

PopplestonAllen

Martyn’s law

Terrorism (Protection of Premises) Bill / Protect Duty

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Topics covered

- What is Martyn’s Law?
- Why Martyn’s Law?
- What premises are in scope?
- Who is responsible?
- What are the requirements, including the Consultation published in February 2024?
- Investigation, penalties and offences
- Guidance
- Next Steps
- Questions



What is Martyn's Law?

- 'Legal requirement on certain venues to consider threat from terrorism and implement proportionate measures'
- AKA 'Protect Duty'
- Move from voluntary to compulsory
- Similar to H&S or Fire Safety
- 'Proportionate' burden on businesses



Why Martyn's Law/Protect Duty?

- Between 2004 and 2016 the cost of terrorism to business in the UK estimated £43.7 billion
- 14 terror attacks since 2017
- Diverse and evolving threat on public places
- Self-radicalised terrorists
- Low-sophistication attacks
- Identification and disruption difficult
- Intelligence and Security Committee Report 2017
- Manchester Arena Inquiry June 2021
- Govt. consultation July 2021



Terrorism (Protection of Premises) Bill – What is it?

- ‘Standalone’ code
- Further detail in regulations
- Extent – all of the UK
- Draft Bill published 2nd May 2023
- Pre-legislative scrutiny by the Home Affairs Select Committee
- Reaffirmed in King’s speech November 2023
- Consultation on Standard Tier February 2024

What Premises are in scope?

- “Qualifying Public Premises”
  - Primary use:
  - ➢ Shops for retail sale, display of goods or provision of a service principally to members of the public.
  - ➢ the sale of food or drink principally for consumption on the premises by visiting members of public.
  - ➢ Night-clubs, social clubs or dance halls.
  - ➢ Premises used for entertainment activities.



Qualifying Public Premises

- Descriptions of entertainment activities
  - Performance of a play
  - Performance of comedy
  - Exhibition of a film
  - Indoor sporting event
  - Boxing or wrestling entertainment
  - Performance of live music
  - Playing of recorded music
  - Performance of dance or acrobatics
  - Entertainment of a similar description to any of those above



Qualifying Public Premises

- Sports grounds – as defined in Section 17(1) England, Wales and Scotland by the Safety of Sports Grounds Act
- Premises used for recreation, exercise or leisure by visiting members of the public
- Libraries, museums and galleries etc
- Exhibition halls, conference centres or venues for hire for events or activities
- Visitor attractions – cultural, historic, touristic or educational
- Hotels, hostels, boarding houses, guest houses or holiday parks
- Places of worship



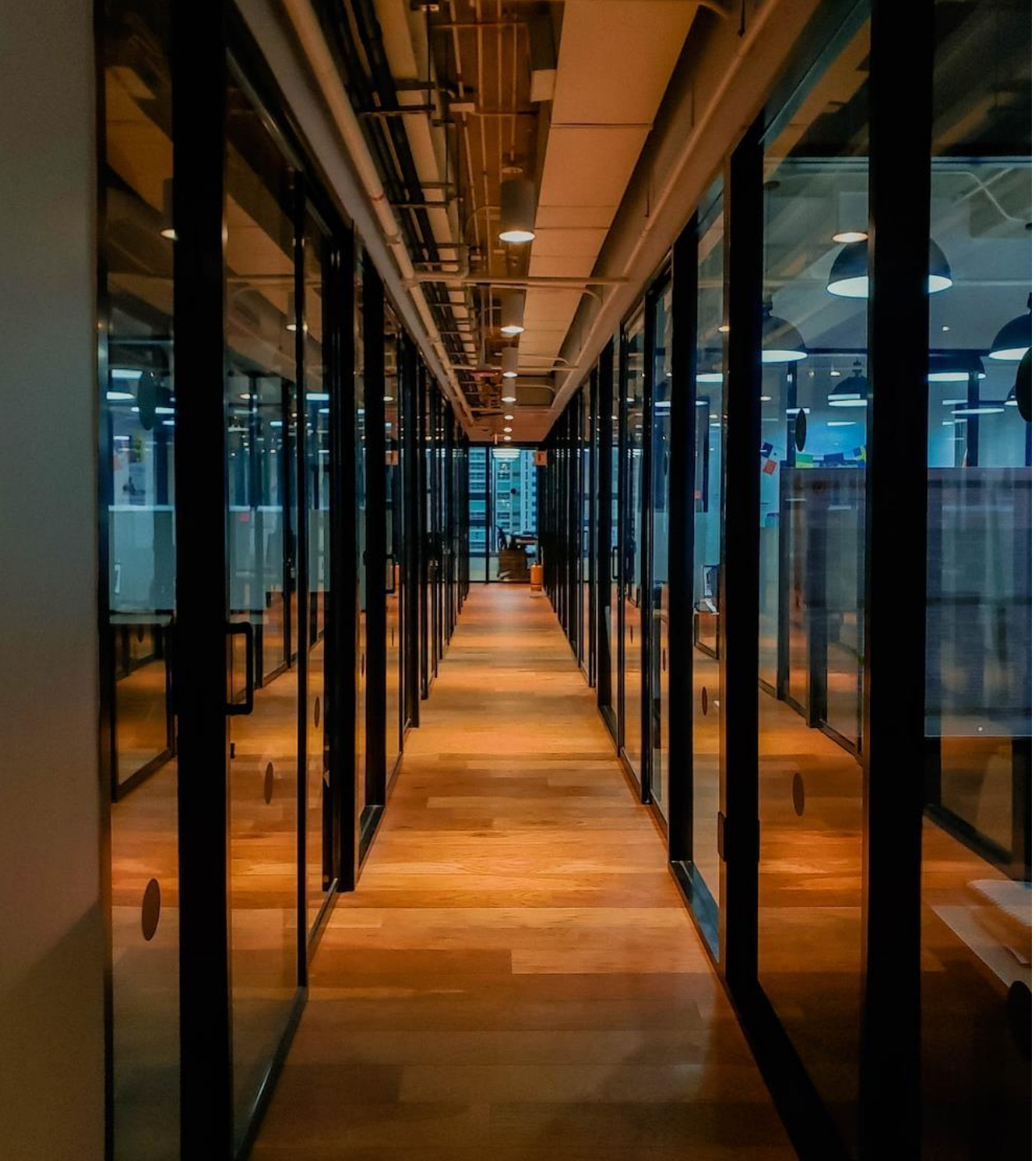
Qualifying Public Premises

- Health care – hospital etc
- Bus stations, railway stations etc
- Aerodromes
- Child care
- Primary and secondary education
- Further education
- Higher education
- Public authorities



Qualifying Public Premises cont’d

- AND MUST
- Be accessible in whole or in part to the public
- AND
- Have a public capacity of 100 or more
- AND
- If Qualifying Public Premises are outdoors admission to the public is by express permission (does not need to be by way of payment or ticket)
- If Qualifying Public Premises are indoors admission to the public is by express or implied permission



Qualifying Public Events

- Qualifying public events
  - Event held at non-qualifying public premises:
  - Public have access to the event
  - Express permission only (whether or not on payment)
  - Premises have public capacity of 800 or more
- Access to the qualifying event must be by express permission only which implies control of entry/boundary but not necessarily by payment or ticket



General points

- Definition of “premises” – clause 43(3).
  - A building, including land occupied with the building.
  - Any other land which has a readily identifiable physical boundary, whether permanent or not.
  - Temporary outdoor premises and events?
- Stores within shopping centres – both possibly qualifying public premises (the store and the overarching shopping centre).

Two-tier system

- **Qualifying public premises:**
- Enhanced duty - capacity of 800 or more
- Standard duty – 100 to 799
- Some exceptions e.g. Places of Worship (always standard tier unless a charge made for entry)
- **Premises capacity below 100 outside scope of Duty.**
- **Qualifying public events:**
- Always enhanced duty (regardless of attendance numbers)

Standard Tier – Consultation published February 2024

- Consultation published on 5th February and runs for 6 weeks.
- ‘significant’ feedback that requirements imposed on premises within the Standard Tier should be proportionate, having regard to the impact on the businesses responsible for premises falling within the Standard Tier.
- Gov reviewed approach to Standard Tier, now ‘proposing changes to ensure that requirements are proportionate and clear’
- ‘whilst ensuring that these achieve their primary objective of this tier: to implement simple procedures which could reduce harm and save lives in the event of an attack’.

Standard Tier – original draft

- Originally:
- 1. Requirement for basic terrorism training
- All relevant (FOH) workers
- Refreshed yearly
- Possibly 1m+ workers
- 2. Standard Terrorism Evaluation to be completed.

Standard Tier: revised requirements

- **Notify the Regulator** that they have become or are responsible for the premises within the Standard Tier.
- Have in place reasonably practicable procedural measures to reduce the risk of physical harm to individuals at the premises in the event of an attack either occurring or being suspected as about to occur. **It is not expected or required that any physical alterations be undertaken, or additional equipment purchased for Standard Tier premises.**
- **Gone**: “Standard Terrorism Evaluation”
- **Gone**: “Terrorism Training”.
- **But** procedural measures should include those working at the premises being sufficiently instructed or trained to carry out those measures in the event of an attack happening or a suspected attack about to happen.
- Training by another name?



Enhanced Tier-Terrorism Risk Assessment

- Must be completed and kept up to date
- Reviewed at least every twelve months
- Identify **Reasonably practicable** measures to reduce:
  - risk of terrorist attack
  - risk of physical harm

  Measures e.g., searching, screening, lighting, access control



Enhanced Tier - Training

- Requirement to provide terrorism protection training to each relevant worker
- Worker’s full time or other status irrelevant
- But may be relevant to what training is appropriate
- Timing – before “start” work for the first time
- Types of acts most likely
- Warning signs/indications of terrorism
- Procedures to be followed
- Tailored to use and premises

Enhanced Tier - Security Measures

- **Positive duty** to take measures identified in risk assessment e.g:
    - monitoring premises
    - movement of individuals in and out
    - procedures if acts of terrorism occur
        - including
            - alerting emergency services
            - alerting people present, evacuation or invacuation and securing the premises
        - security of sensitive information
        - other measures as prescribed
    - Proportionality test

Enhanced Tier – Security Plan

- Must set out prescribed information including:
- Details of premises or event
- Person Responsible
- Designated Senior Officer
- Terrorism Risk Assessment
- Security measures
- Terrorism Protection training
- Must provide to Regulator



Who is Responsible?

- Public premises – person who has control of the premises (shop owner, licensee etc) in accordance with Schedule 1 use.
- Public event – person who has control of the premises in relation to that specific event (festival organiser).
- Body corporate or individual
- Can have jointly responsible persons
- Schedule 1 specifies certain responsible persons in specific cases



Designated Senior Officer

- Enhanced Tier only
- DSO responsible for
  - Co-ordinating risk assessment
  - Security plan
  - Responses to/from Regulator
- Person Responsible must appoint a DSO
- DSO has to be an individual not a company

The Regulator

- The “Regulator” - public authority or secretary of state
- Person responsible (“PR”) must register with regulator.
- Regulator has power to:

    issue penalties

    issue notices for compliance/restriction

    close premises and events

Ethos is collaborative improvement and education



Investigation and Enforcement

- Co-operation Notices
- Issued by PR to another person who has control of the premises or event
- Where PR reasonably requires that other person to co-operate in order for PR to comply with requirements under the Act
- Co-operation notice must be sent to the Regulator
- Cannot require steps outside other party’s control or disproportionate burden.



Contravention Notices

- Issued by Regulator
- Requires person to comply within a specified period
- Right of appeal
- Before contravention notice, the regulator must
    - notify the person of intention
    - give the person an opportunity to make representations
- Can be appealed to Tribunal



Restriction Notices

- Only apply to enhanced duty premises or qualifying public events
- Issued where regulator believes the person is contravening a requirement and
- Necessary to protect the public from risk of harm
- Can restrict use of premises, times, description or maximum number of members of public permitted or specified conditions
- Notice of intention and opportunity for person to make representations must be given first (but not if there is an “urgent need”)
- Duration six months (with maximum three-monthly extensions)
- Can be appealed to the Tribunal

Appeals

- Grounds of appeal for contravention notices and restriction notices:
  - error of fact
  - wrong in law
  - unfair or unreasonable for any other reason
- Contravention notice suspended pending appeal
- Restriction Notice **not** suspended pending appeal



The Tribunal

- Appellate function
- Deals with appeals by interested persons regarding whether:
    - premises or events are in scope
    - •the identity of the Person Responsible
- Appeals against contravention notices
- Appeals against restriction notices
- Appeals against penalty notices



Investigation and Enforcement

- Regulator has power to:
  - conduct investigations into any contravention
  - appoint inspectors
  - Require provision of information by notice or attend a meeting
  - Apply for warrant to enter premises, or without warrant on 72 hours' notice
- Must be necessary for the purposes of a Terrorism Protection Investigation

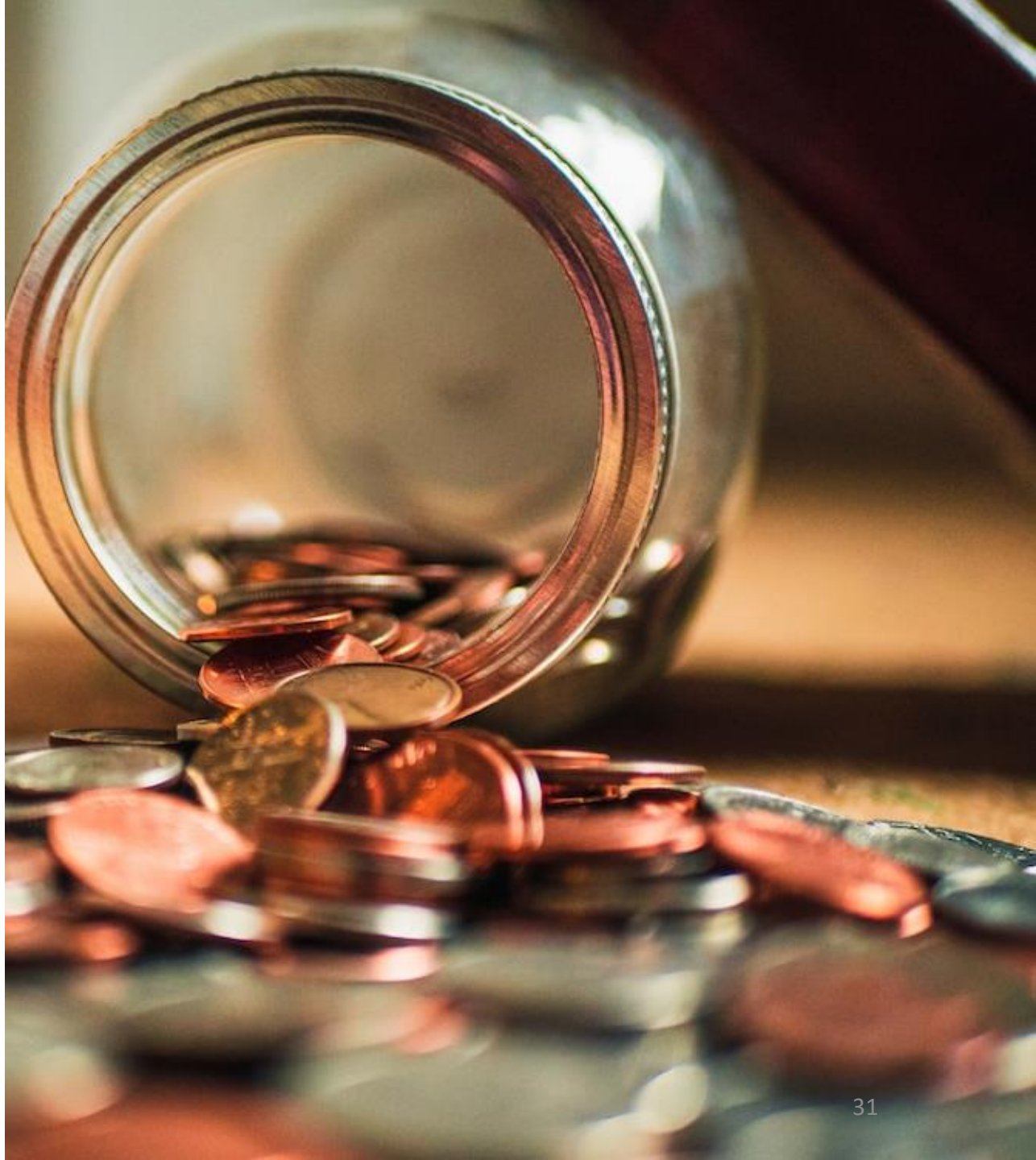
Penalties and Offences

- **Penalty Notices**
- Regulator can give a penalty notice
- One per contravention
- Payable in no less than 28 days
- Can be given in combination with a contravention or restriction notice
- **Maximum amounts**
    - standard duty premises £10,000
    - enhanced duty/qualifying public event £18m or 5% of qualifying worldwide revenue (whichever is the greater)

- Daily penalties
- In addition to a fixed penalty
- Maximum amounts
    - standard duty £500 (per day)
    - enhanced duty/qualifying event 1% of the fixed penalty
    - aggregate daily penalties cannot exceed the fixed penalty

Offences

- Failure to comply with a contravention notice
- Defence of taking all “reasonable steps” to comply
- Up to 2 years on indictment and unlimited fine
- Individuals as well as bodies corporate can be liable (directors, managers etc)
- Other offences (providing false information, obstruction etc.)



Guidance and Support

- Statutory Guidance must be issued by the Secretary of State regarding:

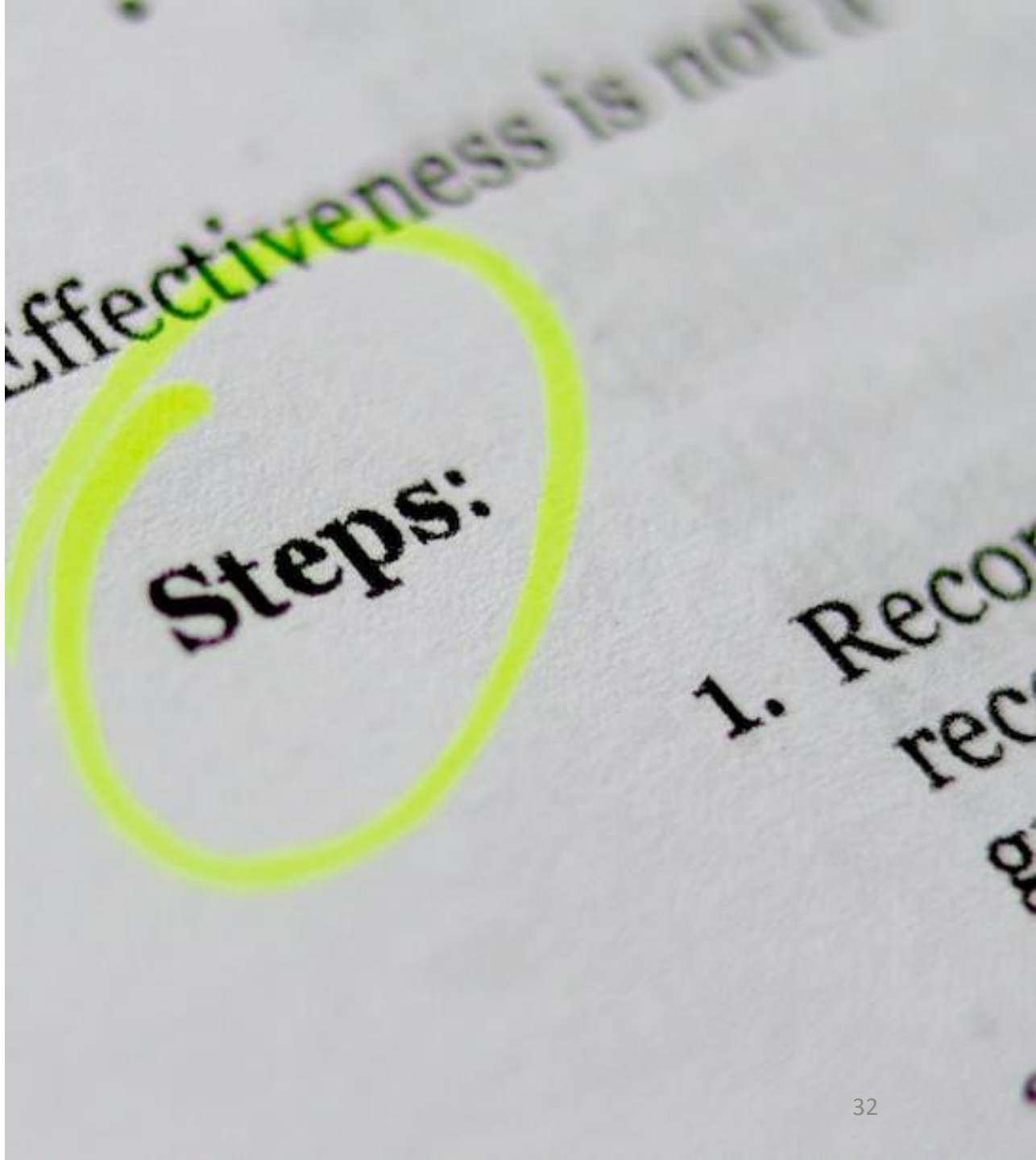
➢ how operators can comply

➢ how it proposes to exercise its functions under the Act

Regulator will:

- Produce guidance for businesses on how to comply with legislation
- Provide tailored advice on how to build reasonably practicable security plans including templates and other products

Protect UK will be the first port of call for updates on Martyn's Law



Licensing of Premises at heightened terrorism risk

- Schedule 3 amends the Licensing Act 2003
- “Terrorism Protection Statement” by Applicant or Licence Holder
- Certified by appropriate security advisor in prescribed manner
- Licensing register must
    - not make the plans available online or otherwise
    - licensing authority must not supply to any other person
- The authority can supply to other responsible authorities, further to legal proceedings etc

Next Steps

- Consultation on Standard Tier runs for 6 weeks to 18 March
- Government must then consider and respond
- Re-draft Bill and lay Bill before Parliament
- If no election, perhaps laid May 2024 earliest?
- Royal Assent
- Up to 2 year implementation period from Royal Assent

Links

- https://www.gov.uk/government/publications/terrorism-protection-of-premises-draft-bill-overarching-documents
- https://www.protectuk.police.uk/
- https://www.gov.uk/government/consultations/martyns-law-standard-tier-consultation
- www.popall.co.uk

Any Questions?

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