

# 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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(if applicable)

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### Your Organisation's Details

Title of Organisation: Money Advice  
Scotland.....  
(if applicable)

Type of Organisation: Professional body (Umbrella organisation which supports  
the advice sector).....  
(individual, business, advice organisation,  
professional body,  
legal body, statutory body)

Address: as  
above.....  
.....  
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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	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](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  
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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.	√			<p>It is our view that increasing numbers of vulnerable people and families, are experiencing problems in meeting their utility bills and as such applying further interest on outstanding debts will further exacerbate their situation.</p> <p>In addition, the costs of fuel have risen considerably and whilst government has recognised the burden particularly on the elderly there are no such provisions for others who could also struggle to meet payments.</p> <p>We are also aware that there are sometimes individuals who in fact are owed money by companies and it is our view that these sums should be paid promptly in order to avoid future problems</p>
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.	√			<p>Similar to the above, we believe that many individuals who can't pay (as opposed to won't pay) are then further penalised by adding interest charges on debt which up to decree has been irrecoverable. Steps need to be taken by local authorities to ensure that they have corporate debt recovery policies in place, and early intervention/referral to money advice agencies. In</p>

					<p>many instances debts in fact are reduced or struck out as many of the individuals may be entitled to benefits including a backdated payment which helps to write the debt off.</p> <p>Furthermore, should interest be applied this will have an impact on households expenditure in respect of their priority and non-priority debts.</p>
Q3	<p>Are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.</p>	√			<p>Having considered this question relating it also to the above at Q2, it is our view that private sector landlords should also be excluded from the statutory interest regime. Our rationale is that more people are being forced to opt for private sector rented property due to the lack of social housing. We believe that there should be parity of justice for people regardless of whether they stay in rented or private accommodation.</p>
Q4a	<p>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?</p>	√			<p>We believe it won't have a significant impact, except that the costs of insurance products may increase.</p>
Q4b	<p>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>	√			<p>As above, we believe it won't have a significant impact, but that insurers will build into contracts.</p>
Q4c	<p>Do you think the draft Bill will have an effect on the insurance industry? If yes, what do you think that effect would be?</p>	√			<p>It is our view that the insurance industry will adapt to any new market conditions and will alter contracts or the availability and costs of insurance.</p>
Q5a	<p>Do you think that statutory interest should run on late payments under contracts of employment?</p>	√			<p>With the exception of circumstances outwith the control of the employer we believe that statutory interest should run on late payments.</p> <p>A consequential effect of late</p>

					<p>payments attracting interest could also result in speeding things up at the employers end and of course avoiding potential debt situations for the people who are owed money, and indeed could be threatened with eviction.</p> <p>There are issues for individuals who complete forms at DWP, as they have to advise whether they are owed funds and if not dealt with quickly by the employer this could have an impact on the individual and their family.</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?	√			See answer as at 5a. This is very relevant for low income families and others who rely on income and have no savings to fall back on.
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?		√		It is our view that it should run from 14 days. In liquidation cases people could wait a long time for money owed.
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?				Where a genuine error has been made, perhaps by a third party
Q8a	Should the rate of statutory interest be simple interest? Please provide reasons for your answer.	√			It is easy to understand and is applied only once, and isn't penalising debtors further when they can't reduce the balance. Given that so many people have credit cards, which are based on compound interest, many creditors will already have had a return on the borrowings, through compound interest

Q8b	Should the rate of statutory interest be compound interest? Please provide reasons for your answer.		√		
Q9a	Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.		√		We believe that Sheriffs should make their own judgments based on principles of fairness. Where Sheriffs have complete discretion this could lead to disparity in decisions between different Sheriffs/Courts
Q9b	Should the draft Bill contain provisions for limited judicial discretion in awarding interest? Please provide reasons for your answer.	√			It is our view that this is the better option to that of complete judicial discretion, as it should also enable the Sheriff to take account of individuals who have been attempting to deal with their debt through Time to pay applications. This is particularly true of cases of consumer credit agreements where the Sheriff can look at overall debt situation etc.  Factors accounts are another example where at least the debtor will be able to put their case to the Sheriff with all the facts before them.
Q10a	Should the draft Bill allow for any retrospective effects?	√			
Q10b	If so, what should have retrospective effect and why?				In respect of Contracts and Time to Pay Orders
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.	√			Yes, in respect of contracts
Q12	Do you think the draft Bill will have an effect on individuals? Please provide reasons for your answer.	√			Yes, if interest applied this will further exacerbate people's situations

Q13	Do you think the draft Bill will have an effect on businesses? Please provide reasons for your answer.	√			Yes, the consumer credit industry and others will look at the costs of taking someone to court, and whether the interest etc is making it worthwhile. It could have an impact on debt recovery/collection techniques
Q14	Do you think the draft Bill will have an effect on backdated pay? Please provide reasons for your answer.	√			It could have an impact on services provided by local authorities, and ultimately on society in Scotland as a whole if individual don't have access to services such as social services, nursery provision etc.
Q15	Do you think the draft Bill should exempt backdated pay from the statutory interest regime? Please provide reasons for your answer.		√		No, as this will affect individuals rights to sums of money.
Q16	Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.	√			It is our view and hope that it will prompt local authorities and health boards and others to plan further ahead and to speed up the process. After all the longer the money is in their bank more interest is applied!
Q17	Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for your answer.	√			This may well affect credit behaviour in both the granting and recovery of credit. Similarly it may affect the costs of credit for consumers in the first place by increasing the interest rate in the first place. Given we are already experiencing a credit crunch, this will be another factor that providers will have to consider.  They may of course, decide not to apply the judicial rate and opt for the contractual rate, which could have a greater impact.
Q18	Do you think the draft Bill will have an impact on equal pay claims?	√			It could possibly speed up negotiations as the longer it takes more interest is applied, and from a business point of view they will likely want to deal with matters sooner than later due to the costs particularly if there is a large sum involved.

Q19	If yes, what would be the likely financial impact on your organisation or the organisations you represent?	√			As we are a charitable organisation with much of our funding being ringfenced, this could cause issues with budgets should we have a claim against us that couldn't be met out by our insurance. As a representative organisation, whose members are drawn from local authorities, voluntary sector and others, it is our view that there will be a consequential effect on budgets, and ultimately on the services provided by these organisations.
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.		√		We view this as an erosion of human rights.

Please use this section if you wish to make additional comments

We welcome this opportunity to input to the consultation. This response has been compiled by representatives of Money Advice Scotland's Council of Management internal Policy Sub Committee and MAS staff. Members of the Sub Committee are drawn from CAB, Local authority, all of whom are well experienced specialist money advisers, involved either in day to day money advice giving, or in the support and management of services.

We have considered carefully the implications of the Bill and hope that our comments are helpful in moving forward to the next stages. We are content to give further explanation if required.

We have one further comment to make in respect of the Bill, which wasn't covered in the questions. With regard to Paragraph 57, on Page 15, where there is an obligation to pay in a foreign currency, we suggest that it should be clarified that the foreign currency should relate to the country mentioned in the original contract, and not one to be specified later at the time of interest being applied.