

EXPLANATORY STATEMENT

Select Legislative Instrument No. 7, 2015

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015

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 Code (the Criminal Code).

Division 102 of the Criminal Code sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; provide training to, receive training from or participate in training with a terrorist organisation; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Section 102.9 of the Criminal Code provides that section 15.4 (extended geographical jurisdiction - category D) applies to an offence against Division 102 of the Criminal Code. The effect of applying section 15.4 is that offences in Division 102 of the Criminal Code apply to conduct (or the results of such conduct) constituting the alleged offence whether or not the conduct (or the result) occurs in Australia.

Terrorist organisation is defined in subsection 102.1(1) of the Criminal Code as:

- an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (paragraph 102.1(1)(a)); or
- an organisation that is specified by the regulations for the purposes of this paragraph (paragraph 102.1(1)(b)).

Subsection 102.1(20) of the Criminal Code provides that a reference to the doing of a terrorist act includes a reference to the doing of a terrorist act, even if a terrorist act does not occur; a reference to the doing of a specific terrorist act; and a reference to the doing of more than one terrorist act.

The purpose of the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* (the Regulation) is to specify Islamic Movement of Uzbekistan, also known as Islamic Movement of Turkestan and Islamic Party of Turkestan, for the purpose of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Criminal Code.

The Regulation enables the offence provisions in Division 102 of the Criminal Code to apply to persons with links to Islamic Movement of Uzbekistan. Details of the Regulation are set out in [Attachment A](#).

Subsection 102.1(2) 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 this section, 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.

In determining whether he is 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, the Minister takes into consideration an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Islamic Movement of Uzbekistan is at [Attachment B](#).

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.

Prior to making the Regulation, consultations were held with the Department of Foreign Affairs and Trade, Australian Security Intelligence Organisation and the Australian Government Solicitor. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories and the Attorney-General offered the Leader of the Opposition a briefing.

The Regulation repeals existing Regulation 4J of the *Criminal Code Regulations 2002* which specify Lashkar-e Jhangvi, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code. The existing Regulation 4L ceased to have effect on 10 March 2015. The repeal of Regulation 4L ensured there is no duplication if the new Regulation was made before the current Regulation ceases.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. 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 it takes effect.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit for, train, receive or participate in training, get funds to, from or

for Islamic Movement of Uzbekistan, and provide support or associate with Islamic Movement of Uzbekistan.

The offence of association with a terrorist organisation in subsection 102.8 of the Criminal Code is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or legal representation.

The object of the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia.

Human rights implications

This instrument engages the following rights:

- Article 6
- Article 19 and
- Article 22.

The *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* will engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the Regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Whilst the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* may limit the right to freedom of association with Islamic Movement of Uzbekistan, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Islamic Movement of Uzbekistan 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, as detailed in the Statement of Reasons ([Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons ([Attachment B](#)) supports the Attorney-General's decision made on reasonable grounds, that Islamic Movement of Uzbekistan satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- 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 regulation
- under subsection 102.1(3) of the Criminal Code the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* 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 regulation listing the organisation ceases to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* 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 *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015* within the applicable disallowance period which is 15 sitting days after the regulation was laid before that House, as provided in subsection 102.1A(4) of the Criminal Code.

Conclusion

The Regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

Details of the Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015

Section 1- Name of Regulation

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation – Islamic Movement of Uzbekistan) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation – Islamic Movement of Uzbekistan

Subsection (1) provides that for paragraph (b) of the definition of ‘*terrorist organisation*’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Islamic Movement of Uzbekistan is specified.

Subsection (2) provides that Islamic Movement of Uzbekistan is also known by the following names:

- (a) Islamic Movement of Turkestan; and
- (b) Islamic Party of Turkestan.

Schedule 1 – Amendments

This schedule amends the *Criminal Code Regulations 2002*.

Clause 1 - Regulation 4J

This clause provides that regulation 4J of the *Criminal Code Regulations 2002* is repealed. Regulation 4J was the regulation listing the Islamic Movement of Uzbekistan as a terrorist organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code. This clause ensures there is no duplication if the new Regulation was made before the current Regulation ceases.

Islamic Movement of Uzbekistan

(Also known as: **Islamic Movement of Turkestan,
Islamic Party of Turkestan**)

The following information is based on publicly available details about the Islamic Movement of Uzbekistan (IMU). To the Australian Government's knowledge, these details are accurate and reliable and have been corroborated by classified information.

Basis for listing a terrorist organisation

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

- (a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
- (b) advocates the doing of a terrorist act whether or not a terrorist act has occurred or will occur.

Details of the organisation

Objectives

The origins of the IMU date from the early 1990s, when Juma Namangani, a former Soviet Army soldier who fought in Afghanistan joined forces with Tahir Yuldashav (variant Yuldosh), an unofficial mullah and head of the Adolat (Justice) Party. Their aim was to implement Sharia law in the city of Namangan in Uzbekistan's part of the Ferghana Valley.

Alarmed by Adolat's demands to transform Uzbekistan into an Islamist state, the government banned the Adolat Party in March 1992. A period of repression followed, forcing many Islamic militants to flee the Ferghana Valley. Namangani fled to Tajikistan, where he participated in the Tajik Civil War and established a base for his fighters in that country. Yuldashev travelled to Afghanistan, Pakistan and Saudi Arabia, establishing links to other Islamic militants. He also made clandestine trips to Uzbekistan, maintaining contact with his supporters and setting up underground cells. By the late 1990s, the IMU was officially formed.

The IMU's stated goal, as posted on the internet in August 1999, is the 'establishment of an Islamic state with the application of the Shariah' in Uzbekistan.

The IMU expanded its territorial focus to encompass an area stretching from the Caucasus to China's western province of Xinjiang, under the new banners of the Islamic Party of Turkestan in April 2001 and the Islamic Movement of Turkestan in May 2001. Despite the name changes, the group's name continues to be reported as the IMU, and it is listed under this name by the US Office of the Coordinator for Counterterrorism as a foreign terrorist organisation.

By the end of the 1990s, the IMU had relocated to Afghanistan and the tribal areas of Pakistan, due to the lack of support for the movement in Uzbekistan and the measures taken against it by the Uzbek government.

Leadership

The former chief and co-founder of the IMU, Tahir Yuldashev, was killed in a US drone strike in South Waziristan, Pakistan, on 27 August 2009. Yuldashev's death was confirmed by the IMU in August 2010. His successor Usmon Odil, a long time associate of Yuldashev was in turn killed by a US drone strike in North Waziristan on 29 April 2012. Odil's death was confirmed by the IMU in August 2012. Odil was replaced by his deputy Usman Ghazi who remains the current leader of the IMU. On 26 September 2014, Ghazi reportedly pledged the allegiance of the IMU to the Islamic State of Iraq and the Levant (ISIL).

Membership

The IMU has attracted supporters from a variety of ethnic backgrounds, principally Uzbeks, Kyrgyz, Tajiks, Chechens and Uighurs. The IMU's recruitment efforts have also been aimed at Germans, with a German member of the group, in a video released in 2010, inviting entire families to leave Germany to join the IMU in Pakistan's tribal areas.

The IMU continues to recruit fighters, and IMU members have fought alongside the Taliban, al-Qa'ida, and the Tehrik-e-Taliban Pakistan (TTP) against Coalition and Afghan government forces in Afghanistan and Pakistani forces in Pakistan. The Ferghana Valley, where the Uzbek, Kyrgyz and Tajik borders converge, is a fertile recruiting ground for the IMU, which has successfully exploited the widespread poverty in the region in its recruitment strategy.

The IMU's losses in Afghanistan and Pakistan, as well as the defection of fighters to a splinter group, the Islamic Jihad Union, have not diminished the group's capability and intent to conduct terrorist attacks. As of late 2013 the IMU claimed to have some 700 fighters and 140 advisers and trainers in Afghanistan, a further 2000 fighters in Pakistan, and an undisclosed number active elsewhere, including Central Asia, the Caucasus, Iran and Syria.

Funding

Sources of funding for the IMU have included Uzbeks who migrated to Islamic countries in the 1920s, in particular Saudi Arabia's Uzbek diaspora, which numbers 300,000 people. Funds also come from a number of Turkish foundations and Islamist and pan-Turkic organisations, the Taliban, al-Qa'ida and sympathetic foundations and banks throughout the Arab world.

The IMU also generates funds through drug trafficking, racketeering and solicitation of donations abroad. In May 2008, French, German and Dutch authorities detained ten individuals suspected of running a network to funnel money to the IMU in Uzbekistan, Afghanistan and Pakistan. On 08 January 2013, a French Court sentenced a Turkish/Dutch national, Irfan Demirtas, to eight years' incarceration for leading the network which French prosecutors said had raised at least 300,000 Euros, with 170,000 Euros specifically designated for jihad. Eight others belonging to the group received lesser sentences.

Terrorist activity of the organisation

Directly or indirectly engaged in the doing of terrorist acts

IMU is directly engaged in the doing of terrorist acts. Significant attacks for which responsibility has been claimed by, or attributed to, the IMU (since the IMU proscription was last updated by Australia in March 2012) include:

- 08 June 2014: the attack at Jinnah International Airport , Karachi, Pakistan, which killed 36 including the 10 attackers;
- The IMU claimed joint responsibility with TTP for the assault;
- 18 October 2013: a suicide bomb attack conducted near Bagram Air Base, Parwan Province, Afghanistan, targeting an International Security Assistance Force (ISAF) convoy. The IMU claimed responsibility for the attack;
- 29 May 2013: in concert with the Taliban, the IMU assaulted the Governor's compound in Panjshir Province, Afghanistan. Two of the attackers and a policeman died in the attack;
- 12 May 2013: the director of the Police Department in Quetta, Pakistan, was murdered in an IMU suicide attack; and
- 15 April 2012: IMU fighters attacked Bannu Prison, Pakistan, liberating 384 prisoners - 20 described by a Pakistani government spokesman as "very dangerous".

Directly or indirectly fostering the doing of terrorist acts

The IMU indirectly fosters the doing of terrorist acts by releasing propaganda material of its militant activities. The IMU maintains a media wing, known as Jundallah Studio, which produces and releases propaganda video and audio statements.

- On 12 February 2014 the IMU released a 32 minute video featuring scenes from Mir Ali, North Waziristan, filmed in December 2013, depicting IMU and other jihadi factions attacking Pakistani government forces.
- On 31 May 2013 the IMU released a video statement indicating it had participated in an attack conducted in concert with the Afghan Taliban in Panjshir province Afghanistan on May 29 2013.
- On 26 June 2012 the IMU released a video of two female fighters calling on Muslims to conduct Jihad and urging women to marry fighters and to prepare their children for jihad.
- On 17 March 2011, the IMU released a 21 minute video recording apparently showing a series of attacks on Coalition forces in July-August 2010 in the Chahar Dara District of Afghanistan's Kunduz Province.
- In June 2010, the IMU produced a video compilation containing footage of operations and attacks conducted by militants, including Germans, from April to June 2010. These videos contained German introductions and German subtitles.
- In December 2009, the IMU released English and German-subtitled videos showing a meeting between its former chief, Tahir Yuldashev, and the leader of Tehrik-e-Taliban Pakistan (TTP), Hakimullah Mahsud. The video shows Tahir and Mahsud talking with each other, walking together and taking turns firing a gun. The video also shows Tahir

reading a eulogy for slain TTP leader Baitullah Mahsud, stressing that jihad will not cease with the death of its leaders.

Conclusion

On the basis of the above information, ASIO assesses that the IMU continues to directly and/or indirectly engage in preparing, planning, assisting, advocating or fostering the doing of acts involving threats to human life and serious damage to property. This assessment is corroborated by information provided by reliable and credible intelligence sources.

In the course of pursuing its objectives, the IMU is known to have committed or threatened action:

- that causes, or could cause, serious damage to property, the death of persons or endanger a person's life or create a serious risk to a person's safety;
- are done with the intention of advancing the IMU's political, religious and ideological causes;
- are done with the intention of coercing or influencing by intimidation the governments of foreign countries; and
- are done with the intention of intimidating sections of the public globally.

Other relevant information

Links to other terrorist groups or networks

The IMU has had historically close ties with al-Qa'ida, the Taliban and other militant groups in the Afghanistan/Pakistan theatre. Senior IMU leaders have held positions in the al-Qa'ida hierarchy. In Pakistan the IMU has conducted joint operations with the TTP. On 26 September 2014 the IMU reportedly pledged allegiance to ISIL.

Threat to Australian interests

The IMU does not represent a direct threat to Australian interests. However given the sometimes indiscriminate nature of IMU attacks and its disregard for loss of life, Australians could be caught up in attacks directed at others in Afghanistan and Pakistan.

Proscription by the UN and other countries

The IMU has been listed in the United Nations 1267 Committee's consolidated list and as a proscribed terrorist organisation by the governments of the United Kingdom, United States, Canada and New Zealand.

Peace and mediation processes

The IMU is not known to have participated in peace or mediation processes.