p>ensure debts can be paid. Where the debtor is an individual, the majority of debts are either exempt or will be covered under existing contract terms as detailed in para 76.</p> <p>Therefore judicial discretion is predominantly likely to affect organisations, for whom business continuity should be an issue they address in the normal course of operation.</p>
Q9b	<p>Should the draft Bill contain provisions for limited judicial discretion in awarding interest? Please provide reasons for your answer.</p>	X			<p>The conduct of the creditor, including the creditor's representatives, should be a limiting factor in awarding interest.</p>
Q10a	<p>Should the draft Bill allow for any retrospective effects?</p>		X		<p>In order to avoid situations where organisations or individuals are faced with multiple claims for interest owed following commencement, there should be no retrospective effect.</p>
Q10b	<p>If so, what should have retrospective effect and why?</p>				
Q11	<p>Should there be a difference in transitional arrangements for contractual debts, non-contractual debts or damages? If so, please give reasons.</p>		X		
Q12	<p>Do you think the draft Bill will have an effect on individuals? Please provide reasons for your answer.</p>		X		<p>The draft Bill is likely to have a limited effect on individuals given the major items of consumer debt are either exempt or likely to be well covered under existing conditions with regards late payment.</p>
Q13	<p>Do you think the draft Bill will have an effect on businesses? Please provide reasons for your answer.</p>	X			<p>The draft Bill provides clarity (in the absence of existing agreements/conditions between the parties) for both creditors and debtors with regards the liabilities due in the event of late payment.</p>
Q14	<p>Do you think the draft Bill will have an effect on backdated pay?</p>	X			<p>See comments at question 7 above. If backdated pay is specifically excluded in the Bill,</p>

	Please provide reasons for your answer.				then there will be minimal effect. If it is not however, then there will be a major incentive for employers to minimise the levels of backdated pay.
Q15	Do you think the draft Bill should exempt backdated pay from the statutory interest regime? Please provide reasons for your answer.	X			See comments at questions 7 and 14 above.
Q16	Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.	X			If back-dated pay is not specifically excluded, then it will encourage early settlement, more so on the part of employers. This has potential to force higher levels of wage increases than may be previously experienced. This is an undesirable outcome for all employers, but particularly public sector employers where wage inflation becomes the dominant financial pressure to the detriment of service provision.
Q17	Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for your answer.	X			As stated in Q16 above, employers will want to settle quickly, while trade unions may be happy to prolong discussions in the knowledge that interest on back-dated pay will accrue to their members. Effectively the Bill would increase the negotiating power of trade bodies.
Q18	Do you think the draft Bill will have an impact on equal pay claims?	X			Successful equal pay claims may already attract an interest element unless agreed that this will not be the case. However there are likely to be many instances where this agreement has not been reached, therefore the draft Bill will have an impact, and similarly to other back-dated claims, the position of the employer is weakened.
Q19	If yes, what would be the likely financial impact on your organisation or the organisations you represent?				It is very difficult to say in quantitative terms given the varying lengths of time since claims were lodged, and the

					levels of claim. However, it is undoubted local authorities would incur an increased cost of claims, impacting on public service provision.
Q20	Do you think the draft Bill should exempt equal pay claims from the statutory interest regime? Please provide reasons for your answer.	X			Ideally these claims should be exempt, but care would need to be taken in the design and application of the exemption so as not to exacerbate any potential discrimination.

Please use this section if you wish to make additional comments

The draft Bill provides a useful reference from which both parties to a contract can be clear (in the absence of an explicit agreement with regards late payment) as to the consequences and potential liabilities around late payment of debt.

In our view, the decision not to apply a minimum threshold for the payment of interest (para 19 in the consultation document) is a missed opportunity to reduce the potential administrative burden for organisations, particularly with regards late payment under contracts of employment. This burden could be especially onerous for public sector employers who generally have large numbers of employees on their payroll. It would seem to make sense to exclude any interest payments where the costs involved in calculating them are likely to outweigh the payment itself.