The criminal law does not only deal with offenders who complete crimes (i.e. the *actus reus* and *mens rea* is completed resulting in harm or loss). The criminal law also deals with attempts to commit crime and conspiracies to commit crime.

### Inchoate:

Beginning, incomplete, undeveloped, early stages.

### Attempt:

Try, effort, plan, endeavour.

---

**Definition**

Inchoate: beginning, incomplete, undeveloped, early stages.

Attempt: try, effort, plan, endeavour.

---

- This chapter will examine the ways in which a person can attempt, or take steps, to commit a crime.
- As you can see from the diagram below, there is some overlap with aiding, abetting, counselling and procuring.

---

### Workpoint

Why is it important that inchoate offences exist in criminal law? What kind of behaviour are Parliament and the police trying to stamp out?

- A big problem in this area of law is deciding exactly when an inchoate offence has taken place.
- How far does a person have to go in order to 'attempt' an offence?
- Is it fair to punish individuals for merely attempting or conspiring to commit an offence?
• There is a delicate balancing act in this area of law: freedom of expression versus the protection of the public.

15.1 Attempt
Making an attempt at a criminal offence is governed by statute law under section 1(1) of the Criminal Attempts Act 1981:

“If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.”

• Notice that the physical element of this crime is to do ‘an act which is more than merely preparatory’.
• The jury decide whether the defendant’s act was ‘more than merely preparatory’ under section 4(3) of the 1981 Act.
• What does ‘more than merely preparatory’ mean?

Workpoint
X and Y wish to attack Z. They hatch a plan to collect weapons and locate Z that night. What do you think X and Y must do now to go beyond preparing to commit the offence?

15.1.1 More than merely preparatory
• The Criminal Attempts Act 1981 prefers to look forward from the stage of preparation to see whether the defendant has gone beyond what is ‘merely preparatory’. However, the old case law liked to look backwards, and some of the old case law is still used today.
• An act that is connected to the commission of the criminal offence will suffice.

Case:

<table>
<thead>
<tr>
<th>Case:</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eagleton (1855)</td>
<td>An act is required, but not all acts leading up to the offence are indictable. Acts immediately connected with the commission of the offence are to be considered.</td>
</tr>
</tbody>
</table>
The defendant must do an act that ‘crosses the Rubicon’.

**Case:**

**DPP v Stonehouse (1978)**

Lord Diplock: ‘Acts that are merely preparatory to the commission of the offence are not sufficiently proximate to constitute an attempt. [D] must have crossed the Rubicon and [done an act].’

An attempt is a ‘series of acts’ that would constitute actual commission of the criminal offence.

A ‘series of acts’ begins when preparation is over and the commission of the real offence begins.

Acts that go beyond preparation will be left to the jury to deliberate.

**Case:**

**Jones (1990)**

Facts: D obtained a gun, shortened the barrel, loaded the gun, disguised himself, got into the victim’s car and pointed the gun at the victim, which the victim wrestled away. D was charged with attempted murder.

Held: most of the acts were preparatory, but getting into the victim’s car and pointing the gun at the victim was sufficient evidence to leave to the jury to deliberate whether an attempt had taken place.

A jury must be able to safely say that the defendant went beyond the ‘merely preparatory’ stage.

If too many acts remain undone, the defendant has not begun the commission of the offence.
Case:

**Campbell (1991)**  
Facts: D was wearing a crash helmet and was armed with an imitation gun when he was arrested for attempted robbery within one yard of the post office door.  
Held: there was no evidence on which a jury could safely say that he had gone beyond what was ‘merely preparatory’.

**Workpoint**

What must the defendant have done in *Campbell (1991)* to go beyond merely preparatory acts and begin an attempt at robbery?

- When it comes to attempted rape or another offence against the person, physical contact must be made but the whole *actus reus* does not have to be performed.  
- Touching the victim and placing her in the relevant position is beyond preparatory.

Case:

Facts: the defendant had placed the victim in a state of distress, interfered with her clothing, dragged her up the stairs, placed her in a particular position, removed his clothing and interfered with her body before he had the chance to complete the rape.  
Held: the defendant had embarked on the offence of rape itself because his acts were more than merely preparatory.

- Being equipped or in the right location is not beyond ‘merely preparatory’.

Case:

**Geddes (1996)**  
Facts: D was discovered in a school boys’ toilets. In his rucksack was string, sealing tape and a knife. He was charged with attempted false imprisonment.  
Held: the defendant intended to commit an act, but there was serious doubt that he had gone beyond the preparation stage. Does the evidence show that D tried to commit the offence or that he was merely equipped/in the position to do so?

- The preparatory acts must be close to, and necessary for, the commission of the criminal offence.
Do the acts of preparation amount to acts of commission? The question is one of degree: how close to, and necessary for, the commission of the criminal offence were the preparatory acts?

The acts of preparation amount to acts of commission. This is because the preparatory acts are necessary for the commission of the criminal offence.

When charging a person for preparing to commit a criminal offence, it is vital that the actus reus of that offence is clear. If the actus reus is not clear, it will be difficult to prove whether the defendant has gone beyond preparing to do it and actually begun to commit it.

If the actus reus requires a particular act (e.g. entry into a building), then any act done by the defendant must go beyond preparing for entry.

I can separate ‘inchoate offences’ into four different types of offence.
I can justify the use of inchoate offences in criminal law.
I can locate the statutory definition of attempt.
I can define a ‘preparatory’ act.
I can explain the ways in which an act can go beyond ‘merely preparatory’.
I can illustrate the ‘series of acts’ theory as laid down by Boyle (1987).
I can apply the rule in Attorney-General’s Reference (No. 1 of 1992) (1993) to non-fatal offences against the person.
I can explain why the actus reus of an offence must be clear in order to charge a person with attempt.
15.1.2 The *mens rea* of attempt

- Defendants charged with burglary and theft have, in the past, been seen as opportunist who do not intend to take particular items when breaking in or stealing – *Easom* (1971).
- Proof of intention will be found in the defendant’s behaviour and how far his preparatory acts went.

<table>
<thead>
<tr>
<th>Case:</th>
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<tbody>
<tr>
<td><em>Whybrow (1951)</em></td>
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</table>

**Research Point**

Examine the decision in *Whybrow (1951)* 35 Cr App R 141 (above). Why do you think the courts have requested only an intention to kill in cases of attempted murder?

- Burglars and thieves have in the past been seen as opportunist who do not intend to take particular items when breaking in or stealing – *Easom* (1971).
- Burglars and thieves can be therefore charged with attempting to steal some or all of another person’s belongings – *Attorney-General’s Reference (No. 1 of 1979)* (1979).
- Even though intention is essential for attempts, the defendant can be *reckless* as to some of the *actus reus.***

<table>
<thead>
<tr>
<th>Case:</th>
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<tbody>
<tr>
<td><em>Attorney-General’s Reference (No. 3 of 1992) (1994)</em></td>
</tr>
</tbody>
</table>

15.1.3 Impossibility

- Just because a crime turns out to be impossible to commit, it does not mean that a person cannot attempt to commit it. Attempts to commit impossible crimes are still punished in the ordinary way.
You cannot murder someone that is already dead, but you can be charged and convicted of attempted murder instead.

Case:

**White (1910)**

The defendant tried to poison his mother, but before the cyanide could take effect she had a heart attack and died of natural causes.

- **Impossible attempt**
  - **Physically impossible**
    - The defendant stabs the victim intending to kill him, but the victim is already dead
  - **Practically impossible**
    - The ‘stolen goods’ that are being handled are not actually stolen
  - **Legally impossible**
    - The defendant tries to break into a bank vault with a matchstick

- Section 1(2) of the Criminal Attempts Act 1981 planned to make all impossible criminal attempts blameworthy and punishable in criminal law:

  ‘A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.’

- The courts have ruled that attempting to commit impossible offences can lead to conviction.
- An intention to commit the impossible offence will suffice for the mental element.

Case:

**Shivpuri (1987)**

Any attempt to commit a criminal offence must involve an intention to commit that offence, even if commission of the full offence is impossible.

**Jones (2007)**

Facts: the ‘child’ that the defendant was inciting was an undercover police woman.

Held: the defendant was rightly convicted of inciting a child under 13 to engage in sexual activity.
• Offences that require **recklessness**, **negligence** and no **mens rea** at all cannot be attempted.

![Diagram with icons: Reckless manslaughter, Gross negligence manslaughter, Strict liability offences]

**Workpoint**

A defendant who is convicted of an attempted crime will receive the same punishment as a defendant who actually carried out that crime. Can it be argued that defendants like those seen in *Jones* (2007) were convicted for their sinister intentions as opposed to real sexual offences against children? If so, is this how the criminal law should operate?

### 15.1.4 Reform

• The Law Commission published a paper – *Conspiracy and Attempts* (No. 183) – in 2007. They make several suggestions to reform the law of attempt. Suggestions include the following:

1. Attempt should be abolished and replaced;
2. First replacement offence: the defendant reaches the last stages of commission;
4. Direct or oblique intention will suffice;
5. Penalties and sentences will remain the same as committing the full offence;
6. An omission will suffice for an attempt.

**Workpoint**

The Law Commission is proposing that only when a defendant reaches the final acts of commission can he be arrested for an ‘attempt’. What effect will this have on the law, individual behaviour and the safety of society?

**Checkpoint - attempt (2)**

<table>
<thead>
<tr>
<th>Item on checklist:</th>
<th>Done!</th>
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<tbody>
<tr>
<td>I can explain why the <strong>mens rea</strong> of intention is important to offences of attempt</td>
<td></td>
</tr>
<tr>
<td>I can explain how a <strong>mens rea</strong> of recklessness can be incorporated into a conviction for attempt as a result of <em>Attorney-General’s Reference (No. 3 of 1992)</em> (1994)</td>
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</table>
15.2 Conspiracy

- A conspiracy is where two or more people agree to commit a crime.
- A conspiracy has occurred as soon as an agreement has taken place.
- It is sometimes difficult to gather evidence that a conspiracy has taken place.
- The criminal offence itself does not have to be committed.

**Definition**

Conspiracy: plot, scheme, plan, agreement.

**Workpoint**

Why is the offence of conspiracy a valuable weapon against crime?

- This area of law is mainly governed by section 1(1)(a) of the Criminal Law Act 1977, which states that a person is guilty of conspiracy if he:

  ‘...agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions...

  (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement.’

- Case law pre-dating 1977 has continued to aid the courts in applying the statutory definition.

15.2.1 The *actus reus* of statutory conspiracy
• All parties must agree to commit the same offence.
• If the defendant is mistaken as to the offence, he will be acquitted of conspiracy.
• A defendant may be charged with the lesser offence if they are similar in nature.

<table>
<thead>
<tr>
<th>Case:</th>
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<tbody>
<tr>
<td><strong>Barnard (1980)</strong></td>
<td>When a defendant agrees to assist with a theft (a less serious offence), he has not taken part in the actual conspiracy to commit robbery (a more serious offence).</td>
</tr>
<tr>
<td><strong>Taylor (2002)</strong></td>
<td>An agreement to import class B drugs was not equivalent to the actual conspiracy to import class A drugs.</td>
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</tbody>
</table>

• Mistakes about minor details will be overlooked by the courts.

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<thead>
<tr>
<th>Case:</th>
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<tbody>
<tr>
<td><strong>Broad (1997)</strong></td>
<td>When charged with a conspiracy to produce a class A drug, it matters little that one defendant thought it was heroin and another thought it was cocaine.</td>
</tr>
</tbody>
</table>

• A conspiracy continues to exist until it is performed, abandoned or frustrated.

<table>
<thead>
<tr>
<th>Case:</th>
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<tbody>
<tr>
<td><strong>DPP v Doot (1973)</strong></td>
<td>Additional parties may join the conspiracy for as long as it exists until it is performed, abandoned or frustrated.</td>
</tr>
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</table>

**Workpoint**

Derek and Jane agree to supply heroin to Zack. They both scour the local streets for illegal drugs. Derek arranges to collect three grams of heroin, but Jane misunderstood the word ‘heroin’ for ‘herbs’ and arranges with a friend of hers to buy twenty grams of cannabis. Before they can collect the drugs, Zack calls Derek to say that he has changed his mind. Derek and Jane are then arrested by an undercover police officer for conspiracy to supply class A drugs. Do they fulfil the *actus reus* of conspiracy?

• The individuals involved in a conspiracy do not have to meet each other.
There must at least be a common purpose between all members.
- The alleged conspirator must have communicated with at least one other member (Scott 1979).
- The alleged conspirator must have agreed with another member who may remain unidentified (Philips 1987).

15.2.2 Excluded parties
- Some parties are excluded from conspiracy.

- A victim cannot conspire to commit an offence against him or herself.
- Laws are in place to protect victims, not prosecute them.
- The attacking conspirator therefore escapes conviction for conspiracy.

**Case:**

*Tyrrell* (1894)

A girl under 16 cannot aid and abet unlawful sexual intercourse because the statute was designed to protect her as a victim, not prosecute her as a co-defendant. She could thus not conspire to commit the offence.

- The notion that a husband and wife cannot conspire with each other is an old common law rule.
• The law was amended to include civil partners by the Civil Partnership Act 2004.
• The husband, wife or civil partner may however conspire with someone outside of the marriage/partnership.

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Lovick (1993)</td>
<td>Convictions to conspire were quashed because only the husband and wife were involved.</td>
</tr>
<tr>
<td>Chrastny (1992)</td>
<td>If a third party is involved (e.g. the husband conspires with the third party), the convictions between spouses may stand.</td>
</tr>
</tbody>
</table>

15.2.2.1 Controversies
• Spouses and civil partners can conspire to commit any criminal offence against another person – even murder – and not face prosecution.
• A defendant who conspires with an underage victim to engage in sexual activity may be seen by some as a very dangerous individual indeed.
• Spouses and civil partners who wish to engage in sadomasochistic sexual activities (i.e. leading to an assault or a battery) cannot do so if one of them is deemed to be the ‘victim’.

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<tr>
<th>Item on checklist:</th>
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<tbody>
<tr>
<td>I can define a ‘conspiracy’ and locate it within the Criminal Law Act 1977</td>
<td></td>
</tr>
<tr>
<td>I can explain what each party to a conspiracy must understand in terms of their role and the ‘common agreement’</td>
<td></td>
</tr>
<tr>
<td>I understand how a conspiracy can come to an end</td>
<td></td>
</tr>
<tr>
<td>I can describe the ways in which conspirators can communicate with each other</td>
<td></td>
</tr>
<tr>
<td>I can list at least two excluded parties from conspiracies</td>
<td></td>
</tr>
</tbody>
</table>

15.2.3 The mens rea of statutory conspiracy
• According to section 1(1)(a) of the Criminal Law Act 1977 (above), a person is guilty of conspiracy if he:
  1. Agrees on a course of conduct;
  2. In accordance with their intentions;
  3. One or more of the parties will commit the offence/offences.
The mens rea required for conspiracy is not the same mens rea that is required for the offence itself.

<table>
<thead>
<tr>
<th>Case:</th>
<th>Siracusa (1989)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facts:</td>
<td>The mens rea for the offence in question may not be required for a charge of conspiracy. What must be proved is an agreement to commit that offence, not the intention to commit that offence.</td>
</tr>
<tr>
<td>Held:</td>
<td>It does not matter that D did not wish to see the conspiracy through to the end (i.e. the commission of an offence). He intended to play some part - this is enough.</td>
</tr>
</tbody>
</table>

The conspirators do not have to intend to see the conspiracy through until the end.

Each member must agree to participate in some way.

<table>
<thead>
<tr>
<th>Case:</th>
<th>Anderson (1986)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facts:</td>
<td>D wished to run away with the money once he had provided tools for the crime. He did not believe the tools would even work.</td>
</tr>
</tbody>
</table>

A conspiracy has taken place even if the agreement contains certain conditions which may or may not transpire on the day – Reed (1982).

<table>
<thead>
<tr>
<th>Case:</th>
<th>Jackson (1985)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facts:</td>
<td>D and E agreed with X to shoot X in the leg if he was convicted of burglary (i.e. the ‘condition’) so that he would receive a more lenient sentence. They were all convicted of conspiracy to pervert the course of justice.</td>
</tr>
</tbody>
</table>
Lord Nicholls in *Saik* (2006) gave the following example of a conditional agreement: ‘A conspiracy to rob a bank tomorrow if the coast is clear when the conspirators reach the bank is not, by reason of this qualification, any less a conspiracy to rob.’ What if: (a) X and Y agree to burgle a house only if it is empty? (b) X and Y agree to kidnap X’s nephew if they can find the time? (c) X tries to persuade Y to have sex with his wife knowing that she won’t consent? (d) X calls Y and asks him if he’d help him beat up an old convict friend? Are any of these scenarios conspiracies?

- There can be a single conspiracy against several defendants to commit several criminal offences – *Roberts* 1998.
- If a conspiracy involves two or more countries (e.g. drug smuggling), the defendants can be tried for conspiracy in both countries – *Lavercombe* 1988.

**Case:**

*Kenning and others* (2008)  
A defendant cannot conspire to aid, abet, counsel or procure another. A conspiracy under the 1977 Act must require commission of an offence. It is known as the ‘necessary’ requirement.

**Workpoint**

Why do you think it is necessary for a conspiracy to include the actual commission of a criminal offence?

- Section 1(2) of the Criminal Law Act 1977 adds:
Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

- In other words, a person is not guilty of conspiracy if, when he commits a crime, he is not aware of particular facts or circumstances relevant to that crime.
- A person will be a conspirator if he and a co-conspirator intend or know about the relevant facts or circumstances at the time of the offence.

‘Suspicion’ of facts or circumstances is not enough.
- The case of Tree (2008) confirmed the rule in Saik (2006) that suspicion was not enough as a mens rea of conspiracy.

**Case:**

**Saik (2006)**

Facts: the defendant was operating a bureau de change and was converting money from criminal activity. He suspected that the money was the proceeds of crime.

Held: without proof that the defendant knew that the money was the proceeds of crime, there was no mens rea for conspiracy.

**Checkpoint - conspiracy (2)**

<table>
<thead>
<tr>
<th>Item on checklist:</th>
<th>Done!</th>
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</thead>
<tbody>
<tr>
<td>I can list the several elements of the mens rea of conspiracy</td>
<td></td>
</tr>
<tr>
<td>I can explain why the mens rea for conspiracy is different to the mens rea of the crime the defendants conspire to commit</td>
<td></td>
</tr>
</tbody>
</table>
15.2.4 Common law conspiracy

- The Criminal Law Act 1977 may have abolished the offence of conspiracy at common law, but there are small traces of common law offences:
  1. Conspiracy to corrupt public morals or outrage public decency;
  2. Conspiracy to defraud.

- Even though a conspiracy to corrupt public morals or outrage public decency is defined under section 5(3) of the Criminal Law Act 1977, its common law nature has been maintained:

  ‘...an agreement to engage in conduct which (a) tends to corrupt public morals or outrages public decency, but (b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement’.

  The Court of Appeal have confirmed that conspiracy to outrage public decency is a statutory offence (Gibson and others 1990)
  The House of Lords have confirmed that conspiracy to corrupt public morals is a common law offence (Shaw v DPP 1962)

- Conspiracy to defraud is still a common law offence.

Case:

**Scott v MPC (1975)**

Viscount Dilhorne: ‘It is clearly the law that an agreement by two or more persons by dishonesty to deprive a person of something which is his or to which he is, or would be, entitled, and an agreement by two or more by dishonesty to injure some proprietary rights of his, suffices to constitute the offence of conspiracy to defraud.’
In the Viscount Dilhorne statement above, what is the actus reus of conspiracy to defraud (i.e. the physical elements of the offence)? What is the mens rea of conspiracy to defraud (i.e. the mental elements of the offence)?

- Many defendants who conspire to defraud are not intentionally dishonest; they are merely opportunists or greedy.

**Case:** Cooke (1986)  
Although the conspirators must intend to defraud, the desire to make a profit may suffice, as this will have the inevitable consequence of resulting in loss to the victim.

**15.2.5 Impossibility**  
- Impossibility used to be a defence to common law conspiracy.  
- In practice, if X and Y agreed to commit an impossible task, they do not attract criminal charges of conspiracy.

**Case:** DPP v Nook (1978)  
D and E believed they were dealing with cocaine, when in fact it was harmless dentistry material. Their convictions for conspiracy to produce a controlled drug were quashed because it was physically impossible to extract cocaine from the powder.

- Under section 3(1) of the Criminal Law Act 1977, a person can be charged with conspiracy even if the offence he was conspiring to perform was impossible to carry out.

**15.2.6 Reform**  
- In the Law Commission’s 2007 Consultation Paper entitled Conspiracy and Attempts (No. 183), they recommended the following changes:
  
  1. Spousal immunity should be abolished;  
  2. Those who conspire with victims should not be exempt from prosecution;  
  3. There should be a statutory defence for victims charged with conspiracy;  
  4. In regards to the mens rea of conspiracy, recklessness as to particular facts or circumstances is preferred by the Law Commission.
15.3 Assisting and encouraging crime

- It used to be a common law offence to ‘incite’ (i.e. encourage) someone to commit a criminal offence.

**Definition**

**Incite**: provoke, spur on, motivate, persuade, encourage.

- Inciting has now been replaced by several new offences in the Serious Crime Act 2007, but offences containing the word ‘incite’ can still be found.

<table>
<thead>
<tr>
<th>Location:</th>
<th>Offence:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offences Against the Person Act 1861 (s.4), <em>Abu Hamza</em> (2006)</td>
<td>Soliciting murder</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971 (s.19)</td>
<td>Incitement to produce, possess or supply controlled drugs</td>
</tr>
<tr>
<td>Sexual Offences Act 1996 (s.2)</td>
<td>Inciting certain sexual offences outside the United Kingdom</td>
</tr>
<tr>
<td>Sexual Offences Act 2003 (s.10), <em>Hinton-Smith</em> (2005)</td>
<td>Inciting a child to engage in sexual activity</td>
</tr>
<tr>
<td>Sexual Offences Act 2003 (s.8), <em>Jones</em> (2007)</td>
<td>Inciting a child under 13 to engage in sexual activity</td>
</tr>
<tr>
<td>Sexual Offences Act 2003 (s.26)</td>
<td>Inciting a child family member to engage in sexual activity</td>
</tr>
<tr>
<td>Sexual Offences Act 2003 (s.31)</td>
<td>Inciting a person with a mental disorder to engage in sexual activity</td>
</tr>
<tr>
<td>Sexual Offences Act 2003 (s.48)</td>
<td>Inciting child prostitution or child pornography</td>
</tr>
</tbody>
</table>
Notice how many of the examples above are designed to protect particularly vulnerable individuals (e.g. minors) from being encouraged or persuaded into crime.

15.3.1 The new offences

Sections 44, 45 and 46 of the Serious Crime Act 2007 create three new offences of doing an act ‘capable of encouraging or assisting’ crime:

1. **Section 44**: doing an act capable of encouraging or assisting the commission of an offence with intent to encourage or assist;
2. **Section 45**: doing an act capable of encouraging or assisting the commission of an offence believing it will be committed and believing that the act will encourage or assist;
3. **Section 46**: doing an act capable of encouraging or assisting the commission of one or more offences, believing that one or more of them will be committed and believing that the act will encourage or assist.

The new offences under the Serious Crime Act 2007 have not created any significant case law yet, so it remains to be seen how the courts will interpret the statute.

**Workpoint**

Below are sections 44 and 45 in full. What is the *actus reus* and *mens rea* of each section? Copy and complete the table.

**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.

**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.

<table>
<thead>
<tr>
<th>Section 44</th>
<th>Section 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actus reus:</td>
<td>Actus reus:</td>
</tr>
<tr>
<td>Mens rea:</td>
<td>Mens rea:</td>
</tr>
</tbody>
</table>

**The 2007 Act**

Under section 49 of the 2007 Act, the substantive offence does not have to be carried out by the defendant(s).

Under section 51, there is a defence available for victims as long as he or she falls within a ‘protected category’.

Under section 50 of the 2007 Act, there is a defence of ‘acting reasonably’, although without case law it is unclear what this may be.

**Workpoint**

William and Jack have been approached by a local gang to assist in breaking into a city office. William’s task is to find a suitable weapon for breaking and entering. Jack’s task is to pick up the gang members in a van. How far must William go both physically and mentally in order to be charged under section 44 as laid out above? How far must Jack go in order to be charged under section 45 above?

**Checkpoint - assisting and encouraging crime**

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<th>Item on checklist:</th>
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<tr>
<td>I can define the two new offences under sections 44 and 45 of the Serious Crime Act 2007</td>
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<tr>
<td>I can list the physical and mental requirements of both offences</td>
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Potential exam questions:

1) ‘Intent is the principal ingredient in the offence of attempt.’ Discuss.
2) Critically analyse the physical and mental elements of the offence of conspiracy.