EXPLANATORY MEMORANDUM TO

THE TERRORISM PREVENTION AND INVESTIGATION MEASURES (POLYGRAPH) REGULATIONS 2022

2022 No. 462

1. Introduction

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

2. Purpose of the instrument

2.1 Following changes made by the Counter-Terrorism and Sentencing Act 2021 ("the 2021 Act"), an individual subject to a Terrorism Prevention and Investigation Measures (TPIM) 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 TPIM 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 is the whole of the United Kingdom.

4.2 The territorial application of this instrument 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 Section 38 of the 2021 Act added a polygraph measure to Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 ("the 2011 Act"). This measure allows the Secretary of State to impose a requirement on an individual who is subject to a TPIM 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 terrorism-related activity.

6.2 The new polygraph measure in paragraph 10ZA(2) of Schedule 1 to the 2011 Act provides that the Secretary of State may by regulations made by statutory instrument 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 During the passage of the 2021 Act, the Government was clear that the TPIM 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 terrorism. TPIMs are an important part of the toolkit available to the Government and operational partners to prevent or restrict an individual's involvement in terrorism-related activity. TPIMs are ordinarily a tool of last resort to protect the public from dangerous individuals whom it is not possible to prosecute or deport, or individuals who remain a threat after being released from prison.

7.2 Through a TPIM notice, the Secretary of State may impose specified measures on an individual subject to certain conditions, set out in the 2011 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 terrorism-related activity, for the specified measures to be imposed on the individual.

7.3 Following the terrorist attacks at Fishmongers' Hall in 2019 and in Streatham in 2020, the Government promised to act. The 2021 Act built upon the Terrorist Offenders (Restriction of Early Release) Act 2020, which retrospectively ended the automatic early release for terrorist offenders in Great Britain serving standard determinate sentences, by introducing a new framework for terrorist sentencing and monitoring.

7.4 One of the ways in which the 2021 Act improves public protection is by strengthening the disruption and risk management tools available to the Security Service and Counter-Terrorism Policing, including by amending the 2011 Act. One of the changes made was to introduce a requirement to participate in a polygraph examination as a new TPIM measure. Polygraph examinations have been used successfully to help manage the risk posed by sexual offenders on licence and from June 2021 polygraph testing has been introduced as a licence condition for terrorist offenders on licence.

7.5 The availability of polygraph as a TPIM measure will provide a potential additional source of information about individuals subject to a TPIM which can assist with their management and, in doing do, better protect the public from the risk of terrorism-related activity.

7.6 These Regulations govern the conduct of polygraph examinations in relation to individuals who are subject to a TPIM notice. They set out the qualification and experience requirements for polygraph operators (regulation 3), as well as the qualifications that polygraph supervisors must have (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, specifying who may conduct a session, what each session must include, and the types of question that can be asked (regulation 5); and reporting requirements on the outcome of each polygraph session (regulation 7).

7.7 These Regulations have been drafted to be consistent with the Polygraph Rules 2009 ('the 2009 Rules'), as amended by the Polygraph (Amendment) Rules 2022 ('the 2022

Rules') and the expansion of the cohort of offenders in scope to include terrorist and domestic abuse offenders. 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.

7.8 There are some technical differences to the 2009 Rules to account for necessary differences in approach when applied to TPIM 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 TPIM measures and to allow for the investigation of other offences. Regulation 5(8) introduces the requirement for the polygraph operator, where reasonably practicable to do so, to liaise 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 TPIM 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 TPIM (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 any public organisation providing polygraph services as specified in the Regulations will be required to comply with the Regulations.

12.3 An 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 2011 Act is also kept under review by the Independent Reviewer of Terrorism 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. Damian Hinds MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.