

Arbitration (Scotland) Bill

Response from the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities welcomes the opportunity to comment on the draft Arbitration Bill, since, in addition to adjudicating on matters of religious law, the *Beth Din* (Rabbinical Court) can sit as an Arbitration Tribunal, when it may apply the local civil law.¹ It is widely recognised that many civil disputes may be settled more simply, speedily, inexpensively, and with less acrimony without recourse to the civil courts, and, for members of the Jewish community, a *Beth Din* is frequently the arbitrator of choice.

Founding principles

We strongly support the founding principles of the Bill, particularly "*that the object of arbitration is to resolve disputes fairly, impartially, quickly and without incurring unnecessary expense*" which reflects the numerous Biblical and Talmudic injunctions² that instruct judges to act in a manner that is demonstrably fair and impartial.

Choice of substantive law

Whilst always deferring to civil law a *Beth Din* operates according to *halachah* (Jewish Law), and we therefore welcome the statement that

3 *The fact that an arbitration is seated in Scotland does not affect the substantive law to be used to decide the dispute.*

We are, however, concerned that negative formulation of this clause lacks clarity, and that

8(4) *Parties are to be treated as having agreed to disapply a default rule ...*
(b) *if they choose a law other than Scots law as the applicable law in respect of that rule's subject-matter.*

is allusive rather than explicit.

We therefore suggest that (3) should be expanded to state explicitly that:

"Substantive law other than Scots law may be applied in an arbitration taking place in Scotland to resolve a dispute, provided the parties have agreed to the application of that other system of law, and whether or not any party or parties are domiciled in Scotland."

Recognition of arbitration agreements

The introduction to the consultation paper states (p6) that "*Courts may also recognise arbitration agreements or awards made under different legal systems.*" However, this is only included in the draft Bill in connection with awards made under the New York Convention. There is no reference to recognition of awards seated in Scotland that apply any substantive law other than Scots Law. We therefore suggest that the draft Bill should be amended to ensure that arbitration agreements and awards made in accordance with *halachah* and other legal systems will indeed be recognised in the Scottish Courts.

¹ The Talmud states that "the law of the land is the law" (Gittin 10b).

² For example:

"You shall appoint Judges and officers ...; and they shall judge the people with righteousness. You shall not pervert judgment; you shall not respect persons nor take a bribe; for a bribe blinds the eyes of the wise, and perverts the words of the righteous. Justice, only justice, shalt thou pursue." Deut 16,18-20

Every judge in a Beth Din must have the following seven qualities: wisdom, humility, fear [of Gd], hatred of money, love of the truth, love of his fellows, and a good reputation." (Maimonides)

Challenging awards

We would suggest that it is inappropriate, where parties have voluntarily agreed not to have recourse to the civil courts, for one of them then to appeal to those courts in relation to the substance of the dispute or the tribunal's award, as this would seem to vitiate their agreement to arbitration, and indeed any reason for doing so, such as cost or privacy.

We note that it is proposed that

56(1) An award may be appealed to the Outer House by a party on the ground that the tribunal erred on a point of law ...

but it is unlikely that the Outer House will have the requisite expertise in relation to any alternative legal system. Having recourse to expert evidence would not necessarily resolve this, as the question of who is an appropriate expert may not be separable from the question of whether, for example, the interpretation of *halachah* by an Orthodox or Reform *Beth Din* is authoritative.

We would suggest that it is contrary to public policy and to the intention of this legislation to enable a party who has voluntarily opted out of Scots Law to then seek to have an arbitration award reviewed under Scots Law, and the right of appeal to the Outer House should therefore be limited to narrow procedural matters.

Timescales

The majority of Jewish festivals are celebrated for two days, and during this time it is not permitted to engage in any business activity. We therefore recommend an amendment to rule 71 to read:

(b) Where the period is a period of 7 days or less, the following days are to be ignored—

- (i) Saturdays and Sundays, and*
- (ii) any public holidays in the place where the act concerned is to be done, and*
- (iii) any days which are observed as a religious festival by any of the parties concerned*

Conclusion

On behalf of the Jewish Community, we strongly welcome the proposals to give legal status to voluntary agreements to abide by the ruling of a tribunal acceptable to the parties, in order to resolve disputes fairly, impartially, quickly and without incurring unnecessary expense, but would ask that the minor matters noted above be addressed.

Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen, and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges. SCoJeC is Scottish Charity SC029438, and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.

In preparing this response we have consulted with representatives of Orthodox and Reform Rabbinical Courts, and with legal experts in the Jewish community