

Children and young people in conflict with the law: policy, practice and legislation

Section 4: Early and Effective Intervention

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1. Introduction

This section focuses on Early and Effective Intervention (EEI) which forms a core aspect as part of the continuum of responses to children at risk of, or who have come into conflict with the law. EEI must be anchored in the [United Nations Convention on the Rights of the Child \(UNCRC\)](#), [Child Friendly Justice](#), and [Getting It Right For Every Child \(GIRFEC\)](#). EEI is 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” (United Nations Committee on the Rights of the Child, 1989:12). This is a key aspiration of EEI that has yet to be fully realised and of significant importance to implementation in a truly rights-respecting manner.

EEI is considered within the context of the legal frameworks for children and criminal justice services relating to single and multi-agency work with eight to 18 year olds in Scotland. EEI was developed as a mechanism to support children who came to the attention of the police for offending behaviour and oversight should sit within Children's Services Planning as specified in the Children and Young People (Scotland) Act 2014. It is important to recognise that children referred to any EEI process have not been convicted of an offence. The aim of EEI is to ensure the right response at the right time, by the right service, in line with GIRFEC, and in adherence to the minimal intervention principal intervention is only offered where it is appropriate. In some situations, no response will be the most proportionate response. In addition, when a response is required, it must be appropriate, proportionate, and meaningful in addressing the needs highlighted by the child's alleged involvement and/or presenting behaviour in the situation which has raised concern (United Nations Committee on the Rights of the Child, 1989:12). Where children who come into conflict with the law are responded to through other systems and processes rather than those formal systems such as the Children's Hearings System (CHS) or justice system, the Committee on the Rights of the Child, General Comments 24 (United Nations Committee on the Rights of the Child, 2019, p. 24) highlights:

“(a) Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding;

(b) The child's free and voluntary consent to diversion should be based on adequate and specific information on the nature, content and duration of the measure, and on an understanding of the consequences of a failure to cooperate or complete the measure;”

“Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents for the upbringing of their children, and at the same time the Convention requires States parties to provide the assistance to parents (or other caregivers) necessary to carry out their child-rearing responsibilities” (United Nations Committee on the Rights of the Child, 2019, p. 24). The inclusion of parents within any EEI response as alternative means of responding to allegations of involvement in offending or concerning behaviour can be critical to improved outcomes for children beyond any intervention, where intervention is required, and provides opportunity for a more collaborative and inclusive working partnership. The level of parental (and other caregivers) involvement should also be expected to be proportionate to the child's age, agency and developing capacity (United Nations Committee on the Rights of the Child,

2019, p. 4). Progressing EEI to ensure it upholds children's rights must focus on embedding the inclusion and influence of the child's views as stipulated in Art 12 in both the decision-making process regarding individual children as well as contributing to the shaping of national EEI policy, practice and processes going forward.

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; this remains the legal definition of a child in Scotland. The 2014 Act did not alter 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 CSO, an 'older child' as 16-17 years and not subject to a CSO.

Article 1 of the UNCRC highlights that all under 18s are 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

[The Riyadh Guidelines](#) (United Nations Committee on the Rights of the Child, 1990) highlights the importance of a preventative approach that is child-centred in orientation where children are not seen as mere objects of socialisation or control but have an active role and partnership within society. That the focus of any preventative programme should be on wellbeing from early childhood as reflected in GIRFEC, [Framework for Action](#) (Scottish Government, 2008b) and the [Early Years Framework](#) (Scottish Government, 2008a), subsequently reinforced by the Children & Young People (Scotland) Act 2014. The Riyadh Guidelines also notes the importance of avoiding the criminalising and penalising of a child for behaviour that does not cause serious damage to the development of the child or harm to others and that formal agencies of social control should be utilised as a means of last resort. Thus, early and effective intervention attempts to embody these values and principles.

In responding to children in conflict with the law there is a degree of overlap between the terms **prevention** and **early intervention**. For the purpose of this section, the definitions purported by Walker (2005), of prevention as referring to activities which stop a social or psychological problem arising in the first place and early intervention as activity aimed at halting the development of a problem which is already evident will be used. Walker (2005, p. 3) noted the distinction, "between the two terms relating to the stage of problem development, rather than age of the child or length of time the child has been known to a particular agency." The four key principles of the Scottish Governments approach to early

intervention as expressed within the Framework for Action and other social policy areas that are still relevant to hold in mind when considering EEI with children are (Walker (2005)):

- To have the same outcomes for all and for all to have the same opportunities
- Take action to identify those at risk of not achieving these outcomes or having these opportunities and take action to prevent that risk materialising
- We make sustained and effective interventions in cases where these risks have materialised

In addition, the following focus also remains pertinent to EEI:

- Key to supporting prevention is agencies working together to provide support
- Prevention and early intervention does not mean early interference by the state at national or local level
- Key part of any early intervention policy is building the capacity of individuals, families and communities to secure the best outcomes for themselves
- Moving from intervening when a crisis happens towards prevention, building resilience and providing the right level of support before problems materialise
- Universal services, who cater for all children, must have the capacity and skills to engage all children and young people throughout childhood and as young adults - even those who may be challenging and reject first offers of help.

The Framework for Action also acknowledges a “small number of children and young people will continue to offend”. However, the position taken is that in “these circumstances it is essential that everything possible is done to address the issues in the young person’s life that are causing that continued offending behaviour as well as stopping that behaviour” (Scottish Government, 2008b, p. 11).

2. Key Findings 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 whilst cautioning against net widening. The Edinburgh Study Youth Transitions and Crime (ESYTC) by McAra and McVie (2010) became an influential 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:

1. Serious offending behaviour is associated with victimisation and social adversity
2. Early identification of at risk children is not a watertight process and may be damaging in the longer term
3. Critical moments in the early teenage years are key to pathways out of offending; and;
4. 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 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:

1. **Promoting children's rights and adults' responsibilities** Children first positive youth justice prioritises children's rights, strengths, capacities and potentialities, making the facilitation and realisation of these the primary responsibility of the adults with whom they work.
2. **Promotion desistance and inclusion** Children first positive youth justice promotes children's strengths and capacities as a means of facilitating desistance, restoration and inclusion.
3. **Promoting diversion and systems management** Children first positive youth justice emphasises diversion and child friendly systems management as vehicles to promote positive behaviours/outcomes for children and to avoid the potentially criminogenic consequences of system contact.
4. **Promoting relationship-based partnerships** Children first positive youth justice is underpinned by children's participation and engagement, which is driven by positive relationships between the child and practitioner.

(Case & Haines, 2015)

Both the Edinburgh Study and CFOS recognise offending behaviour as normal within child development and whilst many children will be involved in offending behaviour of some kind, not all children who do so will come to the attention of the police and most will grow out of it. Thus, 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 responsibilise the child beyond their ability and capacity.

The factors which may increase the vulnerabilities of a child towards involvement in offending behaviour are well evidenced and may vary across a combination of personal, systemic, environmental, community, structural and societal domains with the interaction and influence of these areas upon each other having different weighting at different points in a child's development. However, they are not predictive, and it is crucial that responses are proportionate and bespoke, considering and understanding how the individual child and their family may experience these concerns. Whilst the concerns may be similar, the way 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 critical. Further research by Jahanshahi, Murray, and McVie (2021) into the impact of adverse childhood experiences (ACEs) and poverty on childhood offending behaviour suggests that it is not just the type of childhood adversity that a child experiences which matters but also the structural context. They proposed that "in the presence of ACEs, the direct impact of poverty at the household level on childhood offending is difficult to detect; however, living in persistent poverty at the neighbourhood level remains a key predictor of childhood offending, and has an interdependent relationship with some types of ACEs that deserves further attention" (Jahanshahi et al., 2021, p. 734). Thus, a range of strategies are

required to address childhood offending behaviour that focus on wider inequalities, as well as at the individual, family and neighbourhood level.

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 ACEs, 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 negatively affects the child, their opportunities, and their relationships.

By drawing on a range of theories, from across different fields of learning, such as but not limited to - child development, resilience, attachment, neurodevelopment, motivational interviewing, cognitive behavioural theories, systems theories, as well as Speech Language and Communication Needs and learning disabilities ([see Section 9](#)) - this can assist in identifying the most appropriate interventions required to understand and respond to that specific child and their needs. This responsive scaffolding of support and intervention aids capacity building in a meaningful, inclusive, and collaborative way.

3. Policy Context and Legislation

EI focuses on the needs of the child and recognises that by addressing underlying needs, building strengths and reducing vulnerabilities this will have a greater likelihood of positive outcomes for the child and their family, as well as those harmed by the child's actions 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 Hearings
- System in Scotland. This emphasised the importance of early intervention to prevent the development of future problems, identifying all children as in need of care and protection, linking the needs of children involved in offending behaviour as the same as those in need of care.
- The [Children \(Scotland\) Act 1995](#) with its focus on minimum intervention and providing support to children in need is mirrored as the underlying theme of EI.
- [Getting It Right For Every Child \(GIRFEC\)](#), which has been developed since 2006, is now in statute through the [2014 Act](#) (Parts 4 & 5 were never commenced and are not in law but remain in practice under GIRFEC policy) and emphasises the ethos of Kilbrandon within current policy in relation to children in conflict with the law. 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. Consultation of the refreshed draft suite of GIRFEC guidance was undertaken, with the final guidance documents expected to be published in late summer 2022.

- [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) was passed unanimously by the Scottish Parliament on March 16, 2021. However, a challenge by the UK Government to certain sections of the Act-s.6, 19-21 was upheld in the [Supreme Court](#). The [Scottish Government](#) has expressed their commitment to the incorporation of UNCRC into Scots law and are considering [how to progress](#).
- [Preventing Offending: Getting it right for children and young people who offend \(2015\)](#) continued to include EEI as part of the advancing WSA 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](#), and [Age of Criminal Responsibility \(Scotland\) Act](#) which was fully implemented on December 17, 2021. Practice must continue to evolve 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 from formal systems and processes, to respond swiftly and bring responses to offending behaviour much closer to its occurrence.
- [The Age of Criminal Responsibility \(Scotland\) Act 2019](#) has now been fully implemented as of December 17, 2021; meaning no child under the age of 12yrs can be held criminally responsible.

4. EEI

EEI is a voluntary process where concerns regarding a child's wellbeing have arisen in response to their alleged involvement in an incident which has brought them into conflict with the law or where their behaviour raises concerns, that they may become involved in further incidents that will result in their being charged with an offence. It is responding to allegations of offending or concerning behaviour as potential indicators of wellbeing needs that may benefit from proportionate and appropriate support. Gillon (2021, p. 4) highlighted that caution was required as whilst the intentions underpinning EEI are "benevolent, it was evident that the process could easily be led by a crime control agenda rather than a forum to address wellbeing".

As part of initial discussions with children and their family following a referral to EEI processes this should consider the child's view of what occurred, and level of insight for their involvement in the alleged matter. This is not necessitating that the child takes full responsibility but creates space to discuss with the child what occurred, whether they acknowledge any role in the incident and potential impact upon others. Consideration must be taken that children may feel anxious acknowledging their actions within the alleged incidents and often may deny involvement in the first instance, especially when police are involved. However, ensuring any discussion regarding EEI involvement provides clear

explanation as to the purpose of EEI, that it is about supporting wellbeing and providing support for any issues the child and or parents may experience that could impact upon wellbeing rather than criminalising the child. Careful consideration should be taken as to who is best placed to have such conversations with the child and family, it may be a teacher, third sector, or other practitioner involved in the EEI process. Information which explains the purpose of EEI, the support that may be available if deemed appropriate, that it is voluntary and the reason and parameters of what is expected may allay anxieties and facilitate engagement. Thus children and their families must be provided with the information to enable them to make considered decisions about their involvement in any EEI process. EEI must not lead to unnecessary interventions into the lives of children as 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.

As stated, formal action is not always required and the first consideration of EEI should be whether there is a need for any response, or if the matter been sufficiently addressed by the child and their parents with no other needs identified in the interim. Where a response may be required it must always be proportionate to the level of concern the child's involvement in the alleged incident may raise and impact of the behaviour upon others. In line with the minimum intervention principle, when a response is required a police formal warning with no further intervention may be sufficient. When needs are identified these should be met through the offer of support from universal services including education, health, and employment/training where possible, and potentially third sector organisations as appropriate. However, in accordance with GIRFEC it should be the appropriate service at the right time to meet the needs of the child and their family which may require a response from specialist resources. Thus there should be pathways between EEI and these services to ensure concerns are responded to timeously, preventing deterioration in the child's situation or escalation in their behaviours before such supports are made available. Given the potential impact system contact may have on children and their families, as well as the impact the concerning behaviour may have upon the wider community, and those harmed, it is important that EEI provides a clear, consistent, and credible response to any such behaviour. It should lead to improved outcomes in the lives of children, not merely no further incidents where they are believed to have been involved in offending or concerning behaviour, but also promoting their development into confident individuals, effective contributors, successful learners, and responsible citizens.

The implementation and delivery of EEI must be in line with developments in practice and changes in legislation to ensure compliance, and identify any necessary adaptations as required. Following commencement of [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 the , particularly Article 8 - right to respect for private and family life, and all articles of the UNCRC. For EEI, it may be helpful to ensure information sharing processes are compliant by checking with the organisational Data Protection Officer.

The EEI Core Elements (Scottish Government, 2021) has adopted the position that children (eight to 11) whose behaviour would have been referred to EEI prior to the increase to 12 years for the age of criminal responsibility may still be referred to EEI, if it is the most suitable way to provide support. Where EEI is deemed as the appropriate pathway to a proportionate response to such behaviours then it is vital these children are not viewed as

having committed criminal offences (United Nations Committee on the Rights of the Child, 2019). Any subsequent assistance or services provided must be done so in a child friendly, multi-disciplinary manner which reflects the needs of the child (United Nations Committee on the Rights of the Child, 2019). It may be that existing local systems and universal services can provide a prompt response to any child or children that would fall into this situation and EEI is not the preferred pathway to support. However, a flexible approach which allows the right service at the right time to respond to the needs raised by the concerning behaviour rather than waiting until a child has been charged reflects early intervention and may prevent future contact with formal systems. Recording and reviewing all such instances should be undertaken to uphold children's rights from the moment of contact with the system, prevent net-widening and identify gaps in response to younger children resulting as an unintended consequence of raising the age of criminal responsibility.

The individuals harmed by the behaviours and actions of children referred to EEI will have a range of emotions and experiences and are often other children. Developing appropriate processes to ensure those harmed and affected are considered within interventions, which may involve restorative approaches ([see Section 13](#)), should be integrated into EEI provision. Proportionate information regarding the outcome of the referral to EEI, whilst complying with data protection legislation, is crucial and clarity as to who shares this information with individuals harmed is necessary. Presently this is the responsibility of Police Scotland.

4.1 General Principles

EEI focuses on the wellbeing needs of children aged 12 to 17 years using the principles of GIRFEC:

- Assessments and supports offered should take account of the age and developmental stage of everyone, building 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.
- Most anti-social behaviour and behaviour where children come into conflict with the law 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 (Sepulveda Carmona, 2010).
- 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 that criminalises them.
- Many children charged with an offence never commit any further offences. This can be due to the 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 come into conflict with the law

4.2 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. In Scotland the two main EEI models across the country are:

- 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, EEI processes will include anti-social behaviour referrals alongside alleged offending behaviour, and in other areas, low-level wellbeing concerns are also considered.

The most important feature in any EEI model is the inclusion and involvement of children and their parents in the EEI process, which is integral to decision-making. Contact with the child and their family should be made at the earliest opportunity to explain the purpose and process of EEI, discuss the referral, gather their views and response to the alleged incident, the child's wider situation, and what (if any) supports are required and would be helpful. In addition, inviting them to participate in any meetings if they feel comfortable attending and if not, then what information and views would they like expressed and considered on their behalf. This must be meaningful; thus, merely notifying after a referral has been received, and any decisions taken that have not included the child and family fails to uphold rights, nor does it encourage collaboration or engagement. Also, decisions must be based on proportionate information from appropriate partners, in relation to the child and their wider situation and be timely and relevant to the wellbeing needs identified.

The agencies involved in EEI models tend to vary depending on local arrangements, though 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). Where a multi-agency meeting is deemed appropriate then reflection on how to ensure they are effective and meaningful for children and their families to participate in as well as for services is required to reflect the spirit and embodiment of a rights-based approach. This may mean questioning who is present, the purpose of their presence and what they meaningfully bring to that discussion and if they have no knowledge of the child and their family, whether they should only be involved if they are required to work with the child and their family.

EI disposals include:

- Police direct measures
- Current measures are appropriate, no further action required. There should be clarity and confirmation that existing measures are responding to the identified needs of the child and any additional concern raised by the child's involvement in the matter referred through EI.
- Single agency referral - third sector partners, social work, education, health, fire and rescue are only some examples that could potentially undertake specific intervention or support.
- No further action - for several reasons it may be appropriate to take no further formal action in response to an alleged offence or concern
- Referral to Scottish Children's Reporter Administration (SCRA) - although this should not be an alternative to offering support through EI 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 EI.

It is important that agencies and services involved in implementing EI can provide a range of interventions as appropriate and proportionate for the specific child/children who have been referred. The intervention should fit the child as opposed to the child fitting the intervention and be delivered by the most appropriate service or agency. This may prove difficult as often criteria and thresholds for services can act as barriers to accessing appropriate supports and interventions. Developing pathways to ensure connection to the right service at the right time is required at local levels to ensure children's behaviours are not escalating before support is available or accessible.

4.3 Core Elements

For EI to be effective, it is clear it must be aligned with the principles of GIRFEC and uphold the rights of children. It should enable timely and proportionate responses to alleged offending behaviour by children, which understands their behaviour in the holistic context of each child and their surrounding systems. The understanding that EI 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 there is no obligation on children and families to accept the offer of advice or support from a named person.

EI 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 are a primary consideration, it is not the only consideration as this does not override the human rights of others, whether as 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 to police. It recognises that often,

when in contact with the police, responses from children and parents could be affected by shock and emotionally driven due to stress and initial denials to police may be expressed. However, a different agency approaching at a later point may receive a more engaging and open response.

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 as per [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. "Authorities should ensure that the child understands the charges, options, and processes. Providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons" (United Nations Committee on the Rights of the Child, 2019, p. 9).

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
- Crown Office Framework on the Use of Police Direct Measures and Early and Effective Intervention for 16 and 17 year olds; or
- Police deem a referral to SCRA is necessary as compulsory measures may be required

Whilst EEI is a response to alleged offending or concerning behaviour as a potential indicator of need decisions made as to the suitability for EEI are primarily based on the gravity of offence and whether compulsory measures of supervision may be required. Where referral to EEI is not offence based then referrals may come from a range of sources, and it will be important at the local level to ensure multi-agency partners are familiar with the referral pathways and contacts.

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 alleged offence should not prevent the matter 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 local 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. Establishing whether a child is an open referral to SCRA or subject to CSO can be checked if done so in accordance with data protection legislation.

Multi-Agency Group: Where multi-agency meetings are in operation, these should be held at minimum fortnightly to fulfil the aims and objectives of EEI (ten working days from the child being charged to meeting). Each local EEI arrangement should ensure that the appropriate range of agencies are involved as is relevant to their knowledge of the child referred 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, good practice and a process which upholds Article 12 of UNCRC must include discussion with the child and their parent/legal guardian as soon as possible following receipt of referral to EEI for the reasons already outlined in this section. Outcome of any multi-agency meeting should be discussed with the child and their parents as soon as possible, preferably in person and within five working days.

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. Practitioners engaging with children and undertaking interventions with children must ensure the materials are adapted for that child, have a variable range of content that can be utilised to focus on the areas of need identified, consider the duration of intervention sessions and what the child can tolerate, where sessions take place, and ensure flexibility to adapt sessions and content. Also, where a child has been re-referred to EEI it is important to make sure further intervention does not merely repeat the same material but consider what may have got in the way, if anything, of it being meaningful previously, as well as realistic expectations of children being able to always make good choices in all situations, especially when less positive influences are more immediate. Where similar behaviour has resulted in re-referral, exploring the barriers the child had putting into practice any new skills or learning will also be helpful.

Decision-making: Decisions regarding children referred to EEI should be made in a timely manner, if they are to be effective. The assessment of the child needs must 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: Good 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 these views are 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, preferably 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 person harmed 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 [Data Protection Act 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 (e.g. 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. ICO provides detailed guidance regarding the [GDPR and consent](#).

4.5 EEI - 16 and 17 year olds

EEI for this age group has a more limited range of offences than those considered for the under 16 age group, and this may go some way to explaining the continued sparse 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 (Recorded Police Warnings) 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 an 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 an RPW. It will be the decision of local partners as to whether further intervention is required and offered to address any wellbeing concerns identified. Again, it is important to ensure information sharing processes are in line with legislation.

For 16 and 17 year olds who are not subject to a CSO and commit an offence outwith the guidelines for RPW and EEI, these children will be referred directly to the PF where Diversion from Prosecution ([see Section 16](#)) is an option and police should include this as a consideration within the remarks section of the SPR2.

4.6 The Children and Young People (Scotland) Act 2014

As noted within this section, Parts 4 and 5 of the 2014 Act will not be enacted and will be repealed, 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 having 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 [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.

6. Conclusion

EI provides 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 their context, that responses are flexible and adaptive to their needs, rather than fitting the child into available services. That sometimes, the most appropriate response is no response, and on all occasions EI is a clear and transparent process that upholds rights and build strengths. Collaborative working between and across agencies as well as meaningful inclusion and participation of children and their parents must be at the core of EI processes and practice, if it is to evolve to be able to embody the challenges of being a rights-respecting process going forward.

7. References

- Case, S., & Haines, K. (2015). Children First, Offenders Second: The Centrality of Engagement in Positive Youth Justice. *The Howard Journal of Criminal Justice*, 54(2), 157-175. doi:10.1111/hojo.12099
- Case, S., & Haines, K. (2018). Transatlantic 'Positive Youth Justice': a distinctive new model for responding to offending by children? *Crime Prevention and Community Safety*, 20(3), 208-222. Retrieved from <https://dspace.lboro.ac.uk/2134/33423>
- Gillon, F. (2021). *Grappling with the complexity of Early and Effective Intervention (EEI): Benevolent Intentions, Negative Consequences in Youth Justice implications for Scotland* Retrieved from <https://www.sccjr.ac.uk/wp-content/uploads/2021/02/Dr-Fern-Gillon.pdf>
- Jahanshahi, B., Murray, K., & McVie, S. (2021). ACEs, Places and Inequality: Understanding the Effects of Adverse Childhood Experiences and Poverty on Offending in Childhood. *The British Journal of Criminology*, 62(3), 751-772. doi:10.1093/bjc/azab079
- Liddle, M., Boswell, G., Wright, S., Francis, V., & Perry, R. (2016). *Trauma and Young Offenders: A Review of the Research and Practice Literature, Research Summary*. Retrieved from https://www.basw.co.uk/system/files/resources/basw_80443-10_0.pdf
- McAra, L., & McVie, S. (2010). Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology & Criminal Justice*, 10(2), 179-209.
- McEwan, D. (2017). Understanding the relationship between brain development and offending behaviour. Retrieved from <http://www.cycj.org.uk/resource/information-sheet-67/>
- Scottish Government. (2008a). *Early Years Framework*. Retrieved from <https://www.webarchive.org.uk/wayback/archive/20170215031903/www.gov.scot/Publications/2009/01/13095148/2>
- Scottish Government. (2008b). *Preventing Offending by Young People: A Framework for Action*. Scottish Government Retrieved from <https://www.gov.scot/Publications/2008/06/17093513/0>
- Scottish Government. (2021). *Youth justice - early and effective intervention: core elements - framework*. Retrieved from <https://www.gov.scot/publications/early-effective-intervention-framework-core-elements/>
- Sepulveda Carmona, M. (2010). *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*. Retrieved from <https://ssrn.com/abstract=2441170>
- United Nations Committee on the Rights of the Child. (1989). United Nations Convention on the Rights of the Child. Retrieved from <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>
- United Nations Committee on the Rights of the Child. (1990). United Nations Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines') General Comments (number 10). Retrieved from <https://www.refworld.org/docid/3b00f21d1c.html>
- United Nations Committee on the Rights of the Child. (2007). *General comment No. 10: Children's rights in juvenile justice*. Retrieved from <https://www.refworld.org/docid/4670fca12.html>
- United Nations Committee on the Rights of the Child. (2019). General comment No. 24 on children's rights in the child justice system. Retrieved from <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAq>



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[hKb7yhsqlkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQSFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2bf0RPR9UMtGkA4](https://cycj.org.uk/wp-content/uploads/2018/08/Adverse-Childhood-Experiences-in-high-risk_CYCJ-Final-Version-proofed.pdf)

- Vaswani, N. (2018). *Adverse Childhood Experiences in children at high risk of harm to others. A gendered perspective*. Retrieved from [https://cycj.org.uk/wp-content/uploads/2018/08/Adverse-Childhood-Experiences-in-high-risk_CYCJ- Final-Version-proofed.pdf](https://cycj.org.uk/wp-content/uploads/2018/08/Adverse-Childhood-Experiences-in-high-risk_CYCJ-Final-Version-proofed.pdf)
- Walker, M. (2005). *The Statutory Social Worker's Role in Prevention and Early Intervention with Children*. Stirling: University of Stirling Social Work Research Centre.