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STATUTORY INSTRUMENTS

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**2009 No. 619**

**PROBATION, ENGLAND AND WALES  
CRIMINAL LAW, ENGLAND AND WALES**

**The Polygraph Rules 2009**

<i>Made</i>	- - - -	<i>10th March 2009</i>
<i>Laid before Parliament</i>		<i>12th March 2009</i>
<i>Coming into force</i>	- -	<i>8th April 2009</i>

The Secretary of State, in exercise of the power conferred by section 29(6) of the Offender Management Act 2007(1), makes the following Rules:

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Polygraph Rules 2009 and shall come into force on 8<sup>th</sup> April 2009.

(2) In these Rules—

“comparison question” means a question asked for the purpose of establishing a baseline response, to which the relevant offender’s responses to the relevant questions will be compared;

“polygraph provider” means a person who has contracted with the Secretary of State to provide polygraph services;

“polygraph supervisor” means a person appointed by the polygraph provider to review polygraph sessions;

“post-test interview” means any interview conducted by the polygraph operator with the relevant offender during a polygraph session, following the completion of any polygraph examinations;

“pre-test interview” means any interview conducted by the polygraph operator with the relevant offender during a polygraph session, prior to the start of any polygraph examinations;

“probation provider” means a provider of probation services under section 3 of the Offender Management Act 2007 or a local probation board;

“relevant question” means a question asked for the purpose of monitoring compliance with the relevant offender’s licence conditions or improving the management of the relevant offender; and

“relevant offender” means a person to whom section 28 of the Offender Management Act 2007 applies.

### **Application**

2. These Rules apply to all polygraph sessions held pursuant to a polygraph condition.

### **Qualifications of polygraph operators**

- 3.—(1) A polygraph operator will be suitably qualified if the polygraph operator has—
  - (a) completed the following courses—
    - (i) a polygraph training programme accredited by the American Polygraph Association; and
    - (ii) a post conviction sex offender testing training programme accredited by the American Polygraph Association; and
  - (b) carried out a minimum of 20 post conviction sex offender testing polygraph examinations under the supervision of an American Polygraph Association examiner.
- (2) A polygraph operator will cease to be suitably qualified unless they attend at least 15 hours of continuing development training every twelve months from the date these Rules come into force. The continuing development training must cover—
  - (a) new developments, techniques or methods in the field of polygraphy; and
  - (b) current research or techniques in respect of the assessment of sexual offenders.

### **Polygraph operator independence**

4. A polygraph operator who is also an officer of a probation provider or a therapist must not conduct a polygraph session on a relevant offender in whose supervision or treatment they have been involved.

### **Polygraph session requirements**

- 5.—(1) Polygraph sessions must be conducted by suitably qualified polygraph operators.
  - (2) Polygraph sessions must be electronically recorded using audiovisual recording equipment.
  - (3) A polygraph session must include a pre-test interview, one or more polygraph examinations and a post-test interview.
  - (4) A polygraph examination must include one or more comparison questions and at least one, but not more than four, relevant questions.
  - (5) The polygraph operator must compile a report of each polygraph session conducted by that polygraph operator. The report must include details of all questions and answers during the polygraph examination and of the polygraph operator’s conclusions. The report must also include any disclosures made by the relevant offender during the polygraph session.
- 6.—(1) At the start of each polygraph session, the polygraph operator must explain to the relevant offender—
    - (a) the requirements of and arrangements for the polygraph session; and
    - (b) that anything disclosed during the session may be communicated to the probation provider responsible for that relevant offender’s supervision.

(2) Before commencing the pre-test interview, the polygraph operator must obtain written confirmation from the relevant offender that the matters in paragraph (1) above have been explained and that the relevant offender has understood that explanation.

(3) The polygraph operator must attach that written confirmation to the report of the polygraph session.

### **Polygraph supervisor**

7.—(1) A polygraph supervisor must review the polygraph sessions in accordance with the Schedule.

(2) A polygraph supervisor must meet the qualification requirements for polygraph operators in rule 3.

(3) A polygraph supervisor must meet each polygraph operator whose sessions are reviewed by that polygraph supervisor at least once every six months from the date these Rules come into force to discuss the work of that polygraph operator.

### **Reports of polygraph session reviews**

8. The polygraph provider is required to prepare a report for the Secretary of State every six months from the date these Rules come into force. The report must include—

- (a) the total number of polygraph session reviews conducted by the polygraph supervisor during the six months covered by the report;
- (b) a summary of each review;
- (c) details of any polygraph sessions not conducted in accordance with these Rules or with the contract between the polygraph provider and the Secretary of State; and
- (d) details of any remedial action taken to address any non-compliance with these Rules or the contract between the polygraph provider and the Secretary of State, or an explanation for any decision not to take remedial action to address non-compliance.

Signed by the authority of the Secretary of State

10th March 2009

*David Hanson*  
Minister of State  
Ministry of Justice

SCHEDULE 1

Rule 7

REVIEWS BY THE POLYGRAPH SUPERVISOR

1. The polygraph supervisor must review at least one polygraph session conducted by each polygraph operator each calendar month or, if greater, at least one out of every ten polygraph sessions (or part thereof) conducted by each polygraph operator each calendar month, starting from the date these Rules come into force.
2. For each review the polygraph supervisor must—
  - (a) examine electronic recordings of the polygraph session; and
  - (b) examine the report of the polygraph session.
3. Each review of a polygraph session by the polygraph supervisor must consider—
  - (a) the question formulation by the polygraph operator. In particular, the polygraph supervisor should assess—
    - (i) whether the polygraph operator liaised with the offender manager and the views of the offender manager were taken into account when the questions were formulated;
    - (ii) whether the questions were based on factors relating to the assessment, treatment or management of the relevant offender; and
    - (iii) whether the questions asked were sufficiently clear to allow for a polygraph indication of deception;
  - (b) the technique of the polygraph operator. In particular, the polygraph supervisor should assess whether the following met the applicable standards of the American Polygraph Association—
    - (i) the analysis by the polygraph operator of the physiological responses of the relevant offender; and
    - (ii) the assessments of truth or deception by the polygraph operator;
  - (c) whether the polygraph session was conducted in accordance with these Rules and with the contract between the polygraph provider and the Secretary of State; and
  - (d) whether the polygraph session met the standards of good polygraphy practice of the American Polygraph Association.
4. If the polygraph supervisor identifies a failure when considering the matters in paragraph (3) of this Schedule, the polygraph supervisor must—
  - (a) record that failure as part of the review;
  - (b) inform the polygraph provider and the polygraph operator who conducted the polygraph session as soon as is reasonably practicable;
  - (c) propose appropriate remedial action to that polygraph operator; and
  - (d) review the next two polygraph sessions conducted by that polygraph operator following the completion of the review.

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## EXPLANATORY NOTE

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

The purpose of these Rules is to govern the conduct of polygraph tests during a pilot of polygraph testing of certain sex offenders who have been released from prison on licence. The pilot will run for three years from 8<sup>th</sup> April 2009 in nine police areas in the East and West Midlands.

Rule 2 specifies that these Rules apply to all polygraph sessions conducted pursuant to a licence condition made under section 28(1) of the Offender Management Act 2007.

Rule 3 sets out requirements as to qualifications, experience and continuing development training for polygraph operators, who are responsible for carrying out polygraph testing.

Rule 4 prohibits polygraph operators who are also therapists or probation officers from conducting polygraph tests on offenders whom they have treated or supervised.

Rule 5 specifies who may conduct polygraph sessions and that polygraph sessions must be recorded, requires a session to include both interviews and polygraph examinations and restricts the type of questions that can be asked during a polygraph examination. It also requires polygraph operators to maintain reports of the session.

Rule 6 requires the polygraph operator to explain to the offender being tested how any information he gives during the session may be used. It also requires the polygraph operator to attach to the report of the session the sex offender's written confirmation that he has understood that explanation.

Rule 7 and the Schedule specify the qualifications for a polygraph supervisor, and require that the supervisor regularly reviews the polygraph sessions and regularly meets with polygraph operators to discuss their work.

Rule 8 requires the polygraph provider to provide regular reports to the Secretary of State and sets out what those reports should contain.