

## Contexts and Questions Around the UK's New Protect Duty

Written by Lee Jarvis, Michael Lister, Birgit den Outer, Dan Stevens and Nick Vaughan-Williams

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LEE JARVIS, MICHAEL LISTER, BIRGIT DEN OUTER, DAN STEVENS AND NICK VAUGHAN-WILLIAMS, OCT 30 2024

On 12 September 2024, the UK's new Terrorism (Protection of Premises) Bill was introduced in the House of Commons, with the second reading following on 14<sup>th</sup> October. A committee stage now follows, followed by a third reading, with the same stages repeated in the Lords, before the bill receives royal assent and becomes law. As is common in the counterterrorism space, the bill enjoys cross-party support in the United Kingdom. Then Prime Minister Rishi Sunak had committed his government to the new law before calling the election, including it in his final King's Speech in November 2023. The new Labour Prime Minister, Keir Starmer, has been a long term supporter too, writing to Figen Murray – its principal advocate – in the run-up to his successful election, promising its introduction as soon as possible. The measure is therefore almost certain to become law, probably early in 2025.

The measure has been long trailed, with the first draft bill published in May 2023, pre legislative scrutiny taking place before the Home Affairs select committee in the summer of 2023, and a public consultation occurring in early 2024. When it does pass as Law, the Protect Duty will represent the most extensive change to the UK's counterterrorism framework in the post-9/11 era. This is no small achievement, given the considerable counterterrorism activity that has already taken place in this period, with 7 major counterterrorism bills passed by Parliament since 2000.

The new bill, also known as Martyn's Law after Martyn Hett – one of the victims of the Manchester Arena attack in which 22 people lost their lives, and son of Figen Murray – will place significant new legal responsibilities on the owners, employees, and security personnel of hundreds of thousands of venues. Shops, restaurants, libraries, community centres and other public spaces will become integral to the UK's fight against terrorism. Venues such as these will now be required to undertake 'reasonably practicable actions' to prepare for and deal with terrorist incidents.

There are two tiers proposed in the bill before Parliament. Venues with a capacity between 200 and 799 will be subject to the standard tier, with lesser requirements focused around action plans and limited training requirements. Venues of 800 capacity and over will fall within the enhanced tier and will be required to undertake a larger range of protective measures. Protect is projected to cost £2.1 billion, with the additional costs affecting nearly 200,000 premises, dramatically extending the reach and scope of the UK's counterterrorism framework.

The bill is believed to be a necessary step given the shifting circumstances of recent political violence. A significant impetus behind the legislation is the apparent shift away from group-based, organised terrorism using relatively sophisticated means such as IEDs and weapons, to the less predictable violences of sometimes self-radicalised lone actors employing diffuse and low-tech violence. As Home Secretary, Yvette Cooper said in Parliament:

The public can be targeted at a wide range of public venues and spaces. We know too that the terror threat has become less predictable and potential attacks harder to detect and investigate. That is why everyone needs to be part of the measures we take to keep people safe—including those who run premises and events (Hansard 2024).

Under the plans for the new Protect Duty, venue owners and employees will now be identified as important and

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active contributors to the UK's national security in responding to terrorism.

One way of thinking about Protect is as an important acceleration of two existing trajectories in the post-9/11 counter-terrorism context. First, it progresses the legal widening of counter-terrorism responsibility that is evident in the UK's existing counter-radicalisation framework, Prevent. This framework has generated new obligations for public sector workers such as teachers and healthcare professionals to identify those who are at risk of becoming 'radicalised' and to intervene at an early, pre-crime, moment. Second it also continues a wider effort to "responsibilise" ordinary citizens as "detectives" or "stakeholders" in the delivery of security from terrorism. We see this, amongst other things, in terrorism information campaigns – *See it, Say it, Sorted* – and in the public communications efforts of police forces and public authorities.

Despite these wider trends, there are elements of Martyn's Law which are new and different. The main one is that where previous legal duties, such as the Prevent Duty, were focused on the public sector – and to some extent, extended existing legal responsibilities such as around safeguarding – Martyn's Law brings in a much wider spread of private business and the voluntary sector. Much of the pre-legislative scrutiny before the Home Affairs committee focused on the impact it may have on smaller, voluntary associations (and this may explain why the size of qualifying venue has increased from 100 to 200) but some of the biggest impacts could be felt by larger venues which may be required to enact significant changes. It could be argued that Martyn's Law is not that different to health and safety legislation, which places legal requirements on public and private venues to ensure that their premises are safe for public and workers alike. Whilst in legal form this may be the case, Martyn's Law also positions such venues as responsible for (elements of) *national security*. Guidance notes for the bill state that Martyn's Law will apply to all four nations of the UK because the bill is one which concerns 'national security' (which is a reserved, not a devolved, matter).

The proposed legislation raises a wide range of questions that necessitate urgent social science research. Firstly, will the measure work? Advocates of the measure see it as a cost-effective way to save lives, whereas critics have expressed concerns that the measure may displace rather than erase the locus of violence. Following the hardening of airport security after 9/11, and the liquid bomb plot in 2006, there was a notable shift for terrorist attacks to target "softer" targets and to do so using lower technology. The wave of knife and vehicle attacks which took place in Europe in 2016, 2017 could be seen as a response to the changed security environment. If Martyn's Law "succeeds" in becoming law, how will the UK ensure that it doesn't simply move violence and attacks to other, less protected locations? Or will its 'reasonably practicable measures' save lives?

Secondly, can "ordinary" citizens protect the UK against terrorism? How effective can private individuals, who lack wider training in security and counterterrorism, be in dealing with and preparing for terrorist incidents? The proponents of Martyn's Law stress that much can be achieved through relatively simple measures such as having a plan that all staff are aware of if an incident occurs, but critics have pointed to other issues with regard to training. The Independent Reviewer of Terrorism Legislation has expressed concerns that Martyn's Law may have unintended consequences.

This Bill is inviting all sorts of members of the public to become counter-terrorism specialists ... if there is an attack and it is by someone from a particular ethnicity, when you charge members of the public to become like counter-terrorism officers or to have a counter-terrorism posture, there is a risk that people are going to start saying, "Well, I'm not going to have someone with that ethnicity coming in," or, "I'm going to do extra searches for people who look like they come from that sort of background". The police and Security Service have strong legal and ethical frameworks, and people like me, who oversee that, try to make sure that people are not being discriminated against. But once you throw out a counter-terrorism duty to hundreds of thousands of citizens, the risks of unintended consequences are quite high (Hall, cited in House of Commons 2023).

Thirdly, and finally, how will the UK public respond to these new powers? Much of its success will, ultimately, depend on how the wider public views these measures and those responsible for their implementation. With the Security Industry Authority (SIA) appointed as the bill's regulator, private security services and staff will have important roles to play. To what extent will the public accept and approve of private security moving into policing and security areas

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which have traditionally been the preserve of state security apparatus? Ultimately the success of Protect will depend on the response of those whom it is designed to secure: you.

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