

Committee(s)	Dated:
Policy & Resources Committee – For Decision Planning & Transportation Committee – For Decision	3 June 2021 29 June 2021
Subject: Protect Duty Consultation Response	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Town Clerk & Chief Executive	For Decision
Report authors: Ian Hughes (Deputy Director), Transportation & Public Realm	

Summary

In the context of the high and continuing threat from terrorism in the UK towards publicly accessible crowded spaces, the Government are undertaking a public consultation towards a Protect Duty that would better define, guide & regulate the role of owners, operators and responsible bodies protecting crowded spaces from terrorist attack.

Alongside the broad objective of creating an improved culture of security awareness, the consultation is largely focused on considering how to ensure venues consider and manage the risk to their premises, and how those responsible for public spaces can better work together to address the threat of terrorist attack.

The City Corporation is well placed as a venue operator in its own right and as Highway Authority for most of the Square Mile to respond positively towards the consultation. Given the significant work done since 2017 to review & refine the way it approaches counter terrorism, the City will be able to provide examples of best practice covering structural governance, how to create a security-minded culture and the steps necessary to make physical security improvements to the public realm.

Using that experience as well as the City's role as health & safety regulator, the City will also seek to raise concerns as to how such a Duty can remain proportionate in terms of resources, cost & risk management and how it could be enforced.

The consultation ends on 2 July, so to enable officers to finalise a response with an appropriate degree of Member oversight, it is recommended that Members delegate the City Corporation's final response to the Comptroller & City Solicitor in consultation with your respective Chairmen & Deputy Chairmen.

Recommendation(s)

Members are recommended to:

- Note the consultation objectives and City Corporation responses outlined in this report;
- Delegate the detailed consultation response to the Comptroller & City Solicitor in consultation with the Chairmen & Deputy Chairmen of the Policy & Resources and Planning & Transportation Committees.

Main Report

Background

1. Recent years have seen an increase in terrorist attacks in publicly accessible locations across the UK and Europe, with the City of London itself being the target of terrorist planning & attack on more than one occasion.
2. In its 2019 manifesto, the Government committed itself to improving the safety and security of public venues in the context of counter terrorism, and in February this year, the Home Office launched a public consultation regarding a new 'Protect Duty' addressing roles & responsibilities for protective security & preparedness at publicly accessible locations across the UK.
3. This was against the background of recent inquests relating to terrorist attacks in London and Manchester, as well as calls for new legislation to make it a legal requirement for those responsible for such locations to consider the risk of a terrorist attack and to take appropriate steps to protect the public.
4. It is clearly appropriate for the City Corporation to respond to that consultation in its capacity as venue operator and highway authority, and for Members to have sight of, and approve, that response.
5. The closing date for this consultation is 2 July, but given the timelines for Committee and the need to approve the response from an officer perspective through the Senior Security Board, this report seeks to provide Members with a background understanding of the issues and the City Corporation's outline position. It then recommends the final response to the consultation be delegated to the Comptroller & City Solicitor in consultation with your Chairmen & Deputy Chairmen.
6. Otherwise, to note that the City Police provide both the City Corporation and the wider City community with professional support and advice via their Counter Terrorism Security Advisors (CTSAs). As such the City Police will be undertaking their own consultation response, with officers from both organisations liaising accordingly to ensure their respective responses are aligned.

Consultation Objectives

7. The consultation is intended to consider how the various responsible bodies can work together to develop proportionate measures to improve public security, and how such bodies are ready & prepared to take appropriate action were a terrorist attack to happen.
8. The Government appreciates that some organisations already implement security plans, training & awareness for staff and simple physical countermeasures. However, in the absence of existing legislation to clearly define some of these roles & responsibilities, the Government is concerned there is a lack certainty as to whether security considerations are being undertaken or addressed by all the appropriate bodies.
9. The consultation therefore seeks to consider what could be done to improve this position through 'reasonable and not overly burdensome security measures'. It is mindful of the impact legislative change can have, but the consultation stresses this should be balanced against the need to ensure that public safety & security is effectively considered.
10. As a result, the consultation seeks to consider four themes:
 - To whom (or where) should the legislation apply?
 - What should be the requirements?
 - How should compliance work?
 - How should government best support and work with partners?
11. The consultation also contains three specific proposals related to the potential introduction of a Protect Duty:
 - The Duty should apply to large organisations (employing 250 staff or more) that operate at publicly accessible locations
 - The Duty should apply to owners / operators of publicly accessible venues with a capacity of 100 persons or more
 - A Protect Duty should be used to improve security considerations and outcomes at public spaces

Consultation Response

12. The consultation is targeted at organisations, businesses, local authorities and public bodies who own or operate publicly accessible locations, including sporting, entertainment & meeting venues, high streets, schools & universities, medical centres, places of worship, government offices, transport hubs, parks, public squares and other open spaces.
13. Given its wide operational remit in the Square Mile and beyond, the City Corporation has a direct responsibility or partnership role in regulating or licensing a considerable number of such locations. It also directly manages a range of facilities likely within scope of the Duty, from schools, tourist attractions and open spaces to corporate buildings and markets, but for the

purposes of the response to the consultation, it is intended to focus on two areas, namely the City Corporation as venue owner / operator and the City Corporation as highway authority.

Security Culture

14. For large organisations, the consultation suggests organisational structures should be in place to enable the delivery of policy, planning & operational processes aligned with business needs and the legislative requirements. As part of this it specifically highlights the need for staff training & awareness, with the need for ongoing professional development for those in specialist security roles.
15. More broadly, the consultation also seeks to consider whether the Duty should include requirements for partnership working between responsible parties to ensure better public protection and organisational preparedness. It also seeks to identify ways to improve guidance and support to those who might be required to hold aspects of the new Duty.
16. The City is well placed to respond to this aspect of the consultation having learned lessons from past terrorist incidents in the Square Mile and beyond. In 2017, the City undertook a major review of its governance and culture around how it considered and sought to mitigate the risk from terrorist attack, and as a result, several new security focused cross-department multi-agency boards were introduced.
17. These boards are coordinated to deliver a collaborative approach across the organisation, embedding a better understanding of threat & risk management and enhancing our existing working partnerships with the City Police and other key stakeholders such as Transport for London.
18. Five such Boards now work together to deliver this approach (see Appendix 1), namely:
 - Senior Security Board to provide strategic governance & oversight
 - Public Realm Security Advisory Board to consider terrorist threat, risk and mitigation as it relates to public highway areas in the Square Mile
 - Security Advisory Board to undertake the same role for City-managed premises
 - HR Advisory Board to consider the City's obligations towards its staff in the context of security eg Action Counters Terrorism e-learning
 - Digital Security Board to consider cyber threats to the organisation
19. This integrated approach has delivered a security-aware culture across the organisation with a greater understanding and acceptance of responsibilities, requirements and priorities. Combining a joined-up approach with a robustness of process has delivered key improvements to the way the City addresses the risk of terrorism towards its staff, its venues and the public at large.
20. Part of that process has been to strengthen its partnership working with the City Police, Transport for London, key City commercial & cultural stakeholders

and the security services to draw in additional expertise at a strategic, tactical and operational level.

21. As a result, the Coroner for the Inquest into the London Bridge terrorist attack recognised the City's improved structure & governance, noting in particular the creation of the Public Realm Security Advisory Board with TfL and the City Police as key members.
22. However, in acknowledging the steps the City Corporation had taken, he was unsure as to what extent this had been mirrored across the country. This is addressed within the current consultation as there remains a concern that for those authorities not previously confronted by such issues, the appreciation and management of these risks is not well understood.

Venues

23. In terms of venues, the consultation suggests that counter terrorism responsibilities should adopt a similar approach to fire safety, namely that owners & operators have clear responsibilities for the control and ownership of their venues and can use appropriate systems & processes to mitigate risk. Similarly, the capacity of the venue could be used as an indicator of the level of legislative obligation, once again similar to existing fire safety legislation.
24. Given that most large venues already have various measures in place for anti-social behaviour reasons, the consultation envisages that for many organisations & venues, such requirements would simply require changes to existing systems & processes at nil or low cost.
25. There is however a degree of difference between measures necessary to address anti-social behaviour and those necessary to prevent harm from individuals motivated towards direct violence to others, and this is likely to be a significant consideration in understanding the additional measures necessary to proportionately address this risk.
26. Nevertheless, the City intends to support such proposals as a realistic and appropriate extension of the current legislative responsibilities for venue management, provided risk assessments & mitigation measures remain proportionate to the venue, its environment and the nature of the terrorist threat at the time.
27. The City intends to suggest that the recommendations could go further to consider the needs for coordination and agreement of security measures between duty-holders at events. The Fishmongers Hall inquest has highlighted how lack of communication and information sharing between a venue and event organisers can present vulnerabilities at venues.

Public Highway

28. The current terrorist threat can often appear random in nature given the increase in the number of attacks in public spaces that have no clear boundaries or well-defined entrance or exit points.

29. Such locations are often vulnerable to low sophistication methodologies such as knife attacks or the use of vehicles as weapons, and although difficult to combat, the Government wants to consider how it can do more to work with responsible parties to consider & achieve appropriate security measures in these types of public spaces.
30. The consultation points out that any publicly accessible location is a potential target, and seeks to consider:
 - How responsibilities for public spaces could be established
 - What would be reasonable & appropriate to expect of those responsible for public spaces to improve security
 - The potential role of legislation in addressing these issues.
31. As it stands, roles & responsibilities for counter terrorist protection in such spaces are unclear, particularly with regards to public highway. Highway Authorities have certain responsibilities to maintain these areas for road safety, slips, trips & falls etc, and must also be mindful of the need to consider crime, disorder and counter terrorism in the discharge of their statutory duties.
32. However, there is no clear and direct legal obligation for any one particular organisation to address the risk of terrorist attack, which implicitly acknowledges the difficulty in taking on such an obligation for areas that cannot be managed like a venue. Safety Advisory Groups exist for the purpose of providing oversight to the arrangements to manage major events on the highway, but responsibility for the day to day protection of the public on our streets is far less clear.
33. That is not to say Highway Authorities fail to address this issue, but as noted earlier in the context of the Inquest to the London Bridge attack, the extent to which these issues are understood & considered across the UK is highly variable. Equally an expectation to consider, assess and mitigate risk against every type of terrorist attack for every busy street and crowded space in the UK is unlikely to be realistic.
34. This issue is further complicated by the multi-agency jigsaw of local government. Any change to existing legislation would need to clarify the respective obligations towards local authorities, highway authorities, private landowners and two-tier authorities outside London.
35. Nevertheless, the City Corporation fully supports the ambition of raising awareness of the need to take into account counter terrorism measures when considering public realm design. The success of the Public Realm Board in delivering an innovative, joined up & holistic approach with the support of key stakeholders has been integral to the City's strategy. It has delivered a series of proportionate, buildable and affordable solutions that better protect the public without overwhelming the 'look & feel' of the City's public realm.
36. However, implicit behind the need for such a Board was the recognition of a gap in approach that had not been addressed through the use of other forums such as Community Safety Partnerships, Business Improvement Districts, Local Resilience Forums etc.

37. In taking this step to proactively consider the City's crowded spaces, the City Corporation also recognised the public's expectation that it needed to do all it reasonably could to keep the public safe, particularly in a part of the UK uniquely at risk given its role in the UK economy. This will be a key piece of learning the City will be including in its response to the consultation.

Regulation & Enforcement

38. The consultation suggests compliance with the above requirements would be demonstrated by providing assurance that the various threat & risk impacts have been considered and appropriate mitigations taken forward. It foresees a light touch inspection & enforcement model with compliance assessed remotely and / or through an appropriate third-party agency.
39. It also suggests that a new offence would be created for non-compliance, with organisations fined for persistently failing to take reasonable steps to reduce the potential impact of attack.
40. However, the consultation lacks clarity on who will take responsibility for ensuring compliance with these requirements. It is our understanding that the City Police would not be sufficiently resourced to undertake this duty for all potential risk owners, particularly as they expect a significant increase in demand for their CTSA guidance as a result of the Protect Duty in any case.
41. If a wider enforcement agency is envisaged, the same resourcing concerns would apply and it would need sufficient technical competencies to determine enforcement outcomes, but based on experience of similar Health & Safety legislation by the City's Commercial Environmental Health team, the value of inspection typically demands a local context in order to make robust, defensible and proportionate decisions.
42. The consultation also fails to address how an offence under the Protect Duty might sit alongside a legal failure or criminal sanction in the event of a terrorist incident, and given that some organisations such as leisure venue chains can exist across diverse geographical locations, there needs to be clarity on how those organisations can receive consistent advice and inspection.

Strategic Implications

43. A key objective of the Protect Duty is to drive forward an improved culture of security, where owners / operators can undertake informed security considerations and implement reasonable & proportionate security measures to deliver broader improved security outcomes.
44. As noted earlier, the steps the City Corporation has taken in the last four years to address these issues in the Square Mile would suggest it is well placed to respond to any change to Government legislation in this area. This aligns to the City's Corporate Plan of ensuring the public are safe and feel safe, with the City being able to positively support the Home Office and other

government agencies in terms of shaping the Protect Duty to ensure it's effective in meeting this objective.

45. Alongside sharing the positive outcomes, the City is also well placed to balance this with concerns regarding the ability of local government in particular to meet the financial implications of the Protect Duty should these be significant without additional central government support.
46. In addition, as trustee of Bridge House Estate, the City Corporation's proposed response would seek to clarify that responsibility for assessing public highway areas is a matter for the appropriate public body rather than the owner of a private structure below that highway.

Financial & Resource implications

47. The consultation seems to suggest that most of these legislative obligations could be met at little or no cost. However it does accept that some security measures would require more significant mitigation requirements such as implementing appropriate access control or reducing the risk of 'vehicle as a weapon' attack.
48. As the City has found through its recent Cross-Cutting Programme to protect its key buildings and the on-going Public Realm Security Programme to protect on-street crowded spaces, significant funding is typically needed to plan, design and implement some of these measures.
49. The City identified funding to deliver these measures via a combination of its City Cash reserves, CIL and the on-street parking reserve, but identifying further funding from these sources would need to be considered in the context of the City's wider funding position and its resource allocation process.
50. On the wider front, such sources of funding may not be available to other organisations across the UK, and concerns regarding the additional financial burden of any new obligations have been raised with the Government during the consultation engagement so far. The consultation itself is silent on whether additional government funding would be made available for this purpose, but the City intends to raise this issue in its response.

Legal & Risk implications

51. The City Corporation would clearly seek to comply with whatever additional responsibilities might arise from the consultation and any subsequent legislative changes. Adapting existing fire risk management approaches towards security seems proportionate in terms of venues, but establishing a Protect Duty for all public highway throughout the UK when any location can potentially be subject to an attack is clearly more challenging and would represent a step change in governance of such spaces.
52. In that context, the City has already taken reasonably practicable and proportionate measures to deliver enhanced security protection to its priority

crowded places under its existing governance, process and funding. However, not every street can be protected from every type of terrorist threat, which makes the identification and prioritisation of locations in conjunction with advice from the City Police crucial to managing & mitigating these risks.

Equalities & Climate Implications

53. None.

Proposal

54. In summary, it is proposed to respond to the consultation along the following lines based on the City's recent experience:

- The City is supportive of measures to create and enhance the security culture of organisations across the UK and is able to share examples of Best Practice to assist in that process.
- The City is supportive of the proposals to include proportionate counter terrorism obligations for venue owners / operators above a certain size.
- The City is supportive of Government seeking to clarify roles & responsibilities for protecting outdoor crowded spaces and is able to share examples of Best Practice of how to facilitate a coordinated and holistic approach to such a challenge.
- The City will reiterate that the impact & outcome of the proposed Protect Duty should be proportionate, and that it should be mindful of the potential additional cost burden on those likely to take on additional responsibilities.
- The City will also raise concerns regarding the need for clarity on the regulation & enforcement process based on its parallel experience of current Health & Safety legislation.

Conclusion

55. The City is well placed to respond to the Government's consultation on the Protect Duty. Given its position at the heart of London and the UK's economy, the City Corporation has had to address the threat of terrorist attack throughout much of its recent history, allowing it to place the current threat in the context of its continuing commitment to keep those who live, work and visit the City safe from harm.

Appendices

- Appendix 1 – City Corporation Security Governance

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Appendix 1 – City Corporation Security Governance

