

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 2: Litigation funding and costs

Payments for legal services in civil cases

Section 46: Recovery of insurance premiums by way of costs

295. After the Event (“ATE”) insurance can be taken out by parties in a CFA-funded case to insure against the risk of having to pay their opponent’s costs and their own disbursements if they lose. Under the current arrangements, ATE insurance premiums are recoverable from the losing party. Currently, the recovery of such insurance premiums by way of costs is provided for by section 29 of the Access to Justice Act 1999.
296. **Section 46** repeals section 29 and makes new provision relating to the recoverability of insurance premiums from a losing party. The effect of the new provision is to provide that the cost 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 lose cannot be recovered from a losing party except in certain limited circumstances.
297. *Subsection (1)* inserts a new section 58C into the Courts and Legal Services Act 1990. The effect of section 58C is to limit the recoverability of insurance premiums to certain clinical negligence proceedings and only allow recovery of the premium to the extent that it relates to the costs of an expert report or reports (section 58C(1) and (2)). This exception reflects concerns that expert reports in clinical negligence cases can often be very expensive. New section 58C enables the Lord Chancellor to make regulations to prescribe the circumstances in which the premium would be recoverable and the amount of the premium that may be recovered. The maximum amount may, in particular, be prescribed by specifying a percentage of the relevant part of the premium or an amount calculated in a prescribed manner (section 58C(4)).