

Scots Law TIMES

2009 Issue 12

24 APRIL 2009

News 61–70

Reports 305–336

ARTICLES

Divorce law, the Jewish client and the Get 61
(D Levine)

REPORTS

**William Grant & Sons Distillers Ltd
v McClymont (Ex Div)** 305

**Gray's Timber Products Ltd
v Commissioners for Her Majesty's
Revenue and Customs (Ex Div)** 307

Hughes v HM Advocate (High Ct) 325

**Sovereign Dimensional Survey Ltd
v Cooper (Ex Div)** 327

W. GREEN

Divorce law, the Jewish client and the Get

Deanna Levine ©.

This article is based on “Getting your Get” at www.gettingyourget.co.uk by Sharon Faith and Deanna Levine, the e-book which has been judicially endorsed by the Rt Hon Lady Cosgrove.

Deanna Levine explains the significance of the Get (Jewish divorce document) and the implications of s 15 of the Family Law (Scotland) Act 2006, together with the related legislation, which can be invoked in difficult cases.

Introduction

It is useful to understand the religious background regarding the Get (Jewish divorce) for a fuller understanding of the legislation relating to the Get. Section 3A of the Divorce (Scotland) Act 1976 was inserted by s 15 of the Family Law (Scotland) Act 2006, and there is related subordinate legislation. Unless the context otherwise requires, these two Acts are referred to in this article as “the 1976 Act” and “the 2006 Act” respectively.

The article is divided into two parts: the religious background (Pt 1) and the legislation (Pt 2). A glossary of Hebrew words and phrases is to be found at the end of the article.

Part 1: the religious background What is a Get and who needs one?

A Jewish husband and wife require two types of divorce — a civil one and a religious one — reflecting the civil and religious ceremonies which were entered into at the time of the marriage. A Get is the name for a Jewish divorce document. A Get is required by husband and wife when they are both “halachically Jewish” i.e. when they are Jewish according to the precepts of Orthodox Judaism. By definition, this is a status that applies to someone whose mother is (or was) Jewish, as recognised by an Orthodox Beth Din (Jewish court of law) or someone who has undergone a conversion to Orthodox Judaism.

Like marriage, Jewish divorce is a voluntary agreement requiring the consent of both parties. The husband (or his legal agent) hands the wife the get document and she in turn has formally to agree to accept the Get.

There are several groupings within Judaism, the original and mainstream one being known as Orthodox or traditional Judaism. Each

grouping has its own synagogue and Beth Din. In order for the Get to be universally recognised throughout the Jewish world (as opposed to parts of it), it is essential that the Get procedures should be effected under the auspices of an Orthodox Beth Din when both husband and wife are halachically Jewish, as explained above. This is because, in practice, both parties need a Get from an Orthodox Beth Din in order to remarry within an Orthodox synagogue and to retain the option of remaining fully integrated within the Jewish world. A client may say to his or her legal adviser that he or she is not religious or is a member of a non Orthodox synagogue, namely a Masorti (Conservative), Reform, Liberal (or Progressive) synagogue and therefore does not need a Get from an Orthodox Beth Din. There is, however, no universal recognition of a Get which has been obtained under the auspices of a non Orthodox Beth Din, i.e. a Reform Beth Din or a Masorti (Conservative) Beth Din. The grouping known as Liberal (or Progressive) Judaism has a Rabbinic Board rather than a Beth Din and does not require a Get as a prerequisite to remarriage. Accordingly, only a Get from an Orthodox Beth Din protects the client against future exigencies, such as meeting a partner who is also halachically Jewish and who wants the marriage to take place under Orthodox auspices. Other reasons for having a Get from an Orthodox Beth Din are given elsewhere in the article.

A Get is not a religious document as such and does not indicate any acknowledgement of religious belief or practice. It is simply the method by means of which a Jewish marriage between halachically Jewish spouses is terminated in Jewish law — for which it is important to obtain a Get from an Orthodox Beth Din.

An apparent lack of concern on the part of the client may be regretted in the future, when it may be too late to remedy the situation. It would be helpful for the family law practitioner to explain to his or her client why issues of Get are given full and proper consideration along with other matters, such as contact with the children and the finances. For example, nobody knows what the future may bring. A divorcing client may subsequently wish to marry someone who will refuse to marry a divorcee without a Get from an Orthodox Beth Din. This is not uncommon and can be the case even if the parties are otherwise not religiously observant. A client may in the near or distant future decide to become observant. Occasionally people who have not led religious lives have (for various

reasons) decided to become observant. This phenomenon is not restricted to Judaism.

Tragic consequences if only civil divorce and no Get

Similarly, a client may not be religiously inclined, but if he or she were to remarry, any children of the subsequent marriage may in due course decide to adopt a religious lifestyle in accordance with Orthodox Judaism. If the mother of any such children only has a civil divorce, but has not been validly divorced in Jewish law (i.e. if she does not have Get from an Orthodox Beth Din), this would cause extremely serious problems for any future children. Any child a woman conceives by a Jewish man while she is still married under Jewish law to someone who is not the child's father is deemed a mamzer, even although the mother has a civil divorce. Mamzer status applies only to children born of an adulterous union and not to children merely born in what used to be called "out of wedlock". As, however, a wife is deemed to be committing adultery in Jewish law if she has not received a Get from her husband and then commences a new relationship, the status of mamzer will attach to children born from that new relationship.

The mamzer status can never be removed and is passed to all the descendants of the original mamzer. A mamzer cannot normally marry another Jew or Jewess. It will be appreciated, therefore, that the status of mamzer is a very severe disability and every effort should be made to obtain a Get from an Orthodox Beth Din and thereby avoid such a status arising.

If a Jewish couple have a civil divorce, but not a Get, serious consequences may ensue. In some cases, women are known to have waited for many years for a Get, which may only be granted by the husband; others are known to be required to pay large sums of money before the husband will grant the Get. Similarly, a man may be in a weak or vulnerable position if the wife refuses to accept the Get. In order to obtain the Get, husband and wife have to co-operate.

Damages for refusing the Get

In Canada a Jewish woman was successful in her claim of damages from her former husband for having delayed granting her the Get for 15 years. Damages have similarly been awarded in Israel and France against husbands who refuse for many years to grant the Get. These cases are founded on the significant harm (psychological or emotional abuse) caused to the wife as a consequence of the husband's refusal to grant the Get.

Psychological or emotional abuse is categorised as a form of domestic violence.

It is not known whether such a case would be successful in Scotland.

Obtaining the Get

Having explained the above, the client wants a Get, so how does the family law practitioner proceed?

The Beth Din will facilitate a Get at any time during or indeed before the civil divorce proceedings are commenced. The Get certificate (which is only needed for the purpose of remarriage) will not be sent to the parties until the civil proceedings have been completed, but at least and this is most important — the Get will no longer be an issue in the civil divorce proceedings and the religious problems will be avoided altogether. It is never prudent for consideration of Get issues to be postponed. The issue of the Get should be raised at the earliest opportunity, preferably before the parties have become entrenched in acrimonious recriminations. Accordingly, it is suggested that either the family law practitioner or the client should, as soon as possible, contact Rabbi Rubin, head of the Beth Din in Glasgow: rabbimrubin@talk21.com. The Beth Din in Glasgow will open their own file and help to progress matters according to the circumstances of the particular case. Alternatively, contact should be made with Dianna Wolfson, Co-ordinator of Beth Din sittings: DWolfson@tinyworld.co.uk. In each case the matter is treated in confidence.

The actual Get procedure is relatively straightforward and the Beth Din will advise the couple regarding each step. The husband and wife do not have to meet one another at any stage if they prefer not to or if it is logistically difficult.

The conditions required for the Get to be facilitated by the Beth Din are that both parties consent; that the parties have ceased to co-habit; and that they are no longer living at the same address.

While it is recognised that divorce involves negotiations, whether relating to money or contact with the children, ideally the Get would be given or accepted willingly. The Get has, however, all too often been used as a negotiating tool to enable one spouse to achieve a more advantageous settlement regarding the finances and contact with the children than would be sanctioned by the courts. Ideally, the Get should be raised and handled completely independently of any other aspects relating to the

divorce, such as the financial settlement and matters relating to any children.

It is prudent to raise the subject of the Get as a requirement at the beginning of the civil divorce process and it should not be sidelined to “later” or at “the end”, for failing to raise it at an early stage may lead to an abuse of the Jewish divorce process by enabling the client or the client’s spouse to turn the Get into a financial and emotional weapon. The legislation referred to below means that using the Get in this manner is simply not possible in the majority of cases. If arranging the Get is already a difficult issue (or if it becomes one) in the civil divorce, the client’s position may be protected by invoking the legislation.

Get clauses and minute of agreement

Unless the Get has been obtained beforehand, the family law practitioner’s objective should be for both parties to provide appropriate undertakings to facilitate a Get in any minute of agreement within a defined period of time and the parties should try to ensure that, before any matrimonial agreement is otherwise fully implemented, a Get has been granted. As a matter of good practice, a joint minute or minute of agreement should not be entered into without giving consideration to the client’s need for a Get, in the same way as issues of children and finance should not be overlooked. A Get should in any event be obtained at the earliest opportunity — and certainly prior to completion of the minute of agreement or the granting of the civil divorce decree. A form of Get clauses and minute of agreement is to be found towards the end of this article.

Advice from family law practitioners

A client will not necessarily know what advice he or she can expect to receive and may not know that it would be useful to mention the Get, instead relying on the relevant advice to be provided. The family law practitioner is aware that it is part of his or her professional duty to extract a full picture of the particular client’s circumstances and to advise accordingly. Consideration of Get issues in respect of a Jewish client has been (or should have been) an integral part of any advice given since 4 May 2006, when the legislation came into force.

Family law practitioners are accordingly professionally required to consider the religious issues and to consider whether the client may require assistance in obtaining the religious divorce by invoking the legislation which is designed to assist one spouse when the other spouse is not co-operating with obtaining the

Get, as explained in Pt 2 below. As in all else, if the client chooses to disregard the legal advice, he or she must live with the consequences, but family law practitioners have a professional duty to raise the issue of the Get with the client and consider whether advice in this respect should be given. The author is not aware of any litigation against a family law practitioner for failing to advise a client about Get issues, but in theory there would be nothing to prevent this since the advent of the legislation which is detailed below.

Part 2: the legislation

Having explained the religious backdrop, I now turn to the legislation. Section 3A of the 1976 Act (inserted by s 15 of the 2006 Act) contains the key provisions. It was brought into force on 4 May 2006 by art 2 of the Family Law (Scotland) Act 2006 (Commencement, Transitional Provisions and Savings) Order 2006. Also of relevance is the subordinate legislation: the Divorce (Religious Bodies) (Scotland) Regulations 2006, the Sheriff Court Rules (SSI 2007/6), the Rules of the Court of Session (SSI 2007/7) and the court forms for the simplified procedure, all of which are explained below.

The Family Law (Scotland) Act 2006

As is the case in England and Wales, South Africa, Canada and New York State, the law in Scotland can be invoked to assist a Jewish spouse when his or her spouse is not co-operating with obtaining the Get. While the detail of the law in each of those jurisdictions is different, the principle is the same. Section 3A of the 1976 Act (as amended by the 2006 Act) provides for an application to be made for an order postponing the decree of divorce where there is an impediment to religious remarriage. The impediment is caused by the husband refusing to grant the Get or the wife refusing to accept it. The word “Get” does not appear in the legislation, but when the religious background is understood, it is clearly referring to it.

While not every spouse will be able to benefit from this law, it helps most spouses who find themselves in the invidious situation in which there is such an impediment to the religious remarriage. Although most Jewish divorces are obtained without difficulty, each case of refusal potentially entails very serious problems, as explained in Pt 1 above. The application is made under s 3A (1) of the 1976 Act (as amended) “notwithstanding that irretrievable breakdown of the marriage has been established”. If, however, the recalcitrant spouse is not concerned as to whether or not there is a civil divorce, the legislation will be to no avail, though it will invariably

be worth making the application in any event — or threatening to make it. For example, it may be that, when the recalcitrant spouse is made aware that he or she will have to pay for the application, that spouse's refusal may be turned into co-operation.

The Divorce (Religious Bodies) (Scotland) Regulations 2006 (5512006/253)

Certain words and phrases in s 3A of the 1976 Act are defined and need to be explained in context. Section 3A (7) of the 1976 Act defines a "religious marriage" as "a marriage solemnised by a marriage celebrant of a prescribed religious body", and "religion of that marriage" shall be construed accordingly. And just to round it off, "prescribed" is defined in the same section as "prescribed by regulations made by the Scottish Ministers", which of course means that a statutory instrument has been required in order to understand what is meant by a "religious body".

There accordingly followed the Divorce (Religious Bodies) (Scotland) Regulations 2006 (SSI 2006 No 253), which, by reg 1, came into force on 3 June 2006. The only other regulation, which is reg 2, states as follows:

"Any Hebrew Congregation is prescribed as a religious body for the purposes of section 3A (7) of the Divorce (Scotland) Act 1976."

The relevance of a prescribed religious body in relation to the Get is explained below, in the part dealing with the recall of the order for postponement of the civil divorce.

The court's discretion

As readers are aware, family jurisdiction places heavy reliance on broad judicial discretion and this practice has found its way into s 3A of the 1976 Act (as amended). The section is peppered with provisions in respect of which the court "may" do certain things or has to be "satisfied" in the exercise of its discretion. The court has discretion as to whether or not to grant the application for an order to postpone the decree; it will only grant the application if satisfied that the applicant is prevented from entering into a further religious marriage (s 3A(2)(a)) and that the other party "can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage" (s 3A(2)(b)). In other words, the court has to be satisfied that the applicant cannot remarry religiously because his or her spouse is not co-operating with obtaining the Get, for the spouse's co-operation would remove the impediment preventing the religious marriage.

Moreover, the court will only grant the application if "it is just and reasonable" (subs (1)(b)(ii)) to do so, i e to grant the order postponing the decree of divorce.

The significance of this section is that, if, in the exercise of the court's discretion, an application is successful — which means that the order is made for the decree of divorce to be postponed — the Get must first be obtained before the decree will be granted. Once granted, it is too late to make use of the civil law, and this may well lead to many problems for the client. It is prudent also to be aware of the subordinate legislation governing the simplified divorce procedure in relation to the Get, of which more detail is provided below.

The success of any application is dependent upon the discretion of the court being exercised in favour of the applicant, for the court "may" make such an order — it is not a mandatory requirement. For the order for postponement to be made, this will in turn depend upon the strength of the evidence adduced with the application. Having said that, it is believed to be highly unlikely that any carefully prepared application would be unsuccessful, but if it were, the usual appeal rights would apply.

Recall of postponement

By s 3A(4) the court may recall the order for postponement either on its own motion or on the application of a party. This is the case even if the impediment to the religious remarriage still exists. Normally, however, an application would be made for recall of the postponement when the Get has been obtained, following which, the civil divorce would be granted if the application for recall were to be successful. Before recalling a postponement, however, the court may require the party who had been refusing the Get to produce a certificate to be given by "a relevant religious body" (s 3A(5)), confirming that the impediment to the religious remarriage has been removed in other words, that the Get has been obtained. For the purposes of this subsection, a religious body is "relevant" if the applicant considers the body competent to provide that confirmation (s 3A(6)).

In practice, the "religious body" would be a Beth Din, as a Get is facilitated by a Beth Din, though the certificate may be required to be given to the court by "any Hebrew congregation" (i e a synagogue) as defined in the Divorce (Religious Bodies) (Scotland) Regulations 2006, to which reference has been made above.

But which religious body?

There may be religious difficulties arising from the selection made by the applicant as to which religious body he or she considers to be appropriate. There is a benefit in being aware of the implications of this definition of “relevant religious body”, given that it is the applicant’s decision as to which religious body is selected to confirm that the Get has been obtained. As mentioned above, there are several groupings within Judaism, the original and mainstream one being known as Orthodox or traditional Judaism. It follows that the Beth Din which facilitates the Get and the synagogue which provides the certificate may be Orthodox or non-Orthodox, as explained in Pt 1 above.

It would be useful to bear in mind that, as more fully explained earlier, if both parties to the divorce are halachically Jewish and they wish to have their Get universally recognised throughout the Jewish world, only a Get from an Orthodox Beth Din will suffice. A Get from any other Beth Din does not gain this universal recognition. Civilly divorced spouses who have subsequently remarried and gone on to have children in ignorance of this fact have suffered enormously (especially the children subsequently born to the wife who only has a civil divorce) and this is due to a lack of awareness of the religious laws. In depth coverage of these issues is to be found in “Getting your Get” at www.gettingyourget.co.uk, the e-book about Jewish divorce which includes articles, forms and explanations for family law practitioners.

The rules of court and the simplified divorce procedure

As for the simplified divorce procedure, sometimes a client wishes to take advice about various matters prior to conducting the divorce without legal representation. In such a case, it would be prudent for the client to be advised about the desirability of obtaining the Get before making use of this procedure. As family law practitioners are aware, the simplified procedure is set out in the rules of court and is used when spouses decide not to use family law practitioners. The implications of this for the parties are explained below. The published forms for the simplified procedure take into account the most recent amendments contained in the latest Acts of Sederunt for the sheriff court and the Court of Session. There are six application forms in use for the simplified procedure — three for each court. It is a simple matter to know which form to use, as the particular form will depend upon the circumstances of the divorcing spouses and each form makes it clear

on the front page precisely what the different circumstances are. Details are provided below.

Procedure in the sheriff court

Certain amendments were made to the rules of court in the sheriff court by the Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007 (SSI 2007/6), which was brought into force by para 1(2) on 26 February 2007. For the purposes of the 1976 Act, the relevant parts of these amending regulations are paras 2(14), (15) and (16)(f) to (j).

There are three forms for use with the simplified procedure in the sheriff court. They all state on the front page that they are for use on/after 26 February 2007 and specify the relevant part of the 1976 Act from which they emanate. The form which is used will depend on the circumstances of the parties. The forms are as follows:

1. Form SPA (s 1(2)(d) of the Divorce (Scotland) Act 1976) comprises an application for divorce with consent of the other party to the marriage (husband and wife having lived apart for at least one year).
2. Form SPB (s 1(2)(e) of the Divorce (Scotland) Act 1976) comprises an application for divorce, husband and wife having lived apart for at least two years.
3. Form SPC (s 1(1)(b) of the Divorce (Scotland) Act 1976) comprises an application for divorce (interim gender recognition certificate issued to one of the parties after the marriage).

The Court of Session procedure

Similarly, certain amendments were made to the rules of court in the Court of Session and are to be found in the Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2007 (SSI 2007/7), which was brought into force by para 1(2) on 26 February 2007. For the purposes of the Act of 1976, the relevant parts of these amending regulations are para 2(9) and (10) and certain parts of para 2(20)(a) to (f).

As is the case in the sheriff court, there are three equivalent forms for use with the simplified procedure in the Court of Session. Like those for use in the sheriff court, they all state on the front page that they are for use on/after 26 February 2007 and specify the relevant part of the Act of 1976 from which they emanate. The form which is used will depend on the circumstances of the spouses.

The forms are as follows:

1. Form 49.73-A (SPA) (s 1(2)(d) of the Divorce (Scotland) Act 1976) comprises an application for divorce (with consent of the other party to the marriage), husband and wife having lived apart for at least one year.

2. Form 49.73-B (SPB) (s 1(2)(e) of the Divorce (Scotland) Act 1976) comprises an application for divorce, husband and wife having lived apart for at least two years.

3. Form 49.73-C (SPC) (s 1(0)(b) of the Divorce (Scotland) Act 1976) comprises an application for divorce, issue of interim gender recognition certificate.

The simplified procedure and published guidance

Guidance has been published for divorcing spouses by the Scottish courts in the form of a "Guide to the Simplified Divorce/Dissolution of Civil Partnership Procedure in Scotland". Family law practitioners will also find it useful.

The simplified procedure and the significance of the forms for solicitor and client

There are, as will be appreciated, quite a number of requirements to be met if divorcing spouses wish to make use of the forms for the simplified procedure, but they are not all considered here, as they will be well known, and in any event fall outside the scope of this article. Accordingly, what follows is restricted to an explanation of the requirements relating to the Get which have to be met; and the consequences if they are not met.

If a family law practitioner is consulted for legal advice by a Jewish spouse who is planning to use the simplified procedure, it would be prudent for the client to be advised that it is stated on each of the forms that — when this procedure is used — no application can be made to the court for the decree of divorce to be postponed under s 3A of the 1976 Act (as amended by s 15 of the 2006 Act). Accordingly, if the divorcing spouses are both halachically Jewish and have not yet obtained their Get and intend to obtain it, it would be prudent for the client to be advised that if this procedure is used, and if an application is subsequently made to postpone the divorce, the simplified procedure will stop and the divorce action will be dismissed.

Explanations to this effect are provided in the application forms for the simplified procedure in the sheriff court — see Form SPA at s 11, notes on s 11 and note 3 re completing Pt 2;

Form SPB at s 12 and notes on s 12; and Form SPC at s 11 and notes on s 11.

Similarly, explanations are provided in the application forms for the simplified procedure in the Court of Session — see Form 49.73-A (SPA) at s 11, notes on s 11 and note 2A re completing Pt 2; Form 49.73-B (SPB) at s 12 and notes on s 12; and Form 49.73C (SPC) at s 11 and notes on s 11.

It would be prudent for the client to be advised that the entitlement to make an application to the court for such a postponement is lost for all time if the spouses decide to proceed with the simplified procedure without first obtaining their Get. This is when all the problems mentioned in the first part of this article and in greater detail in www.gettingyourget.co.uk, the e-book about Jewish divorce, which includes articles, forms and explanations for family law practitioners and to which reference has been made above.

It would therefore be prudent for the client to be advised first to obtain the Get, following which, the relevant form for the simplified procedure can be used in order to avoid these problems from arising at a future date.

Ordinary cause procedure

Where the ordinary cause procedure for family actions is used in the sheriff court (or its equivalent in the Court of Session), it is of course possible for a spouse to apply under s 3A of the 1976 Act (as amended by the 2006 Act) for the postponement. That can be done at any time prior to (but not after) decree of divorce being granted. In terms of the Ordinary Cause Rules, the application for a postponement should be made by way of a formal minute in the action. There is similar provision in the Rules of the Court of Session.

For other religions too

Finally, it may be noted that this legislation could be equally applicable to other religions whose members have similar difficulties when divorcing, but so far no other religion has opted for this. Because of the manner in which s 3A of the 1976 Act (inserted by s 15 of the 2006 Act) is worded, all it requires is a statutory instrument equivalent to the Divorce (Religious Bodies) (Scotland) Regulations 2006. This is expected to be straightforward if another religious authority were to approach the government and ask for those legal provisions to apply to them.

Conclusion — avoiding misery for the client

A failure to grasp and deal with the issue of Get before or during the course of the civil divorce proceedings can result in misery not only for the client, but for any future children of a wife who only has a civil divorce. Family law practitioners with divorcing Jewish clients are professionally required in each case to consider whether or not it would be appropriate to make use of the legislation to seek to ensure that the Get is obtained before the decree of divorce is granted, thereby avoiding such misery.

Precedents: Get clauses and minute of agreement

The parties should try to ensure that, before any matrimonial agreement is otherwise fully implemented, a Get has been granted. In many cases formal agreement is reached through the minute of agreement, in which are set out provisions both for finances and children, where applicable. In such an agreement a clause could be inserted, such as the following:

(1) For initiating the Get within a specific time:

Mr/Mrs [] hereby undertakes to apply within six weeks of the last date of the signing of this minute of agreement for a religious divorce (Get) to the Beth Din in Glasgow, whom failing the London Beth Din (“the Beth Din”) and the other party agrees to take all such steps thereafter as are directed by the Beth Din to complete the Get, each step being taken within the time limits directed by the Beth Din or within seven days where no time limit is given and in any event to take all steps within a reasonable period of time. The completion of the Get procedure will take place not later than six months from the date of application to the Beth Din. The costs of the application are to be borne by Mr/Mrs [] to be shared equally and shall be paid to the Beth Din upon request by the Beth Din. In the event that either party materially breaches the terms of this clause then without prejudice to any other remedies this agreement may be treated by the other party at his/her discretion as being void. Provided always that in the event of any delay beyond the period of six months being attributable to the Beth Din, the said period of six months shall be extended until such time as the Beth Din have completed the procedures but such further period shall not affect the obligations of the party to this agreement.

(2) For co-operation with an application for a Get after one party has requested it:

Either party may apply for a religious divorce (Get), and the other party agrees to take all such steps thereafter as are directed by the Beth Din in Glasgow (“the Beth Din”) to complete the Get, each step being taken within the time limits directed by the Beth Din or within 7 days where no time limit is given and in any event to take all steps within a reasonable period of time. The Get shall be completed not later than six months from the date of application to the Beth Din with the cost thereof to be borne by Mr/Mrs [] to be shared equally between the parties and the party or parties responsible for payments shall make payment upon request by the Beth Din. In the event that either party materially breaches the terms of this clause then without prejudice to any other remedies this agreement may be treated by the other party at his/her discretion as being void. Provided always that in the event of any delay beyond the period of six months being attributable to the Beth Din, the said period of six months shall be extended until such time as the Beth Din have completed the procedures but such further period shall not affect the obligation of the parties to this agreement.

Glossary of terms

Beth Din: (Plural: Batei Din). Court of Jewish religious law.

Get: Divorce document.

Halachically Jewish: A status that applies to any person whose ancestors on the maternal side were Jewish, as recognised by an Orthodox Beth Din, or someone who has undergone a conversion to Orthodox Judaism.

Mamzer: A Jewish child whose status is religiously illegitimate; born of a Jewish mother after she has obtained a civil divorce but has no Get. A mamzer can normally only marry another mamzer.

Useful websites

All the legislation and forms to which reference is made are to be found via the following links:

Section 3A of the Divorce (Scotland) Act 1976 is inserted by s 15 of the Family Law (Scotland) Act 2006 at

http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060002_en_1#pb4-1lg15

The Divorce (Religious Bodies) (Scotland) Regulations 2006 (SSI 2006/253) at

<http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060253.htm>

Sheriff Court Rules: Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007 (SSI 2007/6) at

<http://www.opsi.gov.uk/legislation/scotland/ssi2007/20070006.htm>

Court of Session Rules: Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2007 (SSI 2007/7) at

<http://www.opsi.gov.uk/legislation/scotland/ssi2007/20070007.htm>

Sheriff Court Forms (Simplified Divorce Procedure)

<http://www.scotcourts.gov.uk/library/civil/divorce/docs/FormSPA.pdf>

http://www.scotcourts.gov.uk/library/civil/divorce/docs/after_feb_2007/Form_SPB_2007.doc

http://www.scotcourts.gov.uk/library/civil/divorce/docs/after_feb_2007/Form_SPC_2007.doc

Court of Session Forms (Simplified Divorce Procedure)

http://www.scotcourts.gov.uk/library/civil/divorce/docs/after_feb_2007/CS_Form_49_73_A_2007.doc

http://www.scotcourts.gov.uk/library/civil/divorce/docs/after_feb_2007/CS_Form_49_73_B_2007.doc

http://www.scotcourts.gov.uk/library/civil/divorce/docs/after_feb_2007/CS_Form_49_73_C_2007.doc

Guide to the simplified divorce/dissolution of civil partnership procedure in Scotland

http://www.scotcourts.gov.uk/library/docs/divorce_dissolution_guidance_leaflet_2.pdf

“Getting your Get”, an e-book by Sharon Faith and Deanna Levine with articles, forms and explanations for lawyers

www.gettingyourget.co.uk

[The helpful suggestions of Derek Livingston of Naftalin Duncan, Solicitors, Glasgow, are gratefully acknowledged.]

[Deanna Levine, MA, LLB, is a dually qualified Scottish and English solicitor and consultant to Barnett, Alexander Conway Ingram LLP, London. Deanna is Honorary Secretary of The United Kingdom Association of Jewish Lawyers and Jurists and a member of the Family Law Group of the Board of Deputies. She is co-author of the judicially endorsed e-book, “Getting your Get” at www.gettingyourget.co.uk, which includes forms, articles and explanations for family law practitioners; and lectures widely on the topic.]

