

2013 No. 92

LEGAL SERVICES, ENGLAND AND WALES

**The Recovery of Costs Insurance Premiums in Clinical
Negligence Proceedings Regulations 2013**

<i>Made</i>	- - - -	<i>21st January 2013</i>
<i>Laid before Parliament</i>		<i>24th January 2013</i>
<i>Coming into force</i>	- -	<i>1st April 2013</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 58C(2) to (4) of the Courts and Legal Services Act 1990(a) makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings Regulations 2013 and shall come into force on 1st April 2013.

Costs order may require payment of an amount of the relevant part of the premium

2.—(1) Subject to paragraph (2), a costs order made in favour of a party to clinical negligence proceedings may include provision requiring the payment of an amount in respect of the relevant part of the premium of a costs insurance policy taken out by that party which insures against the risk of incurring liability to pay for one or more expert reports in connection with the proceedings (or against that risk and other risks).

(2) A costs order may not require the payment of an amount in respect of the relevant part of the premium which relates to the liability to pay for any expert report if—

- (a) the report was not in the event obtained;
- (b) the report did not relate to liability or causation; or
- (c) the cost of the report is not allowed under the costs order.

Signed by authority of the Lord Chancellor

21st January 2013

Helen Grant
Parliamentary Under Secretary of State
Ministry of Justice

(a) 1990 c.41. Section 58C was inserted by section 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10).

EXPLANATORY NOTE

(This note is not part of the Order)

Section 29 of the Access to Justice Act 1999 (c.22) provided for the recovery, by way of costs, of after the event insurance premiums from a losing party in civil proceedings. The effect of this provision was to enable the costs of any insurance policy, taken out by a party to insure against the risk of having to pay their opponent's costs and their own disbursements if they lost their case, to be recovered from the losing party.

Section 46 (recovery of insurance premiums by way of costs) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) ("the 2012 Act"), which comes into force on the same date as these Regulations, repeals section 29 and makes new provision relating to the recoverability of insurance premiums from a losing party, by inserting new section 58C into the Courts and Legal Services Act 1990 (c.41).

The effect of new section 58C is to limit the recoverability of insurance premiums to clinical negligence proceedings (defined in section 58C) and only allows recovery of the premium to the extent that it relates to the costs of any expert report (again defined in section 58C) in respect of clinical negligence (which is also defined in section 58C).

New section 58C enables the Lord Chancellor to make regulations to prescribe the circumstances in which the premium would be recoverable, including limiting the application of the exception to certain types of expert report and the amount of the premium that may be recovered.

Under these Regulations, the only expert reports in respect of which an insurance premium may be recovered are those which relate to liability or causation. Moreover, the amount of the premium recoverable by way of a costs order is limited to that part of the premium which insures against the risk of incurring liability to pay the cost of any such report which is actually obtained and the cost of which is allowed under the costs order.

Section 46 of the 2012 Act comes into force on the same date as these Regulations. Section 46 also provides that the amendments made under that section do not apply to a costs order made in favour of a party to proceedings who took out a costs insurance policy in relation to those proceedings before the date on which section 46 comes into force. Accordingly, these Regulations will have similar application.

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