

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS 26 SEPTEMBER 2006

New Statutory Right to Interest Recommended

People owed money could benefit from a right to interest on late payment under draft legislation published today. The proposed new law would allow interest to be charged on debts such as late payment of wages and late settlement of insurance claims.

The Scottish Law Commission's recommendations to Scottish Ministers for reform of the law of interest on debt and damages are published today. The Commission's draft Bill would create a statutory right to interest throughout the period from the date when the claimant loses the use of money. Interest would run during the same period and at the same rate regardless of whether the claim is for payment of a contractual debt, a non-contractual debt or damages. The rate of interest would be set at a level which adequately compensates the claimant rather than one which punishes the debtor for the late payment.

Contractual debt

For any debt arising from a contract the Commission recommends the introduction of a statutory right to interest which would run from the date when payment is due. Such an entitlement presently exists only for business to business debts. In contracts for the supply of goods and services, interest would run from the date of payment agreed by the parties or, if there is no such agreement, 30 days after the later of the day on which the supplier's obligation is performed and the day on which the purchaser has notice of the amount claimed by the supplier. The entitlement would extend to sales and leases of land and to earnings from employment but there would be a Ministerial power to exclude specified categories of debt from the scope of statutory interest.

Parties would remain free to agree that interest should run on a different basis, or that it should not be payable at all. Nor would the new entitlement apply where interest is due under another statutory provision, for example interest on unpaid tax.

Non-contractual debt

The Commission recommends that the statutory scheme should also apply to non-contractual demands for money, such as claims based on unjustified enrichment and claims for legal rights, for salvage and for aliment.

A change is also recommended to the current statutory provisions which determine the commencement date for the running of interest on damages. The court's discretionary power (and its duty in personal injury cases) to award interest would be replaced by an entitlement to interest on each head of loss from the date when the loss in question was sustained.

Judicial Discretion

It is recommended that the court should have a discretion, for both interest on debt and on damages, to decide that by reason of the conduct of the person to whom interest would be payable no interest, or a lesser amount of interest, should be paid than provided for in the draft Bill. The conduct of the debtor would not be a relevant factor.

Rate of Interest

The Commission recommends that the statutory interest rate should fluctuate in line with the Bank of England base rate and run at 1.5% above that rate (at present this would be 6.25%). This is similar to the rate at which businesses and consumers can borrow and it should therefore provide adequate compensation for the creditor without being punitive. In view of concerns which were expressed regarding compounding of interest during consultation on the Commission's proposals, it is recommended that, for the present, statutory interest should be calculated as simple interest.

Background

In November 2003 the Scottish Law Commission received a reference under the Law Commissions Act 1965 from the Minister for Justice, Cathy Jamieson MSP, to examine this area of the law and make recommendations for reform.

The Commission published a Discussion Paper in January 2005 proposing reforms. Today's Report sets out the Commission's recommendations which take into account consultees' responses to the Discussion Paper. It has been submitted to Scottish Ministers for their consideration. The Report contains a Draft Bill suitable for introduction into the Scottish Parliament which would give effect to the recommendations.

The Report is primarily concerned with the most common types of claims for interest, which arise either from a claim for payment under a contract or out of a claim for damages for breach of a contractual or other obligation. The Report does not deal with contractual terms which impose exorbitant interest charges: legislation which regulates the charging of interest in consumer contracts is already in force.

Problems with the Present Law

The Report explains that the current law on interest lacks principle and consistency: interest may or may not run on a claim for payment depending upon whether it is categorised as a debt or as a claim for damages. Interest is not payable on a debt unless it has been "wrongfully withheld" which, in the case of contractual debt, means that it does not begin to run until court proceedings have been commenced, rather than from the date when payment fell due. Also, the current rate of interest applied by the courts does not reflect the real cost of money to the creditor or debtor as it does not necessarily bear any relation to what would be available commercially.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Eassie, a Court of Session judge. The other Commissioners are Professor George L Gretton, Professor Gerard Maher QC, Professor Joseph M Thomson and Mr Colin J Tyre QC. The Chief Executive is Mr Michael Lugton.

2. Further information can be obtained by contacting Alastair Clyde, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk).

3. The paper (Report on Interest on Debt and Damages (No 203)) may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshop.