

# 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: .....Alasdair Herbert.....

Job Title: ...Assistant Chief Executive (Finance).....  
(if applicable)

Address: ...North Ayrshire Council,  
...Cunninghame House,.....  
...Irvine.....

Postcode: ...KA12 8EE.....

### Your Organisation's Details

Title of Organisation: ...North Ayrshire Council.....  
(if applicable)

Type of Organisation: ...Local Government.....  
(individual, business, advice organisation,  
professional body,  
legal body, statutory body)

Address: ...As above.....  
.....

Postcode: .....

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	
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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](mailto: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  
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**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](http://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			Non payment eventually results in disconnection and this is considered a sufficient penalty
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			The inclusion of interest would only add to the bureaucratic burden of collecting rents. Is the purpose not to penalise businesses rather than individuals? It may also cause complications with rent benefit claims.
Q3	Are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.			X	
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			<p>If any additional cost is added to settlements the policyholder is likely to incur increased premium to cover these costs.</p> <ul style="list-style-type: none"> <li>· If interest is added to settlements it may encourage settlements to be made more quickly thus minimising any additional costs being incurred initially by the insurer and subsequently by the policyholder.</li> <li>· With a range of additional costs being added to insurance some insurers may decide to limit cover offered.</li> <li>· Probably some uncertainty will exist with policy holder about what will be returned as part of settlement and how this is made up.</li> </ul>
Q4b	Do you think the draft Bill will have an effect on the provision of insurance for	X			As above, business would possibly incur additional premiums costs to meet new

	businesses? If yes, what do you think that effect would be?				<p>levels of settlements.</p> <ul style="list-style-type: none"> <li>· There would be some uncertainty over settlement amounts.</li> <li>· Greater transparency in relation to policy wording would be required to ensure any clauses relating to interest are inserted within terms and conditions and then understood by the policy holder.</li> <li>· Not sure in the management of liability claims what expectations would be held by third party solicitors when the Council may handle claims internally. Would there be an expectation of interest being added to self-insurance payments?</li> <li>· Greater levels of self-insurance may be required to off-set premium increases or exclusions placed on policies.</li> </ul>
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			<p>Clear policy wording would be required to ensure the policy holder is aware of any interest clauses.</p> <p>There could be a perception that insurers will increase costs even where they may not always incur interest payments so there is a perception risk to be overcome.</p> <p>It may encourage settlements to be made more quickly to avoid increased costs.</p> <p>With a range of additional costs being added to insurance some insurers may decide to limit cover offered or force limitations and exclusions within policy wordings.</p>
Q5a	Do you think that statutory interest should run on late payments under contracts of employment?	X			<p>But only when an error is made by the employer</p>

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?		X		This could lead to a bureaucratic nightmare with arguments over when payments are actually received and transactions for interest that actually lead to greater cost involved in the calculation of the interest than the actual level of interest payment.
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			This would remove the minimal payments
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 <b>not</b> run on late payments? If so, then what would these be?	X			Equal pay claims have to be fought on the merits of the arguments put forward by each side and the employment legislation - the issue of potentially significant interest charges on arrears is unrelated to the considerations of a court.
Q8a	Should the rate of statutory interest be simple interest? Please provide reasons for your answer.	X			Depending on the period of the claim, lengthy calculations could be involved if compound interest were awarded
Q8b	Should the rate of statutory interest be compound interest? Please provide reasons for your answer.			X	See 8a
Q9a	Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.		X		The requirement to seek a judicial decision may deter creditors / those seeking a claim as a result of additional cost
Q9b	Should the draft Bill contain provisions for limited judicial discretion in awarding interest? Please provide reasons for your answer.	X			Providing sufficient guidance is provided to situations / contracts where interest can be claimed
Q10a	Should the draft Bill allow for any retrospective effects?			X	Additional financial burdens would be created that were unknown at the time of the original contract
Q10b	If so, what should have retrospective effect and why?				N/A

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			The existence of a contract will detail payment requirements that can be proved.
Q12	Do you think the draft Bill will have an effect on individuals? Please provide reasons for your answer.	X			The draft bill will increase costs for individuals as any interest payment would be recovered, albeit indirectly, from end users of services.
Q13	Do you think the draft Bill will have an effect on businesses? Please provide reasons for your answer.	X			Costs for businesses will increase if interest is charged but this will depend on efficiency within the business.
Q14	Do you think the draft Bill will have an effect on backdated pay? Please provide reasons for your answer.	X			If interest is applied to backdated pay, then employer costs will increase. Often the negotiations for such events are outwith the control of the employer. Pressure for settlements by employers, however, could lead to uneconomic settlements (or perhaps not the best deal that could be struck)
Q15	Do you think the draft Bill should exempt backdated pay from the statutory interest regime? Please provide reasons for your answer.	X			For the same reason at Q14
Q16	Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.			X	Only if the Bill applies to backdated pay
Q17	Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for your answer.			X	Only if the Bill applies to backdated pay – see Q14
Q18	Do you think the draft Bill will have an impact on equal pay claims?			X	Yes if the Bill applies – impact will be expensive for local authorities – but should the bill apply to claims lodged prior to the bill becoming law – this would add a burden that was not known at the time the claim was made known?
Q19	If yes, what would be the				Given the value of equal pay

	likely financial impact on your organisation or the organisations you represent?				claims that currently rest with local authorities following the single status agreement for Local Government, the financial impact would be substantial but only if the bill applies to claims already lodged. The added cost has not been provided for and would be dependent upon the timescale for tribunals settling claims – this is outside the control of the local authorities.
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			For the reasons given in Q19