

Martyn's Law

Lead department	Home Office
Summary of proposal	Provide a framework and legal basis for clarifying the responsibility of publicly accessible locations to protect members of the public from terrorism while they are visiting the premises.
Submission type	Impact assessment (IA) – 24 February 2023
Legislation type	Primary legislation
Implementation date	2025
Policy stage	Final
RPC reference	RPC-HO-5254(1)
Opinion type	Formal
Date of issue	15 March 2023

RPC opinion

Rating¹	RPC opinion
Not fit for purpose	Initially, the IA received an initial review notice from the RPC. The amended IA has addressed the issues affecting the EANDCB figure satisfactorily but has not improved the assessment of impacts on small & micro businesses sufficiently. The IA does not provide evidence that the proposal would reduce terrorism for small venues, or that a new regulator with national inspectors would be efficient compared with local compliance.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision (IN)	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	£199.6 million (initial IA estimate) £242.0 million (final IA estimate)	£242.0 million (2019 prices, 2020 pv) Further IAs to be submitted if there are policy developments affecting the EANDCB.
Business impact target (BIT) score	£1,209.8 million	£1,210.0 million
Business net present value	-£2,073.0 million	
Overall net present value	-£2,172.0 million	

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality²	RPC comments
EANDCB	Green	The IA has addressed satisfactorily the three main issues affecting the calculation of the EANDCB. The adjustment to the appraisal period, addition of costs in relation to outdoor events and re-classification of the benefits of reduced crime to indirect have increased the EANDCB figure and its robustness.
Small and micro business assessment (SaMBA)	Red	The SaMBA includes a breakdown of costs by business size and has been expanded to discuss disproportionality of impact and, to a degree, mitigation. However, the additions are insufficient to meet better regulation framework requirements. The IA needs to address disproportionality, mitigation and exemption further, as described in more detail below.
Rationale and options	Weak	The IA discusses market failures, including negative externalities and information asymmetry. The IA now includes greater discussion of alternative options, such as self-regulation and centralised funding. For a measure with such significant impacts, the RPC is concerned that the IA does not provide evidence that it would reduce terrorism – particularly, the low-level activity required from c.279,000 smaller venues. Further, the IA does not explain fully why local authority inspectors could not ensure compliance, as they fulfil requirements of other regulation on such venues, as opposed to creating a new national regulator and team of compliance staff across the country.
Cost-benefit analysis	Weak	The IA's assessment of benefits has been strengthened and this could be developed further to incorporate impacts other than avoidance of fatalities. The estimates of cost of the proposal are also subject to considerable uncertainty and the IA would benefit from further discussion of risk, uncertainty and sensitivity of the figures to assumptions.
Wider impacts	Weak	The IA covers impacts on the regulator and on trade. It would benefit from an assessment of impacts on competition, including a stronger assessment of potential market exit.
Monitoring and evaluation plan	Good	The M&E plan usefully includes details of project governance, evaluation questions that will be addressed and the types of research methods that will be used, mapped to policy objectives.

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

Response to initial review

As originally submitted, the IA was not fit for purpose for four reasons:

i) Incorrect appraisal period and base years

The IA used a 12-year appraisal period, where the first two years had no impacts, resulting in an artificially reduced EANDCB figure.

ii) Direct/indirect classification

The IA incorrectly treated a reduction in crime resulting from the installation of counter-terrorism (CT) measures, such as CCTV, as a direct benefit to business.

iii) Missing impacts

The IA's omission of outdoor events, such as festivals, from the calculation of the EANDCB did not appear to be proportionate.

iv) SaMBA

The SaMBA needed to be improved by discussing disproportionality of impact more clearly and, where such impacts are identified, mitigation methods.

The first three issues related to the EANDCB figure. The Department has now correctly used a ten-year appraisal period starting in the first year of impacts, treated benefits to business from reduced crime as indirect and included an estimate of the cost in respect of outdoor festivals in the EANDCB. The revised IA has addressed these issues satisfactorily and the RPC is now able to validate the EANDCB figure.

The SaMBA has been expanded to discuss disproportionality and, to a degree, address mitigation. However, the improvement is insufficient to address fully the better regulation framework requirements in relation to assessment of impacts on small and micro businesses. The areas where the SaMBA needs to be improved further are set out in the SaMBA section below.

Summary of proposal

The proposal would provide a framework and legal basis for clarifying the responsibility of 'Publicly Accessible Locations' (PALs) to protect members of the public from terrorism while they are visiting the premises. It would establish a tiered requirements framework:

- Standard Tier – would primarily seek to drive good preparedness outcomes. Responsible persons will be required to undertake simple (comparably to the enhanced tier) low-cost, yet effective, activities to improve understanding of the terrorist threat and response arrangements. The standard tier is aimed at

raising the foundation of security across the UK in order to provide a force multiplier for the outcomes which are being sought within the enhanced tier.

- Enhanced Tier - would see the highest level of requirement placed upon high-capacity premises in recognition of the potential consequences of a successful attack, such as that seen at the Manchester Arena in 2017. It would require premises to take forward a risk assessment and subsequently develop and implement a security plan. In doing so, these premises would need to consider a range of mitigations and decide which are proportionate and necessary to implement to protect visitors and staff from a terrorist attack.

The proposal applies to certain PALs, which can include venues such as sports stadia, festivals, music premises, hotels, pubs, clubs, bars, retail stores, shopping centres, markets, places of worship, and transport hubs. The proposal would directly affect the persons in control of premises with a capacity of 100-persons or more (100-799 persons for the standard tier, and 800 persons or more for the enhanced tier). In addition, there is the potential for other premises to be within scope including charitable premises, government and local authority buildings, hospitals, police stations, and courts. The IA estimates that around 279,000 and 24,300 premises will be in the standard and enhanced tiers, respectively. The large majority of these premises are in the retail and hospitality sectors.

The IA estimates a net present value of -£2.7 billion (-£2.2 billion in 2019 prices; 2020 present value base year). This consists of £0.6 billion million set-up/year 1 costs and £2.1 billion ongoing costs. The most significant costs relate to CT interventions (£267 million in year 1 and £837 million over the rest of the appraisal period), risk assessments (£649 million) and training (£376 million). The NPV figure nets off £18 million in monetised benefits from reduced crime. Nearly all of the costs are borne by business, with the business NPV being -£2.6 billion (-£2.1 billion). The EANDCB is estimated at £242.0 million in 2019 prices, 2020 present value base year.

EANDCB

The EANDCB has increased by over 20 per cent since original submission, from £199.6 million to £242.0 million. This is explained by the following three adjustments in response to the RPC's initial review, listed in order of significance of adjustment to the EANDCB.

Methodology – appraisal period

The IA now uses an appraisal period of ten years, starting in 2024 when impacts are first incurred (these are set-up/preparation costs ahead of full implementation of the measure in 2025). This is in accordance with better regulation framework guidance and means that the EANDCB figure is no longer artificially reduced by including two years before impacts are incurred.

Missing impacts – outdoor events

The original IA excluded outdoor events, such as festivals, on the basis of a lack of information on the number of events. The RPC considered it likely that there was sufficient publicly available information on large, ticketed outdoor events to make at least a partial estimate. The IA now uses data from the Associate of Independent Festivals to include an estimated cost in relation to 975 music festivals, all of which are assumed to have a capacity large enough to fall in the enhanced tier. The IA's approach to including outdoor events in the analysis now appears to be proportionate.

Direct/indirect classification – benefit of reduced crime

The IA assesses that the installation of CT measures, such as CCTV, will reduce crime and, using HO values for the cost of crime, monetises an associated benefit. Following discussions with the RPC, the department now treats the benefit to business as an indirect impact, slightly increasing the EANDCB figure. This is consistent with RPC guidance.³ The benefit comes as a by-product of a measure targeted at something else (terrorism) and there are a number of steps involved in realising any such benefit.

The department has now also provided reassurance on other issues related to the EANDCB, notably on the cost of externally provided training and familiarisation costs. On the former, the IA now notes that training will be provided for free through the Protect UK function and Counter Terrorism Policing's (CTP) existing training. On the latter, the IA discusses how the estimates in relation to CT planning and risk assessment allow sufficiently for more detailed consideration by business of what the requirements mean and how to meet them.

Overall, the RPC is now content to validate the estimate of the direct impact on business for business impact target reporting purposes. The IA could be improved by referencing more clearly the evidence base for some assumptions, such as input from industry or experience from other measures.

SaMBA

The IA explains the difficulties in estimating the number of SMBs affected, given that the criterion for the proposal is the capacity of the premise and there are limited data connecting this to business size. Nevertheless, the SaMBA usefully includes breakdowns of costs by business size, and addresses impacts on medium-sized businesses. The SaMBA has been expanded to discuss disproportionality and, to a degree, address mitigation. However, the improvement is insufficient to address fully the better regulation framework requirements in relation to assessment of impacts on small and micro businesses.

³ <https://www.gov.uk/government/publications/rpc-case-histories-direct-and-indirect-impacts-march-2019>

Disproportionality

The SaMBA estimates that the average cost to a small or micro business is lower than the average for all businesses. However, in the enhanced tier, where costs to business are much higher (at around £80,000 per business over ten years), the cost to a small or micro business is estimated to be only slightly lower than that for larger businesses. The SaMBA needs to make it clearer that this represents a proportionately higher burden for small and micro businesses. The SaMBA also needs to discuss further the impact of these costs on the viability of smaller businesses (see also comments under 'market exit' under 'wider impacts' below). This should include discussing the wider impact on small venues in terms of the responsibility cost that small venues may not be able to meet, for example if they are run by volunteers.

Mitigation

On mitigation, the IA describes the free provision of training and exclusions from the enhanced tier for high-capacity sites that may have low levels of attendance, such as places of worship. However, given the relatively high and uniform cost across businesses of different sizes in the enhanced tier noted above, the SaMBA needs to expand its consideration of mitigation options to cover the cost of risk assessments and subsequent CT interventions. (These costs are faced by businesses in the enhanced tier and are the two largest costs in overall terms).

Exemptions

The SaMBA rightly refers to the better regulation framework guidance being that the default position is to exempt SMMBs (small, micro and medium businesses) fully from the requirements of new regulatory measures. The IA rules this out on the basis that the evidence suggests the objectives of the Martyn's Law regulation would be compromised by exempting SMMBs. The IA states that "*Due to the terror threat in the UK being diverse and threat-agnostic, there is no evidence that SMMBs are less at risk compared to any other premises in the UK*" (paragraph 235, pages 47-48). However, the footnote source cited seems to relate mainly to a variety in the origin of threats rather than in potential targets. The IA needs to discuss what evidence is available, and any steps the department has taken to obtain it, around any relationship between the risk of terrorist incidents and business size.

The RPC and framework SaMBA guidance is that the IA should address how much of the intended benefits from the proposal would be maintained if an exemption was applied. The RPC recognises that this is particularly challenging for a proposal where it is not possible to monetise benefits. Nevertheless, it would seem proportionate for the SaMBA to at least provide further discussion of this, such as through a qualitative assessment of the incidents listed at paragraph 6 (pages 4-5) of the IA. The IA could also discuss the feasibility and utility of dis-aggregating its estimated minimum economic cost resulting from UK terrorism deaths (paragraph 190, pages 38-39) to inform how much of the benefit of the proposal might be lost, or objectives of the policy compromised, if an exemption was applied.

On the basis that it might be expected that businesses in the standard tier will tend to be smaller businesses, the SaMBA would benefit from discussing further the likely cost effectiveness of requirements in this tier compared to the enhanced tier (see comment under 'cost benefit analysis').

Medium-sized business considerations

The SaMBA also provides analysis for medium-sized businesses, in line with the Government's widening, to businesses with fewer than 500 employees, presumed exemptions on regulation. The assessment rules out exemptions for small, micro and medium-sized businesses on the basis that it would significantly undermine the effectiveness of the policy. The medium-sized business assessment would benefit from strengthening, along the lines of that discussed above in relation to SMBs.

Rationale and options

The IA provides evidence of the scale of costs imposed by terrorism in the UK and discusses its proposed intervention in the context of market failures, including negative externalities and information asymmetry. For a measure with such significant impacts, the RPC is concerned that the IA does not provide evidence that the measures would reduce terrorism – particularly, the low-level activity required from c.279,000 smaller venues.

Following the RPC's initial review, the IA now includes greater discussion of alternative options, such as self-regulation and centralised funding (paragraphs 30-34, pages 11-12), and alternatives to the maximum capacity of a premise as the criterion for defining who is subject to the regulatory requirements (paragraphs 44-51, page 14).

Further, the IA does not explain fully why local authority inspectors could not ensure compliance, as they fulfil requirements of other regulation on such venues, as opposed to creating a new national regulator and team of compliance staff across the country.

The IA has also slightly expanded its discussion of international comparisons (paragraph 17, page 9). However, the IA could discuss further why such regulation has not so far been chosen in other countries with recent significant history of terrorist activity.

Cost-benefit analysis

Assessment of societal benefits

The IA explains why it is not possible to monetise the benefits of the proposal and discusses this area qualitatively. However, following the RPC's initial review, the IA's assessment has been expanded to include more information on the scale of the cost of terrorism in the UK. This uses data on deaths in the UK from terrorism over 2011-21 and HO estimates of the minimum economic cost of a death from terrorism (paragraph 190, page 39). The resultant overall minimum cost from terrorism is much lower than the estimated cost of the proposal but does not include, for

example, the cost of non-fatal injuries or indirect impacts. The IA's assessment of benefits would be improved by further consideration of the likely scale of these impacts, perhaps, for example, by drawing in more detail on the RAND Europe study quoted. The IA would also be improved by discussing further the risk that terrorism might be displaced rather than necessarily reduced overall, with more incidents in less defended locations, such as public streets.

The IA would benefit from clarifying whether the RAND Europe estimate of a £43.7 billion cost to the UK of terrorism between 2004 and 2016 is annual or a figure spread over the 12-year period, and from commenting on its robustness.

The IA has added some additional consideration of the likely cost effectiveness of the standard tier (paragraph 55, page 15) but would benefit from discussing further the relationship between the limited actions required and a proportionate reduction in risk of terrorist incidents or harm.

The IA states that the proposal would provide re-assurance to the public, leading to a less fearful population and a positive mental health benefit to society. The IA would benefit from considering the possibility that placing obligations on many small venues to raise awareness of terrorism could also increase public anxiety.

Risk and uncertainty

The RPC's initial review noted the considerable uncertainty around the estimates in the IA, in particular the number of businesses already taking actions that would go some way to compliance with the proposal, the nature of required additional actions and their individual cost. The RPC noted that there would appear, therefore, to be scope for costs to be potentially much higher than those estimated. The RPC suggested providing greater clarity around whether individual assumptions for key costs have been tested with industry. In response, the IA usefully notes (paragraph 229, page 45) that key research figures in the IA have been checked and tested with industry, using the Counter Terrorism Business Information Exchange. The IA would benefit from further discussion of risk, uncertainty, the evidence base for assumptions and sensitivity of estimates to assumptions.

Presentation

The IA sets out clearly how set-up/year one costs have been calculated. The IA would benefit from presenting the same amount of detail for the calculations of the more significant ongoing costs.

Wider impacts

The IA monetises impacts on the regulator, provides an assessment of trade impacts and assesses equality issues. Following the RPC's initial review, the department has usefully added assessments of market exit and insurance impacts (paragraphs 252-258, pages 50-51). The department's assessment is that businesses will be able to pass costs on to consumers, suggesting that the risk of market exit is low. The IA would benefit from assessing further the potential impact of significant costs on businesses in the enhanced tier, which may be operating on low margins and be

subject to other cost pressures. The assessment would also benefit from being broadened into an assessment of impacts of the proposal on market competition, employment and consumers. The IA would also benefit from a brief assessment of impacts on innovation.

Monitoring and evaluation plan

The IA states that a post-implementation review will be conducted within four years of the commencement of Martyn's Law. The IA includes a good monitoring and evaluation plan for primary legislation. This usefully includes details of project governance, description of the different phases of the evaluation, evaluation questions that will be addressed and the types of research methods that will be used, mapped to policy objectives.

Other comments

The IA notes a risk of increased costs due to continued policy development, in particular for the enhanced tier where training requirements may increase as the policy is developed with CTP (paragraph 232, page 45). The department should set out how any such policy developments would be assessed, for example through a revised primary legislation, or enactment stage, IA, and/or through any secondary legislation and/or regulator stage assessments. If any policy developments are expected to have an impact on the EANDCB figure, the RPC would expect to see further assessment(s) for scrutiny.

Regulatory Policy Committee

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