

Cathy Jamieson  
Justice Minister  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

17 October 2006

Dear Ms Jamieson,

I am writing in connection with the EU Proposal for a Council Regulation amending regulation (EC) No 2201/2003. We apologise for sending a submission at this late stage but we have only recently become aware of these proposals. In the light of your stated concern about the need to '*assess what risks, if any, could be incurred where coercion of a more vulnerable party might be an issue*' we wish to put forward three points for your consideration.

The Scottish Council of Jewish Communities shares the concern of the Justice 1 Committee about this proposal. We note that your letter of 14 September 2006 to Pauline McNeill states that '*further informal consultation [on the proposals] will also inform the Executive position on the UK's opt-in*'.

1) As you are aware, the Scottish Council of Jewish Communities was involved in extensive discussions with the Scottish Executive and with the Justice 1 Committee in relation to the introduction of clause 15 of the Family Law (Scotland) Act, (clause 3A of the Divorce (Scotland) Act 1976). We believe that this clause will be of great benefit to the Jewish Community and are delighted at its inclusion in the Act.

However, we are concerned that the introduction of a choice of jurisdiction will entirely vitiate this measure of which Hugh Henry said "*It is right that we were able to address an anomaly that existed for certain people in the Jewish faith. I am proud that we were able to do something about that.*"

The EU proposal may encourage a Jewish party who does not want to co-operate with a *get* (religious divorce), to request the application of the law of a different jurisdiction; a jurisdiction in which the court has no ability to recognise the need for a *get*. This would expose the vulnerable party to precisely the situation that clause 3A is intended to allay.

It is conceivable that even if the application of the law of another jurisdiction were not to be raised in court, the parties' apparent mutual agreement to abide by *lex fori* might result from blackmail, such as: "I will only agree to accept the jurisdiction of Scottish law (with implied co-operation with a *get*) if you give up particular financial or other rights" (eg. a right to the matrimonial home).

2) We are also concerned that a reverse situation might occur in which there could be a '*rush to court*' by a party outwith Scotland in order to secure the advantage of clause 3A. We note your concern about problems associated with Scottish courts having to apply foreign law to divorce cases, and suggest that foreign courts would experience similar difficulties if required to apply Scottish law. It would be of grave concern to us if the relevant court did not fully understand the Scottish legislation and ordered a stop to the civil divorce until a *get* had actually taken place. This would be extremely unhelpful, since, as you are aware, it would be considered coercion, and would therefore invalidate the *get*.

3) It is also of concern to us that the proposed Regulations would introduce a similar inducement to blackmail between parties in the wider community, so that whilst they might come to court with an apparently mutually agreed financial settlement, that agreement may only have been obtained due to threats by one party, for example, to press for the divorce to be heard under Irish jurisdiction unless the other party gave up particular financial or other rights.

We hope that, despite its late submission, you will be able to take our concerns into account in formulating the Scottish position on the EU proposals and in your subsequent representations to the UK Government.

Please do contact me if you would like to discuss these issues further.

Yours sincerely,

Leah Granat  
Public Affairs Officer

cc Pauline McNeill  
Stewart Stevenson  
Callum Thomson