

# 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

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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:**

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  
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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.



## **Interest (Scotland) Bill – COSLA Response to Consultation and Draft Bill**

### **INTRODUCTION**

COSLA welcomes the opportunity to comment on the proposals outlined by the Scottish Government to change the law in Scotland on interest on debt and damages. This response concentrates on the areas that will have implications for local government and therefore does not answer every question posed in the consultation document.

#### **Question 2 – do you agree that rent arrears due to public landlords should be exempt from the statutory interest regime? Please provide reasons for your answer.**

It is considered appropriate that rent arrears due to public landlords should be exempt. The application of interest to such debts is unlikely to induce payment as lack of resources is the main reason for non-payment in the first place. In addition, applying interest could worsen the position of vulnerable individuals which is clearly not desirable.

#### **Question 3 – are there other categories of debt which should be excluded from the statutory interest regime? Please provide reasons for your answer.**

Local authority charging for social work services is an area where consideration should be given to exclusion from the statutory interest regime. However, there is a large range of services that are currently charged for and as such it would be a complex and potentially problematic task to define what should be excluded. We would seek clarity on whether the Bill allows local authorities the discretion to apply interest on debts. Such discretion would allow local authorities to exclude debts for social work services where there would be a negative impact on vulnerable citizens.

#### **Question 5 – do you think that statutory interest should run on late payments under contracts of employment?**

We do not consider it appropriate that statutory interest should run on late payments under contracts of employment. This would create a significant administrative burden on employers. Where late payment or lack of payment is an issue employees have recourse to the Employment Tribunal system and any award may include an element of interest. It should be at the discretion of the employer to award some interest depending on specific circumstances and where the employer is clearly at fault.

#### **Question 8**

- a) **Should the rate of statutory interest be simple interest? Please provide reasons for your answer.**
- b) **Should the rate of statutory interest be compound interest? Please provide reasons for your answer.**

Simple interest is more easily understood and its use would remove complicated provisions and a further area of potential dispute. The interest rate used in the Late Payment of Commercial Debts (Interest) Act 1998 is simple and this should set the precedent.

## **Question 10**

**a) Should the draft Bill allow for any retrospective effects?**

**b) If so, what should have retrospective effect and why?**

No, the bill should not allow for any retrospective effects.

**Question 14 – Do you think the draft Bill will have an effect on backdated pay? Please provide reasons for your answer.**

**Question 15 – Do you think the draft Bill should exempt backdated pay from the statutory interest regime? Please provide reasons for your answer.**

The Bill should not include backdated pay arising from the late settlement of pay awards. Instead, it should be exempt from the Bill.

The nature of the arrangements for the negotiation of pay awards for local government employees means that it is not within the control of the employers' side to ensure that pay awards are in place from 1 April (the usual date to which pay awards are backdated); clearly it is dependent on reaching agreement with the employee representatives. This being the case, it is not fair or reasonable to apply interest to any backdated pay. Additionally, the application of interest to backdated pay could create a disincentive for the employee representatives to accept settlement.

Also, UK employment contracts are not normally time bound and collective agreements are not generally legally enforceable. The application of interest could lead to the serious distortion of these arrangements.

Furthermore, there are well established arrangements to negotiate pay awards for local government employees at a national level with a trend towards longer term deals (e.g. 3 years) which eliminates late payment, particularly in the 2<sup>nd</sup> and 3<sup>rd</sup> years of such deals.

Finally, applying interest to backdated pay would create an additional administrative burden with current payroll systems not set-up to cope with such complications. Potentially, the cost of calculating and implementing any interest on backdated pay could be more than the actual interest payable.

**Question 16 – Do you think the draft Bill will have implications for future pay negotiations? Please provide reasons for your answer.**

**Question 17 – Do you think the draft Bill will alter behaviour and negotiating positions? Please provide reasons for your answer.**

It is difficult to predict what the impact would be on future pay negotiations and the behaviour of those involved.

As stated above, there are well established arrangements for negotiating pay awards within the public sector. The aim of these is always to reach settlement at the earliest possible date. If interest was to be applicable to backdated pay this may reduce the incentive for the employee side to conclude negotiations. This would add another layer of complexity to pay negotiations which is highly undesirable and would not be welcomed.

**Question 18 – Do you think the Bill will have an impact on equal pay claims?**

**Question 19 – If yes, what would be the likely financial impact on your organisation or the organisations you represent?**

**Question 20 – Do you think the draft Bill should exempt equal pay claims from the statutory interest regime? Please provide reasons for your answer.**

It seems that the Bill could impact on future equal pay claims and increase the cost of settlements, although there should be no impact on claims that have already been settled. However, there is some question over whether equal pay settlements do in fact constitute a debt as they are compensatory payments rather than payment of a sum owed to an individual.

If equal pay claims were subject to the terms of the Bill, this could have significant financial implications for local authorities and could ultimately impact on front line services.

We strongly believe that the Bill should exempt equal pay claims from the statutory interest regime. This is because of the potential negative financial consequences for local authorities, the resultant impact on public services and moreover because voluntary or agreed settlement of equal pay and other potential Employment Tribunal actions is by way of a legally binding COT3 (a formal record of the terms of settlement between employer and employee) or compromise agreement which generally provides for full and final settlement of the claim. It would not be appropriate to include overt interest element in such agreements. Parties who believe they have an equal pay claim can, if they are so minded, pursue the claim to the full through the Employment Tribunals.

## **CONCLUSION**

COSLA welcomes the opportunity to comment on the draft Interest (Scotland) Bill. We hope that our response to the consultation is useful and that our points are able to be reflected in the final legislation. The main concerns from a local government perspective are on the impact on backdated pay and equal pay claims and it is of the utmost important that these issues are recognised and addressed.