

ANNEX C CONSULTATION QUESTIONNAIRE

1. Do you agree that the rules should not define 'prohibitively expensive'?

No – as the CJEU and the Supreme Court have defined prohibitively expensive, it should not be difficult to incorporate their reasoning into a statutory definition. If it is too difficult, that suggests that the matter is not as clear as implied so a definition would be helpful.

2. Do you agree that the rules should not distinguish the question of prospects of success from the question of whether or not the proceedings are prohibitively expensive?

Yes – the issues of prospects of success and whether proceedings are prohibitively expensive are inextricably linked – what is prohibitively expensive for a case with merit has to be greater than for a case with little or no merit.

3. Do you have any comments on draft rule 58A.6 for the determination of an application?

No

4. Do you have any comments on draft rule 58A.9 for the expenses of the application?

No

5. Do you have any comments on draft rule 58A.8 for expenses protection in reclaiming motions?

No

6. Do you have any comments on the draft amendment to rule 38.16?

No

7. Do you have any other comments on the proposals contained in this paper?

No