

2016 No. 243

COURT OF SESSION

SHERIFF APPEAL COURT

SHERIFF COURT

**Act of Sederunt (Lay Representation for Non-Natural Persons)
2016**

Made - - - - - *30th August 2016*

Laid before the Scottish Parliament *1st September 2016*

Coming into force - - - *28th November 2016*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 98 of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation, commencement and application, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Lay Representation for Non-Natural Persons) 2016.

(2) It comes into force on 28th November 2016.

(3) A certified copy is to be inserted in the Books of Sederunt.

(4) Paragraphs 2 to 4 apply to civil proceedings to which section 97 (lay representation in other proceedings) of the 2014 Act applies.

(5) Paragraph 5 applies to civil proceedings to which a non-natural person is a party, including simple procedure cases.

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31 and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2014 asp 18.

Interpretation

2. In this Act of Sederunt—

“the 2014 Act” means the Courts Reform (Scotland) Act 2014;

“authorisation document” means a document executed by a non-natural person of a type mentioned in column 1 of the following table authorising an individual holding the relevant position mentioned in the corresponding column 2 to act as its lay representative—

Type of non-natural person	Relevant position
a company	a director or a secretary of the company
a limited liability partnership	a member of the limited liability partnership
any other partnership	a partner in the partnership
an unincorporated association of persons	a member or office holder of the association

 ;

“the court”, in the case of proceedings in the sheriff court, means the sheriff; and

“lay representative”, “legal representative” and “non-natural person” have the meanings given by section 95 of the 2014 Act.

Applications

3.—(1) An application under section 97(2) of the 2014 Act for permission for a lay representative to conduct proceedings on behalf of a non-natural person is to be made in the Form set out in the schedule of this Act of Sederunt.

(2) The application must be accompanied by an authorisation document.

(3) An application may be considered in chambers and without hearing the parties.

(4) Where the court grants an application, it may—

(a) do so in respect of one or more specified hearings;

(b) withdraw permission of its own accord or on the motion of a party.

Lay representatives: functions, conditions and duties

4.—(1) A lay representative may be shown any document (including a court document) or receive any information about the proceedings without the non-natural person, or any of its office holders or employees, contravening any prohibition or restriction on disclosure of the document or information.

(2) Where a document or information is disclosed under subparagraph (1), the lay representative is subject to any prohibition or restriction on disclosure in the same way that the non-natural person is.

(3) The court, of its own accord or on the motion of a party, may impose conditions on the exercise of functions by a lay representative, where it is necessary to do so in the interests of justice.

Liability of lay representative for expenses

5. Where—

- (a) a lay representative has acted unreasonably in the conduct of proceedings; and
- (b) the court awards expenses against the non-natural person,

the court may find the lay representative and the non-natural person jointly and severally liable for those expenses.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
30th August 2016

SCHEDULE

Paragraph 3(1)

Form

Application for a prospective lay representative to conduct proceedings on behalf of a non-natural person

IN THE COURT OF SESSION

[or IN THE SHERIFF APPEAL COURT]

[or IN THE SHERIFFDOM OF [*sheriffdom*] AT [*place*]]

APPLICATION FOR A PROSPECTIVE LAY REPRESENTATIVE TO CONDUCT PROCEEDINGS

in the cause [*or petition*] [*or appeal*] by

[A.B.] (*designation and address*)

PURSUER [*or PETITIONER*] [*or APPELLANT*]

against

[C.D.] (*designation and address*)

DEFENDER [*or RESPONDENT*]

1. The (*specify party*) applies for permission for a lay representative (within the meaning of section 95(3) of the Courts Reform (Scotland) Act 2014) to conduct these proceedings on its behalf.
2. The applicant is a company [*or a limited liability partnership*] [*or a partnership*] [*or an unincorporated association*].
3. The applicant is unable to pay for the services of a legal representative (within the meaning of section 95(4) of the Courts Reform (Scotland) Act 2014) to conduct these proceedings because:

(*State briefly (in numbered paragraphs) the reasons why the applicant is unable to pay.*)
4. The prospective lay representative is (*name and address of prospective lay representative*).

5. The prospective lay representative holds the following relevant position with the applicant: (*specify the relevant provision (within the meaning of section 95(5) of the Courts Reform (Scotland) Act 2014) held by the prospective lay representative.*)
6. The applicant has authorised the prospective lay representative to conduct these proceedings. An authorisation document (within the meaning of paragraph 2 of the Act of Sederunt (Lay Representation for Non-Natural Persons) 2016) is annexed to this application.

DECLARATIONS BY PROSPECTIVE LAY REPRESENTATIVE

The prospective lay representative declares that:

- (a) my responsibilities in my position as (*specify relevant position*) with the applicant do not consist wholly or mainly of conducting legal proceedings on behalf of the (*specify party*) or another person.
- (b) I do not have a personal interest, within the meaning of section 97(5) of the Courts Reform (Scotland) Act 2014, in the outcome of the case.

(*signed*)

[X.Y.], Prospective lay representative

(*Date*)

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes provision regarding lay representation for non-natural persons in civil proceedings. It partly implements Chapter 4 (lay representation for non-natural persons) of the Courts Reform (Scotland) Act 2014 (asp 18) (“the 2014 Act”).

Paragraphs 2 to 4 apply to civil proceedings in the Court of Session, Sheriff Appeal Court and sheriff court. Paragraph 5 applies to those proceedings and simple procedure cases.

Paragraph 3 provides that an application by an individual to be the lay representative of a non-natural person in civil proceedings is to be made in the Form set out in the schedule. The application must be accompanied by an “authorisation document”, as defined in paragraph 2. Applications may be considered in chambers and without hearing the parties. Permission for a lay representative to conduct proceedings may be granted in respect of one or more specified hearings and the court may withdraw permission for lay representation of its own accord or on the motion of a party.

Paragraph 4 makes provision regarding the disclosure to lay representatives of documentation and information about the proceedings and the confidentiality obligations on the lay representative in respect of that documentation and information. Paragraph 4(3) allows for the imposition by the court of conditions on the exercise of functions by lay representatives where this is necessary in the interests of justice.

Paragraph 5 provides that the court may find a lay representative jointly and severally liable, with the non-natural person, for the expenses, where the lay representative has acted unreasonably in the conduct of proceedings.

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