

Protect Duty

April 2022



By Fiona
Larcombe

What might a new “protect” duty mean for businesses and venues?

A recent Home Office consultation proposed a new duty to protect the general public from terrorist attacks at publicly accessible venues. The details are still being worked out but the practical and financial implications for property businesses with entertainment, leisure and retail venues could be considerable. They will need to review their approach to risk assessment, to make sure it covers possible threats from terrorism, and strategies to protect the public.

Legislation on the new “protect” duty could feature in the Queen’s Speech in May 2022, with minimum level compliance required by the end of 2023.

Key issues

The key questions for real estate investors are which sites will be affected, which businesses and individuals will be bound by the new duty; and what action they should be required to take.

The consultation paper set out the Government’s thinking on these issues.

Which venues will be affected?

These proposals are currently aimed at publicly accessible venues, which will include:

- shopping centres
- cinemas
- hotels
- supermarkets / markets

as well as less easily defined public spaces like parks, access routes and urban squares.

The scope of the duty to protect, who will be bound?

In identifying where the duty will apply and who will be bound by it, the Government proposes to look at two factors:

- **Capacity of venue**

The consultation proposed that publicly accessible venues which have a capacity of 100 persons or more should be within the remit of the duty, which would fall on owners, operators and those in control of these large venues.

- **Size of organization**

In addition, the consultation proposed that the duty would also apply to organisations that employ 250 or more staff across their portfolio of publicly accessible venues, even where individual sites do not meet the 100 person capacity threshold. This would mean organisations that are scattered across a wider geographical area such as fast-food chains, petrol stations or high street retailers would be caught under this proposal, while independent equivalents of the same size and location would escape the obligations of the duty.

What happens where more than one person could be responsible for the same space?

There is a lack of detail in the consultation on exactly how obligations would be shared where numerous parties share responsibility for or control of a venue. The consultation expects cooperation between parties but does not provide a framework for how it should be achieved.

What will affect businesses be expected to do?

Specific measures have not been clearly defined, but the Government expects “reasonably practical and proportionate” measures to be taken. As well as risk assessments, the consultation refers to additional staff training and preparedness and expects the additional costs that will be incurred will be minimal. This is on the assumption that businesses already carry out some anti-terrorism measures, which may or may not be the case in reality.

How will the duty be enforced?

The consultation proposes a new “light touch” inspection regime, to ensure compliance on a case by case basis. Inspectors would offer bespoke advice to affected parties to help them improve their readiness and protection. If this advice was not followed, inspectors would be empowered to take enforcement action and a new offence has been proposed to punish non-compliance with fines.

Next steps

There should be more detail when draft legislation is published. Meanwhile, property businesses likely to be in scope should start looking at how their risk assessments, procedures and staff training address the risk of terrorism and be prepared to act once we know what the duty will look like in practice.