

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL SECURITY ACT 2023 (PREVENTION AND INVESTIGATION**  
**MEASURES) (POLYGRAPH) REGULATIONS 2023**

**2023 No. 1249**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 Following the enactment of the National Security Act 2023 (“the 2023 Act”) an individual subject to a State Threats Prevention and Investigation Measures (STPIM) notice may, subject to certain conditions being met, be required by the Secretary of State to participate in a polygraph session.
- 2.2 These Regulations relate to the conduct of STPIM polygraph sessions. In particular, they set out qualification requirements for polygraph operators and supervisors, set out requirements for the conduct of polygraph examinations, make provision for review of every polygraph session, and provide for regular reporting to the Home Office.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Schedule 7 to the 2023 Act includes a polygraph measure as one of the State Threats Prevention and Investigation Measures. This measure allows the Secretary of State to impose a requirement on an individual who is subject to an STPIM notice to participate in a polygraph session for the purposes of: (i) monitoring their compliance with other specified measures; and (ii) assessing whether any variation of the specified measures is necessary for purposes connected with preventing or restricting the individual’s involvement in foreign power threat activity.
- 6.2 The polygraph measure in paragraph 12 of Schedule 7 to the 2023 Act provides that the Secretary of State may by Regulations make provision relating to the conduct of

polygraph sessions, which may include in particular: (a) provision requiring polygraph operators to be persons who satisfy such requirements as to qualifications, experience and other matters as are specified in the Regulations; (b) provision about the keeping of records of polygraph sessions; and (c) provision about the preparation of reports on the results of polygraph sessions.

- 6.3 The STPIM polygraph measure will not be used until such Regulations have been made.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Government is committed to reducing the threat from hostile state actors. STPIMs are an important part of the toolkit available to the Government and operational partners to prevent, restrict and disrupt an individual's involvement in state threat activity. STPIMs are a tool of last resort used to protect the UK from state threat actors, in cases where it is not possible to prosecute or deport.
- 7.2 Through a STPIM notice, the Secretary of State may impose specified measures on an individual subject to certain conditions, set out in the 2023 Act, being met. These include the Secretary of State reasonably considering it necessary, for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity, for the specified measures to be imposed on the individual.
- 7.3 The 2023 Act ensures that the UK's law enforcement and intelligence agencies have the modern tools, powers, and protections they need to counter state threat activity from those individuals who seek to do the UK harm. Schedule 7 to the 2023 Act introduces a requirement to participate in a polygraph examination as a new STPIM measure. Polygraph examinations are currently used successfully in other contexts for example to help manage the risk posed by sexual offenders on licence. They have also been introduced as a licence condition for terrorism offenders on licence and as a terrorism prevention and investigation measure.
- 7.4 The availability of polygraph as a STPIM measure will provide a potential additional source of information about individuals subject to a STPIM which can assist with their management and, in doing so, better protect the public from the risk of state threat activity.
- 7.5 These Regulations govern the conduct of polygraph examinations in relation to individuals who are subject to a STPIM notice. They set out the qualification and experience requirements for polygraph operators (regulation 4), as well as the qualifications that polygraph supervisors must have, whose role is to provide an independent quality assurance check (regulation 6). The Regulations also set out requirements prior to, during and following a polygraph session. This includes the requirement for a police officer to explain how any information given during the session may be used, what each session must include, and the types of question that can be asked (regulation 5), reporting requirements on the outcome of each polygraph session (regulation 7) as well as reporting of reviews (regulation 8).
- 7.6 Whilst expanding the cohort subject to polygraph testing from terrorism and domestic abuse offenders to also include state threat actors, these Regulations have been drafted to be consistent with the Polygraph Rules 2009 ('the 2009 Rules'), as amended by the Polygraph (Amendment) Rules 2022 and with the Terrorism Prevention and Investigation Measures (Polygraph) Regulations 2022 ('the TPIM Regulations').

This is to ensure a cohesive statute book and ensure that the framework governing polygraph examinations for different groups of individuals are consistent across Government.

- 7.7 There are some technical differences from the 2009 Rules to account for necessary differences in approach when applied to STPIM subjects. Regulation 5(1)(b) requires a police officer to explain to the individual that anything disclosed during the polygraph session will be communicated to the Home Office and may be shared with the police or the intelligence services. This is necessary to support compliance with the subject's STPIM measures and to allow for the investigation of other offences.
- 7.8 Regulation 5(1) does not require written confirmation from the relevant individual that they have understood the explanation required by regulation. This is because it is likely that STPIM subjects will be reluctant to comply with requirements placed upon them unless clearly mandated to do so and therefore there is a limited prospect of a STPIM subject agreeing to provide their written confirmation of having understood the details of a polygraph session.
- 7.9 As is the case with TPIMs, it would be procedurally more effective and provide a sufficient safeguard to the STPIM subject to ensure that they did understand the process, for a police officer (who in practice would most likely be the STPIM subject's contact officer who they interact with regularly) to explain the details of the polygraph session to them, and confirm that had taken place on the STPIM subject's behalf. The police will have experience in dealing with STPIM subjects. They will often be the first point of contact for a STPIM subject and will routinely explain to a subject their measures and any variation to these within the lifetime of the STPIM notice. They will therefore be well versed in interacting with the STPIM subjects and familiar with their individual needs and level of understanding and so best placed to ensure the TPIM subject's understanding.
- 7.10 All polygraph sessions are recorded to make sure they are carried out properly, and so that any disagreements about what was said can be checked. If the STPIM subject does have any difficulty understanding the requirements of or arrangements for the polygraph session, they will be able to communicate this at any point during the process to seek clarification.
- 7.11 Regulation 5(6) introduces the requirement for the polygraph operator to consult with the Home Office in order to take into account their views when formulating the questions. This is due to the Secretary of State's overall responsibility for the management of STPIM subjects and will allow questions to be informed by intelligence, where appropriate.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

- 9.1 These are the first STPIM (Polygraph) Regulations to be made. The Government does not assess that there is any need for consolidation measures.

## **10. Consultation outcome**

- 10.1 No public consultation has been undertaken in connection with this instrument. The Regulations were developed in partnership with the relevant government departments and law enforcement and intelligence partners.

## **11. Guidance**

- 11.1 These Regulations will not be supplemented by guidance. The Regulations will be shared specifically with key stakeholders who will be directly affected by them, including polygraph operators and their line managers and the external specialist polygraph provider that provides the quality assurance arrangements.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is that any organisation providing polygraph services as specified in the Regulations will be required to comply with the Regulations.
- 12.2 The impact on the public sector is that any public organisation providing polygraph services as specified in the Regulations will be required to comply with the Regulations.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there will be minimal impact on the private or voluntary sector.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to confine the Regulations to those areas absolutely necessary to the proper delivery of polygraphy services and where possible to align them with existing legislative requirements impacting the same small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that the Regulations should be confined to the minimum necessary to regulate mandatory polygraphy properly and where possible to align them with existing legislative requirements regulating the same small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that these Regulations will be reviewed by the Counter-Terrorism (CT) Pursue Unit at the Home Office on an annual basis to identify the need for any future changes.
- 14.2 The operation of the 2023 Act is also kept under review by the Independent Reviewer of State Threats Legislation
- 14.3 The instrument does not include a statutory review clause.

## **15. Contact**

- 15.1 The CT Pursue Unit at the Home Office can answer any queries regarding the instrument and can be contacted at the Home Office, 5th Floor, Peel Building, 2 Marsham Street, London, SW1P 4DF, Telephone: 020 7035 4848.

- 15.2 The Deputy Director for CT Pursue Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon. Tom Tugendhat, Minister of State for Security at the Home Office can confirm that this Explanatory Memorandum meets the required standard.