

This Statutory Instrument has been made in consequence of defects in S.I.2013/92 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2013 No. 739

LEGAL SERVICES, ENGLAND AND WALES

The Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No. 2) Regulations 2013

<i>Made</i>	- - - -	<i>26th March 2013</i>
<i>Laid before Parliament</i>		<i>28th March 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 of the Courts and Legal Services Act 1990(a) makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No.2) Regulations 2013 and shall come into force on 1st April 2013.

Revocation of the 2013 Regulations

2. The Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings Regulations 2013(b) are revoked.

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

3.—(1) A costs order made in favour of a party to clinical negligence proceedings who has taken out a costs insurance policy may include provision requiring the payment of an amount in respect of all or part of the premium of that policy if—

- (a) the financial value of the claim for damages in respect of clinical negligence is more than £1,000; and
- (b) the costs insurance policy insures against the risk of incurring a liability to pay for an expert report or reports relating to liability or causation in respect of clinical negligence (or against that risk and other risks).

(2) The amount of the premium that may be required to be paid under the costs order shall not exceed that part of the premium which relates to the risk of incurring liability to pay for an expert

(a) 1990 c.41. Section 58C was inserted by section 46 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10).
(b) S.I. 2013/92.

report or reports relating to liability or causation in respect of clinical negligence in connection with the proceedings.

Signed by authority of the Lord Chancellor

Helen Grant
Parliamentary Under Secretary of State
Ministry of Justice

26th March 2013

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 will be recoverable, including limiting recoverability to specified proceedings and to certain descriptions of expert report. Regulations may also make provision about the amount that may be required to be paid under the costs order.

Under these Regulations, an amount in respect of the premium may only be recovered if three prescribed conditions are fulfilled. First, the financial value of the claim, in respect of clinical negligence only, must be for more than £1,000 (Regulation 3(1)(a) has the effect of prescribing such proceedings for the purposes of new section 58C(2)(a)). Secondly, the relevant insurance policy must insure against the risk of incurring a liability to pay for an expert report relating to liability or causation in respect of clinical negligence (Regulation 3(1)(b) has the effect of prescribing such policies for the purposes of new section 58C(2)(c)). Thirdly, the amount of the premium that may be recovered under a costs order cannot exceed the premium in respect of the liability to pay for an expert report or reports relating to liability or causation (Regulation 3(2), has the effect of prescribing the maximum amount that may be recovered for the purposes of new section 58C(2)(e)).

These Regulations revoke and replace the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings Regulations 2013 (SI 2013/92).

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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