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*Dear Charlie,*

### **POLYGRAPH: COUNTER-TERRORISM AND SENTENCING BILL**

Thank you for the questions relating to polygraph that you raised on 3 March during the Report stage debate for the Counter-Terrorism and Sentencing Bill. As promised, I will respond to the questions that I was not able to answer during the debate in this letter.

I will begin by dealing with questions that relate to clause 38 of the Bill, which will add a new polygraph measure to Schedule 1 of the Terrorism Prevention and Investigation Measures (TPIM) Act 2011, before responding to the questions you raised on polygraph examinations more broadly.

You asked about responses given during TPIM polygraph examinations. Specifically, you asked for the Government's view on the extent to which weight can be placed on responses given by a TPIM subject and for confirmation of how the Government will act in response to a subject's physiological reactions, or 'significant reactions', in the course of an examination. As I set out at Report, this clause will allow the Home Secretary to impose a requirement on an individual who is subject to a TPIM notice to participate in a polygraph examination 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.

The availability of polygraph as a TPIM measure will provide our operational partners with a potential additional source of information about individuals of terrorism concern, which can assist them with the management of TPIM subjects and, in doing so, better protect the public. The results of the polygraph

examination could be used to vary the individual's measures; this could be a relaxation (for example removing or easing a measure), or making a change for reasons of national security (for example adding a further restriction), provided it is necessary and proportionate to do so. Any statements or reactions made by the individual will be considered carefully on a case by case basis, alongside other available information, before influencing any operational decision-making. The Government is clear that clause 38 does not provide for information derived from a polygraph examination to be used as evidence in proceedings for breaching a TPIM (which is a criminal offence), or alternatively as the basis for extending an existing TPIM or imposing a new TPIM on the individual. Any attempt to use information in this way would be unlawful.

In the context of polygraph as a TPIM measure, you also asked a number of questions at Report relating to whether the Government will introduce a code of practice and, if so, what it is likely to contain and whether it will be based on the American Polygraph Association's (APA) code of practice. Baroness Hamwee also asked for clarification as to whether the rules that will apply during polygraph examinations will be the same as those that apply under the Offender Management Act.

As I set out at Report, clause 38 includes a regulation-making provision for the conduct of TPIM polygraph examinations. These regulations are expected to include detail, for example, on: the qualifications and experience needed by polygraph operators; how records of the polygraph examinations should be kept; and how reports on the results of the examinations should be prepared. This will ensure there is transparency in relation to how the TPIM polygraph measure will be applied. This approach follows precedent already established by the Ministry of Justice, which has set out its use of polygraph in licence conditions of sex offenders in the Polygraph Rules 2009. We anticipate that the TPIM polygraph regulations are likely to be similar to the 2009 Rules – which may include, for example, specifying that the APA Standards apply to the qualifications and behaviour of polygraph examiners – but given the different operational context they will not be identical.

Parliament will of course have the opportunity to scrutinise these future regulations, which will be subject to annulment by either House. The new polygraph measure will not be used within the TPIM regime unless and until regulations have been made. Once they have been made, the polygraph measure will only be applied to TPIM subjects on a case by case basis, working in close collaboration with operational partners, when deemed necessary for the purposes of preventing or restricting involvement in terrorism-related activity.

At Report, you asked the extent to which the Government regards polygraph answers as reliable and, with reference to the polygraph examinations that have been conducted in the context of sexual offenders, what benefits have been obtained from these examinations.

The APA carried out a meta-analysis of the various polygraph techniques used by polygraph examiners in 2011. The results found 89% were accurate and 11% of the examinations were inconclusive. The pilot for use with sexual offenders in England and Wales also provided evidence of the benefits that

can be obtained from these examinations; it was found that those subject to polygraph examinations made 25% higher levels of disclosures compared to a group who were not subject to them (76% vs 51%). Offenders involved in the pilot stated that, although they did not like being examined, for many, it helped them modify their behaviour and comply with their other licence conditions.

Since that successful pilot, a significant number of polygraph examinations have been conducted by the National Probation Service (NPS) on sexual offenders. Between August 2015 to end November 2019, the NPS carried out 5,228 examinations on 2,249 sexual offenders; and of those examinations, 1,449 resulted in significant disclosures. Significant disclosures include disclosures of information that would not have otherwise been known to the Offender Manager. Polygraph examinations that result in significant disclosures allow Offender Managers to update risk management plans or change the focus of supervision based on this new information. Significant disclosures from polygraph examinations may also be shared with other agencies, including the police. The police may, as a result, make further investigations. If following those investigations evidence reveals that a further offence has been committed the offender may be charged and recalled to custody. An offender may also be returned to custody if they disclose breaches of other licence conditions or information that means that they can no longer be safely managed in the community. We therefore see the benefit of polygraph examinations in keeping the community safe when managing individuals assessed as very-high or high risk.

At Report, you also highlighted that in December last year Her Majesty's Prison and Probation Service announced that it would be seeking a long-term commercial partner to deliver polygraph equipment, training and support services. You asked for an update from the Government on how this work is progressing. In keeping with December's announcement, the Ministry of Justice has proceeded with an open competition to secure a service contract for the delivery of polygraph training, equipment and support services which is compliant with the APA Standards. I can confirm that the Government is in the final stages of the procurement process and will shortly publish the result of the competition ahead of the contract commencing on 20 March 2021.

I hope that covers all the questions to which you were seeking answers and I look forward to discussing the Bill with you further when it returns to the House. I am copying this letter to Baroness Hamwee. I am also placing a copy in the library of the House.

Yours sincerely,



**LORD PARKINSON OF WHITLEY BAY**