

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: Andrew Wilkinson

Job Title: Claims Manager (Scotland)

Address: Norwich Union Insurance
Douglas House 116 Waterloo Street
Glasgow

Postcode: G2 7DR

Your Organisation's Details

Title of Organisation: Forum of Scottish Claims Managers
(if applicable)

Type of Organisation: Representative body for Member Insurers in Scotland
(individual, business, advice organisation, (a list of FSCM Members is attached to this paper)
professional body,
legal body, statutory body)

Address: C/O Norwich Union (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	<input type="checkbox"/>
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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.



Forum of Scottish Claims Managers

Response to:

Interest (Scotland) Bill Consultation Paper

The forum members deal with the majority of insurance related litigation in the Court of Session and Sheriff Courts throughout Scotland. Our responses are directed only at areas where we are able to comment.

Attached is a list of our members' employers. The Forum of Scottish Claims Managers is governed by a constitution, a copy of which is also attached. In respect of all responses to this document we would seek to engage in further discussion with the review group.

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.				No comment
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.				No comment
Q3	Are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.				No comment
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?				Please see answer below.
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?				<p>The FSCM does consider that the provisions of the draft bill would have an effect on the provision of insurance for both individuals and businesses. Some of our members' employers have indicated they may require redrafting policies with some indicating they will specify the applicable law to be that of England & Wales only – effectively contracting out of the provisions. The FSCM does not believe this would ultimately be helpful in the resolution of disputes.</p> <p>The FSCM also holds a view that the bill may create uncertainty and the scope for further litigation over whether for example statutory interest should apply to a claim against an insurer which was not adequately vouched when presented.</p> <p>The FSCM also has a concern about whether it is appropriate to apply the general interest provisions of the draft bill by default. This is because the FSCM</p>

					understands that insurance is a reserved matter in terms of the 1998 Scotland Act. It is the view of the FSCM that the draft bill should specifically exempt contracts of insurance.
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?				Please see our answer above. The FSCM considers it undesirable that some of its members may feel obliged to consider contracting out of obligations.
Q5a	Do you think that statutory interest should run on late payments under contracts of employment?				No Comment
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?				No 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 contract is remunerated?				No Comment
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?				No Comment
Q8a	Should the rate of statutory interest be simple interest? Please provide reasons for your answer.				<p>We are in agreement with the proposal whereby the judicial rate of interest is fixed to the prevailing Bank of England lending rate save for an additional 1 or indeed 1.5 percentage points. This reflects the compensatory element to an award of interest.</p> <p>The FSCM is of the view that the current provision which sets the prevailing Court rate by Act of Sederunt is prone to "lagging" behind the economic reality. The FSCM is aware Bank of England interest rates have not equalled 6% , 6.5% or more since the mid 1990's.</p> <p>In the types of claim the FSCM deal with (ie primarily Personal Injury, Professional Indemnity and Property Damage) the 8% interest rate can often be a significant factor especially when delays in obtaining a Proof are factored in.</p>

Q8b	Should the rate of statutory interest be compound interest? Please provide reasons for your answer.				Please see above answer
Q9a	Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.	Yes			The FSCM agrees that the court should retain a wide discretion to restrict or withhold the award of interest. The FSCM believes that the Court should consider the conduct of the parties both pre and post litigation in determining whether interest should be awarded.
Q9b	Should the draft Bill contain provisions for limited judicial discretion in awarding interest? Please provide reasons for your answer.	No			Please see answer above.
Q10a	Should the draft Bill allow for any retrospective effects?				No Comment
Q10b	If so, what should have retrospective effect and why?				No Comment
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.				No Comment
Q12	Do you think the draft Bill will have an effect on individuals? Please provide reasons for your answer.				No Comment
Q13	Do you think the draft Bill will have an effect on businesses? Please provide reasons for your answer.				
Q14	Do you think the draft Bill will have an effect on backdated pay? Please provide reasons for your answer.				No Comment
Q15	Do you think the draft Bill should exempt backdated pay from the statutory				No Comment

	interest regime? Please provide reasons for your answer.				
Q16	Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.				No Comment
Q17	Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for your answer.				The FSCM does not believe the draft bill will have an effect upon behaviour or negotiating positions. While (see Q8a) interest is certainly a factor Insurers always have to consider, it is not one which guides principal decision making.
Q18	Do you think the draft Bill will have an impact on equal pay claims?				No Comment
Q19	If yes, what would be the likely financial impact on your organisation or the organisations you represent?				No Comment
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.				No Comment

Please use this section if you wish to make additional comments

Fees & Outlays in Proceedings

The FSCM members believe that it is widespread practice whereby many Personal Injury actions are fought on a speculative basis and therefore the fees element at least of a judicial account will not have been paid by a client to his solicitor at any time prior to the date of any discerniture for expenses.

The FSCM can see significant difficulties in practice entitling a pursuer to recover interest on expenses which he may not have paid to his solicitor.