

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: IRRV Scottish Association
Type of Organisation: Professional 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:

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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			Essential services such as utilities should not be included – i.e. must be made exempt. Consumers may not, often for very many different reasons, be able to restrict usage and given the recent increases in costs of these lifeline services, may well already be finding payment difficult. Penalising a consumer because of late payment will not help the vulnerable sector of the population.
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			Payment of rent is usually a high priority for the majority of local authority tenants and where any tenant is having difficulty, adding interest will not help the debtor. Similarly it will not help the local authority as this will lead to an increased level of rent debt which ultimately will have to be written off. Therefore there is little point in adding interest to rent arrears since this would only result in a “paper exercise showing an additional accounting process” – and thus have no real effect. Similarly, any refund of rent due by a local authority to a tenant should be excluded.
Q3	Are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.	X			Where a debt results from charges for services necessary to provide “daily living support”, this should be excluded e.g. home care charges, warden service charges etc. However, where the local authority provides a service over which the consumer has

					a choice, e.g. hire of a hall, any debt arising should not be excluded.
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?				
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?				
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?				
Q5a	Do you think that statutory interest should run on late payments under contracts of employment?				
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?				
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?				
Q8a	Should the rate of statutory interest be simple interest? Please provide reasons for your answer.	X			See next response

Q8b	Should the rate of statutory interest be compound interest? Please provide reasons for your answer.		X		Compound interest could lead to levels of additional sums to be paid which are out of proportion to the actual debt itself. Simple interest is more appropriate.
Q9a	Should the draft Bill contain provisions for complete judicial discretion in awarding interest? Please provide reasons for your answer.		X		It seems unnecessary since 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. Judicial discretion is likely to affect organisations, for example in situations due to force majeure and business continuity should be an issue addressed in the normal course of operations.
Q9b	Should the draft Bill contain provisions for limited judicial discretion in awarding interest? Please provide reasons for your answer.	X			The conduct of the creditor, including his/her agents, should be recognised for this purpose.
Q10a	Should the draft Bill allow for any retrospective effects?		X		It is unfair to allow multiple claims for interest owed on debts occurring prior to the commencement of the legislation. Therefore there should be no retrospective effect. A "clean start" is needed.
Q10b	If so, what should have retrospective effect and why?				
Q11	Should there be a difference in transitional arrangements for contractual debts, non-contractual debts or damages? If so, please give reasons.		X		
Q12	Do you think the draft Bill will have an effect on individuals? Please provide reasons for your answer.		X		The majority of debts for individuals will be exempt or covered under existing conditions. Therefore this draft legislation is likely to only have a limited effect.
Q13	Do you think the draft Bill will	X			Where there are no conditions

	<p>have an effect on businesses? Please provide reasons for your answer.</p>				<p>relating to late payment in any agreement or contract between different parties, this legislation could provide support to the offended party if late payment does occur.</p>
Q14	<p>Do you think the draft Bill will have an effect on backdated pay? Please provide reasons for your answer.</p>				
Q15	<p>Do you think the draft Bill should exempt backdated pay from the statutory interest regime? Please provide reasons for your answer.</p>				.
Q16	<p>Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.</p>				
Q17	<p>Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for your answer.</p>				
Q18	<p>Do you think the draft Bill will have an impact on equal pay claims?</p>				
Q19	<p>If yes, what would be the likely financial impact on your organisation or the organisations you represent?</p>				.
Q20	<p>Do you think the draft Bill should exempt equal pay claims from the statutory interest regime? Please provide reasons for your answer.</p>				.

Please use this section if you wish to make additional comments

It is assumed for the purposes of this consultation 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.

However, in relation to the proposed text of the actual legislation at paragraph 2 (b), relating to tax due to a public authority, it is essential that it is clear that this relates to Council Tax. It is also necessary to include the concept of refunds of Council Tax due to be **repaid by** a public authority in order to prevent confusion.

Housing Benefit, for example, rent allowances must be excluded where the local authority is required to make direct payments to a tenant or landlord, and similarly where a repayment is due back to the local authority – in other words, all local taxation matters and Housing Benefit must be excluded.

Business Rates, i.e. non-domestic rates legislation instructs local authorities to make interest payments in certain circumstances. It is assumed that the intention of this consultation for that to continue – see below for details of the legislation.

Paragraph 19 of the consultation document highlights the decision not to apply a minimum threshold for the payment of interest. This is unacceptable because of the increased administration that may be necessary for local authorities, and indeed large organisations surrounding the calculation of and accounting for any interest payment. The administration process itself brings costs to the organisation and no payment of interest should be made where the administration costs are greater than the value of the actual interest amount.

For Non-Domestic Rates, the minimum amount which can be repaid when a refund is due is £5 - the legislation, the Local Government (Interest on Repayments of Rates)(Scotland) Order was laid in 1991. Is it not reasonable to also include this concept in this new legislation?