

2023 No. 1249

NATIONAL SECURITY

The National Security Act 2023 (Prevention and Investigation Measures) (Polygraph) Regulations 2023

<i>Made</i>	- - - -	<i>21st November 2023</i>
<i>Laid before Parliament</i>		<i>22nd November 2023</i>
<i>Coming into force</i>	- -	<i>20th December 2023</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by paragraph 12(2) of Schedule 7 to the National Security Act 2023(a).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the National Security Act 2023 (Prevention and Investigation Measures) (Polygraph) Regulations 2023 and come into force on 20th December 2023.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) In these Regulations—

“the 2023 Act” means the National Security Act 2023;

“polygraph provider” means a person who enters into arrangements with the Secretary of State under which polygraph sessions may be carried out in relation to a relevant individual;

“polygraph supervisor” means a polygraph operator instructed to review a polygraph session pursuant to regulation 6(1);

“relevant individual” means a person on whom the Secretary of State imposes a polygraph measure under section 39 of, and paragraph 12 of Schedule 7 to, the 2023 Act.

Conduct of polygraph sessions

2. A polygraph operator must comply with the requirements of these Regulations when conducting a polygraph session on a relevant individual.

Polygraph operator independence

3. A polygraph operator who is also a police officer, probation officer or therapist may not conduct a polygraph session in relation to a relevant individual whose management, supervision or treatment they have been involved in.

Qualifications of a polygraph operator

4.—(1) A polygraph operator may not conduct a polygraph session before the date on which they have met both the following conditions—

- (a) Condition 1 is that the polygraph operator has completed a polygraph training programme accredited by the American Polygraph Association, and
- (b) Condition 2 is that the polygraph operator has carried out at least 20 polygraph examinations that have each been reviewed and held to be in accordance with good polygraphy practice by a person that has completed a polygraph training programme accredited by the American Polygraph Association.

(2) A polygraph operator may not conduct a polygraph session unless the polygraph operator has completed at least 30 hours of continuing development training in the preceding 2 year period.

(3) Paragraph (2) does not apply if it is less than 2 years since the polygraph operator satisfied Condition 1 in paragraph (1)(a).

(4) The continuing development training referred to in paragraph (2) must cover new developments, techniques or methods in the field of polygraphy.

(5) A polygraph operator must meet and discuss their work at least once every six months with another polygraph operator.

Polygraph session requirements

5.—(1) A polygraph operator may not commence a polygraph examination without written confirmation that a police officer has informed the relevant individual —

- (a) of the requirements of and arrangements for the polygraph session, and
- (b) that anything disclosed during the session may be shared with the Secretary of State, law enforcement agencies and the intelligence services.

(2) The polygraph operator must attach the confirmation provided pursuant to paragraph (1) to the report of the polygraph session.

(3) The polygraph operator must electronically record the polygraph session using audio-visual recording equipment.

(4) The polygraph operator must ensure each polygraph session includes a pre-test interview, one or more polygraph examinations and a post-test interview.

(5) The polygraph operator must ensure each polygraph examination includes two or more comparison questions and at least two, but not more than four, relevant questions.

(6) The polygraph operator must consult the Secretary of State in formulating the questions.

(7) For the purposes of this regulation—

“intelligence services” means the Security Service, the Secret Intelligence Service and the Government Communications Headquarters;

“pre-test interview” means an interview conducted by the polygraph operator with the relevant individual during a polygraph session, prior to the start of a polygraph examination;

“post-test interview” means an interview conducted by the polygraph operator with the relevant individual during a polygraph session, following the completion of a polygraph examination;

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

“relevant question” means a question asked for the purpose of monitoring compliance with the relevant individual’s other measures imposed under section 39 of the 2023 Act, or assessing whether variation of those other measures is necessary for purposes connected with preventing or restricting the individual’s involvement in foreign power threat activity, or both.

Review of polygraph sessions

6.—(1) The polygraph operator must, before submitting a report on the results of the polygraph session to the Secretary of State, instruct another polygraph operator to carry out a review of the polygraph session in accordance with the Schedule to these Regulations.

(2) A polygraph supervisor must meet the qualification requirements for polygraph operators in regulation 4.

(3) Where a polygraph supervisor's only role is the review of reports produced during polygraph sessions pursuant to paragraph 1(b) of the Schedule, that polygraph supervisor is not required to be a qualified polygraph operator and is exempt from the requirements in regulation 4.

Reports of polygraph sessions

7. The polygraph operator must compile a report of each polygraph session that they conduct, which includes—

- (a) all relevant questions and answers during the polygraph examination;
- (b) the polygraph operator's—
 - (i) analysis of the physiological responses of the relevant individual, and
 - (ii) assessments of truth or deception;
- (c) any disclosure made by the relevant individual during the polygraph session;
- (d) confirmation that a polygraph supervisor has reviewed the polygraph session in accordance with the Schedule; and
- (e) confirmation of whether, in the opinion of the polygraph supervisor, the polygraph session met the standards of the American Polygraphy Association on good polygraphy practice.

Reports of polygraph session reviews

8.—(1) A polygraph provider must report to the Secretary of State at least once every 12 months.

(2) The report must include—

- (a) the total number of polygraph session reviews conducted by polygraph supervisors during the period covered by the report,
- (b) an overview of reviews conducted during the period covered by the report,
- (c) details of any polygraph sessions not conducted in accordance with these Regulations 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 Regulations 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.

21st November 2023

Tom Tugendhat
Minister of State
Home Office

SCHEDULE

Regulation 6

Reviews by a Polygraph Supervisor

1. For each review a polygraph supervisor must—

- (a) examine charts produced during the polygraph session, and
- (b) examine the report of the polygraph session.

2. For each review a polygraph supervisor must consider—

- (a) the question formulation by the polygraph operator. In particular, the polygraph supervisor should assess—
 - (i) whether the polygraph operator consulted the Secretary of State when the questions were formulated,
 - (ii) whether the questions were relevant questions, 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 individual, and
 - (ii) the assessments by the polygraph operator of truth or deception,
- (c) whether the polygraph session was conducted in accordance with these Regulations and with the contract between the polygraph provider and the Secretary of State, and
- (d) whether the polygraph session met the standards of the American Polygraphy Association on good polygraphy practice.

3. If a polygraph supervisor identifies a failure when considering the matters in paragraph (2) 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) arrange for additional sessions conducted by that polygraph operator to be reviewed, if the review indicates a concern about practice.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the conduct of polygraph sessions in relation to individuals who are subject to a Prevention and Investigation Measures (“PIM”) notice under Part 2 of the National Security Act 2023(a) (“the 2023 Act”).

Regulation 2 specifies that these Regulations apply to the conduct of all polygraph sessions conducted pursuant to a polygraph measure imposed under section 39 of and paragraph (12) of Schedule 7 to the 2023 Act.

Regulation 3 prohibits polygraph operators who are also police officers, probation officers or therapists from conducting polygraph examinations on individuals whom they have managed, supervised or treated.

Regulation 4 sets out requirements as to qualifications, supervision, experience and continuing development training for polygraph operators, who are responsible for carrying out polygraph sessions.

(a) 2023 c.32.

Regulation 5 requires a polygraph operator to ensure that a police officer has explained to the individual being examined the requirements and arrangements for the session and how any information they give during the session may be used. In practice when the PIM Notice including the polygraph measure is imposed, the subject will be provided with a letter explaining how the polygraph test works and the requirements of the session. Regulation 5 also specifies that polygraph sessions must be recorded by the polygraph operator, requires a session to include both pre and post-test interviews, and restricts the type of questions that can be asked during a polygraph examination.

Regulation 6 and the Schedule specify the requirements for review of polygraph sessions by an independent polygraph operator (the polygraph supervisor), and require that a polygraph supervisor reviews each polygraph session. An exemption is provided in regulation 6(3) to allow the review of just the polygraph reports to be conducted by individuals who are not qualified polygraph operators.

Regulation 7 requires polygraph operators to maintain reports of their conclusions from the session. In practice these reports cover an analysis by the polygraph operator of the physiological responses of the relevant individual, and an assessment by the polygraph operator of truth or deception.

Regulation 8 requires polygraph providers to provide an annual report to the Secretary of State and sets out what that information should include.

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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