

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

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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— 10
- (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, 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.

