

15.3 Incitement

Introduction and Reform

The Serious Crime Act 2007

Abolition of incitement and replacement by two new inchoate statutory offences of encouraging and assisting crime.

Section 44

(1) A person commits an offence if –

- (a) he does an act capable of encouraging or assisting the commission of an offence; and
- (b) he **intends** to encourage or assist its commission.

(2) But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.

Actus Reus

- There must be an act or course of conduct not an omission;
- It need only be capable of assisting and need not actually do so;
- It can include a threat or coercion upon a third party to commit a crime;
- It can include arranging for another person to encourage or assist a further person to commit a crime.

Mens Rea

- D must intend to encourage or assist a crime;
- S47(5)(a): where the offence being assisted or encouraged is one requiring MR, D must believe that that the crime would be committed by another with that MR or he must be reckless as to that fact or, if D were to actually commit the offence in question, he would do it with that MR.
- D must believe/ intend or be reckless as to any required circumstances or consequences for the offence encouraged or assisted.

Defences

- Knowledge that the offence encouraged or assisted is criminal is not required (s47(2)). Therefore, ignorance of the law is no defence;
- Reasonableness - S50:
A person is not guilty of an offence if he proves knowledge or belief in certain circumstances and that it was reasonable for him to act in the circumstances as he believed them to be. Factors to be taken into account in determining reasonableness include:
 - the seriousness of the anticipated offence;
 - D's purpose;
 - any authority by which D claims to be acting.

If D is a victim/a member of a protected category, he cannot be guilty.

Sentence

S58: Where the offence envisaged is murder – life sentence.

For any other offence – the maximum sentence is that which is available for the completed crime.

Section 45

A person commits an offence if –

- (a) he does an act capable of encouraging or assisting the commission of an offence;
and
- (b) he **believes** –
 - (i) that the offence will be committed and
 - (ii) that his act will encourage or assist its commission.

This offence is very similar to s44 and the notes above apply except that D must *believe* the offence will be committed and that his act will assist or encourage.

There is no need for the offence to occur.

The defences as above apply.

Section 46

This section creates an offence of encouraging or assisting offences believing that one or more will be committed. Again, no offence need actually be committed and the defences above apply.

Websites

The Act: http://www.opsi.gov.uk/acts/acts2007/ukpga_20070027_en_1

Explanatory notes: http://www.opsi.gov.uk/acts/acts2007/en/ukpgaen_20070027_en_1

15.1 and 15.2 Attempts and Conspiracy

Reform

Conspiracy and Attempts – A Consultation Paper (Law Com CP No. 183 2007)

This paper seeks consultation on reform of conspiracy and attempts in the light of the expansion of organized and international crime. It is proposed that s1(1) Criminal Attempts Act 1981 should be abolished and replaced by two inchoate offences:

1. An offence of criminal attempt limited to D's last acts
2. An offence of criminal preparation covering acts which are part of the execution of the plan.

Both would require an intention to commit the final offence. The existing boundaries of liability are not intended by these proposals to be extended. The two new offences would require a distinction between 'last acts' and 'preparatory acts.' It would not seem to avoid the current difficult distinction between 'more than merely preparatory' and 'merely preparatory' but does provide some guidance in the form of a list of examples of acts which should be more than merely preparatory.