



Getting your Get
at
www.gettingyourget.co.uk

*Information for Jewish men and women
in England, Wales and Scotland about divorce according to Jewish law
with articles, forms and explanations for lawyers.*

by

Sharon Faith BA (Law) (Hons) and Deanna Levine MA LLB

*The website at www.gettingyourget.co.uk is sponsored
by
Barnett Alexander Conway Ingram, Solicitors, London*

Dedicated to the loving memory
of
Sharon Faith's late parents, Maisie and Dr Oswald Ross (zl)
and
Deanna Levine's late parents, Cissy and Ellis Levine (zl)

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office of the
CHIEF RABBI

Message from the Chief Rabbi Dr Jonathan Sacks

I warmly commend the publication "Getting Your Get" produced by Sharon Faith and Deanna Levine for Jewish men and women going through the trauma of divorce.

They rightly stress the great importance of obtaining a Get and the tragic personal consequences for both parties to a marriage that may ensue as a result of failure to obtain a Get.

Their excellent publication is particularly useful for legal practitioners as it explains the way in which the Divorce (Religious Marriage) Act 2002 and the related Family Proceedings (Amendment) Rules 2003 can be used to procure a Get.

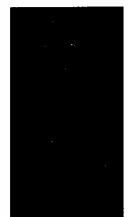
This legislation allows the Courts to deny a Decree Absolute to a spouse refusing to give or receive a Get and this publication is a step forward which will prevent many new cases of Agunah.

I strongly endorse the recommendation to apply for a Get as soon as possible in divorce proceeding and hope that this advice will be heeded by divorcing couples.

With congratulations on your invaluable work!

Jonathan Sacks

Chief Rabbi Dr Jonathan Sacks
September 2004





THE COURT SERVICE
THE CROWN COURT AT HARROW
Hailsham Drive
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Middlesex
HA1 4TU
DX 97335 Harrow 5
☎ 020 8424 2294 Ext
Fax 020 8424 2209

MESSAGE FROM HER HONOUR JUDGE FREEDMAN

Unhappily the fact of divorce is a reality in all too many lives. For it not to blight the future of the parties, or that of the children of any future union, it is essential that any party to a divorce and those who advise them are aware of the vital need to dissolve the marriage in accordance with religious law and the appalling consequences of a failure to do so.

It is also important that the public be aware that, aside from the heartbreak attending the dissolution of a marriage entered into with joy and optimism, there is nothing frightening or unpleasant about the proceedings themselves.

Moreover, since there are now remedies available within the community and, with recent passage of the Divorce (Religious Marriages) Act 2002 at civil law, where a party neglects to deliver or receive a Get, it would be tragic indeed if a failure to dissolve a marriage religiously, as well as civilly, were attributable to a lack of knowledge of the need to do so or how to go about it!

It is for this reason that I commend the publication of "Getting Your Get" which should be an essential feature of every family lawyer's library.

Dawn Freedman



Minicom VII ☎ 020 7842 7594
Helpline for the deaf and hard of hearing

Customer Service Unit
e-mail: cust.ser.cs@gtnet.gov.uk

The Court Service website address is:
www.courtservice.gov.uk

The Right Honourable Lady Cosgrove



Parliament House
Parliament Square
Edinburgh, EH1 1RQ

The plight of the chained wife is an unhappy and now well publicised feature of Jewish life. The possibility that a Get may be withheld raises a spectre of dread for many who are already in a distressed and vulnerable state following the break-up of their marriage. But assistance is now at hand. "Getting your Get" offers advice and guidance as well as information on available support services which should help to avoid or minimise serious problems that may arise from failure to dissolve a marriage religiously as well as civilly. I therefore commend this booklet as an important tool in heightening awareness and providing important practical assistance in this area.

H C.

QUOTES FROM LETTERS OF ENDORSEMENT ABOUT GETTING YOUR GET

“Sharon Faith and Deanna Levine rightly stress the great importance of obtaining a Get and the tragic, personal consequences that may ensue as a result of failure to obtain a Get. An excellent publication and an invaluable work.”

Chief Rabbi Dr Jonathan Sacks

“Getting your Get should be an essential feature of every family lawyer’s library.”

Her Honour Judge Dawn Freedman

“I commend Getting your Get as an important tool in heightening awareness and providing important practical assistance in this area.”

The Right Honourable Lady Cosgrove

“This excellent booklet will educate the Jewish community about the Get.”

Agunot Campaign

“A very practical and lucid guide which I strongly commend to as wide a Jewish audience as possible.”

B'nai B'rith United Kingdom

“This booklet fulfils an important need for the community and should be widely circulated.”

Board of Deputies of British Jews

“Getting your Get is an invaluable practical guide which is easy to read and understand.”

British WIZO

“This booklet serves a valuable and worthwhile purpose in seeking to educate, inform and reassure divorcing Jewish couples.”

Dayan Ch Ehrentreu, Rosh Beth Din

“Sharon Faith and Deanna Levine have risen to fulfil the needs of the moment and produced an immensely helpful booklet.”

Glasgow Beth Din

“Clear and concise, Getting your Get highlights all the issues and will be of immeasurable help to Jewish couples facing the trauma of divorce.”

Glasgow Jewish Representative Council

“We wholeheartedly endorse Getting your Get which fulfils an important and unmet need in the community.”

Jewish Care

“Getting your Get offers practical advice and information on support services for men and women seeking a Jewish divorce and provides an excellent source of reference for the professionals involved.”

Jewish Care Scotland

“Sharon Faith and Deanna Levine have successfully condensed and simplified the complexities of Jewish divorce law and the recent changes in secular law.”

Jewish Chronicle

“Getting your Get explains in clear and simple language why it is necessary for there to be a Get as well as a civil divorce.”

Jewish Marriage Council

“The League has for many years been involved with the problem of agunot and is happy to recommend Getting your Get.”

League of Jewish Women

“I warmly commend this timely publication and congratulate Sharon and Deanna for providing a vital service for Anglo-Jewry.”

Rabbi J Grunfeld, National Director, SEED

“Had there been such a guide as Getting your Get 40 years ago, I might not be an Agunah today.”

Susan Zinkin, JNF

“Getting your Get deals with all aspects of obtaining a Get and explains fully the consequences of failure to do so. It is essential reading for anyone who practises in this area of the law.”

The United Kingdom Association of Jewish Lawyers & Jurists

Acknowledgements

We have written *Getting your Get* to heighten awareness of the need for a Get and the consequences of the absence of obtaining one, as well as to highlight the useful role that various kinds of adviser can play. We believed it would be useful to blend the requirements of Orthodox Jewish law relating to Get with the legal and practical issues that can arise in many divorce situations and so we submitted the text for a review of the religious aspects.

We are accordingly much indebted to the late and sorely missed Dayan Berel Berkovits (zl) of the Federation of Synagogues; and also to Mr David Frei, Registrar of the Family Division of the London Beth Din (Court of the Chief Rabbi) and to Rabbi Avrohom Weiss, formerly of the Glasgow Beth Din, for the interest they have shown and the time they have taken to provide us with many useful comments and suggestions. Their thoughtful input has proved invaluable and has been greatly appreciated.

Our thanks go to Ephraim Borowski MBE of the Glasgow Jewish Representative Council and also to the late Judith Tankel (zl) of the group, 'Women in the Jewish Community', Glasgow¹ for their considerable assistance in locating information that enabled us to ensure that *Getting Your Get* would also be useful to members of the Scottish Jewish community. And so it was that Derek Livingston of Naftalin Duncan & Co, Solicitors, Glasgow, together with Leah Granat, Public Affairs Officer of the Scottish Council of Jewish Communities, kindly assisted with adapting the text so that readers in Scotland would be alerted to any differences in the law that would affect them, as Family Law in Scotland is different from that in England and Wales. We are also grateful to Orli Shaki for her help in compiling the index, thereby making it easier for readers to locate those parts of the text that are relevant to them. The secretarial assistance provided by Elizabeth Guild and Shirley March is also gratefully acknowledged.

We wish to thank Barnett Alexander Conway Ingram, Solicitors, London, for the administrative assistance which they kindly provided to us and for sponsoring the website for this publication: www.gettingyourget.co.uk

We should also like to thank an anonymous donor who very kindly sponsored the printing of a recent paperback edition of *Getting your Get* for free distribution to Jewish organisations and to some non-Jewish organisations which advise divorcing Jewish clients.

Family Law in England, Wales and Scotland

Jewish Law applies to a Jewish person, no matter in which country he or she is living. The laws of England and Wales on the one hand and Scotland on the other are, however, different. Where any part of this publication refers to laws which apply only to England and Wales on the one hand or only to Scotland on the other, this will be clear from the text. If no distinction is made, the same text will apply to each country.

A note for the reader seeking divorce

While we have considered many of the circumstances in which a Jewish husband or wife might find himself or herself as far as the necessity (or otherwise) of having a Get is concerned, we have not attempted to consider every possible set of circumstances that may arise. Accordingly, whether or not the reader is a member of an Orthodox synagogue, it is recommended that a Rabbi from an Orthodox Beth Din – see list in Annexe 3 – is consulted in order to obtain advice on his or her own particular circumstances. Similarly, the information contained in this publication is of a general nature and should not be relied upon in any particular case, for which legal, rabbinical and other appropriate specialist advice should be sought.

¹ This group is not currently active.

A note for the lawyer

Getting your Get has received judicial endorsement in England and Wales from Her Honour Judge Dawn Freedman and in Scotland from The Right Honourable Lady Cosgrove. If you have a Jewish client, you may find that he or she gives you certain chapters of Getting your Get, as suggested in the text, whether you are in England, Wales or Scotland. Alternatively, you may already have printed a copy from the website at www.gettingyourget.co.uk. If this is the case, we would ask you to give a copy to your separated or divorcing Jewish clients, as they would benefit from reading the information contained in Getting your Get, which has also been endorsed by the Chief Rabbi and a diverse range of religious and communal Jewish organisations.

The following chapters of Getting your Get have been written specially for lawyers who act for separated or divorcing Jewish clients:

Legislation: England and Wales.....	page 10
Legislation: Scotland.....	page 11
Some legal aspects	page 25
Annexe 4A: Get Clauses and Undertakings (England and Wales)	page 32
Annexe 4B: Get Clauses and Minute of Agreement (Scotland).....	page 33
Annexe 7: Article for lawyers	pages 36-44

An article by the authors of Getting your Get was published in the Family Law Journal (May 2003 at pages 11-14). Entitled "Religious Divorce", it explains in greater detail than this publication the significance and implications of the Divorce (Religious Marriages) Act 2002 and the Family Proceedings (Amendment) Rules 2003 which are applicable in England and Wales. An article by Deanna Levine was published in the Journal of the Law Society of Scotland (March 2006 at page 26). Entitled "Getting a Get in Scotland" at <http://www.journalonline.co.uk/article/1002804.aspx>, it explains the significance and implications of section 3A of the Divorce (Scotland) Act 1976, as amended by section 15 of the Family Law (Scotland) Act 2006². There is a list of useful websites in the chapters entitled "Legislation: England and Wales" and "Legislation: Scotland".

Jewish Law applies to a Jewish person, no matter in which country he or she is living. The laws of England and Wales on the one hand and Scotland on the other are, however, different. Where any part of this publication refers to laws which apply only to England and Wales on the one hand or only to Scotland on the other, this will be clear from the text. If no distinction is made, the same text will apply to each country.

We would welcome any suggestions you may have to help ease the plight of those seeking a Get, so please let us know of any unusual situations which you have helped to resolve for your client. Similarly, if you encounter any particularly awkward problems, feel free to contact us to discuss them in total confidence. As will be appreciated, your client's permission to contact us about his or her case may be needed.

Sharon Faith & Deanna Levine
London
May, 2008

² A useful introduction, the article was published before the related Divorce (Religious Bodies) (Scotland) Regulations 2006, the Rules of Court and the court forms for the simplified procedure, all of which are considered below.

Legislation: England and Wales

Certain fundamental changes were made to the divorce laws of England and Wales when the Divorce (Religious Marriages) Act 2002 came into force on 24 February 2003. The husband or the wife may apply for an order that a decree of divorce is not to be made absolute until they have both produced to the court a declaration that they have taken such steps as are required to dissolve the marriage in accordance with Jewish law. The word “Get” (which means Jewish divorce) does not appear in the legislation, but it is clearly referring to it.

The court has discretion as to whether or not to grant such an order and will only grant it if it is “satisfied that in all the circumstances of the case it is just and reasonable to do so”. Moreover, the court can cancel the order at any time.

Many procedural matters are set out in related subordinate legislation that was passed on 24 February 2003³ (known as rules of court), making it possible for spouses to benefit from the Act. Together, the Act and the rules of court will assist Jewish husbands and wives in achieving their objective of obtaining their Get where one of them is not co-operating and wants the civil divorce, but not the Get. In such circumstances, the court can refuse to make the divorce decree absolute.

Once the Get has been obtained, the rules of court⁴ specify the form and content of the declaration to be made by both husband and wife that they have their Get, thereby clearing the way for the divorce to be made absolute.

It should be noted that normally a certificate to the effect that the Get has been obtained must accompany the declaration. That certificate has to be given by a “relevant” religious authority (ie a Beth Din⁵). The husband or wife who has made the application for the divorce not to be made absolute is the one who considers that the particular Beth Din which has finalised the arrangements for the Get is acceptable to him or her.

Readers (whether solicitors, husbands or wives) will benefit from being alert to the implications of this definition. It follows that the “relevant” religious authority (or Beth Din) that certifies that the Get has been obtained may be Orthodox, Masorti (Conservative) or Reform. The Union of Liberal and Progressive Synagogues (ULPS) is another such religious authority, but has no form of Get, as they permit a couple to remarry in synagogue without a prior religious divorce.

³ The Family Proceedings (Amendment) Rules 2003.

⁴ See note 3 above.

⁵ Beth Din (plural Batei Din): Court of Jewish religious law.

It would be useful for divorcing husbands and wives who are halachically Jewish⁶ to be aware that, if they wish to have their Get universally recognised throughout the Jewish world, only a Get from an Orthodox Beth Din will gain such recognition. A Get from any of the other Batei Din⁷ does not gain this universal recognition and many divorced husbands and wives 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 divorced wife) due to a lack of awareness of this aspect, which receives in-depth coverage in the main text of Getting your Get.

As for DIY divorce, if a client wishes to take advice about various matters prior to conducting the divorce him/herself, it would be prudent to advise him or her about the desirability of obtaining the Get before decree absolute and to refer the client to the useful information contained in the chapter entitled “DIY divorce”.

Article

The Act and the rules of court are comprehensively covered in an article by the authors in the Family Law Journal (May 2003 at pages 11-14).

Useful website addresses

Divorce (Religious Marriages) Act 2002:

<http://www.hms0.gov.uk/acts/acts2002/20020027.htm>

The Family Proceedings (Amendment) Rules 2003:

<http://www.legislation.hms0.gov.uk/si/si2003/20030184.htm>

Legislation: Scotland⁸

Certain fundamental changes were made to the divorce laws of Scotland when section 15 of the Family Law (Scotland) Act 2006 inserted a new section 3A in the Divorce (Scotland) Act 1976. Section 15 of the 2006 Act came into force on 4 May 2006.⁹ This section may be used to assist Jewish spouses in achieving their objective of obtaining the Get, where one spouse is not co-operating and wants the civil divorce, but not the Get. Despite the fact that it has been established in the divorce action that the marriage has irretrievably broken down, section 3A of the Divorce (Scotland) Act 1976 provides for the postponement of the decree of divorce where there is an impediment to a future “religious marriage”¹⁰ and it is possible

⁶ 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.

⁷ See note 5 above.

⁸ This is the position for Scotland as at 26 February 2007.

⁹ Article 2 of the Family Law (Scotland) Act 2006 (Commencement, Transitional Provisions and Savings) Order 2006. (SSI 2006 No 212).

¹⁰ Section 3A (7). See also the Divorce (Religious Bodies) (Scotland) Regulations 2006 (SSI 2006 No 253).

for the spouse who is not co-operating to remove that impediment or to enable or contribute to its removal. Simply expressed, if the Get has not been obtained before the decree of divorce has been granted, a spouse may apply to the court (“the applicant”¹¹) for the grant of decree of divorce to be postponed until the Get has been obtained. The word “Get” (which means Jewish divorce) does not appear in the legislation, but it is clearly referring to it.

If you are consulted for legal advice by a spouse who is planning to use the simplified procedure, your client should be made aware that it is stated on the form that no application can be made to the court for the decree of divorce to be postponed under section 3A of the Divorce (Scotland) Act 1976 (as amended); and accordingly, if it is intended to obtain a Get, this procedure should not be used. This is the position for both spouses, so if either of them wishes to make an application to postpone the divorce, the simplified procedure cannot be utilised or, if an application is made to postpone the divorce, the simplified procedure will stop and the divorce action will be dismissed. Explanations are provided in the application forms under for the simplified procedure in the Sheriff Court¹² and Court of Session¹³. See also the Sheriff Court Rules and Rules of Court of Session¹⁴. Explanations are also provided in the Guide to the Simplified Divorce/Dissolution of Civil Partnership Procedure in Scotland.

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 when there is no Get. This is when all the problems detailed elsewhere in this publication arise. It would therefore be prudent for your client to be advised first to obtain the Get, following which the relevant form for the simplified procedure can be used.

Where the ordinary cause (ie non-simplified) procedure is used (or equivalent in the Court of Session), it is of course possible for a spouse to apply under section 3A of the Divorce (Scotland) Act 1976 (as amended) for the postponement.

The court has discretion as to whether or not to grant the order postponing the decree of divorce and will only grant it if it is satisfied that the applicant is prevented from entering into a future “religious marriage”¹⁵ because of a religious requirement; the court must be satisfied that there is nothing to prevent the applicant’s spouse from granting or accepting the Get; and the court must also be satisfied that “it is just and reasonable” to grant the order postponing the decree of divorce.

¹¹ Section 3A (1)(a) of the Divorce (Scotland) Act 1976, as amended by section 15 of the Family Law (Scotland) Act 2006.

¹² Form SPA at section 11, notes on section 11 and note 3 re completing Part 2; Form SPB at section 12 and notes on section 12; and Form SPC at section 11 and notes on section 11.

¹³ Form 49.73-A (SPA) at section 11, notes on section 11 and note 2A re completing Part 2; Form 49.73-B (SPB) at section 12 and notes on section 12; and Form 49.73C (SPC) at section 11 and notes on section 11.

¹⁴ Sheriff Court Rules (SSI 2007 No 6) and the Rules of the Court of Session (SSI 2007 No 7).

¹⁵ Section 3A (7) of the Divorce (Scotland) Act 1976, as amended by section 15 of the Family Law (Scotland) Act 2006. See also regulation 2 of the Divorce (Religious Bodies) (Scotland) Regulations 2006 SSI/2006/253.

Before recalling a postponement the court may order the spouse of the applicant for postponement to produce a certificate from “a relevant religious body” which confirms that the applicant’s spouse has acted in such a way as to have removed, or enabled or contributed to the removal of the impediment which prevents the future marriage. The Divorce (Religious Bodies) (Scotland) Regulations 2006, which came into force on 3 June 2006, prescribes a “religious body” as “any Hebrew congregation”. In practice, the parties will produce the Get certificate provided to each of them by the Beth Din that facilitated the Get. The decision as to whether or not the relevant Beth Din is acceptable is made by the spouse who made the successful application for the divorce to be postponed.

Readers (whether solicitors or other advisers, husbands or wives) will benefit from being alert to the implications of this definition. It follows that the “relevant religious body” (Beth Din or synagogue) that certifies that the Get has been obtained may be Orthodox, Masorti (Conservative) or Reform. The Union of Liberal and Progressive Synagogues (ULPS) is another such “religious body”, but has no form of Get, as they permit a couple to remarry in synagogue without a prior religious divorce.

It would be useful for divorcing husbands and wives who are halachically Jewish¹⁶ (as well as their solicitors) to be aware that, if they wish to have their Get universally recognised throughout the Jewish world, only a Get from an Orthodox Beth Din will gain such recognition. A Get from any of the other Batei Din¹⁷ does not gain this universal recognition and many divorced husbands and wives who have subsequently remarried and gone on to have children through lack of awareness of this, have suffered enormously (especially the children subsequently born to the divorced wife). This is an issue which receives in-depth coverage in the main text of Getting your Get.

Useful website addresses re Scotland

Section 3A of the Divorce (Scotland) Act 1976 is inserted by section 15 of the Family Law (Scotland) Act 2006 at http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060002_en_1#pb4-l1g15

The Divorce (Religious Bodies) (Scotland) Regulations 2006
<http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060253.htm>

“Getting a Get in Scotland” (Article by Deanna Levine)
<http://www.journalonline.co.uk/article/1002804.aspx>

Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2007
<http://www.opsi.gov.uk/legislation/scotland/ssi2007/20070006.htm>

Act of Sederunt (Rules of the Court of Session Amendment) (Miscellaneous) 2007 (SSI 2007 No 7)
<http://www.opsi.gov.uk/legislation/scotland/ssi2007/20070007.htm>

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

¹⁶ See definition of “Halachically Jewish” in glossary at Annexe 1.

¹⁷ See note 5 above.

Sheriff Court forms (Simplified Divorce Procedure) amended – see paragraphs 2 (14 & 15) of SSI 2007 No 6 at
http://www.oqps.gov.uk/legislation/ssi/ssi2007/ssi_20070006_en_1
<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) amended by SSI 2007 No 7 – see paragraph 2 (10) at
http://www.oqps.gov.uk/legislation/ssi/ssi2007/ssi_20070007_en_1
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

1. Who needs a Get?

For the information in this publication to apply, both you and your spouse must be “halachically Jewish” ie according to Orthodox Jewish law – see the definition in Annexe 1. This would be the case even if you were married in or now belong to the Masorti, Reform, Liberal/Progressive movements or consider yourself to be a secular Jew. You would normally require a Get even if you only entered into a civil marriage ceremony, eg at a registry office and possibly even if you have been living together for some time and decide to go your separate ways. If you are unsure of your Jewish status, you should check with your Rabbi or an Orthodox Beth Din – see numbers 4-10 at Annexe 3. You may think at this stage that you have no interest in obtaining a Get, but strongly held views today may change over time and more is explained about this below.

Most people who are Jewish are halachically Jewish, so in practice, both you and your spouse need a Get from an Orthodox Beth Din in order to remarry within an Orthodox synagogue and/or to retain the option of remaining fully integrated within the Jewish community. This is the case even if you do not currently belong to an Orthodox synagogue. It is explained in greater detail below.

2. What is a Get?

A Get is a Jewish divorce document which dissolves a marriage entered into by a couple who are both halachically Jewish. (See definition in Annexe 1). In Jewish Law a marriage is deemed to be a contract freely entered into by both parties and therefore it has to be dissolved freely by 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.

A Get is not a document that contains religious content, such as a prayer, nor does it indicate any acknowledgement of religious belief or practice. It is more akin to a contract that is required to be entered into by both husband and wife in accordance with Orthodox religious law. The Get is the method by which a Jewish marriage is terminated in Jewish law for those couples who are halachically Jewish – see the definition in Annexe 1.

In order for the Get to be universally recognised within the Jewish world, it is essential that the Get procedures should be effected under the auspices of an Orthodox Beth Din (Jewish religious court), a list of which is at numbers 4-10 of Annexe 3. Apart from the Union of Liberal and Progressive Synagogues (ULPS), each non-Orthodox Beth Din, (Masorti (Conservative) and Reform) does issue its own Get, but this does not comply with the requirements of Jewish law as recognised in the Orthodox world. ULPS has no form of Get, as they permit a couple to remarry without a prior religious divorce. This means that if a woman has a child after receiving a non-Orthodox Get from her husband, or after remarrying in ULPS without one, that child could have serious status problems in the eyes of Orthodox Jewish Law. If a man were to remarry without first granting a Get through an Orthodox Beth Din, he would normally be prevented from remarrying under the auspices of an Orthodox Beth Din and this in turn may create serious problems for him. These aspects are explained in greater detail below.

3. Highlighting the difficulties

If a Jewish couple have a civil divorce, but not a Get (a Jewish divorce document), serious consequences may ensue. In one of several recent well publicised cases, a Jewish couple still had no Get a few years after the civil divorce. Following a very public, high profile campaign carried out on behalf of the woman by the Agunot Campaign, she obtained the Get.

In some cases, women are known to have waited for many years for a Get, which may only be granted by the husband if he agrees to do so; others are known to be required to pay large sums of money to the husband before he will grant the Get. It can also be problematic for the husband if the wife refuses to accept the Get or if she insists on a substantial payment from the husband as a condition of accepting the Get. Having said that, the consequences for the husband are potentially less draconian and in certain exceptional cases may be circumvented.

In Canada a Jewish woman has successfully claimed substantial damages from her former husband for having delayed granting her the Get for fifteen years. The authors are not aware of any litigation in the United Kingdom against a lawyer for failing to advise a client about Get issues, though this may be possible and, with the advent in England and Wales of the Divorce (Religious Marriages) Act 2002 and section 3A of the Divorce (Scotland) Act 1976¹⁸, there may be nothing to prevent it. In any event, it could be argued that you and your spouse have the responsibility to inform yourselves about Get issues, or at least to check with your respective lawyers that they understand Get procedures and issues and their relationship to the civil divorce proceedings. It should not be assumed that, just because your lawyer is Jewish, he or she is aware of what the procedures and issues are or how and when they

¹⁸ Inserted by Section 15 of the Family Law (Scotland) Act 2006.

need to be addressed, as far as the Get is concerned. Your lawyer is now professionally required to take into account the Divorce (Religious Marriages) Act 2002 which was passed to assist divorcing Jewish couples in England and Wales. In Scotland similar provisions are contained in section 3A of the Divorce (Scotland) Act 1976¹⁹. You should ask your lawyer to advise you about the Act of 2002 if you are divorcing in England or Wales or (if you are divorcing in Scotland) about the Act of 1976. Details of these two Acts are provided elsewhere in this publication, as well as information in the chapter entitled “DIY divorce”, which explains the important issues to be considered if you intend not to use a lawyer.

4. Taking advice from your lawyer and others

As a prospective divorcee, you will not necessarily know what advice you can expect to receive. The lawyer 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. Solicitors are expected to consider the religious issues; and to assist you in obtaining the religious divorce, although this may not always happen. In any event, it is advisable for you to inform your lawyer that you are Jewish and that you accordingly require a Get. Consideration of Get issues in respect of a Jewish client should be an integral part of any advice given. If you then find that you are not receiving advice about Get issues, it is suggested that it is in your own interests either to:

- provide a copy of page 9 to your lawyer, which includes a reference to the article attached at Annexe 7. The article was published in edited form in the English legal press. It has been updated and is now also suitable for use in Scotland. Ask your lawyer if he or she is willing and able to advise you in these matters; or
- change lawyers and contact any of the firms of solicitors in the list attached as Annexe 2, as they have indicated that they are familiar with Get issues; or
- you may prefer to approach two or three firms of solicitors before deciding which firm to use. There may well be other firms of solicitors qualified to advise on Get issues, but we do not have their details.

In an ideal world, your lawyer would be expected to advise you on Get issues, but (for various reasons) he or she may not do so. It is, however, vitally important for you and your spouse to put yourselves fully in the picture. It is the objective of this publication to enable you to do just that.

A list of solicitors is at Annexe 2. Advice may also be taken at an early stage from your local Rabbi or from organisations such as a Beth Din or the Jewish Marriage Council – see the list

¹⁹ See note 18.

at Annexe 3. There is an article for Rabbis at Annexe 8, which suggests additional ways in which they can support their divorcing congregants, so you may wish to give this Annexe to your local Rabbi.

If you live in England or Wales and are contemplating divorce, please see Annexe 5 which describes the assistance provided by the London Beth Din Get Volunteers to those attending the London Beth Din for their Get. If you live in Scotland and are contemplating divorce, please see Annexe 6 which describes the assistance provided by the Glasgow Beth Din Liaison Team.

5. DIY divorce

If your relationship with your spouse is amicable, you may prefer not to use a solicitor for your divorce because it is much cheaper. It would, however, be prudent to consider certain matters before deciding to go down this path. You would need to be confident that you could handle the paperwork, you would need to be good with figures and your situation would need to be straightforward. It will normally be helpful to consult a solicitor for specialist advice as soon as you begin to think about going your separate ways and all the more so if you have children or there are financial matters that need to be dealt with. A family lawyer will be able to give you advice on your financial position and assist you with deciding what type of financial settlement is best for you.

You will remain married for all Jewish purposes even if you have a civil divorce, but no Get. You may (for whatever reason) ignore the need for a Get, you may not be aware of its importance or you may simply forget about it when you are not using a solicitor. It is, however, crucial to be aware that, whether you are a husband or a wife and do not have a Get, this may lead to serious problems in the future. For example, neither of you will be able to remarry in an Orthodox synagogue; and if you are a wife, there are particularly serious problems for any children you may subsequently conceive by another Jewish man. These and other examples of the problems which may arise are explained in greater detail elsewhere in this publication. Hence the importance of obtaining the Get before the civil divorce.

England and Wales: If you decide not to use a solicitor, it would be helpful if you were to know about the legal position in England and Wales as regards the Get if this is where you are applying for your divorce. The civil law can be used to help you get your Get – but only if you make use of it before decree absolute. The Divorce (Religious Marriages) Act 2002 and related regulations can be used to advantage by you if your spouse is not co-operating with obtaining the Get, but wants the civil divorce. If you are not using a solicitor and you still do not have your Get after you have been granted your divorce decree nisi, it will be possible for you to apply for the decree absolute not to be granted until you have obtained the Get.

This application should advisedly be made through a solicitor, as the law is quite complex. Once the divorce decree has been made absolute, it will be too late for you to make use of this law, you will be without a Get, the civil law cannot assist and attempts to obtain the Get may become seriously problematic – if not impossible, as described in detail elsewhere in this publication.

Scotland: If you decide not to use a solicitor, it would be useful to know a little about the law in Scotland as regards the Get if this is where you are applying for your civil divorce. If the divorce is uncontested in all respects, you would make an application using what is known as the simplified procedure in either the Sheriff Court or the Court of Session. This is a “do-it-yourself” way of divorcing, which is simple and cheap. You have to meet certain requirements in order to use this procedure. If you do not meet all the requirements, you will not be able to use the simplified procedure and you will instead have to consult a solicitor. One of those requirements relates to an application for postponement of the divorce. If this is sought by either you or your spouse, the simplified procedure cannot be used or the divorce action will be dismissed if it has been started.

The application form for the simplified procedure makes it clear that, if you (or your spouse) wish to apply for the decree of divorce to be postponed so that the Get may be obtained, you are advised to consult a solicitor and the simplified procedure will be inappropriate. If you require a postponement this can only be done using the ordinary (non simplified) procedure in the Sheriff Court or its Court of Session equivalent. If, however, you have a simplified action taken against you and you want a postponement, you should inform the court immediately by letter and this will lead to the automatic dismissal of the simplified action. Alternatively, if your relationship with your spouse permits it, you could arrange for the Get to be obtained without going to court. Whether your Get is obtained by using the postponement procedure in the court or by agreement, you would be able to use the simplified procedure to obtain your civil divorce after you have obtained the Get. If you have not obtained the Get before you have the civil divorce and you are both Halachically Jewish²⁰, this means that there is an impediment to the religious remarriage of both you and your spouse, as you remain Jewishly married to each other and cannot enter into an Orthodox remarriage without the Get. Having the civil divorce on its own does not dissolve your Jewish marriage and you remain married for all Jewish purposes.

The civil law²¹ can help you if your spouse is not co-operating in obtaining the Get. This involves a court procedure for which you need to use a solicitor.

While there is no legal requirement for a Jewish spouse to apply for the divorce decree to be postponed if there is no Get before the civil divorce, it is strongly recommended either that

²⁰ See definition of “Halachically Jewish” in glossary at Annexe 1.

²¹ Section 3A of the Divorce (Scotland) Act 1976, inserted by section 15 of the Family Law (Scotland) Act 2006.

such an application is made before decree of divorce is granted or that the Get is obtained without going to court. If – for whatever reason – the Get is left until after your civil divorce, you could be exposing yourselves to the possibility of not being able to remarry in an Orthodox synagogue until such time (if ever) as you have it; and (if you are a wife) any future children you may conceive by another Jewish man will suffer all the serious and tragic consequences described in greater detail elsewhere in this publication. These problems could arise if you only obtained your civil divorce and were left without a Get. Your entitlement to make an application to the court for the decree of divorce to be postponed will be lost for all time if you and your spouse were to use the simplified procedure by ignoring the fact of the impediment to your religious remarriage.

Explanations are provided in each of the application forms for the simplified procedure and in the Guide to the Simplified Divorce/Dissolution of Civil Partnership Procedure in Scotland. You are, however, advised to take the advice of a solicitor in any event so that, as far as the Get is concerned, you can be quite sure of the consequences of your decision. For further information, you can read the Guide, which explains what the simplified procedure is and sets out the many requirements that must be met in order to determine if you and your spouse are entitled to use it. The Guide may be downloaded free of charge from the website at <http://www.scotcourts.gov.uk/library/civil/divorce/index.asp>. Alternatively, a copy can be obtained by writing to the Scottish Court Service Headquarters or to the Scottish Executive Justice Department, Courts Group, St Andrews House Edinburgh EH1 3DG.

Your divorce may be one of many which cannot make use of the simplified procedure if, for example, you and your spouse have a dispute over how the finances should be divided or if you have children under the age of 16, even though there is no dispute about them. Similarly, as mentioned above, if you or your spouse wish to apply for a postponement of the decree of divorce, the do-it-yourself simplified procedure will come to an end when such an application is made. Instead, you should, as the Guide suggests, consult a solicitor and apply for your divorce in the ordinary way.

6. Why bother to get a Get?

You should be aware that there are reasons why an apparent lack of concern by you may be regretted in the future, when it may be too late to remedy the situation. For the reasons which follow, it would be sensible for you at least to be aware as to why issues of Get are important, so that they are given full and proper consideration along with all the other aspects relating to your civil divorce.

- Nobody knows what the future may bring. Whether you are a husband or a wife, you may subsequently wish to marry someone who will refuse to marry you without an

Orthodox Get. This is much more common than you may think and can be the case even if you and the person that you wish to marry are otherwise not religious.

- You or your children may in the near or distant future decide to become observant, so not having a Get will become a seriously problematic issue. It is not uncommon for people who have not previously led religious lives to become observant.
- Even if you are a halachically Jewish wife – see definition in Annexe 1 – you may not currently be religiously motivated or you may belong to a Masorti, Reform or Liberal/Progressive synagogue, rather than an Orthodox one. If you had your civil divorce, but not the Get and were to remarry civilly or under non-Orthodox auspices without the Get, any children of your subsequent marriage in due course may decide to adopt a religious lifestyle in line with Orthodox Judaism. If you had no Get, this would cause serious problems for those children, as they would be deemed to be mamzerim – see the definition in Annexe 1.
- Even though a wife has a civil divorce, she is deemed to be committing adultery in Jewish law if she commences a new sexual relationship with another man (whether Jewish or non-Jewish) and has not yet received a Get from her first husband. It is therefore important for any woman who wishes to abide by the religious and moral standards of Jewish law to receive a Get, so that she avoids committing adultery when she forms a new relationship.
- Quite apart from the question of adultery in Jewish law, failure to obtain a Get may have disastrous consequences for any subsequent children. If a woman has not received a Get from her husband and conceives a child by another Jewish man, that child is deemed to be a mamzer in Jewish law, even if she has obtained a civil divorce.
- The word “mamzer” is sometimes wrongly translated as “bastard” in the sense of an “illegitimate” child. A child born to a single mother out of wedlock, however, is not a mamzer in Jewish law. That term refers specifically to a child born of a Jewish father to a woman who has not received a Get from her husband. The term “mamzer” also refers to the child of an incestuous relationship.
- A mamzer will suffer very severe and tragic restrictions in later life. Under Jewish law a mamzer (and his or her descendants) cannot normally marry and it is therefore of crucial importance to avoid such a situation arising. In practice this means that it is essential for you, as a Jewish wife, to obtain a Get before becoming pregnant by another Jewish man. Once a Get is obtained and if you were subsequently to become pregnant by another Jewish man, the child would not be a mamzer.

- If you are a wife and are contemplating entering into a new relationship with another man, it is essential to obtain a Get before you start that relationship. If you do not do so, you may find subsequently that you will have difficulties if you apply to marry that man in Jewish law.

7. Are you a Jewish husband?

If you and your wife are halachically Jewish – see definition in Annexe 1 – you might wish to pause for a moment and take time to consider the very grave harm you would be causing to all parties concerned (including yourself) if you do not grant your wife a Get.

Here are some of the difficulties that may arise for you:

- It is well documented that divorce is second only to bereavement as the most stressful life event which you will ever encounter. Experience shows that refusing your wife a Get will inevitably lead to delay and continuing bitterness which will be detrimental to your own psychological, emotional and financial well-being.
- If you refuse to grant your wife a Get, you may find that, a few years later, you wish to remarry a Jewish woman. At that time you may decide that you do wish to grant the Get after all, only to find that your wife refuses to accept it, especially if she feels that your initial refusal ruined her chances of remarriage and/or further children and the Get is no longer important to her.
- It is well established that the distress caused to your children by prolonging hostilities is incalculable and may well affect their behaviour, happiness and academic performance, not to mention their relationship with you.
- There will be many occasions in the future when you will wish to participate in your children's lives, for example, Barmitzvah or Batmitzvah, weddings, degree ceremonies and less fortunate occasions, such as illness. Your participation in these events will be far easier and much more pleasant if there are no outstanding issues relating to the marriage that still require to be dealt with. Failure to give your wife a Get will almost inevitably adversely affect your children. It may also damage your relationship with them.
- You may wish to bear in mind that your synagogue may not permit you to have an aliyah (call-up in synagogue) at your son's Barmitzvah or your daughter's Batmitzvah if you refuse to grant your wife a Get. There are many other different types of life events in which you may wish to be involved and your participation may be refused.

An aliyah is a privilege or honour accorded to men during the course of a synagogue service. It marks many different kinds of significant life events in the lives of their families or themselves. Refusal to grant the Get could lead to the withdrawal of this privilege or honour.

8. Are you a Jewish wife?

- It is well documented that divorce is second only to bereavement as the most stressful life event which you will ever encounter. Experience shows that refusing to accept a Get from your husband will inevitably lead to delay and continuing bitterness which will be detrimental to your own psychological, emotional and (possibly) financial well-being.
- If you were now to refuse to accept a Get from your husband when he is willing to grant one, you may find that, a few years later, you wish to remarry a Jewish man. At that time you may decide that you do wish to accept the Get after all, only to find that your husband refuses to grant it, especially if he feels that your initial refusal ruined his chances of remarriage in an Orthodox synagogue and the Get is no longer important to him.
- If you are a wife and choose to disregard the information which you are now reading or the legal advice given to you by your lawyer, you should be aware that your decision will adversely affect any children who are conceived by you while you have no Get, where those children have a different Jewish father from the man to whom you remain Jewishly married, for each such child would be a mamzer – see the definition in Annexe 1. Although your lawyer arguably has a professional duty to advise you of the need to have a Get, the decision whether or not to accept such advice remains yours alone.
- The refusal by your husband to grant the Get or your refusal to accept it could have horrific consequences for any children subsequently born to you where the father is Jewish, but was not your Jewish husband at the time of conception. Any such child would have the status of mamzer attached to him or her – a status which can never be removed and which passes down to all descendants of the mamzer.
- If you were to refuse to accept the Get from your husband, you should be aware that this will cause grave hardship to him, as he will not be able to remarry in accordance with Jewish law. The hostility that this could cause between you and your husband may well have an adverse impact on the psychological well-being of your children, as it is well documented that children may be affected when they see a bitter and hostile relationship between their parents.

9. No Get: the consequences

Your refusal as a husband to grant a Get to your wife or your refusal as a wife to accept one may lead to mamzer status for any children she may subsequently have. 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 it is in the interests of all Jewish children, including your own, that every effort should be made to avoid such a status arising.

10. Contacting the Beth Din

The Beth Din will facilitate a Get at any time during or indeed before the civil divorce proceedings are commenced. The Get certificate is only needed for the purpose of remarriage, but it will not be sent to the parties until (in England and Wales) the decree absolute (or in Scotland, the decree of divorce) has been granted – but at least the Get will no longer be an issue in the civil divorce proceedings. Accordingly, you may find it helpful if (whether you are a husband or wife) you or your lawyer were to contact the Beth Din direct at the earliest opportunity – see the list at numbers 4 -10 of Annexe 3. Even if you think that your husband or wife may cause difficulties, this should not deter you from applying to the Beth Din for the Get as soon as you know that you will be divorcing. The Beth Din will open their own file for a fee and will help to progress matters according to the circumstances of your particular case.

The actual Get procedure is relatively straightforward and the Beth Din will inform you about each step. Neither you nor your spouse have to meet one another at any stage if either of you prefers not to do so, or if it is logistically difficult. Except in the most exceptional circumstances, bitter experience has shown that it is never prudent for you to postpone consideration of Get issues until (in England and Wales) after the decree nisi has been made absolute or (in Scotland) the divorce decree has been granted. In England and Wales decree nisi is followed by decree absolute and (through your lawyers) you can apply for the divorce not to be made absolute until you have your Get. In Scotland the decree of divorce is absolute immediately, so it is never prudent for you to postpone consideration of Get issues until after the divorce decree has been granted. If your divorce is taking place in Scotland, you can apply (through your lawyers) for the divorce decree to be postponed if your spouse is not co-operating with obtaining the Get, as explained more fully elsewhere in this publication.

On application to the Beth Din, a Get file can be opened by either party at any stage without any conditions. It is understood that mostly the Beth Din does not make any enquiries as to the causes of the breakdown or the circumstances leading to the divorce, although this may

happen in certain cases in order for the Beth Din to be satisfied that, for example, a reconciliation is not viable. For a Get to be concluded by the Beth Din, however, both you and your spouse must consent to the proceedings, you must have ceased to co-habit and you must no longer be at the same address. These requirements have to be met by the date when the Get is to be concluded. This should not, however, prevent you from opening a file with the Beth Din and having all matters processed until the actual Get itself, even if you are still living together at the same address.

11. When and how do you raise the issue of Get?

The issue of Get can be raised direct with your spouse if your relationship is amicable and in any event it would be worthwhile contacting your local Beth Din – see numbers 4-9 (England and Wales) and 10 (Scotland) of the list at Annexe 3. Similarly, you are likely to find it helpful to contact the Get Advisory Service of the London based Jewish Marriage Council or the Jewish Marriage Council in Manchester, whether or not your relationship is amicable. (See also numbers 1 and 2 of the list at Annexe 3 if you live in England and Wales). You may find that your Rabbi is helpful and an approach to him may well prove to be beneficial. There is an article for Rabbis at Annexe 8, which suggests additional ways in which they can support their divorcing congregants, so you may wish to give it to your local Rabbi. Alternatively, you may prefer to raise the issue of Get through your respective lawyers. If you feel more comfortable about these issues being handled by your lawyer rather than approaching your spouse direct, then you should ask your lawyer to raise them with the lawyer who is acting for your spouse.

Without any shadow of doubt, it is always best to raise the issue of the Get at the earliest opportunity. In some circumstances you or the Beth Din (or anyone else advising you) may feel that it is appropriate for the Get to be concluded even before the civil divorce. Indeed, this is precisely what the authors recommend – subject to both parties consenting, ceasing to co-habit and ceasing to live together at the same address. Many people, however, will not be able to obtain a Get before the divorce and financial matters have been resolved because they will be living under the same roof due to financial constraints or there may be child contact issues still to resolve. In those cases it is still appropriate – and indeed recommended – to raise the issue of Get as early as possible in the divorce process. It cannot be stressed too strongly that the divorce should not be concluded in England and Wales by the divorce being made absolute and/or the final financial orders made unless and until the Get has either been concluded or both parties have undertaken to obtain it in the final financial orders – see Annexe 4A. Similarly, in Scotland, the Get should be obtained before the civil divorce is granted – see Annexe 4B.

Failure to attend to the Get in this manner could well prove fatal to your ever obtaining/receiving a Get or could result in the problems of delay and even blackmail that you may have been reading about.

In the unfortunate event that you are one of the minority of cases in England and Wales where it is necessary to go to court to resolve the financial issues, the judge should be alerted by your lawyer to any outstanding Get issue in order that he or she can deal with it as appropriate.

In addition, the Divorce (Religious Marriages) Act 2002 and related legislation (applicable only to England and Wales) means that yet another tool is available to the party seeking a Get where the other party is not co-operating. Similar legislation is in force in Scotland through section 3A of the Divorce (Scotland) Act 1976,²² together with related legislation. In England and Wales, application is made to the court after decree nisi for the divorce decree not to be made absolute (i.e. final) until the Get is concluded. In Scotland the application to postpone the civil divorce until the Get has been obtained must be made to the court before the divorce decree is granted. Accordingly, whether your divorce takes place in England, Wales or Scotland, if you are having or expect to have problems with your Get, it would be prudent for you to ask your lawyer if you can make the appropriate application to the court. The application would be made through your lawyer.

12. Some legal aspects

The Beth Din can provide you or your lawyer with a document which has been specially prepared to assist divorcing couples to procure the Get, while making it part of the civil divorce proceedings. Your lawyer will know (or can contact the Beth Din to find out) how this document is used in the divorce proceedings. In England and Wales the document, called Get Clauses and Undertakings, is available from the Beth Din (at numbers 4-9 (England and Wales) and 10 (Scotland) of the list at Annexe 3) and from the Jewish Marriage Council (at number 1 (England and Wales) of the list at Annexe 3). A sample form for England and Wales that you can give your lawyer is contained in Annexe 4A. A sample form for Scotland that you can give your lawyer is contained in Annexe 4B.

For an explanation of the current legal position in England and Wales, it would be useful to refer your lawyer to the chapter entitled "Legislation: England & Wales". Similarly, for an explanation of the current legal position in Scotland it would be useful to refer your lawyer to the chapter entitled "Legislation: Scotland".

As mentioned earlier, it would be useful also to give your lawyer Annexe 7, which is based on an article by the authors and published in the legal press.

²² Inserted by section 15 of the Family Law (Scotland) Act 2006.

13. Get and provision of marriage services

When a husband refuses to grant his wife a Get, he may believe that he is simply hurting or punishing her. What he is actually doing (if his wife is of child-bearing age) is to inflict the damning status of mamzer on any subsequent children she may bear. Those children have had absolutely no part in this dispute and in reality it is they who will be hurt or punished, not the wife. A husband's refusal to grant the Get could lead to his wife deciding not to have any more children (despite a deep desire to do so) in order to prevent the mamzer status being imposed upon them. If a husband were to ask himself whether he truly wishes to impose his will in such a powerfully negative manner, it is to be hoped that he would reconsider his refusal if he were made aware of all the implications.

Unfortunately, divorcing couples can become very bitter indeed, so if you live in England or Wales and find yourself in such a situation, you should seriously consider making use of the Get Advisory Service or the Family Mediation Service of the Jewish Marriage Council, where matters are handled sensitively and in confidence by qualified and accredited counsellors and therapists – see number 1 of the list at Annexe 3. In the north of England the helpful and confidential services of the Jewish Marriage Council (Manchester) may assist you – see number 2 of Annexe 3.

Even if there is no bitterness and you just wish to inform yourself about the Get, or even just receive a sympathetic ear and listen to some wise counsel, then, if you live in England or Wales, you would benefit from contacting the Jewish Marriage Council – see number 1 of the list at Annexe 3.

14. No Get and no (or no more) children

Much of the information in this publication is presented from the perspective of the wife who may have a child by another Jewish man while she remains married to her Jewish husband, in which case any such child will be a mamzer. What if you are a wife whose husband is refusing to grant a Get, but you do not have any children; or if you do have children, you do not at this stage wish to have any more as you feel you have enough? In such a situation you would still not be able to remarry in an Orthodox synagogue if you were to meet someone else and wish to remarry.

Similarly, a husband whose wife refuses to accept the Get will not normally be able to remarry in an Orthodox synagogue.

While these situations avoid the mamzer problem (if, as a wife you continue to have no children or no more children) they undoubtedly have their own difficulties attached to them and are extremely distressing. It is therefore still essential to obtain a Get as soon as

possible. Again, in such circumstances, it is going to be worthwhile contacting one or more of the organisations listed in Annexe 3 or your local Rabbi. There is an article for Rabbis at Annexe 8, which suggests additional ways in which they can support their divorcing congregants, so you may wish to give it to your local Rabbi.

15. Contacting the organisations

If you are having really serious problems in getting your Get, you may find it helpful to make contact with the Agunot Campaign, whose address is listed at number 3 of Annexe 3. Although this organisation is based in London, you may find it helpful to contact them wherever you live. The Agunot Campaign has raised the issue of Get in the minds of the general public, not just the Jewish community. As some of their work involves highlighting in public the problems that a Jewish wife is experiencing in obtaining a Get, some women prefer to use alternative methods of support, as they feel distinctly uncomfortable about having their case made public. The Agunot Campaign is one of several organisations that give information or advice to women whose husbands are refusing to grant the Get and they will not publicise a case if this is what the wife prefers.

In the first instance, an Orthodox Beth Din should be contacted, so that they can open a file. (See numbers 4-10 of Annexe 3). Contact may be made either by yourself or anyone else on your behalf. The Beth Din will request certain information and, contrary to certain public perceptions, experience has shown them to be helpful, sympathetic and co-operative.

In any event, the organisations listed at numbers 1-9 (England and Wales) of Annexe 3 or 10 (Scotland) of Annexe 3 are not simply there to assist the Agunah (whose husband is refusing to grant her a Get), but are also there to provide information, advice and support to anyone (husband or wife) who requires a Get. If you feel that the organisation you have selected is less helpful than you would like, it would be worthwhile contacting another type of organisation from the list at Annexe 3.

16. A final comment

Judaism is a religion whose laws and traditions have stood the test of time and preserved its people, just as they have preserved it. We hope that, having explained the issues involved, you and your spouse, as the parties to a marriage breakdown, will now have such information as will enable each of you to think carefully about your actions and any consequences in relation to issues surrounding the Get. As you will have observed, decisions taken now could have very far-reaching effects, not only on your immediate family, but on subsequent generations of the Jewish community.

Glossary of terms

- Agunah (plural Agunot): A woman who is “chained” to her Jewish husband who refuses to grant her a Get (Jewish divorce document). A man will also be an Agun (plural Agunim) if his wife refuses to accept a Get.
- Beth Din (plural Batei Din): Court of Jewish religious law.
- Get (plural Gittin): Jewish 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 (plural Mamzerim): A Jewish child whose status is religiously “illegitimate”. Under Orthodox Jewish law a mamzer, together with any descendants, cannot normally marry another Jew or Jewess. A child will be a mamzer if he or she is born to a Jewish mother who married her husband in an Orthodox synagogue, but who did not obtain a Get from him before she became pregnant by another Jewish man with that child – even if she did obtain a civil divorce.

List of solicitors

The firms of Solicitors listed below have indicated that they practise family law and take Get issues into account. As such, the authors are not recommending any particular firm, but seek to provide you with a choice from which to make your selection. Some of the firms may do legal aid.

England and Wales

Ms Sandra Davis
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Ms Marilyn Stowe
Grahame Stowe Bateson
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Raglan Street
Harrogate HG1 1LT
Tel: 01423 532600
Fax: 01423 532601
E-mail: famlaw@gsblawyers.com

Useful organisations to contact

For further information in **England and Wales** please contact:

1. Get Advisory Service
Jewish Marriage Council
23 Ravenhurst Avenue
Hendon
London NW4 4EE

Tel: 020 8203 6311

2. Jewish Marriage Council (Manchester)
Nicky Alliance Day Centre
85 Middleton Road
Manchester M8 4JY

Tel: 0161 740 5764

3. The Agunot Campaign
63 Bayswater Road
London W2 3PH

Tel: 020 7402 4007

4. London Beth Din
735 High Road
North Finchley
London N12 0US

Tel: 020 8343 6270

5. Beth Din of the Federation of
Synagogues
65 Watford Way
London NW4 3AQ

Tel: 020 8202 2263

6. Sephardi Beth Din
2 Ashworth Road
London
W9 1JY

Tel: 020 7289 2573

7. Manchester Beth Din
Jewish Ecclesiastical Court for Greater
Manchester
Manchester Jewish Community Centre
Jubilee School
Bury Old Road
Manchester M7 4QY

Tel: 0161 740 9711

Fax: 0161 721 4249

Email: mbethdin@aol.com

8. Leeds Beth Din
The Etz Chaim Synagogue
411 Harrogate Road
Leeds LS17 6BY

Tel: 0113 269 6902

9. Union of Orthodox Hebrew
Congregations
140 Stamford Hill
London N16 6QT

Tel: 020 8800 6833

For further information in **Scotland** please contact:

10. Rabbi Rubin
Glasgow Beth Din

Tel: 0141 577 8251

Mobile: 07803 038 500

E-mail: rabbimrubin@talk21.com

11. Gila Hackenbroch
Co-ordinator of Beth Din Sitings

Tel 0141 639 5389

Mobile 07916 159 503

E-mail: ghackenbroch@gmail.com

GET CLAUSES AND UNDERTAKINGS (England and Wales)

Get clauses are clauses which are included in a consent order and made by the Civil Court. This consent order may be made in relation to financial matters or occasionally in divorce proceedings themselves. It is essential to incorporate into the Get clause a time limit by which a Get should be applied for otherwise it becomes almost impossible to bind anyone to the terms of the clause. It is also preferable to add a time limit for the conclusion of the Get as well as the date of initial application, as in the examples below.

The following drafts (based on those used for the London Beth Din) are suggested:

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

Upon the Petitioner/Respondent hereby undertaking to apply within 6 weeks of this Order/within 6 weeks of the Decree Nisi to the London Beth Din (Court of the Chief Rabbi) for a religious divorce (Get), to take all such steps thereafter as are directed by the Court of the Chief Rabbi to complete the Get, such completion to take place not later than 6 weeks/3 months from the date of application to the Court of the Chief Rabbi, costs thereof to be borne by the Petitioner/Respondent/to be shared equally between the parties and to be received by the Beth Din not less than five working days before the Get is written.

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

Upon the Petitioner/Respondent hereby undertaking upon application by the Respondent/Petitioner to the London Beth Din (Court of the Chief Rabbi) for a religious divorce (Get), to take all such steps as are directed by the Court of the Chief Rabbi to complete the Get, such completion to take place not later than 3 months from the date of application to the Court of the Chief Rabbi, costs thereof to be borne by the Petitioner/Respondent/to be shared equally by the parties and to be received by the Beth Din not less than five working days before the Get is written.

It sometimes happens that, at the conclusion of a contested application, one or both of the parties is prepared to give an undertaking regarding the Get, either on his or her own initiative or that of a lawyer. Sometimes, too, the Court indicates that it will make a certain Order provided one of the parties gives an undertaking regarding the Get. Such undertaking should be included in a Court order. If husband or wife applies under the Divorce (Religious Marriages) Act 2002 for the divorce not to be made absolute until the Get has been obtained, these clauses may be adapted accordingly.

GET CLAUSES AND MINUTE OF AGREEMENT (Scotland)

In Scotland parties should try to ensure that, before any matrimonial agreement is otherwise fully implemented, a Get has been granted. In many cases in Scotland formal agreement is reached through a document known as a Minute of Agreement setting 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 Glasgow Beth Din, 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 7 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 Glasgow Beth Din (“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 6 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 6 months being attributable to the Beth Din, the said period of 6 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.

The London Beth Din Get Volunteers

This group was formed over ten years ago following a visit to the Beth Din by two women judges. Her Honour Judge Dawn Freedman and the late Judge Myrella Cohen attended the court at the time the Dayanim were conducting a Get ceremony. They found the proceedings were conducted sympathetically and clearly explained, but apart from the wife, there were no other women present. Although women may at times have a relative or friend accompanying them at the ceremony, this does not always happen. In fact, they too may be feeling nervous and overawed at the time.

In this way, and with the agreement of the Dayanim, a group of women volunteers was formed, composed of between fifteen and seventeen members. After training, a rota was established and the system managed by one of the volunteers.

In 2006, two hundred and forty-eight Gittin (Jewish divorces) were granted. Women come from all over England, Wales and Ireland and some as far as Gibraltar and Hong Kong. In emergencies, cases can be dealt with within 24 hours. Some Gittin have even been given in hospital, nursing homes or prison, with the volunteers ready for support when required.

All women receive a booklet from the London Beth Din before they attend the Court in order to familiarise themselves with the ceremony beforehand. When they arrive at the Beth Din, they will be greeted at the door of the building by a volunteer and offered head covering and refreshments. Every effort is made at all times to soothe their understandable fears and apprehension with quiet and restrained talk and sensitive listening. They will be accompanied into the Court by a volunteer who will remain with them during the ceremony and afterwards for as long as desirable.

At all times, every effort is made to fit in with the women's stated needs, bearing in mind that confidentiality is absolutely essential. When husbands attend at the same time, they are received courteously, with the volunteer available for general advice, while waiting for the proceedings to start.

Feedback on volunteers' attendance has always been favourable, with sincere thanks given and on occasion letters expressing gratitude received for the help extended. It is felt that the London Beth Din Get Volunteer Service has made getting the Get a less stressful event in women's lives since its inception and appreciation has been expressed by both the Court and the community.

For further information, please contact The Befrienders' Co-ordinator
London Beth Din
Tel 020 8343 6270

The Glasgow Beth Din Liaison Team

When a couple applies to Rabbi Rubin, head of the Glasgow Beth Din, or to Gila Hackenbroch, Co-ordinator of the Scottish Council of Synagogues, for arrangements to be made to obtain a Get, in order to preserve total confidentiality, the Co-ordinator sends the wife a letter prepared by 'Women in the Jewish Community', Glasgow²³ with information regarding the procedure.

This letter also explains that, if contacted, one of its members will be in touch to answer questions, provide support and information on the processes beforehand and/or on the day of the hearing. In addition, there is a 'user-friendly' leaflet which explains the processes and the reasons for them. The Team also have a selection of head coverings for use if required.

Members of the Liaison Team are on hand to give whatever help and support is needed on the day of the Beth Din Sitting. If required, they will be available on the women's arrival at the Beth Din, and will – if requested – sit with them while they are waiting, accompany them during the ceremony and be with them afterwards if they wish to remain quietly for a while. They also ensure that husbands and wives are not waiting in the same room (unless it is their wish to do so) and provide tea, coffee or a cold drink if required.

Enquiries about Getting your Get in Scotland:
Mrs Gila Hackenbroch, 6 Tormeadow Road, G77 6TE
Tel 0141 639 5389 Mobile 07916 159 503
Email: ghackenbroch@gmail.com

²³ This group is not currently active.

The Lawyer and the Jewish Matrimonial Client²⁴

A short perspective on the issue of Get
by Sharon Faith and Deanna Levine

Highlighting the Difficulties

If a Jewish couple have a civil divorce, but not a Get (a divorce document), serious consequences may ensue, as explained below. In one of several recent well publicised cases, a Jewish couple still had no Get a few years after the civil divorce. Following a very public, high profile campaign carried out on behalf of the woman by the Agunot Campaign, she obtained the Get.

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 Canada a Jewish woman was successful in her claim of damages from her former husband for having delayed granting her the Get for fifteen years. The authors are not aware of any litigation against a lawyer for failing to advise a client about Get issues, but in theory there would be nothing to prevent this, particularly since the advent of the Divorce (Religious Marriages) Act 2002²⁵, which came into force on 24 February 2003 and is designed to assist divorcing Jewish couples in England and Wales. This Act and the related Family Proceedings (Amendment) Rules 2003 are the subject of a comprehensive article by the authors in the Family Law Journal (May 2003 at pages 11-14). Scotland also has legislation which is similarly designed to assist divorcing Jewish couples – section 3A of the Divorce (Scotland) Act 1976²⁶ which came into force on 4 May 2006. The Scottish Act is the subject of an article by Deanna Levine in the Journal of the Law Society of Scotland (March 2006 at page 26)²⁷.

Advice from Lawyers

²⁴ An edited version of this article was published in The Law Society's Gazette under the title "How to Get a Get" (*Gazette* 97/17 28 April 2000). It has been updated to take account of the Divorce (Religious Marriages) Act 2002 (for England and Wales). The article has been adapted for use also in Scotland.

²⁵ Section 1 of the Divorce (Religious Marriages) Act 2002 inserts section 10A in the Matrimonial Causes Act 1973. See the chapter entitled "Legislation: England and Wales" for more information.

²⁶ Inserted by section 15 of the Family Law (Scotland) Act 2006. See also the Divorce (Religious Bodies) (Scotland) Regulations 2006, the Sheriff Court Rules (SSI 2007 No 6), the Rules of the Court of Session (SSI 2007 No 7) and the court forms for the simplified procedure, all of which are explained in the chapter entitled "Legislation: Scotland".

²⁷ A useful introduction, the article (at <http://www.journalonline.co.uk/article/1002804.aspx>) is entitled "Getting a Get" and was published before the subordinate legislation and court forms referred to in note 26.

Annexe 7

A client will not necessarily know what advice he or she can expect to receive. The lawyer 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 in England and Wales since 24 February 2003 and in Scotland since 4 May 2006, when the legislation in these jurisdictions came into force. In any event, solicitors practising family law in England and Wales are expected to be familiar with the Family Law Protocol²⁸, the Law Society's definitive guide to best practice with which solicitors are expected comply²⁹. The Protocol recognises that it may be just as important for the client to obtain the religious divorce as the civil divorce; it urges solicitors to consider the religious issues; and to assist the client in obtaining the religious divorce.

A client in England and Wales can expect his or her lawyer to give advice about the Divorce (Religious Marriages) Act 2002³⁰. Briefly, if one spouse is not co-operating with obtaining the Get, an application by the other spouse may be made to the court after decree nisi for an order that the decree of divorce is not to be made absolute until the Get has been obtained.

A client in Scotland can expect his or her lawyer to give advice about section 3A of the Divorce (Scotland) Act 1976³¹. Briefly, if one spouse is not co-operating with obtaining the Get, an application by the other spouse may be made to the court before the decree of divorce is granted for an order for the decree to be postponed until the Get has been obtained.

What is a Get and who needs one?

A Get is a divorce document. A Get is required by husband and wife when they are both "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. For technical reasons beyond the scope of this article, a Get is granted by mutual 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.

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 (Jewish Court) when both husband and wife are halachically Jewish, as explained above. In practice, both parties need an Orthodox Get in order to remarry within an Orthodox synagogue and to retain the option of remaining

²⁸ 2006 edition.

²⁹ The standards set out in the Protocol apply to the Law Society's and Resolution's panel members, as well as legal aid practitioners.

³⁰ See note 25.

³¹ See note 26.

fully integrated within the Jewish community. A client may say to his or her legal adviser that he or she is not religious or is a member of a Masorti (Conservative)/Reform/Liberal/Progressive Synagogue and therefore does not need a Get from an Orthodox Beth Din. A Get, however, 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.

In such circumstances the lawyer (whether solicitor or barrister) should be aware that there are reasons why such 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. For the reasons which follow, it would be prudent for the lawyer to provide an explanation to such a client as to why issues of Get are given full and proper consideration along with all the other aspects to which reference has been made above.

1. Nobody knows what the future may bring. A divorcing client may subsequently wish to marry someone who will refuse to marry a divorcee without an Orthodox Get. This is not uncommon and can be the case even if the parties are otherwise not religious.
2. 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.
3. Similarly, a client may not be religious, but if he or she were to remarry, any children of the subsequent marriage in due course may 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 (ie if she does not have an Orthodox Get), this would cause serious problems for the children.
4. Any child a woman conceives 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 (or incestuous) union and not to children merely born in what used to be called "out of wedlock". However, as a wife is deemed to be committing adultery in Jewish law if she has not received a Get (divorce document) from her first 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 unless their intended is also a mamzer. 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.

At the very least lawyers need to be able to advise clients about the need to have a Get and the legislation³² which is designed to assist divorcing spouses where one of them is not co-operating with obtaining the Get. As in all else, if the client chooses to disregard the legal advice, he or she must live with the consequences, but lawyers have a professional duty to give advice in this respect. In particular, (if in England and Wales), lawyers need to consider whether advice may be required in connection with the Divorce (Religious Marriages) Act 2002 and the related rules of court³³. In Scotland lawyers need to consider whether advice may be required in connection with section 3A of the Divorce (Scotland) Act 1976, as read with related subordinate legislation³⁴.

Having explained the above, the client wants a Get, so how does the lawyer 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 the Get will no longer be an issue in the civil divorce proceedings. Accordingly either the lawyer or the client is advised to contact the Beth Din direct at the earliest opportunity. The Beth Din will open their own file and will help to progress matters according to the circumstances of the particular case.

The situation in Scotland is procedurally somewhat different in obtaining a civil divorce, but the general principle of obtaining a Get at the earliest opportunity – and certainly prior to completion of the Minute of Agreement – should also be applied there. The civil court procedures referred to in the remainder of this Annexe are somewhat different in Scotland, although the Beth Din position will be the same relative to Scotland as it is to England and Wales. It should be stressed that in particular the references to consent orders, decree nisi and decree absolute do not apply in Scotland.

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. Except in the most exceptional circumstances, it is never prudent for the parties to postpone consideration of Get issues

³² For England and Wales see note 25. For Scotland see note 26.

³³ The Family Proceedings (Amendment) Rules 2003 (SI 2003 No. 184 (L. 2)). See the chapter entitled "Legislation: England and Wales" for more information.

³⁴ See note 26.

until (in England and Wales) after the decree nisi has been made absolute or (in Scotland) after the Minute of Agreement has been finalised or the civil divorce has been granted. In England and Wales, if the client's spouse wants a civil divorce, but that spouse is not co-operating with obtaining the Get, the client can apply to the court after decree nisi for the decree of divorce not to be made absolute until the Get has been obtained³⁵. In Scotland, if the client's spouse wants a civil divorce, but that spouse is not co-operating with obtaining the Get, the client can apply to the court before the grant of decree of divorce for the decree to be postponed until the Get has been obtained³⁶.

Two conditions only are required for the Get to be facilitated by the Beth Din:

1. that both parties consent; and
2. that the parties have ceased to co-habit and are no longer living at the same address.

Lawyers should therefore raise the issue of the Get at the earliest opportunity, preferably before the parties have become entrenched in acrimonious recriminations. As a matter of good practice, a consent order or even a court order in contested ancillary proceedings in England and Wales (and equivalent in Scotland) should not be made without giving consideration to the client's need for a Get, in the same way as the issue of the home, contact with the children or maintenance should not be ignored in either jurisdiction.

The subject-matter of the Get is advisedly 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 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.

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 than would be sanctioned by the courts. These two pieces of legislation³⁷ mean 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, it would be useful to protect the client's position by making the

³⁵ The Divorce (Religious Marriages) Act 2002 and the Family Proceedings (Amendment) Rules 2003. See the chapter entitled "Legislation: England and Wales" for more information.

³⁶ Section 3A of the Divorce (Scotland) Act 1976. See also note 26.

³⁷ For England and Wales see note 25. For Scotland see note 26.

appropriate application in each jurisdiction, as explained above.

The lawyer's objective should be for both parties to provide appropriate undertakings to facilitate a Get in any consent order in England and Wales (or in any minute of agreement in Scotland) within a defined period of time. Such undertakings can then be enforced as a matter of civil law – and in England and Wales the Divorce (Religious Marriages) Act 2002 may be invoked only after decree nisi, but before the divorce decree has been made absolute. In Scotland the minute of agreement may be enforced as a matter of civil law – and section 3A of the Divorce (Scotland) Act 1976 may only be invoked before the decree of divorce has been granted.

The Beth Din has a suitable draft clause which can be incorporated in consent orders. Reference should be made in this connection to the precedent at Annexe 4A (if in England and Wales) or Annexe 4B (if in Scotland) of this publication at www.gettingyourget.co.uk. In disputed ancillary proceedings in England and Wales (and equivalent in Scotland) the matter should be raised with the court and referred to in any affidavit filed.

As for DIY divorce, sometimes a client wishes to take advice about various matters prior to conducting the divorce him/herself. In such a case, it would be prudent to advise him or her about the desirability of obtaining the Get before decree absolute in England and Wales or (in Scotland) before the Minute of Agreement has been finalised or the civil divorce has been granted. It would also be useful to refer the client to the information contained in the chapter entitled "DIY divorce", which explains the position in both jurisdictions.

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. Lawyers 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 so that in England and Wales³⁸ the Get is obtained before decree absolute and in Scotland³⁹ the Get is obtained before the decree of divorce is granted.

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

³⁸ See the chapter entitled "Legislation: England and Wales" for further information.

³⁹ See the chapter entitled "Legislation: Scotland" for further information.

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 organisations to contact

For further information in **England and Wales** please contact:

1. Get Advisory Service
Jewish Marriage Council
23 Ravenhurst Avenue
Hendon
London NW4 4EE
Tel: 020 8203 6311
2. Jewish Marriage Council (Manchester)
Nicky Alliance Day Centre
85 Middleton Road
Manchester M8 4JY
Tel: 0161 740 5764
3. The Agunot Campaign
63 Bayswater Road
London W2 3PH
Tel: 020 7402 4007
4. London Beth Din
735 High Road
North Finchley
London N12 0US
Tel: 020 8343 6270
5. Beth Din of the Federation of Synagogues
65 Watford Way
London NW4 3AQ
Tel: 020 8202 2263
6. Sephardi Beth Din
2 Ashworth Road
London
W9 1JY
Tel: 020 7289 2573
7. Manchester Beth Din
Jewish Ecclesiastical Court for Greater Manchester
Manchester Jewish Community Centre
Jubilee School
Bury Old Road
Manchester M7 4QY
Tel: 0161 740 9711
Fax: 0161 721 4249
Email: mbethdin@aol.com
8. Leeds Beth Din
The Etz Chaim Synagogue
411 Harrogate Road
Leeds LS17 6BY
Tel: 0113 269 6902
9. Union of Orthodox Hebrew Congregations
140 Stamford Hill
London N16 6QT
Tel: 020 8800 6833

For further information in **Scotland** please contact:

10. Rabbi Rubin
Glasgow Beth Din

Tel: 0141 577 8251
Mobile: 07803 038 500
E-mail: rabbimrubin@talk21.com

11. Gila Hackenbroch
Co-ordinator of Beth Din Sitings

Tel 0141 639 5389
Mobile: 07916 159 503
E-mail: ghackenbroch@googlemail.com

Biographical notes about the authors

SHARON FAITH BA (Law) (Hons) was admitted as a Solicitor in 1979 and her practice largely consisted of matrimonial disputes. Although she is now on an extended (probably permanent) career break in order to bring up her own four children, her continuing interest in Get issues has resulted in her advising many women experiencing Get difficulties on a voluntary basis.

DEANNA LEVINE MA LLB NP is a dually qualified Scottish and English Solicitor and Consultant to Barnett, Alexander Conway Ingram, Solicitors, London. She is Honorary Secretary of The United Kingdom Association of Jewish Lawyers and Jurists, represents B'nai B'rith UK on the Board of Deputies and is a member of the Board's Family Law Group. Deanna is a Get Adviser with the Jewish Marriage Council, a member of Gettlink (an international forum for Agunah advisers) and lectures widely on the Get and its interaction with the civil law.

The Rabbi, the Divorcing Congregant and the Get⁴⁰

Those advising divorcing spouses may be solicitors, organisations – such as the Beth Din or Jewish Marriage Council – or the Rabbi. The Rabbi is of course in a prime position to assist a divorcing member of his congregation with obtaining a Get and the purpose of this article is to suggest more practical ways in which such an individual might be supported by our spiritual leaders. This can range from the Rabbi simply suggesting that his divorcing congregant should contact the Beth Din about the Get, to enquiring now and again as to how matters are proceeding and generally keeping in touch at a time when great trauma is often being experienced.

As will be appreciated, the recent laws regarding the Get⁴¹ are of assistance to a divorcing spouse who wishes to have a Get when the other spouse is not co-operating. At the stage of decree nisi⁴² in England and Wales, the husband or wife can apply to the court for an order that the decree of divorce is not to be made absolute until they have both produced to the court a declaration that they have their Get⁴³. In Scotland the application is made for the grant of decree of divorce to be postponed until the Get has been obtained⁴⁴. These laws – referred to as “the Get Laws” – are without any shadow of doubt extremely useful, but at the same time it is worthwhile bearing in mind the following issues that may arise:

- Sadly, experience has shown that not every solicitor in the land who acts for divorcing clients is aware of the Get Laws, so they may be by-passed. If this happens, it means that the Get remains outstanding, while the decree of divorce will be made absolute in England and Wales, or in Scotland the divorce will be granted. In other words, the spouses will have their civil divorce, but no Get. As is only too well known, this is precisely the situation which lends itself to blackmail by the spouse who is not co-operating or it may lead to the husband becoming an Agun or the wife an Agunah with all the heartbreak which this entails. When the Get Laws are by-passed and the spouses have no Get, an additional complication is the tragic possibility of the wife having further children who would be Mamzerim.

⁴⁰ Written by Deanna Levine, this article was originally sent by the United Synagogue to their member Rabbis and applied only to England and Wales. It has since been adapted for use also in Scotland.

⁴¹ The Divorce (Religious Marriages) Act 2002 came into force in England and Wales on 24 February 2003. Section 3A of the Divorce (Scotland) Act 1976, inserted by section 15 of the Family Law (Scotland) Act 2006, came into force in Scotland on 4 May 2006 and changes were made to certain court forms effective from 26 February 2007.

⁴² The divorce is completed in two stages, the first being the decree nisi. Then there is a wait of six weeks and one day before application can be made to the court for the decree absolute. When the decree absolute is granted, the divorce is final. In Scotland, there is only a single stage at which decree of divorce is granted by the judge.

⁴³ The Family Proceedings (Amendment) Rules 2003, which govern the procedural requirements and set out the substantive detail required for the operation of the Divorce (Religious Marriages) Act 2002.

⁴⁴ In Scotland, the law is set out in section 3A of the Divorce (Scotland) Act 1976 [inserted by section 15 of the Family Law (Scotland) Act 2006]; the Divorce (Religious Bodies) (Scotland) Regulations 2006; the Sheriff Court Rules (SSI 2007 No 6); and the Rules of the Court of Session (SSI 2007 No 7).

- The spouse who is not co-operating in obtaining the Get may not care whether or not s/he obtains a civil divorce, so a successful application to the court for the divorce not to be made absolute in England and Wales – or for the divorce decree to be postponed in Scotland – until the Get has been obtained will not make any difference in this situation. Accordingly, the spouses will remain in limbo with no civil divorce and no Get.
- If an order is made using the Get Laws, application may be made for the court to cancel or recall it. This will only happen if the spouse who originally made the successful application subsequently feels that the recalcitrant spouse has no intention whatsoever of granting/accepting the Get and that there are advantages in having the civil divorce. In England & Wales a cancellation of the order would clear the way for the divorce decree nisi to be made absolute, but the spouses would then only have their civil divorce, and still no Get – clearly an unsatisfactory situation. In Scotland a recall of the order would clear the way for the divorce decree to be granted and it may be recalled either by application of the spouse who applied for the postponement or by the court itself even if no application is made.

So what can be done to assist the divorcing congregant in achieving the objective of obtaining the Get?

- As will be appreciated, the Get can be obtained at any time during or even before the civil divorce proceedings have begun (though the Get cannot actually be written until the parties are no longer residing together in the matrimonial home). If this can be achieved before or early in the proceedings, much potential hardship will have been averted. It is helpful to suggest that, just as soon as it is known that s/he intends to proceed with a divorce, contact is made with the Beth Din. Contact may be made direct or through the spouse's solicitors if the spouse finds it too difficult to make the contact direct. While contact with the Beth Din may occasionally be made at the initiative of a divorcing spouse at an early stage in the process, most are unaware that this is in fact the best time to make the contact.
- A spouse who needs a Get and who does not yet have the civil divorce should ideally be urged to inform his/her solicitor about the need for a Get as soon as possible after the initial instructions have been given for that particular solicitor to act. In England and Wales, the latest time in the proceedings to alert the solicitor is after decree nisi has been granted, but before decree absolute. This is because the application to the court for an order that the decree of divorce is not to be made absolute may be made using the Get Laws only after the decree nisi has been obtained. In Scotland the latest time in the proceedings to make the application for the decree of divorce to be postponed using the Get Laws is before the decree of divorce has been granted.

Annexe 8

- It would be helpful to explain to a divorcing congregant that it would be useful if s/he were to inform his/her solicitor of the necessity of mentioning in correspondence with the other spouse's solicitors the requirement for the Get. Simply advising the spouse to contact a solicitor may not ensure that the Get is dealt with, as not every solicitor is aware of the recent laws regarding the Get, as explained above. Moreover, including the Get as a requirement in correspondence between solicitors would normally mean that it is dealt with within the overall context of the civil divorce and may be included in undertakings (in England and Wales) or in a minute of agreement (in Scotland), as explained below.
- It would be most helpful if the Rabbi were to advise a divorcing female congregant that she would be unable to marry a Jewish man in an Orthodox synagogue if she were to enter into a civil marriage before the Get has been obtained and wishes to marry him afterwards. It would be equally useful if it were explained that the consequences are the same if, before she has the Get, she enters into an intimate relationship with a Jewish man whom she hopes to marry in an Orthodox synagogue after obtaining the Get. Again, it would be helpful for the Rabbi to explain to the congregant that she would be unable to marry in an Orthodox synagogue if the divorce decree were to be based on adultery with the very man whom she hopes to marry religiously. These matters are simply not known to a congregant and explaining them to her at an early stage would hopefully avert unnecessary heartbreak when she finds out about them – by which time it is too late for her to avoid the consequences of her unwitting actions.

If it is found that the husband refuses to grant the Get, it may be worthwhile bearing in mind that communal sanctions can be invoked through the use of the United Synagogue Bye-laws⁴⁵. The London Beth Din gives advice on the circumstances in which the sanctions may be used. The bye-laws are published by and applicable to the United Synagogue – an English organisation comprising about 60 synagogues. Any synagogue in England, Wales or Scotland which is not a member of the United Synagogue may amend its constitution and adopt the use of communal sanctions. Before they are used, it will be useful to explain to the husband that participation in his children's lives may be restricted if he persists in his refusal, eg he may be refused an aliyah at his child's Bar or Batmitzvah; or certain of his burial rights could be lost vis-a-vis (for example) the place of burial in a Jewish cemetery. These burial rights may also be lost by a wife who refuses to accept a Get from her husband.

As mentioned above, it would be useful to make a divorcing congregant aware that the civil divorce should not be made absolute in England and Wales – or that the decree of divorce should not be granted in Scotland – before the Get has been obtained. In any

⁴⁵ Paragraphs AA10a) and AA10b) at page 23 of the edition which was updated by Resolution of the United Synagogue Council of 4 March 2001. See the end of this Annexe for these bye-laws, which are reproduced in full with the kind permission of the United Synagogue.

event, it would be helpful for the congregant to be advised to alert his/her solicitor that the final financial orders should not be made unless and until the Get has either been obtained or both parties have given undertakings in England and Wales⁴⁶ to obtain it in the final financial orders. In Scotland such an undertaking can be made through the insertion of an appropriate clause in a Minute of Agreement⁴⁷.

Unfortunately, not all solicitors are aware of how the civil divorce procedures can be utilised to ensure that the Get is obtained. Accordingly, it would be useful for Rabbis to alert their divorcing congregants to the need to inform their solicitors about these aspects, so that they can be given the attention they deserve and the priority they require.

Divorce is never a pleasant experience. The emotions involved before, during and after divorce can be painful, confusing, complex and sometimes frightening. The trauma of divorce is known to be alleviated by the support, advice and ongoing concern of the community Rabbi.

**United Synagogue Byelaws of member synagogues – extract re communal sanctions.
(Updated as of Resolution of the Council of 4th March 2001)⁴⁸**

AA10a). If in the written opinion of the London Beth-Din a member wrongly refuses to co-operate with granting or receiving of a Get, the member shall have such privileges of membership, as directed by the London Beth-Din, withheld during the period that the Beth-Din shall advise. The privileges shall include but shall not be limited to being appointed Shaliach Tsibbur; Ba'al Tekiyah; Ba'al Koreh; Chatan Torah or Bereyshit; receiving an Aliyah when not a chiyuv; the entitlement to be a member of the Board of Management or represent the Synagogue on both local and national organisations, the appointment to positions of responsibility such as taking Children's or Youth Services, as a teacher in the religion classes and/or Synagogue security or protection.

AA10b). If a member fails to give or receive a Get when directed by a Beth-Din to so, he or she could forfeit his or her right to membership. Such membership and all the privileges and rights of membership can be terminated by the honorary officers of the United Synagogue on the written authority of, and for such period as has been determined by, the London Beth-Din.

⁴⁶ See the form of Get Clauses and Undertakings in Annexe 4A of this publication for England and Wales.

⁴⁷ See the form of Get Clauses and Minute of Agreement in Annexe 4B of this publication for Scotland.

⁴⁸ The Bye-laws have been reproduced with the kind permission of the United Synagogue.

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