



# PROTECT DUTY

Paul Haggerty looks at the results of the UK Government's consultation on the Protect Duty and what the planned legislation will mean for businesses.

With a number of high-profile terror attacks in the UK in recent years, in February 2021 the Government launched a public consultation on the implementation of a legal 'Protect Duty' for public places. In particular, the type of attack carried out at the Manchester Arena in May 2017, which killed 22 people and injured hundreds more, was a focus of the consultation. In both the initial consultation document and the Government response published in January this year, the attack is mentioned as well as the Martyn's Law campaign that followed, named after Martyn Hett, one of those who died.

These attacks present an ongoing threat to public safety in the UK. The initial Protect Duty consultation notes that between March 2017 and February 2021, the UK police and security services stopped 27 plots. The response document opens by noting that in the less than one year between the publication of the two documents, four additional plots were stopped, but sadly two attacks had been carried out, one of them claiming the life of the MP Sir David Amess in his Southend constituency.

There is currently no legislative requirement for businesses and other organisations that operate in the publicly accessible spaces to protect people from deliberate attacks or even the dangers posed by accidental vehicle collisions. There are small exceptions

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to this, such as security for transportation and some sports grounds. When made law later this year, as the Government has pledged, the Protect Duty legislation will be the first of its kind in the UK to apply to the vast majority of public spaces.

In the statement that accompanied the publication of the consultation response document, Home Secretary Priti Patel said the legislation will aim to: "strike the right balance between public safety, whilst not placing excessive burden on small businesses". This should be encouraging news for businesses concerned about the financial burden that this may place on them.

The consultation, which sought views from all groups that a 'Protect Duty' would potentially affect, including organisations who own or operate at publicly accessible locations, covered four key areas: where should legislation apply, what should the requirements be, how compliance should work and how Government can best support and work with organisations. There were several key points from the consultation that should be highlighted.

The first thing to note is that the idea of introducing a Protect Duty was strongly supported in the consultation, with 70 percent of respondents agreeing that those responsible for public locations should take appropriate measures to protect the public from attacks. As defined in the consultation, a publicly accessible location is: "Any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission".

This covers a range of locations including high streets, parks, beaches, public squares, retail stores, shopping centres and markets as well as hotels, pubs, clubs and bars. Schools, universities, hospitals and places of worship are also included under this umbrella as well as music venues, festival grounds and sports stadia.

Based on the responses to the consultation, it seems likely that a large number or even all publicly accessible locations will have some degree of responsibility under the Protect Duty legislation. In the consultation, when asked which specific places a Protect Duty should apply to, many suggested: "all publicly accessible locations" or: "all locations in general". In addition, the majority (58 percent) said there should be no exemptions to the Protect Duty. This would seem to align with the sentiment shared in the introductory section of the document that reiterated that attacks cannot be predicted and could occur at any location, making them difficult to prevent.

However, the consultation also asked for views on setting criteria to decide which venues the duty should apply to. The capacity of the venue was the most popular, with other factors also suggested such as the evaluated risk of the location, the geographical location (such as in a rural area) and the type of event being held at the venue. Additionally, the idea of using the average, rather than maximum, capacity of the venue as the criterion was also put forward.

The exact requirements of the legislation have not yet been defined. However, it is clear that the overarching focus will be on ensuring that organisations carry out risk assessments to evaluate their vulnerability and then take action to mitigate

these risks. This includes training staff to identify potential threats and respond correctly as well as implementing effective and appropriate physical security measures. It is also clear that as a legal requirement, organisations will have to demonstrate compliance or incur penalties.

The statement issued by the Government alongside the consultation response explained that the Home Office is working with the National Counter Terrorism Security Office (NaCTSO) and Pool Reinsurance to create a new interactive online service. The platform, which is scheduled for launch later in the year, will provide a central hub for advice, guidance, e-learning resources and other relevant content. It is intended to provide support for all organisations in creating a safer environment, whether or not the Protect Duty applies to them.

## ORGANISATIONS WILL NEED TO CARRY OUT RISK ASSESSMENTS AND TAKE APPROPRIATE ACTION

One of the key themes of the Protect Duty is that measures should be appropriate, proportionate and affordable. In effect this means that smaller organisations and venues will not be expected to implement the same level of security as larger organisations. For example, with regard to physical protection, there are costly and complex options that might be necessary for larger venues or higher risk areas but are excessive for smaller organisations.

A further important part of the legislation is likely to be collective duty if there is shared responsibility for a venue or multiple organisations operate within an area. More than 80 percent of respondents in the consultation agreed that where this is the case, the parties should collaborate to meet the Protect Duty requirements.

For many businesses and organisations, adopting a collaborative approach may help to reduce the financial burden and lessen the impact on customers, visitors and staff. Take for example, the implementation of hostile vehicle mitigation (HVM) measures in a pedestrianised street where multiple shops, restaurants or cafés operate. It will often be easier, more cost effective and less obtrusive to introduce protective features at each end of the street than try to protect each business separately.

An important element for any organisation addressing the Protect Duty requirements will be the evaluated risk of its location. A place where people are dispersed across a relatively large and open space may be considered a lower risk than a location where people are concentrated into a smaller area. Also, certain types of buildings or areas of a structure may require additional protection, such as data centres or server rooms.

For this reason, working with specialists to meet the requirements is important. They can provide advice and guidance on designing a strategy that is appropriate based on the risk assessment. For example, if the layout of a street makes it unlikely or impossible for a large vehicle to approach the area,



then HVM features that are designed and tested to stop a smaller vehicle may be suitable instead of those engineered for larger 7.2 tonne vehicles and are therefore more expensive.

For many businesses, the Protect Duty will not require a completely new approach, but an enhancement of what is already in place. Of those who responded to the consultation and are working in an organisation that would come under the protect duty, 50 percent already undertake a risk assessment for terrorism, with 83 percent of that group carrying it out in-house. Also, the majority (78 percent) said they already review this risk assessment at least once a year.

## ORGANISATIONS WILL HAVE TO DEMONSTRATE COMPLIANCE OR INCUR PENALTIES

One important element of the Protect Duty that has not received attention in the discussion around the consultation is the other benefits that implementing these measures will have. In particular with regard to physical security. Protective barriers and other features designed to prevent attacks will also help to minimise the risk from accidental hazards such as out of control vehicles.

One challenge when making public places safer is to do so without affecting the operation of the site or the experience of visitors. It is also important to avoid making people feel unsafe by giving the impression that the area is heavily defended. One possible solution is to replace features such as

street furniture with security versions. For example, protective versions of planters, seats, cycle stands and bins can be used to discreetly provide hostile vehicle mitigation while maintaining the design intention for the area. Often there will be a relatively small cost difference between standard and protective options.

### GET PROACTIVE

In addition, for businesses that do need to implement additional measures, it is important to do so in the most cost effective way. As mentioned above, working with specialists to find the most appropriate solutions is a key part of this, but being proactive and looking ahead is also essential. If a new project or refurbishment is currently underway it may be valuable to look at how additional measures can be integrated now rather than retroactively when the Protect Duty becomes law. Physical barriers will often require reinforcements to be sunk into the ground and it will be more cost effective and less disruptive to do this during the initial construction activities.

Similarly, if a refurbishment is planned for the near future it may be best to wait until then to implement any permanent changes. In the meantime, effective temporary measures can be used to fulfil the requirements of the Protect Duty.

Terrorist actions are unfortunately not a new occurrence in the UK, but the events of recent years have underlined how important it is to make public spaces as safe as possible and the Protect Duty legislation will be a key part of this. By utilising the publicly available resources, approaching the requirements strategically, engaging with specialist partners and carefully considering the most appropriate solutions, businesses can ensure they comply with minimal financial impact or disruption to operations ●

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Picture credit: Marshalls Landscape Protection