

Protect Duty – A Summarised Overview

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What is Protect Duty and what is currently known?

In the public inquiry into the Manchester Arena Bombing (which took place during a concert on 22nd May 2017 and resulted in 23 fatalities) the Hon Sir John Saunders, Chairman of the Inquiry, stated it was their belief that it would be "... reasonable for publicly accessible venues able to hold gatherings of 100 persons or more to carry out an assessment of threats and implement appropriate mitigating measures at their premises.". The report stated areas such as the range of threats, steps to mitigate said threats, preparations and responses in the event of an attack, and the reason why any such steps have not been taken, should be included in the security risk assessment.

The Protect Duty, a term synonymous with Martyn's Law (named after one of the victims of the Manchester Arena Bombing, Martyn Hett), will be a piece of legislation that seeks to embed in law the necessity for sites to demonstrate preparedness for terrorist attacks. This will almost certainly require the completion of a security risk assessment, as alluded to above, and many of the countermeasures identified to protect against a terrorist attack will provide additional security benefits to the site. It is also noteworthy that the Hon Sir John Saunders specified the need to assess threats, not only terror related threats, in his summary. There was a public consultation on the proposed Protect Duty which ran from 26 February 2021 to 2 July 2021, with the proposed legislation expected to be presented in the first quarter of 2022.

Whilst there remains some ambiguity over exactly what will be included in the Protect Duty, and who it will apply to, it is believed to provide a big step forward in promoting security awareness within the workplace. Some have stated they believe the Protect Duty may have a similar affect to the impact GDPR legislation had on data protection, whilst others have drawn parallels with the Health and Safety at Work Act 1974, dubbing the Protect Duty as its equivalent for Security.



What is the new legislation likely to address?

It is not possible to state exactly what form the Protect Duty will take as the legislation has not yet been defined, however, the Home Office have stated the Protect Duty will impose a legal requirement for owners and operators of public spaces to be prepared for terrorist attacks. It is generally expected to require some form of security risk assessment to be conducted which will aim to achieve greater preparedness, in part, through identifying security vulnerabilities and implementing proportionate and appropriate risk mitigation measures. There is sufficient information from the consultation to speculate about which businesses are likely to be affected. The two figures included in the literature are venues with capacity of over 100 and businesses with over 250 employees, although there is some suggestion that these figures could relate to multiple locations rather than a single site.

The Protect Duty is unlikely to apply to small enterprises that do not receive members of public/customers into their demise. The consultation has also expressly excluded businesses that have clear requirements for preventing terror attacks within law already, such as military complexes, power stations, police stations, and any other site with specific security risk assessments mandated in legislation. It is likely to impact on any site(s) that welcome members of the public into their demise, in the form of clients or patrons, or may have multiple smaller sites (there is a suggestion that the Protect Duty may be cumulative for businesses with multiple smaller sites).

Where will the Protect Duty apply?

The duty is expected to apply to publicly accessible locations, including but not limited to:

- Venues (sports stadia, festivals, music venues)
- Hospitality (hotels, pubs, clubs, bars, casinos)
- Retail (high streets, retail stores, shopping centres and markets)
- Educational Establishments (schools and universities)
- Public Spaces (parks, beaches, public squares and other open spaces)
- Medical centres and hospitals
- Places of worship
- Government offices
- Job centres
- Transport hubs



Who is the Protect Duty aimed at and what does it seek to achieve?

Owners and/or operators of publicly accessible venues with a capacity of 100 persons or more:

- The 100 threshold is to align with the stated numbers used for the site capacity for the purposes of fire legislation. This area will apply to public venues, permanent buildings and temporary event locations (such as outdoor festivals) where there is a defined boundary. This will apply to the party, or parties, responsible for the venue, which would usually be the owners or operators, who have control and ownership of systems and processes.

Large organisations (employing 250 staff or more) that operate at publicly accessible locations

- This will apply to businesses that operate at publicly accessible locations, with staff who are responsible for taking forward a range of legislative and other requirements to be implemented across the organisation, through its systems and processes. This could include organisations with a number of outlets, below a 100 persons or more venue capacity, across a wide geographical (often national or UK wide) footprint, where there is significant and/or regular public footfall and public engagement, on a routine and often daily basis e.g. high street retailers, supermarkets, betting shops, newsagents, chemists, and petrol stations. This could also apply to any sites where there is a public right of way in or through the site, or the public enter certain areas of the site (e.g. reception areas, cafes, etc.).

Can it be used to improve security considerations and outcomes at public spaces?

- This includes open public locations which usually have no clear boundaries or well-defined entrance / exit points (e.g. city centre squares, bridges or busy thoroughfares, parks, and beaches). To this end the Government is considering how it can do more to work with

the parties responsible for such locations to consider and achieve appropriate security measures. This is an issue which was raised in both the Westminster and London Bridge Inquests, and the Manchester Inquiry.

Other Aspects

- This includes considering the potential for the Duty to require:
 - Partnership working with parties already complying with security legislation, for example to ensure effective co-ordination between transport sectors (where security legislation is already in force) and operators responsible for publicly accessible locations adjacent to transport hubs;
 - Existing security guidance (e.g. for bus and coach operators) to be given legislative effect for certain locations or sectors; and
 - Companies and other organisations responsible for holding, selling or hiring products that could be used by terrorists as a weapon in an attack at a publicly accessible location to adhere to security guidance.

Exemptions

- It is proposed that exemptions to the Protect Duty will apply to areas where legislation already requires certain stakeholders and/or locations to consider terrorist threats and to take forward appropriate security measures to mitigate these (e.g. transport security regulations).

Publicly Accessible Locations

Publicly accessible locations are one of the key points within the Protect Duty and, given the current wording of the consultation, will be the key factor in determining who it applies to. Publicly accessible locations are defined in the consultation as:

“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. Publicly accessible locations include a wide variety of everyday locations such as: sports stadia; festivals and music venues; hotels; pubs; clubs; bars and casinos; high streets; retail stores; shopping centres and markets; schools and universities; medical centres and hospitals; places of worship; Government offices; job centres; transport hubs; parks; beaches; public squares and other open spaces. This list is not exhaustive.”

The definition of publicly accessible locations, in its current form, means there is potential for the legislation to apply to the majority of businesses. Within the definition this includes any locations where “... any section of the public has access, on payment or otherwise, as of right or by virtue of **express or implied** permission.”. There is potential for this to extend to any building or site where those attending site are not employees and visit under implied permission (including if paying for a service on site where they are the client/customer). When coupled with the potential that the capacity/employee figures states (100/250 respectively) may include the total number across multiple business locations, this could apply to the majority of workplaces and venues across the country.

NOTE:

Readers should note that the legislation referred to above is not yet defined or published, and as a consequence this guidance is subject to change.



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