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Introduction

As 2023 hurtles to a close and Parliament rises for a well-earned Christmas break, the pace in policy-making shows no sign of abating. Since the government's Autumn Statement last month, and the pencilled-in spending cuts to fund tax changes, there's been much media speculation on future spending plans. We discuss this and the latest immigration news below together with your usual roundup of justice news.

Do **get in touch with us** if you have any questions or suggestions for things to include in these bulletins.

Autumn Statement: what it could mean for justice

Summary

Debt and tax reduction took centre stage in this year's **Autumn Statement, delivered on 22 November**. As an update on the government's economic plans, the Statement isn't known for focusing on justice and law, but often touches on them when mentioning public services and spending. Their absence this year was noted by many in the sector: in literal terms, 40 mentions of "tax," 52 of business, 0 of "justice", 0 of "law," 1 of "legal," in relation to creating a legal right to a single pension pot. Nick Emmerson, the newly-minted, 179th president of The Law Society, expressed disappointment at the absence of new investments **"for a justice system in dire need of financial infusion,"** grappling with substantial court backlogs, deteriorating court infrastructure, and a persistent shortage of lawyers and judges. Emmerson underscored the immediate need for investment to protect access to justice.



So what did we see?

The Chancellor pledged £10 million over the 2024-25 period for the *Tackling the Economic Impacts of Domestic Abuse Fund* to support projects that research the effects of domestic abuse on the labour market. An additional £2 million in funding for the *Flexible Fund* will provide one-time payments to domestic abuse victims, with the purpose of alleviating financial pressures that may otherwise trigger a return to abusive situations.

The Autumn Statement is worded as such: “the government will make £10 million of additional funding available in 2024-25 for projects that aim to understand the impacts of domestic abuse on the labour market”; “the government will provide £2 million of additional funding to expand the Flexible Fund, which trials [...] provid[ing] one off payments to victims of domestic abuse”. This implies a total of £12 million, as it is not explicitly stated that the flexible fund is a subsection of the TEIDA fund, and could be construed as referring to a separate fund. However, the table that outlines the 2023 policy decisions only shows a £10 million spend for 2024-25.

Other justice-adjacent changes included the tightening of universal credit sanctions. The government reported that the sanction would end entitlement to legal aid for universal credit claimants “refusing to engage” with their Jobcentre, as well as ending their entitlement to free prescriptions, dental care, and help with energy costs.

Finally, mentions of “streamlining bureaucratic processes” will have many a legal aid lawyer perking their ears, but the government’s aim to adopt the Policing Productivity Review’s recommendations seem mainly reserved for policing upstream rather than justice downstream.

What might this mean?

The Institute for Fiscal Studies (IFS) has suggested that the proposed cuts could match the scale of George Osborne’s austerity drive a decade ago. **By 2027-28, the Office for Budget Responsibility (OBR) estimates that the real value of departmental budgets will have been eroded by £19 billion.**

Looking at the Government’s post-Spending Review departmental spending plans, the OBR finds that the commitment to spending the same amount in cash terms, combined with inflation, and certain budgets being protected has clear implications for “unprotected” spending (Justice is one such unprotected department). Thus, spending will need to fall by 2.3 per cent a year in real terms from 2025-26 at the very least, and if Defence and Official Development Assistance (foreign aid) increase in line with Government ambitions, **“this would lead to unprotected spending needing to fall by an average of 4.1 per cent a year.”**

The IFS figure sits somewhere in between those two figures: even if day-to-day public spending is set to increase by 0.9% in real-terms on average each year from 2025-26 to 2028-29, **it estimates that** – those protected spending commitments on health, defence, overseas aid, schools and childcare – imply a 3.4% real-terms cut each year for “unprotected” departments in England.

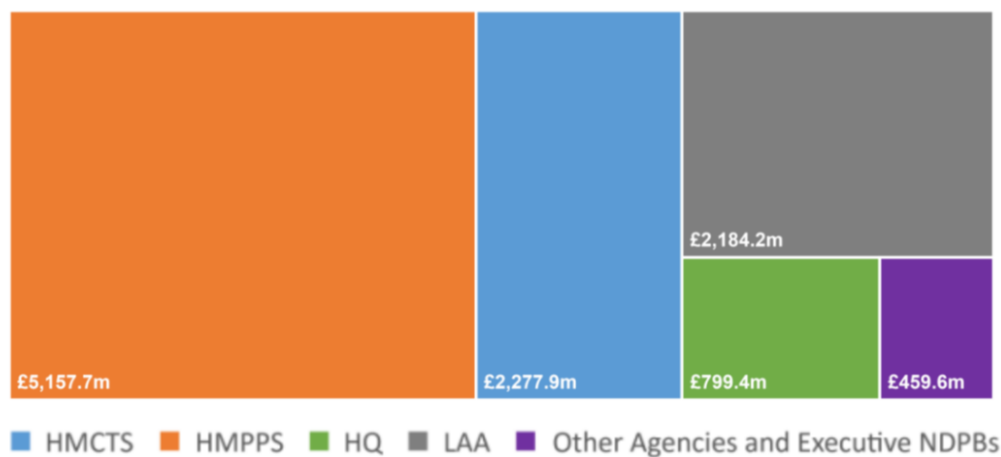
What would the justice system look like after 5 years of 3.4% year-on-year cuts?

Reporting on the figure of 3.4%, The Guardian states that Sir Bob Neill MP, Chair of the Justice Select Committee, believes there is "a case for 'revisiting which departments should be given protection' from spending cuts" in light of the state of prisons and backlogs in the justice system.

To imagine what this would feel like, let's look at a 3.4% reduction of the Ministry of Justice's (MoJ) current budget. Currently standing at £10.88 billion, the MoJ budget would be reduced by £370 million. If uniformly distributed across MoJ departments, it would result in an £74 million decrease in the budget allocated to the Legal Aid Agency (civil and criminal legal aid), £175 million in the HM Prison and Probation Service budget, £77 million in the HM Courts & Tribunals Service budget, £27 million in the MoJ HQ budget, and £17m in the budget of other agencies.

Those wondering if a change in government may prevent this may be disappointed. Leader of the opposition Sir Keir Starmer has "**refused to rule out any real-terms cuts to the budgets of Whitehall departments**" if his party govern next, in a speech to the Resolution Foundation. He has also **confirmed that Labour would not heavily invest in public services** with increased spending.

Ministry of Justice Expenditure Limit: Total budget £10.879 billion, 2023-24



Source: Ministry of Justice Main Estimate 2023-24: Estimates Memorandum, 18 May 2023

Immigration: net figures and the Rwanda deal

Some background

Immigration has long been a heated topic in the UK's political discourse, and remains a key area of focus for not just the main political parties in the UK in the run up to next year's general election, but also for our European and American counterparts.

Looking back to former prime minister **David Cameron** and his general election campaign of 2010, the then-Conservative leader said his government would reduce net migration to the "tens of thousands" to stop the UK population going over 70 million. According to the Office of National Statistics (ONS), the figure stood at 252,000 that year. When the 2015 election came around, the number was up to 379,000.

Fast-forward to the 2016 referendum and immigration dominated the four months of campaigning, with both Vote Leave - headed by Boris Johnson and Michael Gove - and Nigel Farage's Leave.EU promising that a future outside the bloc would see the UK being "in charge of our borders" and having stricter controls on immigration.

The campaign struck a chord with a large portion of the public. This was a focus confirmed by the referendum result with 52% of the UK voting to leave the EU and most post-referendum analysis pointing to immigration as the issue that swung it. Former Prime Minister Theresa May had taken a tough stance on immigration in her role as

Home Secretary and repeated Mr Cameron's pledge to get net migration down to the tens of thousands, once in power, that this would be achieved as part of Brexit as it would end free movement for European nationals. But in 2018, the figure was still at 258,000, and in 2019, when she left Downing Street, the number had risen to 275,000.

Boris Johnson's leadership campaign promised to introduce an Australian-style points system to bring down net migration, specifically reducing the number of unskilled workers coming into the country. He didn't commit to a target of "tens of thousands", but pledged that "overall numbers would come down" in his party's 2019 manifesto. In 2020, net migration sat at 374,000 and the focus of Mr Johnson's government moved from the day-to-day policies to tackling the COVID pandemic.

After the Covid lockdowns, the issue turned to supply chains. The country faced shortages of lorry drivers, fruit pickers and butchers, problems with getting petrol, and questions over whether rules should be adjusted to allow more people to come to work in the UK. The ONS figures for net migration in 2021 stood at 239,000. A new issue began to capture attention - namely people crossing the Channel in small boats. In 2021 more than 25,000 arrived - three times the number for 2020. In the year ending June 2022, 1.1 million people migrated into the UK and 560,000 people emigrated from it - leaving a net migration figure of 504,000 people. The ONS said factors such as the waning impact of COVID, the return of more international students, and new asylum routes from Afghanistan after the Taliban takeover, Ukraine after the Russian invasion, and Hong Kong, were all contributing factors.

For non-EU nationals arriving during this period, study was the most common main reason (around 277,000 people). This was followed by "other" reasons (276,000 people), including arrivals under humanitarian schemes and family migrants. An estimated 151,000 non-EU nationals came primarily for work in that year. Of the 504,000 people who migrated to the UK in 2022, 45,000 entered the country by crossing the channel, yet the focus in the media remained those who were entering the country through illegal routes, and it remained one of prime minister Rishi Sunak's five key pledges to the public.

Rwanda

The "**Migration and Economic Development Partnership**" was announced by **Boris Johnson on 14 April 2022**. He said the plan meant "anyone entering the UK illegally may now be relocated to Rwanda. [...] The deal we have done is uncapped and Rwanda will have the capacity to resettle tens of thousands of people in the years ahead. And let's be clear, Rwanda is one of the safest countries in the world, globally recognised for its record on welcoming and integrating migrants."

On 15 November 2023, the Supreme Court disagreed with this latter point, pronouncing itself on (i) whether Rwanda is a "safe third country," and (ii) whether asylum seekers would be at risk of refoulement (return to the country from which they are fleeing, or facing threat that they would be returned). It found there were substantial grounds to believe in a real risk of refoulement, rendering the Secretary of State's policy unlawful.

The High Court had previously given legal clearance to the first flight, set to take off on 14 June 2022, before a last-minute interim measure by the European Court of Human Rights led to the plan being halted until the conclusion of the legal action in the UK. Two weeks later, the Court of Appeal ruled the plan was unlawful, followed by an appeal to the Supreme Court.

[2023] UKSC 42

On appeal from [2023] EWCA Civ 745

The legal debate

Section 5 of **the Illegal Migration Act 2023, states** that the duty to remove a migrant applies "regardless" of whether the person makes a protection claim, human

rights claim, claims to be a victim of slavery or human trafficking, or makes an application for judicial review. This includes claims that removal would be unlawful under **section 6 of the Human Rights Act 1998**.

This led the United Nations entity for human rights, the Office of the High Commissioner for Human Rights, to state that the Act "is at variance with the country's obligations under international human rights and refugee law and will have profound consequences for people in need of international protection".

In response to domestic and international calls for the Act to be abandoned and the Rwanda plan scrapped, Minister for Immigration Robert Jenrick defended the Act's lawfulness: "The Government takes its international obligations very seriously and there is nothing in the Act which requires the Government to act incompatibly with those obligations... The Government is satisfied that the provisions of the Act are capable of being applied compatibly with the Convention rights, and we continue our work with European counterparts."

What next?

Following the decision, Prime Minister **Rishi Sunak pledged to push through emergency legislation** declaring Rwanda to be a safe country. Facing calls from some members of his party to withdraw from the European Convention on Human Rights (ECHR) and to "**ignore the laws and send them straight back**," the Prime Minister stated that he would set up a parallel plan to ensure a legal guarantee that Rwanda would not return asylum seekers to their home countries.

On Monday 4 December, Home Secretary James Cleverly announced **a package of measures designed to cut the number of migrant workers and their dependants entering the UK**, making it far harder for employers to bring in overseas staff, including in the NHS and social care sector. Presenting his five-point plan, Mr Cleverly added that it will help reduce net migration by 300,000 a year thus almost halving current net migration levels, which hit 672,000 in the year to June. Many of these changes will only come into effect in the spring of 2024, which will be too late to be reflected in the official figures as these have a lag time of several months. We will also not get a sense of the impact of Monday's measures until August at the earliest, when the second quarter statistics are published by the Home Office. It will take even longer — November 2024 — for the Office for National Statistics to give its account of the impact, by which time it is likely that the general election will have been held.

The most significant measure announced by Mr Cleverly was a major increase in the minimum salary threshold for foreign workers, from £26,200 to £38,700, which will come into effect in the spring. A small number of shortage occupations will be exempt from the higher threshold, among them health and social care workers.

Mr Cleverly said the minimum combined income requirement for a foreign spouse to join their partner in the UK would rise from £18,600 to £38,700. The threshold had not been lifted since 2012 and will make it significantly harder for British citizens who want to bring foreign spouses to the UK on a family visa.

A fifth and final measure will be an independent review of the graduate visa route, which currently allows foreign students to stay in the UK for up to two years after finishing their course without the need to get a job.

In other news on the same day, the BBC reported that "**British lawyers could be based in Rwandan courts as part of asylum plans**." Under a new deal being brokered with Rwanda, British lawyers would be stationed in Rwandan courts to address the Supreme Court's concerns.

We watch as the situation continues to develop and understand that **Mr Cleverly was in Rwanda earlier this week to sign the new treaty**. Zoe Bantleman, Legal Director of Immigration Law Practitioners Group has told us that they "await to hear the timeframe for implementation of the rest of the Illegal Migration Act 2023, now that the LAA has published its forthcoming amendments to the 2018 Immigration and Asylum Specification. It seems the signed treaty is expected to be laid before Parliament

tomorrow, and emergency legislation is anticipated in the coming days." For an up-to-date look at what the UK has agreed with Rwanda, [you can read Joshua Rozenberg's analysis here](#).

Justice Bite Size

Appointments and Congratulations



Congratulations go to our former Co-Chair Laura Farris MP on her **promotion to Minister for Victims and Safeguarding**, where she will work across the Home Office and Ministry of Justice. Before becoming Co-Chair, Laura had been a long-term member of both the APPG on Legal Aid and the APPG on Pro Bono and Public Legal Education and a vocal advocate for justice. As part of the former, she was a key contributor to the **Westminster Commission on Legal Aid**. A practising barrister working primarily in employment and public law, her commitment to the law is a lifelong one. We wish her the best in her new role.

In this new role, Laura has committed to increasing prosecutions for rape and domestic abuse. Additionally, she has expressed her dedication to "reflect[ing] the voices of valued local organisations," safeguarding children from harm, and she will oversee the implementation of recommendations of the Independent Inquiry into Child Sexual Abuse and the new Grooming Gangs Taskforce. She has committed to proposing legislation with a central focus on enhancing public protection. This includes whole life tariffs for murders characterised as sadistic or sexually motivated as well as reinforcing the rights of victims of rape and serious sexual offences by providing them with a dedicated advisor who will offer support throughout the entire criminal justice process.



Congratulations also go to our former Vice-Chair Gareth Bacon MP on his **promotion to Minister for Sentencing** where he will be responsible for Sentencing Policy, Sentencing Bill, Illegal Migration, Electronic monitoring and the Prisoner Escort and Custodial Services (PECS). It was a pleasure working with him on the Westminster Commission and we look forward to working with him in his new role.



And finally, our warm congratulations to James Daly MP on being appointed as the new co-chair of the All-Party Parliamentary Group on Access to Justice. James's personal background and experience, both as a member of the Justice and Home Affairs Select Committee and as a former criminal defence solicitor and current conveyancing partner at a High Street firm, stand him in good stead to further access to justice at the policy level.

IPP Reform

"Reforms bring hope to rehabilitated people still serving abolished indefinite sentences" reads a press release published on gov.uk on 28 November.

Sentences of Imprisonment for Public Protection (IPPs) have been in use since 2005 before being abolished in 2012. Despite this, in June 2022 there were over 2,900 people subject to such a sentence who were still in prison. The sentences were designed for serious offenders whose crimes did not merit a life sentence, but who the government did not want to release until they were deemed "safe to the public". **In a report published on 28 September 2022**, the Justice Committee found IPP sentences "irredeemably flawed". James Daly MP has consistently spoken against these sentences, calling them "a stain on our justice system."

Now, Lord Chancellor Alex Chalk is introducing retrospective changes to licence durations so that they end immediately for "around 1,800 rehabilitated offenders." This considerably reduces the current 10 year wait for offenders on licence before they can have their licence reviewed by the Parole Board. More specifically, under the proposed changes, former prisoners' licenses undergo review three years post-release, automatically ending two years later if the Parole Board does not issue a recall. Mr Chalk emphasised the necessity for decisive action in aiming to curtail IPP license periods.

Lord Chancellor sets out a vision for the future of the civil and family courts and Tribunals

The Lord Chancellor has also **unveiled his vision for the future of justice**, with a notable focus on technology. This mirrors the work already underway by the Master of the Rolls and Civil Justice Council. The full speech, **which you can read here** mentions digital solutions that will elevate accessibility for individuals involved in the civil and family justice systems and builds upon his work on ELSA (early legal support and advice) as Minister for Legal Aid. Key focuses include the promotion of mediation and online dispute resolution, as well as the promotion of "LawTechUK" and technological advancements like AI, which the Lord Chancellor suggests can boost the UK economy whilst ensuring a fair society. He emphasised that a transition is already well under way, with digital legal service user numbers already surpassing 2 million, including 400,000 Online Civil Money Claims and 635,000 users engaging with the Official Injury Claim portal.

Resolution's 'Vision for Family Justice'

Overview

On the subject of visions, Resolution has launched its '**Vision for Family Justice**,' consolidating insights from its extensive membership of 6,500 professionals who work in family justice. Underlining that the family justice system in England and Wales is at a crucial turning point, and demand on family courts has never been higher, the document makes several recommendations with two standing out: making cohabitation a priority area for reform (nearly 1 in 5 families in the UK are classed as cohabiting, and lack many rights as a result), and funding early legal information and advice. Other recommendations include furthering support for survivors of domestic abuse and ensuring there are no more family court closures (with online processes not being relied on as a "one-size-fits-all solution").

The document underlines that practitioners who support families through divorce, separation, child arrangements and financial disputes are now seeing their clients face growing delays: with private law cases now taking **47 weeks on average to reach a final order** – double the time they took in 2016. Their ability to support vulnerable children, adults at risk of harm, and families involved in child protection matters is hampered by overstretched courts, they say.



Other recommendations

The paper echoes two common demands from the legal aid sector: scope and fees. In terms of scope, it argues for the inclusion of private family legal aid in child arrangements proceedings marked by allegations of domestic or child abuse. In relation to fees, it wants to ensure the sustainability of family legal aid through increased rates: "hourly rates have not risen for well over 20 years; in fact they have reduced substantially in real terms, with both hourly rates and fixed fees cut by 10% in 2011." To make the sector more viable for providers and address the challenge of recruitment and retention, it also advocates for reasonable fees for helping clients with mediation, as well as for means assessment, in particular for "controlled work."

Proposing enhancements to the gateway evidence criteria, the paper recommends that specialist solicitors screen cases for domestic abuse with the help of appropriate health professionals even if they live abroad. For a more detailed look at family law, keep an eye out for our next news bulletin in the new year.

Independent Public Advocates

The Ministry of Justice has revised its plan to establish independent public advocates in England and Wales, providing support for victims of major disasters.

Based on a 2017 Conservative manifesto promise, the Victims and Prisoners Bill published in March of this year followed consistent calls for independent public advocates. **The gov.uk website describes how the advocates will support victims in rebuilding their lives**, notably following events like the Hillsborough disaster, Manchester Arena bombing and the Grenfell Tower fire. It was advocated for in Right Rev James Jones KBE's 2017 report "**The patronising disposition of unaccountable power.**"

The new proposals outline the qualifications for independent public advocates, with potential candidates including emergency workers and community leaders. Amendments to the Victims and Prisoners Bill indicate a shift from the initial plan of having different

advocates for each major incident, to having a permanent independent public advocate, with potential for more. The focus is on ensuring victims receive immediate and comprehensive support, with advocates available 24/7 to guide them through accessing essential services and understanding their rights.

While welcomed for its potential impact, concerns linger over the resource allocation and organisational structure of the Independent Public Advocate service. Questions about funding sources, policy responsibility, and staffing underscore the need for careful planning to guarantee the efficient and effective functioning of this vital support system for disaster victims. **Some even point to failings in existing duties to support the bereaved**, such as that to provide legal advice and assistance at inquests, and funding for representation, or the fact that the Exceptional Case Funding scheme remains subject to a means tests. Worth noting is the fact that the legal aid scheme does not apply in inquiries by default, but the Chair of an inquiry can make funding available to "core participants" on a case-by-case basis.

Community Sentences

On 2 December, The Telegraph reported that the Lord Chancellor was hoping to tackle prison overcrowding by **imprisoning foreign criminals for shorter durations than Britons**, before deporting them back to their home country. There are 10,500 foreign nationals in English and Welsh prisons. A previous iteration of this scheme was called the "Early Removal Scheme," but this only allowed releases up to 12 months before the court-ordered date, for any crime except terrorism offences. This comes 3 weeks after the **Lord Chancellor announced a new presumption** that offenders facing jail sentences of under 12 months would serve their sentence within the community. **The MoJ stated** the presumption will not stop judges and magistrates from sending offenders to prison for less than 12 months if deemed appropriate, such as prolific repeat offenders.

And finally, on the subject of prisons a request from our friends over at the Association for Prison Lawyers (APL) who have launched a request for information on prison visits:

Association for Prison Lawyers launch survey

Request for information on prison visits

APL is asking lawyers working with people in prisons how important seeing their clients is to them. The current system sees every prison operating differently with regards to visits: some "don't do links for solicitors", others have limited availability with long waiting lists. The Association of Prison Lawyers is collecting data on this topic, for 2 weeks, via the link below:

<https://shorturl.at/zGOQT>

On that note, a Merry Christmas and Happy Holidays to you all from the staff at the APPG on Access to Justice. Thank you once again for making time to read us in this most unexpected and turbulent of years. Your support and feedback means a great deal to us all and we look forward to seeing you on the other side. Take care of yourselves and each other, wherever you are.

Rohini Jana
Head of Parliamentary Affairs
6 December 2023

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About the APPG on Access to Justice

We strive to highlight the importance of access to justice as a fundamental pillar of society, and to empower individuals to exercise their rights, challenge discrimination, and reduce social inequalities. We foster parliamentary and public understanding of access to justice by acting as a forum for discussion and debate, providing an interface between Government, Parliament, and the justice sector.

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