

APPENDIX A

Draft Interest on Debts and Damages Bill

The draft Interest on Debts and Damages Bill begins on the following page with a Contents section. The draft Bill is then set out with the Clauses on left hand pages and Explanatory Notes on the corresponding right hand pages.

Interest on Debts and Damages Bill

CONTENTS

- 1 Award of interest by High Court
- 2 Award of interest by county courts
- 3 Award of interest by other courts of record
- 4 Consequential amendments and repeals
- 5 Commencement, extent and short title

Schedule – Repeals

DRAFT
OF A
B I L L
TO

Amend the powers of courts to award interest on debts and damages; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Award of interest by High Court

For section 35A of the Supreme Court Act 1981 (c. 54) (power of High Court to award interest on debts and damages) substitute—

“35A Power of High Court to award interest on debts and damages

- | | |
|--|----|
| (1) Subsection (2) applies where, during proceedings in the High Court for the recovery of a debt, the defendant pays the whole debt to the claimant. | 5 |
| (2) The court may award simple or compound interest on some or all of the debt for some or all of the period— | |
| (a) beginning on the date when the cause of action arose, and | 10 |
| (b) ending on the date of the payment. | |
| (3) Subsections (4) and (5) apply where, in proceedings for the recovery of a debt or damages, the High Court gives judgment to any extent in favour of the claimant. | |
| (4) In relation to an action for damages for personal injuries or death in which the court gives judgment for damages exceeding £200, it must, unless it thinks there are special reasons why it should not, award simple or compound interest on— | 15 |
| (a) some or all of the damages for which it gives judgment, and | |
| (b) if any sum is paid in respect of damages during the proceedings, some or all of that sum, | 20 |

EXPLANATORY NOTES

CLAUSE 1

This clause replaces section 35A of the Supreme Court Act 1981.

New section 35A

In general, this section merely re-drafts and clarifies the current section. The only substantive change of policy between the old section 35A and the new section 35A is that the new section refers to “simple or compound interest” rather than only simple interest.

One of the more confusing aspects of section 35A, as currently drafted, is the way in which it applies to sums paid before judgment. Section 35A(3) states that where the whole of a debt is paid before judgment, the court has power to award interest on the sums already paid, at such rate and for such periods as it thinks fit. However, where damages are paid before judgment, interest may only be awarded as part of a court judgment (section 35A(1)).

In *Edmunds v Lloyds Italico*,¹ Sir John Donaldson MR explained the distinction as follows:

Payment in full of a debt extinguishes the cause of action and leaves the Court with no basis for giving any judgment, save as provided by sub-s. (3). Payment in full of the amount of the damages still leaves the Court with power to give judgment on liability and to assess the damages and interest taking account of the fact that there has been a payment and acceptance on account of an amount equal to the full amount of the damages.

This means that even where damages are paid in full before judgment, the court retains the power to award interest on all or any part of the damages paid.

The new section 35A retains the distinction, though it reverses the order. New sub-section (1) deals with cases in which the whole debt has been paid, and the cause of action has therefore been extinguished. New sub-section (3) deals with all other cases, including actions for damages and cases in which only part of the debt has been paid. Here the court may still give judgment. The sub-section makes it clear that the judgment does not have to be for the amount on which interest is awarded. A judgment that is to any extent in favour of the claimant will suffice, including one on liability alone.

¹ *Edmunds v Lloyds Italico & l'Ancora Compagnia di Assicurazioni & Riassicurazione SpA and another* [1986] 1 WLR 492.

- for some or all of the relevant period.
- (5) Otherwise, the court may award simple or compound interest on—
- (a) some or all of the sum for which it gives judgment in respect of the debt or damages, and
 - (b) if any sum is paid in that respect during the proceedings, some or all of that sum,
- for some or all of the relevant period. 5
- (6) “Relevant period” means the period beginning on the date when the cause of action arose and ending—
- (a) in relation to any sum for which the court gives judgment, on the date of the judgment, and 10
 - (b) in relation to any sum paid during the proceedings, on the date of the payment.
- (7) This section is subject to rules of court.
- 35B Section 35A: rate of interest, &c. 15**
- (1) In relation to an action for damages for personal injuries, interest awarded under section 35A on damages for non-pecuniary loss runs for the period for which it is awarded at such rate (or rates) as the court specifies.
- (2) Otherwise, subject to rules of court, interest awarded under section 35A runs for the period for which it is awarded— 20
- (a) at such rate (or rates) as the Secretary of State may by order specify, or
 - (b) if the court decides there are good reasons for awarding interest at some other rate (or rates), at such rate (or rates) as the court specifies. 25
- (3) An order under subsection (2)(a) must be made by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Where interest is awarded under section 35A, rules of court may make provision as to— 30
- (a) matters to which the court must have regard when deciding whether to award simple or compound interest;
 - (b) circumstances in which, or heads of damage on which, compound interest may not be awarded; 35
 - (c) the method of calculating any compound interest awarded (and, in particular, the rests to be used in the calculation);
 - (d) matters to which the court must have regard when making a decision under subsection (2)(b) above.
- (5) The court may not award interest under section 35A on a debt for a period during which, for whatever reason, interest already runs on it. 40
- (6) But where interest on a debt is statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998—
- (a) the court may, on the application of the claimant, award interest under section 35A for the period during which the statutory interest runs, and 45

EXPLANATORY NOTES

New Section 35B

This section includes much new material. It introduces the concept of a specified rate; it allows rules of court to give guidance on when the courts should grant compound interest; it clarifies the interaction with the Late Payment of Commercial Debts (Interest) Act 1998; and it limits the power to grant “mixed orders”.

The specified rate

New sub-section (2)(a) introduces the concept of a specified rate, to be set by the Secretary of State by order. This order-making power replaces the existing provision in section 35A(5) to set the rate with reference to the Judgments Act 1838 or some other statute.

We anticipate that the order will contain a formula along the following lines:

For so much of the relevant period as falls in a period of 12 months ending with 31 March (a year), a percentage rate equivalent to one per cent above the base rate of the Bank of England in force at the beginning of 15 February in the preceding year.

However, in times of rapidly changing interest rates, it may be necessary to change the rate more frequently than once a year. Under new sub-section (3) the statutory instrument by which the formula may be changed is subject to the negative resolution procedure.

New sub-section (1) provides that the specified rate will not apply to damages for non-pecuniary loss for personal injuries. This preserves the current law, in which case law provides that such damages should carry interest at 2% from the date of service of the claim.

Under new sub-section (2)(b) the court will grant interest at the specified rate unless it decides that there are good reasons for awarding interest at some other rate. Note that there only need to be “good reasons”, not special reasons or unusual reasons. We anticipate that in most cases the reason for using a different rate will be that the claimant has been forced to borrow money at a higher rate.

The Civil Procedure Rule Committee may give the courts further guidance on this issue through rules of court or practice directions: see new sub-section (4)(d).

Guidance on when the courts should grant compound interest

New sub-section (4) permits the Rule Committee to make three kinds of rules about how the power to award compound interest should be used.

- Under paragraph (a), the Committee may give general guidance on what matters the courts should take into account when deciding whether to award simple or compound interest. We anticipate that the Civil Procedure Rules will draw a distinction between cases of less than £15,000 and those of £15,000 or more. In the former case, there will be a rebuttable presumption that interest should be simple. In the latter case, the rebuttable presumption will be that interest should be compound.
- Under paragraph (b), the Committee will have the power to specify that compound interest should not be granted on some heads of damages, or in some types of case. We anticipate that this power will be used to exempt non-pecuniary damages for personal injury from compound interest, and to prevent compound interest from being granted on losses that have been outstanding for less than a year.
- Under paragraph (c), the rules will lay down how compound interest is to be calculated, setting out the rests and mathematical formula to be used. It is important that the parties only calculate compound interest according to computer programmes or tables that use the formula specified by the Rule Committee. If the parties were to calculate compound interest in their own way this could lead to different results, which may cause unnecessary disputes.

New sub-section (4)(d) allows for guidance on the use of the specified rate: see above.

Interaction with the Late Payment of Commercial Debts (Interest) Act 1998

This Bill will not affect creditors’ right to increased interest under the 1998 Act. New sub-section (6) simply regularises the current situation in which creditors who could use the 1998 Act choose to apply for interest under section 35A instead. Claimants will be allowed to choose which interest regime to apply for.

- (b) if it does so, the claimant is not entitled to statutory interest under that Act for that period.
- (7) Interest awarded under section 35A in respect of damages may be simple in respect of one head of damage and compound in respect of another. 5
- (8) Interest under section 35A –
- (a) may be calculated at different rates in respect of different parts of the period for which it runs, but
- (b) may not be simple in respect of one part of that period and compound in respect of another. 10
- (9) In section 35A and this section –
- “claimant” means the person seeking the debt or damages,
- “defendant” means the person from whom the claimant seeks the debt or damages, and
- “personal injuries” includes any disease and any impairment of a person’s physical or mental condition. 15
- (10) Nothing in section 35A or this section affects the damages recoverable for the dishonour of a bill of exchange.”
- 2 Award of interest by county courts**
- (1) For section 69 of the County Courts Act 1984 (power of county courts to award interest on debts and damages) substitute – 20
- “69 Power to award interest on debts and damages**
- (1) Subsection (2) applies where, during proceedings in a county court for the recovery of a debt, the defendant pays the whole debt to the claimant. 25
- (2) The court may award simple or compound interest on some or all of the debt for some or all of the period –
- (a) beginning on the date when the cause of action arose, and
- (b) ending on the date of the payment.
- (3) Subsections (4) and (5) apply where, in proceedings for the recovery of a debt or damages, a county court gives judgment to any extent in favour of the claimant. 30
- (4) In relation to an action for damages for personal injuries or death in which the court gives judgment for damages exceeding £200, it must, unless it thinks there are special reasons why it should not, award simple or compound interest on – 35
- (a) some or all of the damages for which it gives judgment, and
- (b) if any sum is paid in respect of damages during the proceedings, some or all of that sum,
- for some or all of the relevant period. 40
- (5) Otherwise, the court may award simple or compound interest on –
- (a) some or all of the sum for which it gives judgment in respect of the debt or damages, and

EXPLANATORY NOTES

“Mixed” orders

Under new sub-section (7), the court may award compound interest on some heads of damages (such as past pecuniary loss) but only simple interest on another head (such as non-pecuniary loss).

However, under new sub-section (8)(b), the court may not award simple interest for part of the period and compound interest for the other part. This would add an unnecessary layer of complexity.

Retained elements

The new section also retains some elements from the current section 35A. New sub-section (5) replicates the current sub-section 35A(4). It states that power to award interest is ousted where interest already runs under a contract or other statute.

The definitions are set out in sub-section (9). The Bill uses the modern term “claimant” rather than the archaic term “plaintiff” used in the present section 35A.

New sub-section 35B(10) replicates the current sub-section 35A(8).

CLAUSE 2

This makes corresponding changes to section 69 of the County Courts Act 1984, dealing with the county courts’ powers to award interest on debts and damages. It replaces the existing section 69 with two new sections.

- (b) if any sum is paid in that respect during the proceedings, some or all of that sum,
for some or all of the relevant period.
- (6) “Relevant period” means the period beginning on the date when the cause of action arose and ending— 5
- (a) in relation to any sum for which the court gives judgment, on the date of the judgment, and
- (b) in relation to any sum paid during the proceedings, on the date of the payment.
- (7) This section is subject to rules of court. 10
- 69A Section 69: rate of interest, &c.**
- (1) In relation to an action for damages for personal injuries, interest awarded under section 69 on damages for non-pecuniary loss runs for the period for which it is awarded at such rate (or rates) as the court specifies. 15
- (2) Otherwise, subject to rules of court, interest awarded under section 69 runs for the period for which it is awarded—
- (a) at such rate (or rates) as the Secretary of State may by order specify, or
- (b) if the court decides there are good reasons for awarding interest at some other rate (or rates), at such rate (or rates) as the court specifies. 20
- (3) An order under subsection (2)(a) must be made by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (4) Where interest is awarded under section 69, rules of court may make provision as to—
- (a) matters to which the court must have regard when deciding whether to award simple or compound interest;
- (b) circumstances in which, or heads of damage on which, compound interest may not be awarded; 30
- (c) the method of calculating any compound interest awarded (and, in particular, the rests to be used in the calculation);
- (d) matters to which the court must have regard when making a decision under subsection (2)(b) above. 35
- (5) The court may not award interest under section 69 on a debt for a period during which, for whatever reason, interest already runs on it.
- (6) But where interest on a debt is statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998— 40
- (a) the court may, on the application of the claimant, award interest under section 69 for the period during which the statutory interest runs, and
- (b) if it does so, the claimant is not entitled to statutory interest under that Act for that period.
- (7) Interest awarded under section 69 in respect of damages may be simple in respect of one head of damage and compound in respect of another. 45

EXPLANATORY NOTES

New section 69A

This introduces the equivalent changes for county courts as new section 35B introduces in the High Court. The previous notes apply.

- (8) Interest under section 69 –
- (a) may be calculated at different rates in respect of different parts of the period for which it runs, but
 - (b) may not be simple in respect of one part of that period and compound in respect of another. 5
- (9) In section 69 and this section –
- “claimant” means the person seeking the debt or damages,
 - “defendant” means the person from whom the claimant seeks the debt or damages, and
 - “personal injuries” includes any disease and any impairment of a person’s physical or mental condition. 10
- (10) Nothing in section 69 or this section affects the damages recoverable for the dishonour of a bill of exchange.
- (11) In determining whether the amount of any debt or damages exceeds that prescribed by or under an enactment, no account is to be taken of any interest payable as a result of section 69 except where express provision to the contrary is made by or under that or another enactment.” 15
- 3 Award of interest by other courts of record**
- (1) Section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) (power of courts of record to award interest on debts and damages) ceases to have effect. 20
- (2) A court to which that section applied immediately before the commencement of this section has such powers in relation to the award of interest on debts and damages as the High Court has. 25
- 4 Consequential amendments and repeals**
- (1) In section 24 of the Crown Proceedings Act 1947 (c. 44) (interest on debts and damages), for subsection (3) substitute –
- “(3) The following provisions (which give courts power to award interest on debts and damages) apply to judgments given in proceedings by and against the Crown –
- (a) sections 35A and 35B of the Supreme Court Act 1981 (award by High Court),
 - (b) sections 69 and 69A of the County Courts Act 1984 (award by county courts), 35
 - (c) section 3(2) of the Interest on Debts and Damages Act 2004 (award by other courts of record).”
- (2) In section 329 of the Income and Corporation Taxes Act 1988 (c. 1) (interest on damages for personal injuries is not taxable income), in subsection (2) –
- (a) omit paragraph (a), 40
 - (b) in paragraph (c), for “section 35A” substitute “sections 35A and 35B”,
 - (c) in paragraph (d), for “section 69” substitute “sections 69 and 69A”, and
 - (d) after paragraph (d), insert –
- “(da) section 3(2) of the Interest on Debts and Damages Act 2004;”. 45

EXPLANATORY NOTES

CLAUSE 3

Section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 still applies to courts of record other than the High Court and county courts that award debts and damages and that do not possess their own interest jurisdiction. The only such courts we have been able to identify are the House of Lords, the Employment Appeal Tribunal, the Barmote Courts (which have jurisdiction to deal with some mining disputes in Derbyshire) and, possibly, the Court of Admiralty of the Cinque Ports (which has jurisdiction to deal with some salvage claims).

The current law is limited in that section 3 only applies to cases that are tried. This new clause would give other courts of record the same powers to award interest as the High Court.

CLAUSE 4

Clause 4 deals with consequential amendments and repeals.

- (3) In section 1 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) (statutory interest), after subsection (2), insert –
- “(2A) But that is subject to –
- (a) section 35B(6) of the Supreme Court Act 1981 (power of High Court to award interest under section 35A instead of statutory interest), and
- (b) section 69A(6) of the County Courts Act 1984 (power of county courts to award interest under section 69 instead of statutory interest).”
- (4) The enactments specified in the first column of the Schedule are repealed to the extent specified in the second column. 10

5 Commencement, extent and short title

- (1) The preceding provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (2) Different days may be appointed for different provisions and in relation to different cases. 15
- (3) Compound interest may not be awarded on a debt or damages in consequence of a provision of this Act if the proceedings to recover the debt or damages were issued before the commencement of the provision.
- (4) An amendment or repeal contained in section 4 or the Schedule has the same extent as the enactment to which it relates. 20
- (5) Otherwise, this Act extends to England and Wales only.
- (6) This Act may be cited as the Interest on Debts and Damages Act 2004.

EXPLANATORY NOTES

Clause 4(3) inserts a new provision into the Late Payment of Commercial Debts (Interest) Act 1998. It refers to a creditor's right to use section 35A or section 69 if they prefer.

CLAUSE 5

Under clause 5(2), the Secretary of State for Constitutional Affairs may introduce the Act in segments. For example, the provisions for a specified rate may be introduced at a different time from the provisions for compound interest. It would also allow compound interest to be introduced into personal injury cases several years after its introduction into other types of action.

Clause 5(3) limits the extent to which compound interest could be applied retrospectively.

SCHEDULE

Section 4

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Law Reform (Miscellaneous Provisions) Act 1934 (c. 41)	Section 3.	5
Administration of Justice Act 1969 (c. 58)	Section 22. In section 34, the words from “, and section 22” to the end.	
Income and Corporation Taxes Act 1988 (c. 1)	Section 329(2)(a).	10