



UK Home Office Public Consultation to consider legislation to improve public safety and preparedness from terrorism



Pool Re
SOLUTIONS
Building resilience against terrorism risk

Executive summary

1. On 26th February 2021, the UK Home Office launched, a public consultation to consider how legislation can be introduced to improve the protection of the public from terrorist attacks.
2. It will place greater responsibility on owner / operators of Publicly Accessible Locations (PALs), formerly referred to as 'Crowded Places/Spaces, which are defined 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, but not private venues, such as places of employment, or other locations where there is not public access.
3. The consultation currently proposes that the law should be applied to any PAL with a capacity of 100 or more, or any business employing more than 250 people, that operates PAL's. The latter criteria is likely to draw corporate entities operating multiple outlets (such as shops and restaurants) into the law.
4. Different sized businesses operating PALs will be required to comply with different parts of the legislation. All will be required to do what is 'reasonably practicable' to comply with the law. PALs would be required to assess the threat, leading to considering and taking forward appropriate and proportionate mitigation measures.
5. The Government aims to develop an inspection regime to enforce the process. Given the severe impacts that could occur as a result of a breach of the proposed Duty, it is proposed that a new offence is created for non-compliant organisations who persistently fail to take reasonable steps to reduce the potential impact of attacks. An enforcement regime will be developed, with penalties primarily based on civil sanctions (such as fines) for organisations in breach of the Duty.
6. For the insurance markets, the most significant change presented by this legislation would be to the liability market, where a failure by an organisation to perform the required legal duties results in injury or harm, the chances of defending subsequent tort actions will inevitably be more difficult.
7. The consultation lasts for 18 weeks and seeks the views of those who could be affected by the Protect Duty legislation. Pool Re will host a webinar on 14th April with representatives from the Home Office and the Association of British Insurers, to discuss the impact and opportunities that the Protect Duty might have on Members, the UK (re)insurance market and businesses.
8. The purpose of this document is to explain some of the principal components of the proposed Duty and the possible implications for (re)insurance and for Members and their policyholders. Pool Re encourages all of its Members and other stakeholders in the re/insurance sector to review the published documentation which can be found here (<https://www.gov.uk/government/consultations/protect-duty>) as well as to participate in the consultation process.

Introduction

On 26th February 2021, the UK Home Office launched a public consultation to consider how legislation can be used to enhance the protection of publicly accessible locations (PALs) across the UK from terrorist attacks and to ensure widespread organisational preparedness.

The 18 week consultation seeks views from all parties and/or stakeholders that a 'Protect Duty' would potentially affect - in particular, organisations who own locations or operate at publicly accessible locations.

Background

The British experience of terrorism, in the 80s and 90s, has been largely contained to attacks on infrastructure, with the murder of people being a consequence of that. From 2014 onwards (and just before with the murder of Fusilier Lee Rigby in 2013) there was an obvious shift, globally, to cause mass casualties by individuals or small groups of extremists attacking members of the public in everyday work and social settings.

Recent years have seen an increase in terrorist attacks in publicly accessible locations, i.e. locations that people visit, congregate in, or transit through. A defining feature of such attacks is the targeting of people, whether pre-planned or randomly, or as representatives of specific groups (e.g. relating to race, religious beliefs, etc).

Any publicly accessible location is a potential target, and therefore the government deems it essential that the owners and operators of all such locations understand the risks they face and consider appropriate mitigations.

The Public Consultation

The public consultation seeks the public's views on 4 principal areas:

1. Who (or where) should legislation apply to?
2. What should the requirements be?
3. How should compliance work?
4. How should Government best support and work with partners?

Who should the legislation apply to?

There is a greater focus on crowded spaces, zones and sectors as well as places. The term Publicly Accessible Location (PAL) has been coined to help develop these definitions. A PAL is defined 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, but not private venues, such as places of employment, or other locations where there is not public access

With some exceptions for transport security and some specific sporting locations, there is currently no legislative requirement to consider or implement security measures at PALs.

A Protect Duty requirement would apply to the parties responsible for the venue, which would usually be the owners or operators, who have control and ownership of systems and processes. Where there is a shared organisational responsibility for a venue within scope, the parties would be required to work together to ensure the Duty requirements are met.

The consultation currently proposes that the law should be applied to any PAL with a capacity of 100 people or more, or any business employing more than 250 people, that operates PALs. The latter criteria is likely to draw corporate entities operating multiple outlets (such as shops and restaurants) into the law.

The consultation will consider if these are the right criteria and thresholds. There is also consideration as to whether a Protect Duty should be used to improve security considerations and outcomes at public spaces (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).

What will the requirements be?

It is proposed within the consultation that different sizes of businesses operating PALs will be required to comply with different parts of the legislation. All will be required to do what is 'reasonably practicable' to comply with the law. The term 'reasonably practicable' is already a well-established and understood concept for organisations through health and safety legislation and fire safety regulations, which requires owners/operators to weigh a risk against the effort, time and money needed to mitigate it.

PALs would be required to assess the threat, leading to considering and taking forward appropriate and proportionate mitigation measures. It is envisaged that for many organisations and venues, these requirements would be simple changes to existing systems and processes, entailing nil or low new costs. Much of these are freely available such as staff training and awareness programmes, and it would be expected that all staff are aware of (and practice) their roles in response to different types of incidents. For larger organisations and venues with more complex operating environments, considerations and mitigating measures would be more significant.

How should compliance work?

The Government want to ensure that the Duty does not create unnecessary costs or burdens on staff resource or time. For many organisations falling under the Duty, it is anticipated that financial costs incurred will be minimal, and proportionate compliance can be achieved by undertaking simple measures such as regular risk assessment and preparedness activities, for example regular staff training.

It is assumed that an inspection regime would be required to provide the necessary assurance that those within scope of a Protect Duty are meeting its requirements. The Government aims to develop a light touch inspection regime, and will consider whether, and how far compliance could be assessed remotely and or through appropriate third-party agencies. It is envisaged that an inspection regime would use evidence-based risk assessments and other proportionate means to determine how and where inspections take place. This would take in to account the specific nature of the threat, as well as information regarding levels of compliance and concern. Given the severe impacts that could occur as a result of a breach of the proposed Duty, it is proposed that a new offence is created for non-compliant organisations who persistently fail to take reasonable steps to reduce the potential impact of attacks. An enforcement regime will be developed, with penalties primarily based on civil sanctions (such as fines) for organisations in breach of the Duty.

How should the Government best support and work with partners?

There will be a need to establish a range of appropriate guidance and tools for those in scope so they understand terrorist threats and attack methodologies, reasonably practicable mitigating measures, and processes to follow to ensure good security outcomes are achieved. This will build on existing measures such as the Action Counters Terrorism e-learning modules, the ACT App, and the planned Information Sharing Platform, an online terrorism awareness resource being developed by CT Police.

Implications to Pool Re Members and the wider insurance market

There are a number of implications for the insurance market should this legislation be enacted. From a property perspective, the issues primarily relate to terrorism underwriters, whose policyholders will be required to carry out risk assessments in respect of terrorism and protective security. Although the requirement to undertake such assessments specifically for terrorism will be new, most businesses already have to undertake risk assessments in respect of fire and indeed health and safety. As the largest reinsurer of terrorism risk in the UK, Pool Re will be working with its Members to understand these new requirements and embed them in its risk assessment tools.

Perhaps the most significant change presented by this legislation would be to the liability market. Not only will the legislation introduce new duties for businesses as regards both their employees and members of the public, but where a failure to perform such duties results in injury or harm, the chances of defending subsequent tort actions will inevitably be more difficult. Although many liability underwriters are Members of Pool Re through their property departments, other insurers and Lloyd's syndicates are not and so we will be working with both ABI and LMA, initially to ensure everyone is aware of the proposals and has the opportunity to participate in the consultation.

Next steps

Pool Re intends to participate fully with the consultation, acting as a conduit to Members for further information as well as providing opportunities to Members to meet to discuss their views. Pool Re will **host a webinar** on 14th April 2021, from 1100-1200 BST, to discuss, for the benefit of Members and interested stakeholders, the proposals as well as to explore the views of the UK insurance market. The Home Office will be represented by Shaun Hipgrave, Director Protect and Prepare, CBRNE, Science and Technology and Kevin McNulty, Head of the Publicly Accessible Locations Team from the Office for Security and Counter-Terrorism (OSCT). In addition, we are working with the ABI on engaging the wider industry in this initiative and Pool Re's Chief Underwriting Officer, Steve Coates, will highlight the insurance implications stemming from the proposed Duty. Members and others in the re/insurance sector are encouraged to contribute to the consultation by responding using the online form www.homeofficesurveys.homeoffice.gov.uk/s/1D4SQ3/