

Inchoate offences: conspiracy, attempt and incitement

In 2010, the Commission published its Report on [Inchoate Offences](#) (LRC 99-2010) (3rd Programme of Law Reform, Project 19), which followed from its 2008 Consultation Paper on [Inchoate Offences](#) (LRC CP 48-2008). The Report contains the Commission's final recommendations for reform in the law concerning incitement, conspiracy and attempt, together with a draft *Criminal Law (Inchoate Offences) Bill*.

Incitement, conspiracy and attempt are inchoate offences because they criminalise conduct which may be described as working towards the commission of a particular offence. For example, the complete offence of murder requires the wrongful killing of a human being; whereas the offence of attempted murder caters for cases where the accused tries, but fails, to kill the victim. Similarly, the offences of conspiracy to murder and incitement to murder provide for cases where the accused has made an agreement to kill (conspiracy), or has sought to persuade someone else to kill (incitement). Prosecutions for incitements, conspiracies and attempts are relatively infrequent compared to prosecutions for the offences to which they relate, but charges such as incitement to murder (usually called solicitation), conspiracy to defraud and attempted robbery remain an important part of the criminal law.

Among the key recommendations in the Commission's Report are:

On conspiracy:

- only agreements to commit a criminal offence should be criminal conspiracies. This would be a significant reform of current law. At present the crime of conspiracy includes agreements to commit civil as well as criminal wrongs.
- abolition of the vague offences of conspiracy to corrupt public morals, conspiracy to effect a public mischief and conspiracy to outrage public decency.
- retention of the offence of conspiracy to defraud, which is sufficiently clear in scope to remain a valuable part of the criminal law.

On attempt:

- the physical aspect of an attempt should be defined as an act which is close to the completion of the target criminal offence and the mental/fault aspect of attempt should be defined as intention that an act constituting a criminal offence be completed. This ensures that the defendant really was trying to commit the target offence.

On incitement:

- incitement should continue to be defined as “encouraging, commanding or requesting” the carrying out of a criminal act with the intention that the act is carried out.

For all three inchoate offences:

- impossibility should not be a defence. This means that the person who pickpockets an empty pocket (not knowing it is empty) may still be guilty of attempted theft even though in the circumstances they had no chance of gaining anything. Likewise, hiring a hit-man to kill a person who is already dead (but where this is not known to the person hiring the hit-man) is still an incitement to murder. This reflects the commonsense view that the blameworthiness of someone who tries to bring about a crime is the same regardless of their chances of success.