

# The Counter-Terrorism and Sentencing Bill – Polygraph

## Fact sheet

### What are we doing?

1. We are introducing polygraph examinations for use in the licence conditions of those who are Very High / High risk of Serious Harm or 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 across the UK. We are also making polygraph testing available as a measure for TPIM subjects. Polygraph testing has been found to be an important tool to enhance the safe and effective risk management of offenders, and one which will have important benefits for managing the threat posed by individuals of terrorism concern.
2. Polygraph tests 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.
3. In Scotland and Northern Ireland, where the introduction of polygraph examinations will be novel, we will not bring the polygraph testing provisions into force immediately when the Bill receives Royal Assent. Instead we intend to commence them at a later date, to ensure there is sufficient time for the devolved administrations to develop the necessary infrastructure, with the support of the UK Government.
4. 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. 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.

### How will polygraph examinations be used as part of a licence condition?

5. 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.
6. The examination is used to provide additional information that we would otherwise not have access to. This can either take the form of new disclosures made by the offender, or information that indicates further investigation by the relevant authorities should be undertaken.
7. The results of a test cannot be used in criminal proceedings against the examined person, nor can someone be recalled to prison for failing a polygraph test. A failed polygraph can however be used to add additional licence conditions to support management of the offender and if an offender makes disclosures during a test that suggest their risk has escalated they can be recalled. This is no different to an offender making such a disclosure who is not subject to a polygraph test.
8. Information from a failed polygraph examination may be passed onto the police who may then make further investigations. If evidence is found that suggests a further offence has been committed, the offender may then be charged and recalled.

### How will polygraph examinations be used with TPIM subjects?

9. The availability of polygraph testing will help operational partners assess an individual's compliance with their TPIM notice and support decision-making on whether variations to the TPIM notice are required.

10. This new measure will not be used unless and until the Home Office introduces regulations to make provision for the conduct of the polygraph sessions. These regulations are likely to include detail, for example, on the qualifications and experience needed by polygraph operators and how records of the polygraph sessions should be kept – thereby ensuring transparency on how this measure will be applied in practice.
11. This measure cannot not be imposed unless the Home Secretary reasonably considers it necessary for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity. We anticipate this measure being used sparingly, in a targeted and proportionate manner, and only following consultation with relevant operational partners. If it is imposed as a measure when the TPIM is served the individual can challenge the measure as part of their section 9 review. If the measure is imposed by way of a variation to the TPIM then the subject will have a right to appeal to the court under section 16 of the TPIM Act 2011.

## **Frequently Asked Questions**

### **What quality assurance takes place?**

- For polygraph testing that is used as part of a licence condition we already ensure rigorous quality assurance, which includes reports to the Lord Chancellor every 6 months with details on: total number of polygraph session reviews; a summary of each review; details of any divergence from the Polygraph Rules 2009 and any remedial action taken to address such divergence.

### **Can disclosures and / or information from a polygraph examination be used in Criminal proceedings against the offender?**

- It is important that the information obtained during a polygraph examination is used in a proper and legitimate manner. As such, none of the information obtained during the polygraph examination will be able to be used in criminal proceedings against the released individual.
- What will be possible is that information relevant to risk will be shared with the police, who may decide to use the information to conduct further enquiries. If, in those circumstances, the police obtain further derivative evidence that suggests an offence has been committed, then that evidence may result in criminal charges.

### **Why is the Government not conducting a pilot for the use of polygraph examinations with terrorist offenders?**

- It is correct that the Government is piloting polygraph within the Domestic Abuse Bill. The reason we are not doing so for terrorist offenders is that of volume. There are far fewer terrorist cases than there are domestic abuse perpetrators, and so there are insufficient numbers to carry out a pilot which would produce meaningful results.
- What the Government will do, however, is conduct a robust internal review of testing terrorists after a two-year period.
- The recent independent evaluation of mandatory testing on sexual offenders carried out by the University of Kent produced extremely positive results.

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

- Polygraph testing does not replace any existing forms of risk assessment or management; rather 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.

### **Do polygraph examinations breach an offender's human rights under Article 8 of the European Convention on Human Rights?**

- During the course of the sexual offender pilot an offender did challenge the imposition of testing based on Article 8 grounds (the right to private and family life). This was rejected by the courts. The court accepted that because of the offender's 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 lawful.

- 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.

**Case Examples of polygraph testing with sexual offenders in the National Probation Service**

*J is a 47 year 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 then able to make further investigations.*

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*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.*