



## What are we going to do?

- We will introduce mandatory polygraph examinations on Very High/High risk of Serious Harm terrorist offenders.

## How are we going to do it?

- We will introduce legislation via the Counter Terrorism Bill that will enable the Secretary of State for Justice to impose mandatory polygraph examinations on high risk offenders who have been convicted of terrorist offences or offences related to terrorism. The policy will require those who meet all the eligibility criteria to take a polygraph test three months post release and every 6 months thereafter, unless the test is failed. In such circumstances the offender will be required to take the test more frequently.
- We will appoint and train 4 qualified Probation Officers, experienced in managing high risk offenders to be qualified polygraph examiners.
- We will use a Polygraph Training School '(Behavioural Measures)' that is already approved and commissioned by the Ministry of Justice and has trained the existing sexual offender and domestic abuse polygraph examiners in the National Probation Service. 'Behavioural Measures' is approved and licenced by the American Polygraph Association and operates to strict professional guidelines.
- We will review the value of testing terrorist offenders internally after 2 years.

## Background

- Polygraph examinations have been successfully used in the management of sexual offenders since January 2013 in the National Probation Service (NPS). Initially, this was as a successful pilot and later a national programme. The Polygraph is used with sexual offenders released on licence and its work by measuring the physiological changes in the body when the individual being tested is asked certain questions. The polygraph instrument measures changes in heart rate, blood pressure, respiratory rate and sweat and the changes to the individual's normal rates can indicate the subject is attempting to be deceptive. They are used to monitor compliance with licence conditions and the information obtained during testing is used by offender managers to refine and improve risk management plans. Examinations are carried out by experienced qualified Probation Officers who have been trained as accredited examiners to the standards set by the American Polygraph Association (APA) and who are also experienced in managing high risk offenders.



## Which offenders will be subject to testing?

Testing will be imposed on those offenders who are:

- Aged 18 years and over
- Male and Female
- Assessed as Very High/High risk of serious harm using nationally accredited risk assessment tools.
- Convicted of a specified terrorist offence or a specified offence with a terrorism connection.
- The offender is sentenced to a term of custody of 12 months or more and released on licence
- The legislation in relation to polygraph testing will apply retrospectively so will apply to those offenders who are already sentenced who meet the criteria

In addition, and in line with the current testing of sexual offenders and those subject to measures to be introduced in the Domestic Abuse Bill, there will be a discretionary group who can also be made subject to mandatory testing. These would include those who meet the legal criteria but do not necessarily meet the policy position of High Risk of Serious Harm. This cohort will include those where there are sufficient concerns about the offender's risk of re-offending, so as to justify mandatory testing and ensuring it is 'necessary and proportionate' to manage the risk that the offender poses in the community. We will test all types of

## Can offenders be recalled to custody for failing a polygraph examination?

- Offenders subject to testing cannot be recalled to custody for failing a polygraph test, **however they can be recalled for making disclosures during the test that reveal they have breached other licence conditions or that their risk has escalated to level whereby they can no longer be safely managed in the community.** Those failing the test will be tested more frequently and in additional, stringent measures can be imposed such as additional licence conditions or formal warnings. Information gathered from a failed examination will be routinely shared with the police who are able to conduct further investigations that may or may not result in charges being made. Where charges are made the offender will be recalled to custody.
- Offenders who attempt to 'trick' the polygraph test, or who refuse to take it can be recalled to custody.

## Is the polygraph examination reliable?

The American Polygraph Association (APA) carried out a meta-analysis of the various polygraph techniques used by polygraph examiners in 2011. This included 'single issue tests' that are used in the UK by the National Probation Service examiners testing sexual offenders and would be used with domestic abuse perpetrators. These studies involved 32 different samples, and described the results of 45 different experiments and surveys. The results produced a decision accuracy rate of 89%, with an estimated inconclusive rate of 11%. These findings were consistent with a previous study carried out by National Research Council of the National Academies of Science research published in 2003 in relation to accuracy. This provides additional support for the validity of polygraph testing when conducted in accordance with the APA Standards of Practice.

Recent independent academic evaluation showed:

"Polygraph testing has increased the chances that a sexual offender under supervision in the community will reveal information relevant to their management, supervision, treatment, or risk assessment. It has also increased the likelihood of preventative actions being taken by offender managers to protect the public from harm".



## How well has mandatory polygraph testing worked with sexual offenders in the National Probation Service?

Findings from examinations carried out by the National Probation Service on Sexual Offenders.

- The National Probation Service (NPS) has been polygraph testing high risk sexual offenders on a mandatory basis since August 2014. It has carried out 4572 examinations. Outcome data has only been recorded since August 2015. The results of those tests are:

No deception indicated (known as no significant response)	2212
Deception indicated (known as significant response)	1324
Inconclusive	382
Others have been where the offender has not co-operated or other reasons	

- The significant responses are particularly useful in assisting offender managers in formulating risk management plans or changing the focus of supervision. Significant response information is also routinely sent to the police so the further investigations can be made. Where evidence is found of further offending or a breach of another licence condition the offender can be recalled and charges may be brought.

## Where will testing take place?

- Testing will take place across the whole of England and Wales
- It is yet to be decided if it will take place in Scotland and Northern Ireland

## Is there a risk that offender managers will use the polygraph test as a substitute to existing risk assessment?

- Polygraph testing does not replace any existing forms of risk assessment or management, more it provides an additional tool for offender managers.
- Polygraph provides information for the offender manager that s/he would not otherwise have
- There is no evidence from the testing of sexual offenders that the polygraph is used as a substitute for other forms of risk assessment and management

## Why bother with polygraph examinations if they cannot be used for evidence and cannot recall offenders to prison?

- Polygraph examinations are used as an additional source of information for probation officers supervising offenders. There are sanctions for failing the tests or making disclosures during the tests. For example, increased reporting, the imposition of additional licence conditions and increasing the frequency of testing. In addition, the offender manager can change the focus of supervision in order to address the issues that relate to the failed questions. The information gained from testing is passed onto other statutory agencies such as counter terrorism police. In particular, the police will be able to take action regarding any failed questions that relate to forbidden contact with other known terrorists or entering an exclusion zone. If the police find evidence that a further offence has been committed, this can result in charges.
- During the pilot of polygraph testing on sexual offenders, the evaluation found that those subject to mandatory testing overall made higher levels of disclosures as opposed to the comparison group not subject to testing (76% vs 51%). As a result, offender managers were able to pass the additional information to other agencies via MAPPA and change the focus of supervision.
- Of note, offenders involved in the pilot stated that although they did not like being tested, for some, it helped them modify their behaviour and think more intelligently about their other licence conditions. For example, entering exclusion zones.



## Do polygraph examinations breach an offender's human rights under Article 8 of the Human Rights Act?

- During the course of the sexual offender pilot an offender did challenge the imposition of testing based on Article 8 grounds. This was rejected by the courts. The court accepted that because of the offenders' risk level and previous history of offending, testing was both 'necessary and proportionate' for the prevention of crime. There have been no further challenges since that time. We are therefore confident that imposing mandatory testing on the proposed cohorts is not a breach of the Human Rights Act.
- We will only target those who present the highest risk in the community.

## What if an offender has a mental or physical health problem or has learning difficulties. Can they still be tested and will it still work?

- The basic criteria for anyone taking a polygraph test is whether or not they understand the difference between a truth and a lie and can answer straightforward yes or no questions.
- The polygraph examination is split into three parts with a pre-test interview, the test itself and a post-test interview. During the pre-test phase the examiner conducts a basic health screening. In addition, they have access to any medical, psychiatric or psychological reports that might be available. In addition, the 'Behavioural Measures' contract provides access to a Professor of Psychiatry who is an international expert on polygraph who can, where necessary provide advice.
- In reality however, very few people are not suitable for testing.

## Will the tests be quality assured?

The contract that the NPS has with 'Behavioural Measures' provides the following:

- Training for polygraph examiners to the American Polygraph Association Standards
- Quality assurance of all polygraph reports
- Quality assurance of all polygraph charts
- Continued professional development (CPD) training events for all examiners four Times per annum

In addition there will be:

- Specialist training and supervision for polygraph examiners testing terrorist offenders. This will be provided internally by specialists working in the counter-terrorism unit.

All NPS examiners are required to complete an additional 30 hours of CPD via the APA.



## Case Examples of polygraph testing with sexual offenders in the NPS?

*J is a 47year old sexual offender convicted of the abuse of young boys.*

*He has a licence condition not have contact with children under the age of 18 years.*

*J was subject to mandatory polygraph testing as part of his release following a nine-year custodial sentence.*

*During the polygraph examination he denied any contact with children under the age of 18 years. The test revealed he was attempting to be deceptive. The test was run a second time and still produced a deceptive result.*

*The polygraph examiner contacted the offender manager who immediately contacted the police. The police were waiting for the offender when he returned to his property and found three young boys and another adult in the house.*

*J was immediately recalled to custody. The police were able to make further investigations*

*C is a 33-year-old sexual offender convicted of downloading and sharing indecent images of children.*

*He has a licence condition not to possess any internet devices unless approved by his supervising officer.*

*C was subject to mandatory polygraph testing as part of his release licence following a three-year custodial sentence*

*During the polygraph pre-test phase he disclosed that he had a laptop, but that it was his mothers and it was not internet enabled. He was then tested and asked 'other than what you have already told me, do you have any internet enabled devices'. He replied 'no' to the question and deception was indicated. During the post test phase the examiner told him he had failed the question and asked if there was anything he would like to add. C said there was not.*

*The polygraph examiner notified the offender manager, who visited C at home with the police with a warrant. The police discovered numerous phones, a laptop and several USB sticks containing indecent images of children.*

*C was immediately recalled to custody and charged.*