

REGULATORY IMPACT ASSESSMENT

TITLE

Making provision in the Management of Offenders & Sentencing Bill for the mandatory Polygraph Testing of certain Sexual Offenders

PURPOSE AND INTENDED EFFECT

Objective

1. The objective of the policy is to enable the compulsory polygraph testing in selected areas of sex offenders who have been sentenced to 12 months' imprisonment or more and who have been released on licence, with a view to improving the management and treatment of such offenders. The measure should also enable us to establish, upon a firmer basis than the current voluntary testing arrangements, the extent to which polygraph testing encourages sex offenders to make disclosures of behaviour that would otherwise not come to light. The provision will only permit the extension of the use of polygraph testing in other areas by an order approved by affirmative resolution.

Background

2. The protection of the public from the risks posed by sex offenders remains one of the Government's highest priorities and a subject of considerable media and wider public interest. Even though sex offenders are reconvicted much less frequently than other offenders, their reoffending causes understandable anxiety and terrible distress to the victims. The assessment and management of the risks posed by sex offenders is therefore one of the most important tasks the correctional services undertake.

3. The National Probation Service is currently piloting the use of polygraph testing with sex offenders on a voluntary basis. All the offenders involved are engaged on a sex offender treatment programme in a number of areas across the country. The pilot seeks to clarify whether the use of polygraph testing encourages sex offenders to disclose more about their attitudes and behaviours than more traditional methods; and whether, if it does encourage such disclosure, the new information helps target the interventions used to manage an offender's risks more accurately. The proposed legislative provision will ensure that offenders who have not volunteered to undergo a polygraph test can be included in such pilots. It will help enable more confident conclusions to be drawn about the efficacy of polygraph testing and whether its use as a condition of an offender's licence can be justified.

Polygraph testing

4. A polygraph test measures a subject's bodily reactions when asked questions. Two bands are placed around his chest and abdomen to measure breathing; a blood pressure cuff measures heart rate; and a finger stall measures galvanic sweat response. The results are plotted in real-time on a computer screen and a trained examiner determines whether the subject is telling the truth or not. Lying is indicated by an abnormal reaction when giving that particular response.

5. The polygraph test does not impose any significant constraint on the person undergoing the test; and it is not physically uncomfortable. Although it does involve some physical intrusion and a less tangible intrusion into the offender's private life, this can be justified by the wider public interest in effective management of sex offenders on licence.

6. A polygraph test is designed to support traditional supervision by encouraging offenders to be more truthful in discussing their behaviour, in a way that helps themselves and the supervising officer. It is likely to have greatest value when used as part of the supervision of offenders participating in an accredited sex offender treatment programme. Tests help monitor whether or not the offender is engaging in 'risky' behaviours. For example, offenders may be asked how they are applying individual relapse prevention plans to avoid or deal successfully with high-risk situations and moods. Such plans are a key product of sex offender treatment. Sex offenders generally have high levels of denial and polygraph testing is a potential additional management tool to help supervising officers to target treatment and supervision more effectively. Disclosures as part of the polygraph examination process will not lead directly to prosecution or to enforcement action against an offender. But information obtained as part of the process will be followed-up to see if it can be corroborated by other means.

Risk Assessment

7. Polygraph testing is extensively used in the management of offenders in the USA, where its use has also been subject of judicial challenge. In the 2003 case of *USA v. Lee* the court found that polygraph testing may provide an added incentive to furnish truthful testimony to the probation officer, and that this would assist with supervision and monitoring. This finding of the court supports the general view of many practitioners who see its value as a supplement to other measures taken to assess and manage an offender's risks. The provisions will exclude the use of information from the tests as evidence in fresh criminal proceedings against the offender.

8. The National Probation Service decided to pilot the use of polygraph testing in 2003 on a voluntary basis as part of a sex offender treatment programme. However, because this analysis will be based upon data provided by offenders who, as volunteers, are self-selected, they do not form a fully representative sample.

Offenders who pose the highest risk are more likely to opt not to take part in the pilot (in the current pilot only an average of 40 per cent of offenders approached volunteered for testing). Further evaluation, on the basis of mandatory testing, is needed to establish whether polygraph testing has a positive effect in helping to manage the risks posed by sex offenders, answering questions such as:

Does polygraph testing lead to increased disclosure that is relevant to the treatment and supervision of sex offenders?

Does this information lead to changes in the risk assessment, treatment and management of sex offenders?

The legislative measure proposed will ensure that the pilot is comprehensive and the data it provides more robust.

OPTIONS

9. There are three options:

A. Continue and extend the use of polygraph testing based upon the trust practitioners have placed in the use of the technology during trials and the limited research conducted so far.

B. Abandon the further use of polygraph testing altogether.

C. Seek to establish the value of the test through a wider usage and further evaluation.

Option A

10. This option would enable the continued use of polygraph testing with offenders who volunteer. Given that particularly the more deviant sex offenders are more likely not to volunteer, this option would prevent the use of polygraph testing on many high-risk and deviant sex offenders.

Option B

11. To abandon the use of polygraphy testing at this stage is unsatisfactory because it leaves unresolved the issue of whether the technology is indeed a useful asset or not, and leaves a potential device for improving protection of the public unexplored. Many practitioners would be unhappy if the option were withdrawn.

Option C

12. This is the most costly option (see below) but the only one which provides the basis for better public protection and which will also assist better informed decisions about the use of this technology.

COSTS AND BENEFITS

Business sectors affected

13. The implementation of this measure will have no direct impact upon the business or the voluntary sectors: it is a measure which will enable better management of offenders being supervised by Probation Boards. All the additional costs will be borne by the Home Office.

14. The impact of the measure on front-line staff will be minimal because the conducting of the tests and interviews and administration of research will be contracted-out. The experience gained in running polygraph tests on offender volunteers shows a very small increase in the administrative workload of front-line staff, not seen by them as significant. If polygraph tests are shown to be an effective management tool the benefits should be better targeting of treatment and supervision and, ultimately, better public protection.

Costs

Options A and B

15. Options A and B have no cost implications in that they require no additional expenditure.

Option C

16. The costs will comprise those of implementing the additional tests (some £0.5m) and those for further evaluation (up to around £0.5m).

EQUITY AND FAIRNESS

17. A separate Race Equality Impact Assessment has been prepared on this measure. The measure is assessed as likely to have a neutral impact on black minority and ethnic groups.

SMALL FIRMS IMPACT TEST

18. This measure has no direct impact on small businesses, though it may provide an opportunity for such firms to bid to supply appropriately trained polygraph examiners.

COMPETITION ASSESSMENT

19. The 'competition filter' has identified that this measure has no regulatory impact on the competitive process.

ENFORCEMENT AND SANCTIONS

20. The use of the provisions of this measure are set out partly on the face of the Bill and will be further developed in Regulations and guidance issued by the Secretary of State.

CONSULTATION

21. There has been wide discussion within the Home Office and with stakeholders, including legal advisers and researchers. Also, the Law Officers have also been consulted in respect of the human rights issues which arise.

MONITORING AND REVIEW

22. A time-limited research project will monitor the use of the polygraph test. Additionally, the existing supervisory arrangements of probation staff provide a framework within which the use of the test will be monitored.

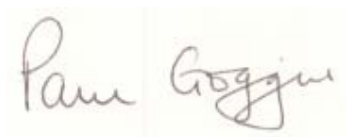
SUMMARY AND RECOMMENDATION

23. The Government is in favour of Option 3 for the arguments provided. It is essential that public protection be enhanced by the use of all sensible tools that offer better assessment and management of the risks posed by sex offenders.

MINISTERIAL DECLARATION

24. I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed

A handwritten signature in blue ink that reads "Paul Goggins". The signature is written in a cursive style and is centered on a light-colored rectangular background.

Date: 6 January 2005

Paul Goggins
Parliamentary Under-Secretary
Home Office

Contact Point

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