

A Guide to Youth Justice in Scotland: policy, practice and legislation

Section 4: Early and Effective Intervention & Diversion from Prosecution

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1. Introduction

This section focuses on Early and Effective Intervention (EEI) and diversion, both of which form critical aspects of the continuum of responses to children's risk of or involvement in offending behaviour. EEI and diversion should be anchored in [Getting It Right For Every Child \(GIRFEC\)](#) and fulfil the aspirations of the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) and [Child Friendly Justice](#). Article 40 of the UNCRC outlines that states shall promote and establish laws and procedures for measures for dealing with children who have infringed the penal law, without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

EEI is positioned within the context of the legal frameworks for children and criminal justice services providing an opportunity to divert children from formal systems where appropriate for eight to 17 year olds in Scotland. Diversion as referred to in this guidance relates to those aged 16 and 17 years reported to the Crown Office and Procurator Fiscal Service (COPFS). Diversion forms part of the range of prosecutorial actions available to procurator fiscals (PFs), which may include fiscal fines, fiscal work orders, and fiscal warnings as opposed to being solely available as an alternative to prosecution in appropriate cases. This shift in practice allows for a more individualised response to the needs of an individual associated with offending behaviour that does not require prosecution in the first instance. This shift in diversion policy and implementation applies to diversion for both under and over 18s.

It is important to recognise that children referred to EEI processes or diversion have not been convicted of any offence and that as noted by the United Nations Committee on the rights of the Child (2007) the presumption of innocence ([UNCRC Article 40 \(2\) \(b\) \(i\)](#)) is fundamental to the protection of the human rights of children in conflict with the law. Both these processes occur prior to any judicial process of establishing guilt beyond a reasonable doubt, seeking to divert under 18s from such processes. [The International Covenant on Civil and Political Rights \(ICCPR\), Article 14 \(3\) \(g\)](#) stipulates that the individual shall not be compelled to give testimony, confess or acknowledge guilt and that no such admission could be accepted in evidence ([Article 15 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)). The aim of EEI and diversion is to provide appropriate and proportionate intervention to address assessed needs and risks. EEI and diversion are both supported by UNCRC Article 40 (3) (b) "whenever and appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected" (UNCRC, 1989:12).

In Scotland, a child is defined differently depending on the legal context:

- [The Children and Young People \(Scotland\) Act 2014](#), [United Nations Convention on the Rights of the Child](#) and the Council of Europe Guidelines on [Child Friendly Justice](#) defines a child as being under 18 years old
- [The Children \(Scotland\) Act 1995](#) (section 93), [Criminal Procedure \(Scotland\) Act 1995](#) (section 307) and [Children's Hearings \(Scotland\) Act 2011](#) (section 199) define 'children' as a) under 16 years old; b) those referred to the children's reporter prior to their 16th birthday and c) those young people age 16 and 17 who are subject to a Compulsory Supervision Order (CSO) through the Children's Hearings System. The 2014 Act has not changed this definition
- The [Adult Support and Protection \(Scotland\) Act 2007](#) defines an adult as someone over the age of 16 years

- The [Criminal Justice \(Scotland\) Act 2016](#), which came into force on January 25, 2018, refers to 'younger child', which is anyone under 16 years or aged 16 or 17 years, and subject to a Compulsory Supervision Order (CSO), an 'older child' as 16-17 years and not subject to a CSO.

Article 1 of the UNCRC highlights all under 18s as children and have all the rights of the convention. Therefore, all under 18 years within this section, as throughout this guidance, are referred to either as 'child' or 'children'.

Prevention and early intervention

There is a degree of overlap between the terms **prevention** and **early intervention**. For the purpose of this section, the distinction between prevention and early intervention is informed by the following definitions, from Walker (2005) and from the [Framework for Action](#) (2008):

- Prevention refers to activities which stop a social or psychological problem arising in the first place
- Prevention services are available as part of universal provision
- Early intervention is activity aimed at halting the development of a problem which is already evident
- Early intervention is targeted assistance for vulnerability towards offending
- Whilst many children will cease offending behaviour without additional support there are some who require assistance to desist and develop a sense of self which is not associated with offending behaviour.

2. Messages from Research

A significant body of international research highlights the importance of a preventative approach to children's involvement or risk of involvement in offending behaviour. The Edinburgh Study Youth Transitions and Crime (ESYTC) by McAra and McVie (2010) became a seminal paper in shifting policy and practice within Scotland to a preventative approach as enshrined within the [Whole System Approach \(WSA\)](#) with four key findings of this study highlighting:

- (i) serious offending is associated with victimisation and social adversity
- (ii) early identification of at-risk children is not a watertight process and may be damaging in the longer term
- (iii) critical moments in the early teenage years are key to pathways out of offending;
and
- (iv) diversionary strategies facilitate the desistance process.

The findings of the Edinburgh Study strongly reflect the Kilbrandon philosophy that we should be responding to children's needs not deeds - that often our children involved in offending behaviour are our most traumatised and victimised individuals (McAra & McVie, 2010), and should be responded to as children first (Case & Haines, 2015). The Children First, Offenders Second (CFOS) approach developed in Wales and England highlights four principles promoting:

1. **Child friendly** adults' responsibilities
2. **Promotion** inclusion and desistance
3. **Diversion** and systems management
4. **Relationship-based partnerships** including participation, engagement, legitimacy

Both the Edinburgh Study and CFOS recognise offending behaviour as normal within child development and whilst the majority of children will offend, not all children who offend will come to the attention of the police and most will grow out of it. That offending behaviour “should be responded to accordingly, rather than criminalised/exacerbated through risk, offence- and offender-focused formal intervention(ism)” (Case & Haines, 2018:11). A strengths-based approach that leverages and builds on existing strengths within the child and the systems surrounding them is crucial to shift away from a deficit based model. Furthermore, the CFOS approach highlights the importance of the adults and systems around the child taking responsibility rather than seeking to responsabilise the child.

The factors, which may increase the vulnerabilities of a child towards involvement in offending behaviour, are well known and may vary across a combination of factors such as personal, system, environmental, community and societal. However, they are not predictive and it is crucial that responses are proportionate and bespoke, taking into account and understanding how the individual child and their family may experience these concerns, as whilst the concerns may be similar, the manner in which a child experiences them will be very individual to that child and their wider situation. Formal system contact was found to be a significant indicator of future system contact; thus the importance of having robust preventative responses that can provide the right support at the right time without stigmatising and labelling children for normative behaviour (McAra & McVie, 2010) is crucial.

Developmentally Informed

The application of a preventative and early intervention approach must always be developmentally informed and consider the evolving array of research regarding the impact and relationship between adverse childhood experiences, brain development, poverty and trauma to shape responses and processes (Liddle, Boswell, Wright, Francis, & Perry, 2016; McEwan, 2017; Vaswani, 2018). Practitioners working with children and families with emotional and behavioural difficulties and/or offending behaviour seek to understand the reasons why some children from similar backgrounds appear to have no problems within family, school, and community settings while others struggle to cope. Children who struggle to cope at home, school and/or in the community often display behaviours which the systems around them struggle to manage or respond to appropriately. This can result in the children becoming labelled and stigmatised by the systems trying to support them, which subsequently affects negatively on the child, their opportunities and their relationships.

Awareness and understanding of the various child development theories can provide practitioners with insight into the possible underlying drivers for behaviour, vulnerabilities and importantly the strengths of the child and the system around them. By drawing on a range of theories, this can assist in identifying the most appropriate interventions required to respond to that specific child's needs and risks and assist the systems around the child to take these forward in a meaningful, inclusive and collaborative way. Practitioners involved in EEI and diversion processes and delivery of interventions with children and their families must be familiar with a range of social work theories including resilience, attachment, brain development and desistance.

3. Legislation and Policy

Both EEI and diversion focus on the needs of the child and recognise that by addressing underlying needs this will have a greater likelihood of positive outcomes for the child and their family as well as victims and wider society. The recognition of building capacity by addressing needs is at the heart of Scottish policy and legislation relating to children. For example:

- [The Kilbrandon Report 1964](#) underpinned the [Social Work \(Scotland\) Act 1968](#) and established the Children's Hearing System in Scotland. This emphasised the importance of early intervention to prevent the development of future problems, linking the needs of children involved in offending behaviour with those in need of care.
- There is an underlying theme of EEI within the [Children \(Scotland\) Act 1995](#) with its focus on minimum intervention and providing support to children in need
- [Getting It Right For Every Child \(GIRFEC\)](#), which has been developed since 2006, is now in statute through the [2014 Act](#) (with the exception of parts 4&5), and emphasises the ethos of Kilbrandon within current youth justice policy. The GIRFEC approach upholds that intervention should be appropriate, proportionate and timely. It prioritises acting early on concerns or in response to a crisis to prevent escalation of concerns or deterioration in wellbeing, recognising children and family pressures and understanding the impact of these, and building on strengths. It emphasises that where planning is required to meet a child's wellbeing needs through the delivery of targeted interventions, this will be done through the single planning framework of the Child's Plan, which links support and activities to desired outcomes and requires professionals to work together and share information proportionately and appropriately.
- [Preventing Offending; Getting it right for children and young people who offend \(2015\)](#) includes EEI as part of its advancing Whole System Approach agenda. The emphasis is on supporting partners to integrate EEI with the 2014 Act and other relevant legislation such as [Data Protection Act 2018](#), [Human Rights Act 1998](#) pending legislation in the form of the [Age of Criminal Responsibility Bill](#) currently progressing through the Scottish Parliament. Practice must continue to evolve in order to support and promote an improvement culture among national and local partners. The strategy also emphasises the need to maximise the opportunities for and encourage greater use of diversion across the Criminal Justice System (CJS) and formal processes, to respond swiftly and bring action on offending much closer to the offence.

4. EEI

EEI is a voluntary process in which children and their families must be provided with the information to enable them to make informed and considered decisions about their involvement in any interventions offered to address offending behaviour. It should not lead to unnecessary interventions into the lives of children set out by [UNCRC Article 16](#) which stipulates that no child shall be subjected to arbitrary or unlawful interference with his or her

privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation and that the child has a right to the protection of the law against such interference or attacks. In addition, further formal action is not always required. Any identified needs should be met through the offer of support from universal services including education, health and employment/training where possible. Given the potential impact offending behaviour can have on the lives of children, their families, the wider community, those harmed and affected by such behaviour, it is important that EEI provide a clear, consistent and credible response to such behaviour. Ultimately, it should lead to improved outcomes in the lives of children, not merely no further involvement in offending behaviour but promoting their development into confident individuals, effective contributors, successful learners and responsible citizens.

The implementation and delivery of EEI must be in line with updates and changes in legislation to ensure compliance and identify any necessary adaptations or developments as required. Following the enacting of the [Data Protection Act 2018 \(DPA\)](#) which incorporates the [General Data Protection Regulations \(GDPR\)](#) from May 2018 it is crucial to ensure that all processes are in line with this legislation as well as [Human Rights Act \(1998\)](#) particularly Article 8 right to respect for private and family life. For EEI, Information Sharing Protocols (ISP) should be checked with your organisational Data Protection Officer to ensure compliance with the appropriate legislation. In addition, once the Bill to raise the Age of Criminal Responsibility (ACR) is enacted any child under the age of 12 years will no longer be criminally responsible and they will not be able to be referred to EEI on offence based well-being concerns. However, the right individual/service/agency should respond to any well-being concerns raised through presenting behaviour in line with GIRFEC policy ensuring the right response at the right time. At the time of writing implications for the proposed Information Sharing Bill and the outstanding aspects of the [Children and Young People \(Scotland\) Act 2014](#) Parts 4 and 5 which have not been enacted in relation to Named Person Service and the Child's Plan remain policy and are not legislative. Further amendments to this guidance will be required as these aspects are finalised. Both the [Scottish Government](#) and the [Information Commissioner's Office \(ICO\)](#) are clear that agencies should reassure themselves that practice adheres to the necessary legislation for sharing information and consent.

The victims of the offences addressed through either EEI or diversion will have a range of emotions and experiences and are often other children. Developing appropriate processes to ensure they are considered within interventions, which may involve restorative justice approaches, are provided. Proportionate information regarding the outcome of the offences whilst complying with data protection legislation is crucial and clarity as to who shares this information with victims is necessary. Presently this responsibility remains with Police Scotland.

General Principles

EEI focuses on the wellbeing needs of children aged eight to 17 years using the principles of GIRFEC:

- Assessments and supports offered should take account of the age and developmental stage of each individual, building up the child's skills, capacity and strengths, and where appropriate promoting supports for children and their families that can be universally accessed

- Children who become involved in offending behaviour come from a wide array of social backgrounds and cultures, and have often faced a range of difficulties and adversities, which may have affected them to varying degrees. Thus, the responses required to support them must be varied and individualised recognising their strengths and vulnerabilities.
- The majority of anti-social behaviour and youth offending behaviour takes place in [areas of economic and social deprivation](#), where there are fewer opportunities for pro-social activity than in wealthier areas, and where social controls are frequently poor
- What can sometimes be described as anti-social behaviour by a child may fall within the parameters of normal adolescent behaviour, rather than intentional criminal behaviour and it is the system response which criminalises them
- Many children charged with an offence never commit any further offences. This can be due to family's parenting skills, emotional support, pro-social values, peer influence and the maturational process
- Unnecessary involvement in formal systems such as the Children's Hearings System, Criminal Justice System and social work can result in continued anti-social behaviour through labelling and stigmatisation
- Some children who begin to display offending behaviour will, without the appropriate intervention and services, continue to offend

Models of EEI

The majority of local authorities have developed multi-agency EEI processes as an early intervention response to a child charged with an offence that may otherwise have automatically resulted in a referral to the Children's Reporter. There are two main EEI models across the country:

- A multi-agency group decision making forum
- A lead contact who screens referrals, making some individual decisions and referring other children to an EEI or multi-agency group/ Team Around the Child meeting (TAC)

Some local authorities predominantly use the latter, reserving the option to hold a multi-agency group meeting for cases that are more complex.

The models across the country vary with respect to the nature of the referrals discussed. In some areas, the multi-agency group considers antisocial behaviour referrals alongside offending behaviour, and in other areas, low-level wellbeing concerns are also considered.

The most important feature in any EEI model is that decisions are based on all available, proportionate and appropriate information from a range of agencies, and are timely and in proportion to the wellbeing needs identified. Wherever appropriate, children should be diverted from formal processes and supported within their community. In addition, the inclusion of the child and their parents is integral to any decision making and respects the parent's role in parenting, supporting and addressing aspects of their child's behaviour. This must be meaningful, thus, merely notifying after a referral has been received, and the decision as to what if any response will be taken only usurps the parental role and does not encourage collaboration or engagement. Nor is this in line with the positioning of UNCRC that states have a role to support parents.

The agencies involved in EEI models tend to vary depending on local arrangements although most have representatives from social work, police and education. Many areas also have representatives from health, community safety, housing and third sector partners (e.g. Sacro, YMCA, Action for Children, Barnardo's).

EEI disposals include:

- Police direct measures
- Current measures are appropriate, no further action required
- Single agency referral - third sector partners, social work, education, health, fire & rescue are only some examples and as appropriate could undertake specific intervention or support such as Restorative Justice or substance misuse work.
- No further action - for a number of reasons it may be appropriate to take no further formal action in response to an alleged offence
- Referral to Scottish Children's Reporter Administration (SCRA) - although this should not be an alternative to offering support through EEI if appropriate and timely, but an option where compulsory measures of care may be considered necessary
- In exceptional circumstances, it may be appropriate to refer a child to COPFS, however, this is unlikely if agencies are working together to identify the right children for EEI.

It is important that agencies and services involved in implementing EEI are able to provide a range of interventions as appropriate and proportionate for the specific child or children being considered. The intervention should fit the child as opposed to the child fitting the intervention and be delivered by the most appropriate service or agency. A full report on options available, written by the 'menu of options' short life working group [can be found on the CYCJ website.](#)

Core Elements

For EEI to be effective, it must be aligned with the principles of GIRFEC. It should enable timely and proportionate responses to offending behaviour by children, which understands their behaviour in the holistic context of each child and their surrounding systems. The understanding that EEI is a voluntary process, ensuring children and their family are aware of this, and that they have a choice, whether they wish to participate in any intervention offered or not is paramount. This reflects the position regarding the Named Person Service, which is also a voluntary scheme and children and their family do not need to take up the support offered through this scheme. EEI should provide a proportionate and effective multi-agency information sharing, assessment, and decision-making forum that focuses primarily on the needs of the child and actively includes children and parents from the earliest opportunity. Whilst the child's best interests is a primary consideration, this is not the only consideration as this does not override the human rights of others whether this be individuals or groups. Therefore a considered and balanced approach is required.

Sufficiency of evidence: Police Scotland is responsible for the examination of the evidence in each case and ensuring that there is sufficient evidence to proceed with a case. This does not mean that there must be an admission from the child. However, it must be remembered that EEI is a voluntary process where the child agrees to participate in whichever form of intervention is identified to meet their needs, although this does not preclude them being considered in the first instance.

The child must be charged in person and as appropriate in the presence of parents or legal guardian. Every child that is charged has a right to prompt and direct information of the charges ([UNCRC Article. 40\(2\) \(b\) \(ii\)](#)). United Nations Committee on the rights of the Child (2007) outlines that this right also relates to when authorities make the decision to address the case through processes other than judicial proceedings, the child must be informed of the charge that may justify this approach. This is part of the requirement of Article 49 (3) (b) that legal safeguards should be fully respected.

Suitability of Offence for EEI: It is the responsibility of Police Scotland to identify cases suitable for discussion/referral to EEI. All offences should be considered for EEI unless they are excluded under:

- [Lord Advocate's Guidelines](#) to the Chief Constable on the Reporting to Procurators Fiscal of Offences Alleged to Have Been Committed by Children for under 16s
- Crown Office Framework on the Use of Police Direct Measures and Early and Effective Intervention for 16 & 17 Year Olds; or
- Police deem a referral to SCRA is necessary

Decisions made as to the suitability for EEI are primarily based on the gravity of offence.

Notification: The police should explain to a child and their parent/legal guardian (where appropriate) that cases may be referred to appropriate local partners, what this involves, how long it should take and what information may be shared:

- If under 16 parent/carer must be notified
- Consent to an EEI referral being made by Police Scotland is not required. However, consent is required from any child aged 16-17 years and not subject to a CSO
- Initial denial of the offence should not prevent the offence being referred to EEI
- Attitude of the child to police/parents should be recorded where possible
- The child and family/legal guardian should understand what EEI entails
- If the child is subject to a CSO or has a Child's Plan, the **lead professional** must be notified of the EEI referral
- As part of the Recorded Police Warning process

SCRA check: If a child has been referred to EEI process and it becomes known that they are subject to an open referral with SCRA then the offence must be forwarded to SCRA to ensure they have all available information to aid their decision making. However, this would not preclude offer of support to the child and their family in the interim whilst the formal process is followed.

Multi-Agency Group: Where multi-agency meetings are in operation, these should be held at minimum fortnightly in order to fulfil the aims and objectives of EEI (15 working days from the child being charged to meeting). Each local EEI arrangement should ensure that an appropriate range of agencies are involved as is relevant to their knowledge of the child being considered and reflect a team around the child meeting (TAC). Those in attendance at these meetings should have the necessary level of authority to both provide agency information to the meeting and to receive referrals from the meeting. In addition, best practice would include the involvement of the child and their parent/legal guardian at this meeting or at the very least, their views in response to the needs identified from the referral.

Outcome of any multi-agency meeting should be discussed and explained with the child and their parents as soon as possible and preferably in person.

Practitioners: They must use their professional judgement when sharing information between agencies and ensure that the information shared is proportionate and relevant to the identified wellbeing concern. As stated ISPs should be updated and reviewed to ensure compliance with legislation.

Examples of information, as set out within the [EEI Core Elements](#), (this document is currently being updated as of May 2019) which may be shared per agency, are detailed below and must always be proportionate and in accordance with current information sharing legislation:

Police

- Details of alleged offending incident including relevant information regarding the victim and whether the child was under the influence of alcohol/substances
- Response from child and their family
- History of previous offending and disposals
- Outstanding charges
- Relevant intelligence
- Any other relevant concerns

Social Work

- Whether the child or young person is currently an open case and, if so, on what statutory basis
- Details of current Child's Plan, if relevant
- Family background and current caring arrangements
- Previous support provided and its effectiveness
- Previous/current concerns, strengths and areas of risk
- Previous level of engagement from the child/young person and their family
- Response to any previous EEI interventions

Education

- Current level of attendance, and any previous attendance issues
- Number/nature of exclusions
- Additional support needs
- Previous/current concerns
- Knowledge of family/carers and any concerns over attitudes or engagement with school staff
- Response to any previous EEI interventions
- Details of current Child's Plan if there is one

Health

- Any relevant mental or physical health diagnosis
- Details of any previous or current treatment or support required - in particular relating to mental health or substance use

Community Safety/ Antisocial behaviour services

- Any historical concerns regarding child

- Response by child and their family to services
- Any current and relevant intelligence re. community issues
- Response to any previous EEI interventions

Decision making: Decisions regarding children involved in offending behaviour should be made in a timely manner, if they are to be effective. The assessment of the child needs to be based on the GIRFEC national practice model. It should be holistic and needs led, while also being proportionate to the gravity of the alleged offence and level of concerns regarding the child.

If the disposal of the EEI process is that compulsory measures of supervision are required, the police should submit the Standard Prosecution Report (SPR2) to SCRA with additional information from EEI advising the reasons for the referral. This should be done within five working days. A disposal to SCRA from EEI does not preclude the offer of support to the child and family if appropriate. If referral to SCRA is required on welfare grounds solely then agency processes should be followed or the referral made by the lead professional if there is one allocated to the child.

A child should not be re-referred to the multi-agency group/TAC for the same alleged offence, even if they have declined to engage with services offered. If the relevant agency has concerns over the wellbeing of the child then they should follow their agency's protocols in deciding whether further referral is required to social work services, or SCRA if compulsory measures of care are necessary.

Communication: Best practice would be to gather the views of the child and their parent at the earliest opportunity regarding the alleged involvement of the child in the offence referred to EEI. [UNCRC Article 12](#) (1) states that the child has the right to express their views freely in all matters affecting them, and their views being given due weight in accordance with the age and maturity of the child. Establishing their responses to the charge, opinions as to any needs where they feel assistance would be beneficial or why they feel this is not required should be ascertained. Inclusion in the multi-agency/TAC meeting would also be in line with ensuring clear and transparent processes or opportunity to discuss the outcome of any meeting where they have declined to attend. The child and their parents should be notified in person or in writing of the EEI outcome within five working days of the decision.

The outcome of the EEI process should also be reported to the victim with no information regarding the specific child or children involved but rather explaining the EEI process and possible outcomes, unless the provision of the information would be detrimental to the best interests of the child concerned (or any other child connected in any way with the case). This requires timely information being fed back to the Reporting Officer. It is the responsibility of Police Scotland to ensure this information is passed to the Reporting Officer.

Information sharing: Ensuring EEI complies with [DPA \(2018\)](#) is crucial and the [Information Commissioners Office](#) provides a range of guidance to support adherence with the legislation. A review of EEI processes against the legislation and consultation with the appropriate service/agency legal representative or Data Protection Officer for direction is recommended.

Consent: GDPR defines consent as “any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear

affirmative action, signifies agreement to the processing of personal data relating to him or her”

The [Data Protection Act 2018](#) and [GDPR](#) are clear that consent should only be sought where it is the most necessary legal basis for sharing information and there is a genuine choice. Where information will be processed irrespective of consent then it is not appropriate to seek consent, as it is [misleading and unfair](#). Where there is a clear position of power, then such bodies such as public bodies should avoid relying on consent unless they can evidence that it is freely given. As stated within this guidance checking your current practice against DPA 2018 for information sharing and consent practices will ensure adherence to the legislative requirements and where updating may be required. ICO provides detailed guidance regarding the [GDPR and consent](#).

EEI 16 & 17 year olds

With regard to EEI for this age group there is a more limited range of offences than those considered for the under 16 age group and this may go some way to explaining the low numbers of 16 and 17 year olds being considered by EEI. In addition to EEI, Recorded Police Warnings (RPW) are also available as a direct measure for 16 and 17 year olds not subject to CSO.

The present RPW Scheme was implemented in January 2016. RPWs can be issued to all adults, which include children aged 16 and 17 not on CSO. The scheme aims to address in a more proportionate and effective manner minor offending behaviour that previously was reported to COPFS and resulted in either a non-court disposal or no action being taken due to the minor nature of the offence and circumstances. Each time a RPW is issued it should be accompanied by the submission of a wellbeing concern form to relevant partners who may consider any concerns that have not been directly addressed by the administration of a RPW. It will be the decision of local partners as to whether further intervention is required to address any wellbeing concerns identified. Again, it is important to ensure ISPs are in line with legislation.

For 16 and 17 year olds who are not subject to a CSO and commit an offence out with the guidelines for RPW and EEI, these children will be referred directly to the PF where Diversion from Prosecution may be an option.

The Children and Young People (Scotland) Act 2014

Parts 4 and 5 of the 2014 Act are not yet enacted in legislation and presently there is no indication as to when this may occur. However, there has been no change to the [GIRFEC](#) policy, which enshrines the Named Person Service (NPS) and Child's Plan. In some local authority areas, they will have been providing an NPS to children for some time, thereby providing a point of contact for families to seek information, support and guidance in relation to their child if desired. There is no compulsion for families to engage with NPS and nor should any decision not to utilise the NPS be viewed in a negative light. The provision of an NPS is in line with the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) which clearly states the role of the state in supporting parents and guardians in undertaking their roles and responsibilities to ensure every child has an upbringing that provides care and security and is respectful of their rights and individuality. It outlines how parents should fulfil

their responsibilities and is clear that the state should provide parents with the necessary level of support they need to fulfil their role. Parents have legal rights and responsibilities that they have a duty to fulfil to support their child growing up.

It is also important to note that irrespective as to whether the NPS is offered through policy or legislation it does not replace existing statutory processes such as child protection nor does it preclude referrals to social work services where there are welfare concerns in relation to a child.

The process of referring a child to the Children's Reporter is unchanged by [the 2014 Act](#). If a wellbeing assessment indicates that a child is in need of protection, guidance, treatment or control, and that it might be necessary for a compulsory supervision order to be made to ensure that the child's wellbeing needs are met, as specified in the [2011 Act](#), a referral should be made to the Children's Reporter.

5. Diversion

In Scotland, the decision to prosecute an individual for a criminal offence rests with COPFS. Decisions on how to respond to any allegation reported for consideration to the PF are taken based on the overall circumstances of the case. Where the nature of an offence does not demand prosecution in court the PF has the option to utilise diversion as an option of prosecutorial action in order that a meaningful intervention can be delivered to address the identified needs and risks for that child. The COPFS [Prosecution Code](#) stipulates the factors to be taken into account when making any decision in relation to prosecution. Diversion in the context of this chapter specifically refers to diversion as menu of prosecutorial action.

Presently in Scotland diversion is a deferred model of prosecution and should the child choose not to participate in the diversion scheme or their engagement and participation is not of a meaningful level then their case will be returned to the PF for their decision as to whether any further action will be taken which may include prosecution in the criminal justice system.

There is a national structure for the consideration (Initial Case Processing) of cases by the PF. The national unit is responsible for marking all reported cases (i.e. those on summons), which form a significant part of the diversion workload. The national Initial Case Processes Structure deals with all undertaking and custody cases.

Police and social work can highlight to the PF the cases they feel may be suitable for consideration of diversion. Police can add comments to the Standard Prosecution Report (SPR) outlining the factors they have assessed as to why someone may or may not be suitable for diversion. Social work practitioners may have a number of opportunities to highlight a 16/17 year old to the PF for diversion such as

- when they have been held in custody to appear at court (direct phone contact to PF in this instance is recommended);
- working with individuals who advise they have been charged; or
- through information on Police Concern Forms.

In relation to the latter two scenarios, the PF youth diversion e-mail inbox NationalCPSCRA-WSA@copfs.gsi.gov.uk can be used to highlight possible cases for consideration of diversion for 16/17 year olds and discussion should take place with the diversion link in the appropriate local authority as to who should flag cases. This should include information to enable PFs to identify the case and, where possible, the PF number if known.

The evaluation of the WSA (Murray, McGuinness, Burman, & McVie, 2015) recommended that diversion from prosecution should be the default position rather than prosecution for 16 and 17 year olds. Diversion can be a useful intervention with positive outcomes ([IPS 2018](#)) in respect of reoffending. In Scotland youth justice diversion schemes are often a collaborative approach where statutory agencies (mainly social work) will be responsible for the oversight and initial point of contact with COPFS and either specific or a range of third sector partners delivering the interventions on a bespoke basis. Diversion schemes should link with the available resources in that area as identified by the needs of the individual child to build their capacities. Interventions and supports may be delivered in either an individual or group work basis that reflects the needs of the child. The content of intervention undertaken should not be prescribed but flexible and reflect the needs and risks identified for that individual to ensure it is meaningful and builds capacity to reduce the likelihood of future involvement in offending behaviour. Intervention may utilise a range or combination of methods such as cognitive behavioural therapy, mentoring, practical supports, family systemic therapy but any intervention should be in line with the Good Lives Model and build on an individual's capacity and self-autonomy. The intensity and frequency should not be based on a set programme of time but reflect an individualised response that is proportionate to that child's needs and risks identified through an assessment of the details of the alleged offence, the child's wider situation and collaboration with the child and where possible their family. This creates a collaborative approach where priorities identified by the child and from the assessment are both worked.

Once the PF has made the decision to divert that individual, the local authority is not assessing the suitability of the offence but the individual child and their wider situation, as well as their agreement to participate. It must be noted that any information provided by the child in relation to the alleged offence of which they were charged during any part of the diversion process cannot be considered by the PF, should a decision to prosecute be taken at a later stage or if the individual declines to participate in the diversion scheme. Referrals for diversion must not be returned to the PF on the basis that an offence is unsuitable; this is discriminatory and fails to take recognition that alternative intervention has been deemed in the public interest, which should be a priority of all diversion schemes. Following completion of the diversion from prosecution intervention, a report evidencing the level of engagement and child's participation relevant to their developmental capacity should be submitted to the PF. In recognition of the individualistic response advocated for diversion interventions, there may be situations when the intervention will be undertaken during the initial assessment or where no assessment is undertaken during an initial appointment. In such cases where assessment reports are part of the local process this would be sufficient to highlight completion of intervention and recommendation with no further input required. In these situations, evidencing the individual has made appropriate changes and reduced the likelihood of any further, such incidents must be sought.

The completion report should focus on the depth of engagement from the child in consideration of their capacity and ability to participate and engage. Reflecting on how the intervention was undertaken and the child's participation has addressed the areas of need and risk from the initial assessment is crucial. Stating the number of sessions attended

provides no analysis or information as to what the child has taken from the intervention or contributed to it. Highlighting strengths whether developing or existing and evidence of application of any of the learning from the intervention out with sessions should be included. Noting areas of unmet need and attempts to address these or limitations to doing so should be included. In addition, referrals to other services for support beyond the diversion intervention are also important to include.

Not all those referred to diversion from prosecution will successfully complete the intervention easily and some may not engage at all. It is important that every effort is made to support children to participate, whether that involves numerous home visits or repeated attempts to engage them, requiring persistence and tenacity on the part of the workers. Recognising they require additional supports merely by the fact of their being a child in an adult system is crucial. Their [cognitive abilities](#) are still developing and may be compounded by additional factors such as a learning difficulty, often undiagnosed, they may become homeless during their participation, susceptible to peer influence, breakdown in family situations, and employment or college commitments or ignoring the situation in the hope it goes away without an appreciation for the possible consequences which may include prosecution in court. A flexible approach that is transparent by being clear about the expectations of the child's participation, what is acceptable and what is not and the consequences once the boundaries have been over stepped is necessary. How this information is explained and the opportunity to remind the individual are both important to their ability to process and remember.

Where the decision to return a referral to the PF has been taken, the reasons why, reflection of any work undertaken by the individual and any possible solution should be fully outlined to the PF.

In terms of the process of diversion, there appears to be three distinct models in Scotland:

1. Diversion referrals are sent from the PF to social work with no interim process of highlighting appropriate/suitable cases. Social work complete a suitability assessment and where appropriate, offer a diversion intervention. Someone in the youth justice/young people team normally provides the intervention.
2. Police and/or social work highlight suitable referrals to the PF. The PF sends the diversion referrals to the social work team (throughcare, young people's service, youth justice team, criminal justice). Social work completes an assessment and where appropriate, offers a diversion programme.
3. Social work highlight appropriate diversion cases to the PF. Diversion referrals are sent from PF to social work. Initial information is gathered and a referral is made to a third sector organisation who undertake the suitability/intervention assessment. A diversion programme is provided by the third sector organisation.

[The Diversion from Prosecution Toolkit 2011](#) offers guidance in relation to the processes and procedures required to develop a person responsive diversion from prosecution scheme, which is applicable across both youth and adult justice. It outlines what is required to deliver a more effective, tailored and appropriate intervention for under 18s involved in offending behaviour, though is also applicable to over 18s. It offers detailed guidance on establishing

and maintaining a youth justice diversion scheme. Updated guidance in relation to diversion from prosecution for both under 18s and adults is anticipated to be published during 2019.

Where a child has a Child's Plan, any referrals for services, such as diversion, need to be documented. If there is a Child's Plan in place and a lead professional, then communication and liaison with them is crucial, to determine who is best placed to undertake any diversion assessment or intervention and share appropriate information.

6. Conclusion

Both EEI and diversion provide opportunities to ensure children receive the right help at the right time in a proportionate and holistic manner, which can avoid labelling and stigmatisation. It is important that these opportunities take recognisance of the individuality of each child and responses are flexible to mould to their needs rather than fitting the child into available services. Confidence in doing nothing where that is appropriate is required as well as clear and transparent processes that upholds rights and builds strengths are key. Collaborative working between and across agencies as well as meaningful inclusion and participation of children and their parents must be central to early and effective intervention and diversionary practice.

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