

**2022 No. 191**

**PROBATION, ENGLAND AND WALES**

**CRIMINAL LAW, ENGLAND AND WALES**

**The Polygraph (Amendment) Rules 2022**

*Made* - - - - - *21st February 2022*

*Laid before Parliament* *28th February 2022*

*Coming into force* - - - *21st March 2022*

The Secretary of State, in exercise of the powers conferred by section 29(6) and (7) of the Offender Management Act 2007(a), makes the following Rules:

**Citation, commencement, extent and interpretation**

**1.**—(1) These Rules may be cited as the Polygraph (Amendment) Rules 2022 and come into force on 21st March 2022.

(2) These Rules extend to England and Wales.

(3) In these Rules, “the 2009 Rules” means the Polygraph Rules 2009(b).

**Amendments to the 2009 Rules**

**2.**—(1) The 2009 Rules are amended as follows.

(2) In rule 1(2) (citation, commencement and interpretation) –

(a) after the definition of “comparison question”, insert –

““polygraph operator” means any employee (either temporary or permanent) of a probation provider appointed to conduct polygraph examinations;”;

(b) in the definition of “probation provider”, omit “or a local probation board”.

(3) In rule 3 (qualifications of polygraph operators) –

(a) in paragraph (1), for sub-paragraph (a) substitute –

“(a) completed a polygraph training programme, which includes post-conviction sex offender testing training, accredited by the American Polygraph Association; and”;

(b) in paragraph (1)(b), for “under the supervision of an American Polygraph Association examiner” substitute “reviewed by a polygraph supervisor”;

(c) in paragraph (2) –

(i) for “15” substitute “30”;

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(a) 2007 c. 21.  
(b) S.I. 2009/619.

- (ii) for “twelve months from the date these Rules come into force” substitute “two years”;
  - (d) in paragraph (2)(b), for “sexual” substitute “relevant”.
- (4) In rule 5 (polygraph session requirements) –
- (a) in paragraph (4), for each instance of “one”, substitute “two”;
  - (b) after paragraph (4), insert –
    - “(4A) In setting the questions, where it is reasonably practicable to do so, the polygraph operator must liaise with the relevant offender’s probation practitioner and take the probation practitioner’s views into account when formulating the questions.”;
  - (c) in paragraph (5), before “questions”, insert “relevant”.
- (5) In rule 6 (polygraph session requirements) –
- (a) in paragraph (1), for “At the start of each polygraph session, the polygraph operator”, substitute “Before each polygraph session, an employee of the probation provider”;
  - (b) in paragraph (2) –
    - (i) for “commencing the pre-test interview, the polygraph operator” substitute “the relevant offender’s first polygraph session, an employee of the probation provider”;
    - (ii) for “obtain” substitute “ask for”.
  - (c) for paragraph (3), substitute –
    - “(3) An employee of the probation provider must attach that written confirmation to the relevant offender’s case record.”.
- (6) In rule 7(2) (polygraph supervisor), after “rule 3”, insert “(except where that supervisor’s only role is the review of reports produced during polygraph sessions under rule 5(5), pursuant to paragraph 2(b) of the Schedule)”.
- (7) In rule 8 (reports of polygraph session reviews) –
- (a) after the first instance of “Secretary of State”, insert “at least”;
  - (b) in paragraph (a) –
    - (i) for “the polygraph supervisor”, substitute “polygraph supervisors”;
    - (ii) for “six months” substitute “period”;
  - (c) for paragraph (b), substitute–
    - “(b) an overview of reviews conducted during the period covered by the report;”.
- (8) In Schedule 1 –
- (a) in paragraph 2(a), for “electronic recordings of”, substitute “charts produced during”;
  - (b) in paragraph 3(a)(i), for each instance of “offender manager”, substitute “probation practitioner”;
  - (c) in paragraph 4, for sub-paragraph (d), substitute –
    - “(d) arrange for additional sessions conducted by that polygraph operator to be reviewed, if the review indicates a concern about practice.”

21st February 2022

*Kit Malthouse*  
 Minister of State  
 Ministry of Justice

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Polygraph Rules 2009 (S.I. 2009/619) to reflect changes to the conduct of polygraph testing of offenders on licence. Since the conclusion of the 2009 pilot for sex offenders, polygraph testing has been fully implemented for sex offenders, and now applies to a wider cohort of offenders via the extension of section 28 of the Offender Management Act 2007 (c. 21) (“the 2007 Act”) to terrorist offenders by section 32 of the Counter-Terrorism and Sentencing Act 2021 (c. 11), and a pilot for domestic abuse offenders commenced by the Domestic Abuse Act 2021 (Commencement No. 1 and Saving Provisions) Regulations (S.I. 2021/797).

These changes to the Rules:

- reflect the structural, operational changes which have been made to the probation services since 2014, concluding with the formation of the new Probation Service in June 2021;
- reflect changes to the training program delivered by the American Polygraph Association, the preferred training provider for the Department;
- reflect changes and developments in best practice in polygraph session delivery;
- extend the length of time for polygraph examiners to be able to complete their mandatory continued professional development training, to reflect best practice and to improve flexibility for probation staff;
- clarify the frequency of mandatory reporting to the Secretary of State, normally conducted three times annually;
- clarify that polygraph supervisors whose only supervisory role is to review reports produced by examiners under rule 5(5) are not required to meet the qualification requirements for polygraph operators as set out in rule 3;
- clarify that the Rules apply to all relevant offenders as defined in section 28 of the 2007 Act; and
- clarify the process by which the polygraph supervisor must conduct a review, and next steps if a failure is identified.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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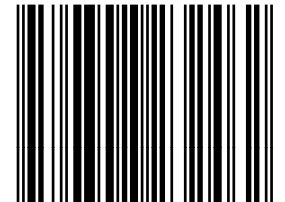
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