

Written evidence submitted by the Local Government Association (TER0002)

1. About the Local Government Association

- 1.1 The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.
- 1.2 We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

2. Key messages

- 2.1 Acts of terrorism have a devastating and far-reaching impact on victims, their families and friends, and on communities more widely. Councils take the threats from terrorism very seriously and, work alongside wider partners to keep their communities safe.
- 2.2 We anticipate a number of implications for councils from the proposed legislation; as owners of premises covered by the duty; as leaders of place; and potentially in enforcing compliance. We raise a number of issues below, including the need for greater clarity on a number of issues, and the significant resource and capacity that are needed for successful implementation.
- 2.3 We broadly support, in principle, Government's approach to consider what more can be done to help protect local people and places from attacks and introduce new legislative measures that require those responsible for certain public premises and events to take proportionate steps in mitigation.
- 2.4 We agree with the core principle set out in the draft legislation and surrounding documents about the need to take a proportionate approach to a new duty. Any new requirements must not be unduly burdensome and must not inhibit our freedoms to enjoy the places that are a critical and much-loved part of local life, nor undermine efforts to open up access to facilities and encourage more people to participate in community events and sports.
- 2.5 Preparing for implementation will require substantial resources across sectors, a dedicated communications campaign to raise awareness of the new duty and a programme of support and guidance, with sufficient lead in time for those within scope to prepare.
- 2.6 Government should confirm as soon as possible where the regulatory functions outlined in the Draft Bill will sit. Any option that requires local authority enforcement would need to consider the significant existing pressures on resources, enforcement capacity and expertise that councils are already facing in delivering their existing regulatory duties.
- 2.7 The new duty should be one aspect of a number of measures to keep our communities safe from terrorism and other harms, complementing the many existing measures already in place. It is also vital that measures to increase

security continue to sit alongside investment in prevention programmes, that aim to stop people being drawn into terrorism, tackle extremism and build cohesion and resilience.

3. Councils and Martyr's Law

- 3.1 We agree that it is important to look at what more can be done to improve security at premises and events, and welcome the work to develop new and proportionate legislation in this space.
- 3.2 Councils already undertake considerable work with wider partners to assess and mitigate against the risks of terrorism at and around public premises and for particular events, alongside responding to a range of broader risks and threats to help keep communities safe.
- 3.3 We anticipate that councils will be impacted in several ways by the new legislation. Councils are responsible for a number of premises which are likely to fall within scope of the new duty; from local community centres, schools, recreational and sports facilities, museums, theatres, libraries and historic buildings to amusement parks – as well as a range of cultural and community events. As leaders of place, we expect that councils will also likely have a role in convening local partners subject to the duty to consider security measures across the wider landscape, and possibly also in a regulatory or enforcement capacity.
- 3.4 We set out below some examples of what councils are already doing in anticipation of the new duty, however there are a number of questions about how the legislation might operate in practice, the resource and capacity implications for councils, and preparation for implementation of the new duty, which we explore further below.

4. A proportional approach

- 4.1 We support the Government's proposal that the new duty must be proportional and not unduly burdensome for those within scope.
- 4.2 Councils are keen to encourage communities to come together as a key part of community cohesion, to use local recreational and sports facilities that boost residents' health and wellbeing, and support local businesses and the voluntary sector. Similarly, local authorities are keen, and have been encouraged, to do what they can to support community events through light touch approaches to licensing. It must be ensured that the new duty does not put the viability of these spaces, events and groups at risk.
- 4.3 It must be accepted that it is impossible to eliminate all risks and threats entirely. An appropriate balance must be sought that enables community facilities and groups to remain financially viable and continue to operate, whilst keeping people safe and without undue limitations on access and enjoyment of public places.
- 4.4 We are pleased to note that the capacity thresholds included in the draft Bill for the duty to apply have increased from those proposed in the original consultation, thereby reducing the number of premises within scope. Nonetheless, we remain mindful of the need to support local businesses and recreational facilities as many continue to feel the [effects from post-pandemic recovery](#), high energy bills and reduced spending as users focus on buying

essentials, and that the resource implications from the introduction new measures should be kept to the necessary minimum.

5. Specific issues requiring further clarity or consideration

- 5.1 We note that draft guidance on the duty is yet to be published. However, there is a need for urgent clarity on a number of issues, to enable those who may be subject to the duty to understand its implications and prepare for implementation. This is particularly important as many of those who will be captured by the legislation will be unfamiliar with the security space and their future obligations (there is also a risk that in the absence of official guidance, guidance will be sought from other sources, which may be misleading and expensive).
- 5.2 A number of provisions in the Draft Bill require further clarification, including:
- 5.2.1 The types of premises and events that will be in scope, where there may be ambiguity. For instance, “Shops etc” in schedule 1 of the Draft Bill broadly describes premises used “for the provision of a service”, which could be extended to additional local authority premises.
 - 5.2.2 “Persons responsible” for qualifying premises or events, who will be required to take certain measures under the duty. The proposals raise questions about who would fulfil this role, how to ensure their competence and how to achieve a consistent approach across the board. A further important question is whether those undertaking risk assessments could be personally liable for their advice.
 - 5.2.3 It must be clarified where this responsibility will fall when the owner of the premises and those operating from it are discrete (and how “cooperation notices” referenced in the Bill will apply), for instance in cases where a premises (or part of) is rented out or hired for a specific qualifying purpose (in some cases with multiple hirers). This should also consider how to avoid any inconsistencies in approach that might arise between several hirers/occupiers of the same premises.
 - 5.2.4 Who will be classified as “relevant workers” (required to undertake training etc); in particular whether this will also encompass volunteers. Much of the effectiveness of mitigation measures will be reliant on “relevant workers” implementing these competently and reliably. This raises issues about training and vetting staff (and potentially volunteers); some events for example might need additional staff/stewards and it may be difficult to verify qualifications/competence and the extent to which those personnel have been briefed or trained.
 - 5.2.5 How “express permission” should be construed under the Bill (in determining whether spaces being used for a specific qualifying event, or premises primarily comprising land in the open air, should fall within scope - and therefore the extent to which for example parks and open spaces will or will not be covered by the duty). We support the Government’s proposal that the duty should not be broadly applied to all public spaces as a matter of course; to do so could have, for instance, a negative impact on biodiversity, and may deter people from using these spaces, including groups who are already deemed less likely to do so.
 - 5.2.6 How the capacity of events will be assessed.

- 5.2.7 “Reasonably practicable” security measures to mitigate against risks; although this term is relatively well established and understood, care needs to be taken in written guidance to ensure those subject to the duty are confident in meeting this test, but which avoids measures that are too prescriptive, disproportionate to risk, or unnecessarily burdensome.
- 5.2.8 Whether the duty will apply to planning requirements for new premises.
- 5.3 Managing risks in the spaces outside specific venues also needs some consideration. These are not necessarily captured by the Draft Bill where those spaces do not fall within the definition of a premises or event, but nonetheless it is possible that mitigation measures introduced for one premises (for instance bag searches) effectively introduces new, or displaced, risks elsewhere (for instance queues in public space outside of venues or muster points).
- 5.4 Assessing and mitigating against terrorism risks sits alongside a range of other health and safety and safeguarding issues that local authorities and others must consider. Further clarity is needed about how Martyn’s Law will fit in a way that would ensure that specific terrorism risks are viewed in the context of the full range of risks being considered and ensure there are no unintended overlaps or contradictions.
- 5.5 This includes existing duties and delivery of work in the counter-terrorism space, such as the work undertaken by Community Safety Partnerships, Local Resilience Forums (in particular, how the new duty will be aligned to the requirements in the Civil Contingencies Act 2004), CONTEST boards, Safety Advisory Groups (SAGs), licensing teams, and under the Health and Safety at Work Act. One specific example is fire risk assessments; although the two risks differ in some respects, thought must be given as to whether the evacuation implications are different and how to ensure that separate risk assessments for evacuation in the event of a fire and of a terrorist attack avoids duplication and/or confusion.
- 5.6 It is important that local authorities have sufficient flexibility to meet their responsibilities under the duty in a way which best fits local circumstances, including across two tier areas.
- 5.7 The Manchester Arena Inquiry highlighted the important role the Licensing Act 2003 can play in improving the provision of event healthcare services through adding conditions to licences, to ensure staff can provide some level of care until emergency services arrive in the unlikely event of a terrorist attack. The inquiry recommended that the Government consider updating the section 182 guidance, which accompanies the Licensing Act, to set out what level of event healthcare should be required from licensees and what appropriate licensing conditions should be imposed. The LGA supports this recommendation.
- 5.8 It is also important that measures to increase security continue to sit alongside prevention programmes, that aim to stop people being drawn into terrorism, tackle extremism and build cohesion and resilience.
- 5.9 Another issue which requires further clarity is the potential for different actors to become liable should an attack occur - even where a risk assessment was undertaken, and mitigation measures introduced. We highlight above the need for clarity about who will be the “responsible person” in law; which raises

further queries, for instance, about whether an event organiser could potentially be responsible/liable for a venue it does not own; or a building owner be held responsible for the actions of those who use it, where risks are displaced from elsewhere.

- 5.10 There is an additional risk of unintended consequences from the duty that might arise because of the possibility of liability – for instance, recommending/introducing disproportionately high-level, disruptive or expensive mitigation measures to avoid future litigation.
- 5.11 Given the difficulties that have arisen in the housing sector from the unwillingness of insurers to provide Professional Indemnity Insurance to those conducting surveys of cladding systems or fire risk assessments in high rise residential buildings, the Government needs to make an assessment of the willingness of insurers to cover those giving advice on assessments under the duty to ensure that demand for such assessments will be met without imposing excessive costs through a ramping up of premiums. We are pleased that Government has committed to continuing with its policy to engage with the insurance industry to promote and incentivise compliance.

6. Regulation and compliance

- 6.1 We agree that effective implementation the duty will need some form of regulatory and enforcement function. The function must place sufficient emphasis on guidance and support to assist those subject to the duty to meet their requirements.
- 6.2 It is clear the regulator will have a significant role across a number of sectors, which includes providing early advice ahead of implementation. While the regulator has not yet been named, we understand that Government has previously explored whether councils should be responsible for this role (or part of it).
- 6.3 Councils' regulatory services functions have faced substantial resource and capacity concerns for some time. Significant reductions in local government funding, alongside the need to protect services such as adult social care and children's services, have led to regulatory services shrinking and a reduction in officer capacity. At the same time the number of statutory responsibilities being placed on these services has increased, adding to the pressure on already stretched services.
- 6.4 Enforcement would be an unwelcome burden for councils which would require significant resource and capacity; local authorities would need dedicated resources to fulfil this role if this was imposed. Given the large number of venues covered by the scope of the duty as it currently stands, any additional inspection burden over and above existing activities would need considerable resource. A new duty on councils for the inspection element of the proposals would need to be resourced as part of the New Burdens doctrine.
- 6.5 If councils were to be responsible for this element of the duty, there is a question as to where it should sit. Councils' environmental health, licensing and health and safety teams may provide some possibilities. However, this poses a number of challenges for councils which would need to be fully understood. These include councils having to develop specific expertise in counter-terrorism and currently having small health and safety functions which

are working at capacity and facing recruitment challenges. Additionally, while terrorism risks might be considered as part of the licensing process, not all venues to which the duty would apply are licenced.

- 6.7 If councils are given an enforcement role, this would raise a further question as to how the duty is enforced in local authority premises.
- 6.8 If local authorities were to take on the regulatory function, it should be clarified whether the council should recoup some costs through, for instance, licensing fees.

7. Resourcing implications

- 7.1 The Draft Bill documents are clear that the expectation is that costs will be borne by local authorities and central government to bring sites they own and operate into compliance.
- 7.2 Councils continue to face significant budgetary pressures across the board. We are very concerned about the financial implications of the new duty for councils, given the large number and range of premises and events councils are responsible for.
- 7.3 This extends to capacity pressures. Councils are already incredibly stretched when conducting their current roles and may have extremely limited capacity to take on a new initiative.
- 7.4 Inevitably, the new duty will impact on some areas to a greater extent than others. For some councils with multiple (particularly enhanced) sites within scope, such as areas with significant proportions of the local economy related to tourism and entertainment, this could mean a substantial burden. Furthermore, preparing for the implementation of the duty is likely to require significant investment in mitigation measures in a short period of time.
- 7.5 We are concerned about the implications for recreational venues, businesses and community groups, which are often reliant on income generation in order to survive. Any additional burdens could put them at risk or deter hirers/visitors if costs are passed on.
- 7.6 The impact assessment considers the cost implications for the introduction and ongoing maintenance of some physical mitigation measures, particularly for enhanced tier premises/events. It should be noted that some of the risks associated with certain premises/events will change over time in response to evolving threats, which could mean further measures are necessary.
- 7.7 Whatever guidance and support may be available at national level, this assessment should also consider the likely role of councils in fielding questions from local businesses and community groups, particularly in the preparatory stages of the new duty coming into force (local authorities have already received a significant number of calls from local businesses seeking advice on the duty), and their anticipated wider role as leaders of place in convening others subject to the duty to assess the risk picture across the wider locality, with inevitable resource implications. Effective risk assessment requires a holistic and overarching approach across a whole place, rather than considering risk simply on a premises-by-premises basis.
- 7.8 We note that a separate exercise is underway to determine the financial impact on local authorities, as part of a New Burdens assessment. This

exercise must be completed as soon as possible and should inform the wider impact assessment as already published.

8. Preparing for implementation

- 8.1 While it is important that new measures to protect the public are introduced promptly, the timescales for introducing the new duty should be carefully considered. Sufficient time must be available for preparation, training, recruitment of specialist advisors and assessors etc to be sourced before implementation can begin. For councils, the duty will impact a number of service areas and therefore processes and procedures will need to be adapted accordingly.
- 8.2 A significant national communications exercise is needed to ensure that those who will be captured by the duty are aware of their pending responsibilities. There is currently very little awareness in many sectors.
- 8.3 A substantial training and guidance programme will also need to be developed as part of implementation and should be made available before the new duty comes into force. Guidance/training on undertaking risk assessments, and appropriate and proportionate mitigation measures that meet the legislative requirements will be particularly important. Sample templates for risk assessments and evaluations, and good practice examples will also be welcome. It is also important that guidance and training is reviewed and refreshed regularly to reflect changes to risks and threats over time.
- 8.4 A particular concern is that many organisations potentially within scope of the duty would have little experience or expertise in the counter-terrorism field, including few local authority officers.
- 8.5 These issues require the urgent appointment of the regulator and central guidance to be made available. This would help to alleviate the additional resources burdens on councils in responding to local queries.
- 8.6 Prior to implementation of the duty, Government should look to learn from any relevant schemes or pilot programmes. This would help to inform the implementation of the duty and to determine what guidance and support will be necessary for the bodies, organisations and individuals to which the new duty applies. An important consideration in preparing any guidance will be the different circumstances faced by different types of local authority, as well as the different local contexts in different parts of the country.