



## **Criminal Code (Terrorist Organisation— Jama'at Mujahideen Bangladesh) Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated *7th June* 2018

*Peter Cosgrove*  
Governor-General

By His Excellency's Command

Peter Dutton  
Minister for Home Affairs  
Minister for Immigration and Border Protection

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## 1. Name

This instrument is the *Criminal Code (Terrorist Organisation—Jama'at Mujahideen Bangladesh) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Criminal Code Act 1995*.

## 4 Terrorist organisation—Jama'at Mujahideen Bangladesh

- (1) For the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*, the organisation known as Jama'at Mujahideen Bangladesh is specified.
- (2) Jama'at Mujahideen Bangladesh is also known by the following names:
- (a) Islamic State-Bangladesh;
  - (b) Islamic State of Iraq and Levant-Bangladesh;
  - (c) Islamic State of Iraq and Syria-Bangladesh;
  - (d) Jamaat Mujahideen Bangladesh;
  - (e) Jama'atul Mujahideen Bangladesh;
  - (f) Jamaat ul Mujahideen Bangladesh;
  - (g) Jamayetul Mujahideen Bangladesh;
  - (h) JMB;
  - (i) Neo-JMB.

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Criminal Code Act 1995*

*Criminal Code (Terrorist Organisation—Jama'at Mujahideen Bangladesh) Regulations 2018*

The purpose of the *Criminal Code (Terrorist Organisation—Jama'at Mujahideen Bangladesh) Regulations 2018* (the Regulations) is to specify Jama'at Mujahideen Bangladesh for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*.<sup>1</sup> Details of the Regulations are set out in Attachment A.

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the *Criminal Code*.

Paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code* provides that regulations can specify organisations for the purposes of the definition of 'terrorist organisation'.

Subsection 102.1(2) of the *Criminal Code* provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act or advocates the doing of a terrorist act.

The Minister for Home Affairs is satisfied on reasonable grounds that Jama'at Mujahideen Bangladesh is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. In coming to this position, the Minister for Home Affairs has taken into consideration an unclassified Statement of Reasons provided by the Director-General of Security, as well as advice from the Australian Government Solicitor (AGS). The Statement of Reasons is at Attachment B.

### *Effect of the instrument*

Division 102 of the *Criminal Code* sets out the following offences relating to terrorist organisations:

- directing the activities of a terrorist organisation
- being a member of a terrorist organisation

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<sup>1</sup> A 'terrorist organisation' is defined in subsection 102.1(1) of the *Criminal Code* as:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- (b) an organisation that is specified by the regulations for the purposes of this paragraph.

- recruiting persons to a terrorist organisation
- receiving training from, providing training to or participating in training with a terrorist organisation
- getting funds to, from or for a terrorist organisation
- providing support to a terrorist organisation, and
- associating with a terrorist organisation.

The Regulations ensure that the offences in Division 102 of the *Criminal Code* apply to conduct relating to Jama'at Mujahideen Bangladesh.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered. Subsection 102.1(3) of the *Criminal Code* provides that regulations for the purposes of paragraph (b) of the definition of 'terrorist organisation' cease to have effect on the third anniversary of the day on which they take effect.

#### *Consultation*

The unclassified Statement of Reasons was prepared by the National Threat Assessment Centre in the Australian Security Intelligence Organisation, in consultation with the Department of Foreign Affairs and Trade and the Department of Home Affairs (Home Affairs). Home Affairs also sought the advice of the AGS to inform the decision of the Minister for Home Affairs.

Subsection 102.1(2A) of the *Criminal Code* provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Minister for Home Affairs wrote to the Leader of the Opposition enclosing the information upon which he was satisfied that Jama'at Mujahideen Bangladesh met the legislative criteria for listing.

The *Intergovernmental Agreement on Counter-Terrorism Laws* (June 2004) (the IGA) requires that the Commonwealth Government consult with the governments of the states and territories prior to making regulations specifying an organisation for the purposes of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*. The IGA provides that if a majority of the states and territories object to the making of such a regulation within a time frame nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Minister for Home Affairs wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the states and territories. A majority of the states and territories did not object to the making of the Regulations within the time frame nominated by the Minister.

## Statement of Compatibility with Human Rights

### *Overview*

The *Criminal Code (Terrorist Organisation—Jama'at Mujahideen Bangladesh) Regulations 2018* (the Regulations) specifies Jama'at Mujahideen Bangladesh for the purposes of paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*.

The object of the Regulations is to identify Jama'at Mujahideen Bangladesh as a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities which might constitute an offence under Division 102 of the *Criminal Code* in relation to Jama'at Mujahideen Bangladesh.

The Regulations, which are part of Australia's terrorist organisation listing regime, support the application of the offences in Division 102 of the *Criminal Code*, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the Regulations provide that the offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* applies in relation to associating with Jama'at Mujahideen Bangladesh.

Terrorist organisations, including Jama'at Mujahideen Bangladesh, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a 'terrorist organisation' requires that these bodies directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act or advocates the doing of terrorist acts (refer to [Attachment B](#) for details).

### *Human rights implications*

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

The Regulations limit the following human rights contained in the ICCPR:

- the right to freedom of expression in Article 19, and
- the right to freedom of association in Article 22.

### *The inherent right to life in Article 6*

Article 6 of the ICCPR provides that countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the *Criminal Code* apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

### *The right to freedom of expression in Article 19*

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Jama'at Mujahideen Bangladesh. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

### *The right to freedom of association in Article 22*

Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right may be limited for the purpose of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right of freedom of association to prevent people engaging with and participating in terrorist organisations, in this instance Jama'at Mujahideen Bangladesh.

The offence of associating with a terrorist organisation in section 102.8 of the *Criminal Code* is limited in its application to an organisation that is a listed terrorist organisation under the definition of 'terrorist organisation' in paragraph 102.1(1)(b) of the *Criminal Code*. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

### *General safeguards and accountability mechanisms*

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Jama'at Mujahideen Bangladesh, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The *Criminal Code* provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the *Criminal Code* the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) the *Criminal Code*, the Regulations will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) of the *Criminal Code* provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the *Criminal Code*, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the *Criminal Code*
- subsection 102.1(17) of the *Criminal Code* provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the *Criminal Code*, and
- both Houses of Parliament may disallow the Regulations within the applicable disallowance period, which is 15 sitting days after the Regulations are laid before that House, as provided for in subsection 102.1A(4) of the *Criminal Code*.

### ***Conclusion***

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations achieve a legitimate purpose and are reasonable, necessary and proportionate.



## ATTACHMENT A

### Details of the Criminal Code (Terrorist Organisation—Jama'at Mujahideen Bangladesh Regulations 2018)

#### Section 1 – Name

This section would provide that the title of the Regulation is the *Criminal Code (Terrorist Organisation—Jama'at Mujahideen Bangladesh) Regulations 2018*.

#### Section 2 – Commencement

This section would provide for the commencement of each paragraph in the instrument, as set out in the table.

Subsection (1) would provide that each provision in the instrument specified in column 1 of the table commences in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Columns 1 and 2 would provide that the Regulations commence the day after the instrument is registered.

The note to subsection (1) would clarify that the table only relates to the provisions of this instrument as originally made, and that it will not be amended to deal with any later amendments to the instrument.

Subsection (2) would provide that information in column 3 of the table is not part of the instrument. It is designed to assist readers, and may be updated or changed in any published version of these Regulations. Column 3 is empty at the time of making the instrument.

#### Section 3 – Authority

This section would provide that the Regulations are made under the *Criminal Code Act 1995*.

#### Section 4 – Terrorist organisation — Jama'at Mujahideen Bangladesh

Subsection (1) would provide that for paragraph (b) of the definition of 'terrorist organisation' in subsection 102.1(1) of the *Criminal Code*, the organisation known as Jama'at Mujahideen Bangladesh is specified.

Subsection (2) would provide that Jama'at Mujahideen Bangladesh is also known by the following names:

- a) Islamic State-Bangladesh
- b) Islamic State of Iraq and Levant-Bangladesh
- c) Islamic State of Iraq and Syria-Bangladesh
- d) Jamaat Mujahideen Bangladesh
- e) Jama'atul Mujahideen Bangladesh
- f) Jamaat ul Mujahideen Bangladesh
- g) Jamayetul Mujahideen Bangladesh
- h) JMB
- i) Neo-JMB

**ATTACHMENT B**

<b>STATEMENT OF REASONS FOR JAMA'AT MUJAHIDEEN BANGLADESH</b>	
<p>Also known as: Islamic State-Bangladesh, Islamic State of Iraq and Levant-Bangladesh Islamic State of Iraq and Syria-Bangladesh, Jamaat Mujahideen Bangladesh, Jama'atul Mujahideen Bangladesh, Jamaat ul Mujahideen Bangladesh, Jamayetul Mujahideen Bangladesh, JMB and Neo-JMB</p>	
<p>This statement is based on publicly available information about Jama'at Mujahideen Bangladesh (JMB). To the Australian Government's knowledge, this information is accurate, reliable and has been corroborated by classified information.</p>	
<b>1.</b>	<p><b>Basis for listing a terrorist organisation</b></p> <p>Division 102 of the <i>Criminal Code</i> provides that for an organisation to be listed as a terrorist organisation, the Minister for Home Affairs must be satisfied on reasonable grounds that the organisation:</p> <ol style="list-style-type: none"> <li>a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act; or</li> <li>b) advocates the doing of a terrorist act.</li> </ol> <p>For the purposes of listing a terrorist organisation under the <i>Criminal Code</i>, the doing of a terrorist act includes the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
<b>2.</b>	<p><b>Background to this listing</b></p> <p>The Australian Government has not previously proscribed JMB as a terrorist organisation under the <i>Criminal Code</i>.</p>
<b>3.</b>	<p><b>Terrorist activity of the organisation</b></p> <p><u>Objectives</u> JMB is an Islamist extremist group which aims to establish an Islamic state in Bangladesh and broader South Asia through violence. Since its formation in 1998 by Sheikh Abdur Rahman, JMB has expanded its targeting to include religious minorities and non-Muslim foreigners. This coincided with the group establishing greater linkages to and influence by Islamic State (a listed terrorist organisation) members, including in Syria, which began in 2015. The November 2015 issue of Islamic State's propaganda magazine <i>Dabiq</i>, stated several militant groups in Bangladesh had come under the leadership of JMB.</p> <p><u>Directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts</u> JMB has conducted attacks in Bangladesh and across the region since its formation in pursuit of its objectives listed above. Attacks in Bangladesh claimed by Islamic State are likely to have been conducted by JMB members. Attacks conducted by, or reasonably attributable to, JMB include:</p> <ul style="list-style-type: none"> <li>• On 25 March 2017, JMB members killed six people and injured more than 50 others in a suicide attack in Sylhet.</li> <li>• On 17 March 2017, JMB conducted a suicide attack against a Rapid Action Battalion camp in Dhaka- the assailant was the sole casualty of the attack.</li> <li>• On 1 July 2016, five JMB members killed 22 people, including 18 foreigners, at the Holey Artisan Bakery in Dhaka.</li> <li>• On 25 December 2015, a JMB suicide bomber attacked an Ahmadi mosque in Dhaka, injuring three people.</li> <li>• On 18 November 2015, JMB members killed Italian priest Piero Parolari in Mirzapur.</li> <li>• 23-24 October 2015, one person was killed and at least 60 injured in a suicide bombing attack at a</li> </ul>

	<p>Shi'ite mosque in Dhaka.</p> <ul style="list-style-type: none"> <li>On 5 October 2015, Christian priest Luke Sarkar was killed and six suspected members of JMB were arrested in relation to his murder.</li> <li>On 3 October 2015, JMB militants attacked and killed Japanese national Kunio Hoshi in Kaunia.</li> <li>On 28 September 2015, JMB militants killed Italian national Cesare Tavella in Dhaka.</li> <li>On 17 August 2005, JMB conducted a series of 459 synchronised bombings across Bangladesh, killing three people and injuring more than 100 others.</li> <li>On 13 February 2003, JMB reportedly conducted seven bombing attacks in Jinajpur, injuring three people.</li> </ul> <p>A number of JMB members have been killed or arrested who are believed to have been at various stages of planning and preparing for terrorist attacks. For example:</p> <ul style="list-style-type: none"> <li>On 1 February 2018, two suspected JMB members were arrested in India with 50 kilograms of explosives, and were suspected of planting improvised explosive devices targeting the Dalai Lama during his January 2018 visit to India.</li> <li>On 12 January 2018, three JMB militants were killed by Bangladeshi counter-terrorism authorities in Dhaka. The group planned to attack important establishments in Dhaka and law enforcement establishments.</li> <li>On 31 October 2017, Bangladeshi police arrested a pilot with state-run Biman Bangladesh Airlines on suspicion of planning with JMB members to crash a plane into the homes of politicians or to take passengers hostage.</li> <li>On 5 September 2017, Bangladeshi police killed JMB militant Mir Akramul Karim Abdullah during a raid. Police seized large amounts of explosives and material for its manufacture. Abdullah was believed by authorities to have been planning to conduct a large-scale attack using explosives.</li> <li>On 15 August 2017, Bangladesh police conducted a raid at Hotel Olio in Bangladesh when a suspected JMB militant detonated an explosive device. Bangladeshi officials claim he planned to conduct an attack later that day on a crowd gathering for National Mourning Day.</li> <li>On 8 October 2016, 12 JMB members were killed in a series of raids, during which police discovered firearms and ammunition, sharp weapons, bomb-making materials and jihadi literature.</li> <li>On 29 August 2016, two senior JMB members were killed in a police raid. During the raid, police found a pistol, ammunition, two homemade bombs, other bomb-making materials and a knife.</li> <li>On 27 August 2016, three JMB members were killed in a police raid, at which police found an AK-22 rifle, one pistol, ammunition and four live grenades.</li> </ul> <p><u>Advocating the doing of terrorist acts</u></p> <p>JMB has publicly advocated terrorist attacks in order to further its objectives. An interview in Islamic State's April 2016 edition of their propaganda magazine <i>Dabiq</i>, outlines Shaykh Abu Ibrahim al-Hanif's claim that he is the leader of Islamic State members in Bangladesh and his calls for Bangladeshis to perform violent jihad as it is an 'obligation on every capable Muslim'. Al-Hanif is assessed to be identical with senior JMB member Sarwar Jahan, leader of the extremist cell responsible for conducting the attack of the Holey Artisan Café on 1 July 2016.</p>
4.	<p><b>Details of the organisation</b></p> <p>JMB aims to establish an Islamic state in Bangladesh through violent means. It subscribes to Islamic State's anti-Western ideology and considers non-Muslim foreigners to be legitimate targets for attack.</p> <p><u>Leadership</u></p> <p>Leadership figures within JMB frequently change as a result of counter-terrorism activities by the</p>

Bangladeshi security The JMB leadership is drawn from experienced militants who have had a long association with the group.

During a raid of his residence on 5 September 2017, Mir Akramul Karim Abdullah identified himself as a leader of JMB. Prior to the raid, 35 senior JMB senior leaders had been present but had departed. Abdullah's comments indicates an organised JMB leadership exists that might prove resilient to the current Bangladeshi security agencies counter-terrorism approach.

#### Membership

The number of JMB members is difficult to specify. However, since the July 2016 Holey Artisan Bakery attack, Bangladeshi authorities have reportedly killed dozens of suspected JMB members and arrested hundreds more.

#### Recruitment and funding

JMB recruits members across Bangladeshi society, ranging from rural working-class individuals to young university-educated individuals. JMB has also sought to recruit members within the Bangladeshi diaspora, predominantly in South East Asian countries.

The amount and source of JMB's funding is largely unknown. However, JMB has been identified receiving funding from Syria-based Islamic State member Siful Sujon prior to his death in 2015.

#### Links to other terrorist organisations

Since 2015, Islamic State has increased its influence on, and linkages with JMB. Many of the attacks conducted by JMB since mid-2015 have been claimed by Islamic State. The JMB members responsible for the July 2016 Holey Artisan Bakery attack, received advice from a Syria-based Islamic State member during the attack.

In his interview with Islamic State's propaganda magazine *Dabiq*, published in April 2016, Shaykh Abu Ibrahim al-Hanif states militants in Bangladesh associated with Islamic State (that is, JMB members) are in contact with Islamic State—Khorasan Province: 'By the grace of Allah, we are able to connect and cooperate with the mujahidin of the various wilayat of the Khilafah, including the brothers in Wilayat Khurasan'.

[REDACTED]

#### Threats to Australian interests

JMB subscribes to Islamic State's anti-Western ideology and would consider Australians to be legitimate targets for attack. JMB targeted foreigners during the July 2016 Holey Artisan Bakery attack—the bakery is located in Gulshan district in Bangladesh's capital of Dhaka, which is where many Western diplomatic missions, including Australia's, are located.

#### Listed by the United Nations or like-minded countries

JMB is proscribed as a terrorist organisation by the United States (under ISIL-Bangladesh) and the United Kingdom.

#### Engagement in peace or mediation processes

JMB is not and has not been a participant in peace or mediation processes.

<b>5.</b>	<p><b>Conclusion</b></p> <p>On the basis of the above information, ASIO assesses that JMB is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts or advocates the doing of terrorist acts.</p> <p>In the course of pursuing its objectives, JMB is known to have committed or threatened actions that:</p> <ul style="list-style-type: none"><li>a) cause, or could cause, death, serious harm to persons, serious damage to property, endangered life (other than the life of the person taking the action), or create a serious risk to the health or safety of the public or a section of the public;</li><li>b) are intended to have those effects;</li><li>c) are done with the intention of advancing JMB's political, religious or ideological causes;</li><li>d) are done with the intention of intimidating the government of one or more foreign countries; and</li><li>e) are done with the intention of intimidating the public or sections of the public.</li></ul>