

CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: POLICY, PRACTICE AND LEGISLATION

Section 10: Early
and Effective
Intervention

June 2023



Children and Young People's
Centre for Justice

www.cycj.org.uk

Contents

1. Introduction	3
1.1 General Principles	3
2. Definitions	4
2.1 Children	4
2.2 Prevention and early intervention	4
3. Key Findings from Research	5
3.1 Unintended consequences	6
3.2 Adversities	7
4. Policy Context and Legislation	8
5. EEI	9
5.1 Child's Views	9
5.2 Parental Responsibilities	10
5.3 Decision Making	10
5.4 Younger children	11
5.5 Victims	11
6. Models of EEI	12
7. Core Elements	13
7.1 Sufficiency of evidence	14
7.2 Suitability of Offence for EEI	14
7.3 Notification	15
7.4 SCRA check	15
7.5 Multi-Agency Group	15
7.6 Practitioners	15
7.7 Decision making	16
7.8 Communication	16
7.9 Information sharing	17
7.10 Consent	17
8. Conclusion	17
9. References	18

1. Introduction

This section focuses on Early and Effective Intervention (EEI) which forms a core aspect of the continuum of responses to children who have come into conflict with the law, or are at risk of doing so. 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 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, p. 12).

This is a key aspiration of EEI with significant importance to implementation in a truly rights-respecting manner.

EEI was developed as a mechanism to support all children who come into conflict with the law, 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 with the minimal intervention principle - only being offered where it is appropriate. In many 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, p. 12).

1.1 General Principles

EEI focuses on the wellbeing needs of children using the principles of GIRFEC:

- placing the child or young person and their family at the heart, and promoting choice, with full participation in decisions that affect them
- working together with families to enable a rights respecting, strengths based, inclusive approach
- understanding wellbeing as being about all areas of life including family, community and society
- valuing difference and ensuring everyone is treated fairly
- considering and addressing inequalities
- providing support for children, young people and families when they need it, until things get better, to help them to reach their full potential
- everyone working together in local areas and across Scotland to improve outcomes for children, young people and their families

2. Definitions

2.1 Children

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
- The [*Criminal Justice \(Scotland\) Act 2016*](#), which came into force on January 25, 2018, refers to 'younger child', which is anyone under 16 or aged 16 or 17 years old, and subject to CSO, an 'older child' as 16-17 years and not subject to a CSO.
- [*The Children \(Care and Justice\) \(Scotland\) Bill*](#) seeks to amend the Children (Scotland) Act 1995 and the Children's Hearing (Scotland) Act 2011 bringing the definition of a child up to anyone under the age of 18.

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, and throughout this guidance, are referred to either as 'child' or 'children'.

2.2 Prevention and early intervention

[*The Riyadh Guidelines*](#) highlight 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. The focus of any preventative programme should be on wellbeing from early childhood as reflected in [*GIRFEC, Framework for Action*](#) and the Early Years Framework, subsequently reinforced by the [*Children & Young People \(Scotland\) Act 2014*](#). The Riyadh Guidelines also note the importance of avoiding criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others; 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 proposed by Walker (2005) will be used.

- **Prevention** refers to activities which stop a social or psychological problem arising in the first place
- **Early intervention** is an activity aimed at halting the development of a problem which is already evident.

Walker (2005, p. 3) notes 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 Scottish Government’s approach to early intervention aims for all children to have the same opportunities. In addition, the following focus 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.

(Scottish Government, 2008)

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, 2008, p. 11).

3. Key Findings from Research

A significant body of international research highlights the importance of a preventative approach to children being (or at risk of being) in conflict with the law, whilst cautioning against net widening. The Edinburgh Study Youth Transitions and Crime (Edinburgh Study) by McAra and McVie (2010) was influential in shifting policy and practice within Scotland to a preventative approach as enshrined within the [Whole System Approach \(WSA\)](#) . Four key findings of this study highlighted:

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
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), (Case & Hazel, 2023). The Children First, Offenders Second (CFOS) approach developed in Wales and England highlights four principles:

1. **Promoting children's rights and adults' responsibilities;** 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. **Promoting desistance and inclusion;** promotes children's strengths and capacities as a means of facilitating desistance, restoration and inclusion.
3. **Promoting diversion and systems management;** emphasises diversion and child friendly systems management as vehicles for promoting positive behaviours/outcomes for children, and avoiding the potentially criminogenic consequences of system contact.
4. **Promoting relationship-based partnerships;** 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 that coming into conflict with the law is a normal facet of child development; however, 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, p. 11). A strengths-based approach that leverages and builds on existing strengths within the child and the systems surrounding them is crucial to shifting away from a deficit-based model. Furthermore, the CFOS approach highlights the importance of adults and systems around the child taking responsibility, rather than seeking to hold the child responsible beyond their ability and capacity.

3.1 Unintended consequences

Despite the well-researched intention to keep children and young people out of formal systems, evidence suggests that early intervention has the potential to lead to future negative contact with systems. This is exacerbated further for groups of children who are the most vulnerable. 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". This then results in children being labelled and stigmatised at an early age.

Despite the EEI process being classed as 'informal' findings from the research have indicated that in reality this is an extension of the formal youth justice system, rather than the alternative that it was set up to be. This must be borne in mind during any decision making and potential intervention.

3.2 Adversities

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; the interaction and influence of these areas upon each other has different weighting at different points in a child's development. However, they are not predictive, it is crucial that responses are proportionate and bespoke given the potential impact that raising concerns could have on the child and their family. Whilst the concerns may be similar, the way a child experiences them will be unique 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, is critical (McAra & McVie, 2010).

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 propose 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). Furthermore, 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). 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.

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 when shaping 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. More information on adversity can be found in [section 5](#).

Drawing on a range of theories from across different fields of learning can assist in identifying the most appropriate interventions required to understand, and respond to that specific child and their specific needs.

Theories / approaches it can be useful to consider include: child development, resilience, attachment theory, neurodevelopment, motivational interviewing, cognitive behavioural theories, systems theories and speech, language and communication needs [see section 6](#).

4. Policy Context and Legislation

EEL focuses on the needs of the child and recognises that addressing underlying needs, building strengths and reducing vulnerabilities will increase the likelihood of positive outcomes for the child and their family, as well as those harmed by the child's actions and wider society. Addressing needs and building capacity 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 in conflict with the law to the needs of children in care.
- The [Children \(Scotland\) Act 1995](#) with its focus on minimal intervention, and providing support to children in need is reflected in the underlying theme of EEL.
- [Getting It Right For Every Child \(GIRFEC\)](#), which has been developed since 2006, 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 the pressures that children and families can be under, and the impact of these, it seeks to build on strengths. It emphasises that where planning is required to meet a child's wellbeing needs through the delivery of targeted interventions, it will be done through the single planning framework of the Child's Plan. This links support and activities to desired outcomes, and requires professionals to work together and share information proportionately and appropriately. Refreshed GIRFEC [policy and practice materials](#) were published in September 2022.
- [The Children and Young People \(Scotland\) Act 2014](#) is now implemented, (although parts 4 and 5 of the 2014 Act will not be enacted and will be repealed); this enshrines the Named Person Service (NPS) and Child's Plan. Some local authority areas will have been providing an NPS to children for some time, thereby having a point of contact for families seeking information, support, and guidance in relation to their child. There is no compulsion for families to engage with NPS; any decision not to utilise the NPS should not 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 of 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 a compulsory supervision order may be required to ensure their needs are met, as specified in the [2011 Act](#), a referral should be made to the Children's Reporter.

- [Preventing Offending: Getting it right for children and young people who offend \(2015\)](#) included 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 the [Data Protection Act 2018](#), [Human Rights Act 1998](#), and [Age of Criminal Responsibility \(Scotland\) Act 2019](#). 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 enacted as of December 17 2021, meaning no child under the age of 12 can be held criminally responsible.
- [A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities](#) is the current youth justice strategy; it highlights the importance of a continued focus on EEI.
- [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 is considering [how to progress](#). On 24th May 2022, the Deputy First Minister made a statement to the Scottish Parliament about the Bill's next steps. The Scottish Government has not produced a timeline for the reconsideration stage in the Scottish Parliament.

More information of policy and legislation can be found in [section 1](#).

5. 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. It is a response to allegations of offending or concerning behaviour as potential indicators of wellbeing needs that may benefit from proportionate and appropriate support.

5.1 Child's Views

As part of initial discussions with the child and their family following a referral to EEI processes the child's view of what occurred should be considered, and level of insight for their involvement in the alleged matter. This does not necessitate that the child take full responsibility; it creates a space for discussing what occurred, in which the child can

acknowledge any role in the incident and reflect upon the incident's impact on others. Consideration must be given to the fact that children may feel anxious acknowledging their actions within the alleged incident(s); they may initially deny involvement, especially when police are involved. It helps to provide clear explanations as to the purpose and focus of EEI: it is about promoting wellbeing and providing support for any issues that the child / family may be experiencing, rather than criminalising the child. Careful consideration should be given as to who is best placed to have such conversations with the child and family; it may be a teacher, third sector worker, or other practitioner involved in the EEI process. The explanation should foreground the parameters of what is expected, highlighting the reasons behind EEI, and the fact that it's a voluntary process. This may encourage greater engagement and allay any anxieties. 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 in the lives of children, as set out by [UNCRC Article 16](#). This stipulates that no child shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, nor to unlawful attacks on their honour and reputation, and that the child has a right to the protection of the law against such interference or attacks.

5.2 Parental Responsibilities

Articles 18 and 27 of the UNCRC confirm the importance of the responsibility of parents for the upbringing of their children. Furthermore, 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 an alternative way of responding to allegations of being in conflict with the law, or concerning behaviour) can be critical to improved outcomes for children beyond any intervention; it provides the opportunity for a more collaborative and inclusive working partnership. The level of parental/caregiver 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 Article 12 in both the decision-making process regarding individual children and in shaping national EEI policy, practice and processes going forward.

5.3 Decision Making

As stated, formal action is not always required. 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 raised by the child's involvement in the alleged incident, and the impact of their 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, with potential third sector involvement 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 an 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 is about more than just preventing further incidents; it should lead to improved outcomes in the lives of children, 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. [General Data Protection Regulations \(GDPR\)](#) was introduced in May 2018; it is crucial to ensure that all processes are in line with this legislation, 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.

5.4 Younger children

The [Early and Effective Intervention – Framework of Core Elements](#) (Scottish Government, 2021) state that children aged 8 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 the appropriate pathway to a proportionate response, 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 service provided must be done so in a child friendly, multi-disciplinary manner reflecting 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 in which case EEI may not be 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.

In order to uphold children's rights, all instances should be recorded and reviewed from the first moment of contact with the system; this helps with identifying gaps in the way that we respond to younger children as an unintended consequence of raising the age of criminal responsibility, and prevents net-widening.

5.5 Victims

The individuals harmed by the behaviours and actions of children referred to EEI will have a range of emotions and experiences, and are often children themselves. Developing appropriate processes to ensure that those harmed and affected are considered within

interventions should be an integral part of EEI provision. This may involve restorative approaches ([see Section 12](#)). It is the hope that, as the [Scottish Government's Restorative Justice Action plan](#) is delivered across Scotland, there are increased opportunities for restorative approaches for those involved in EEI. 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.

6. Models of EEI

The majority of local authorities have developed multi-agency EEI processes as an early intervention response to a child being 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 and the child's wider situation; and to establish what (if any) supports are required / would be helpful. In addition they should be invited to participate in any meetings if they feel comfortable attending. If not, they should be asked what information/views they would like to have expressed and considered on their behalf. This must be enacted meaningfully. Retrospectively notifying a family/individual that a referral has been made, and decisions have been taken (in which they have had no voice) contravenes the child's rights and fails to encourage collaboration / engagement.

Decisions must be based on proportionate information from appropriate partners in relation to the child and their wider situation; they should 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 steps should be taken to ensure it is effective and meaningful for children and their families to participate in; this reflects the spirit 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.

EEL 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 EEL.
- Single agency referral – i.e. third sector partners (including those offering restorative approaches), social work, education, health, fire and rescue that could 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). This should not be an alternative to offering support through EEL if appropriate and timely but is 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 EEL.

It is important that agencies and services involved in implementing EEL 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. At a local level, pathways should be developed to ensure the child is connected to the right service at the right time; this should avoid any behaviours escalating before support becomes available.

7. Core Elements

Early and Effective Intervention – Framework of Core Elements were first published in 2015 and refreshed in 2021. The core elements framework aims to clearly set out best practice for the effective delivery of EEL.

For EEL 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, situating their behaviour in the holistic context of each child's life and their surrounding systems/environment. It is of paramount importance that the child and their family understand that EEL is a voluntary process; they have a choice to participate in any proposed intervention or not.

This reflects the position of the [Named Person Service](#), which is also a voluntary scheme where there is no obligation on children and families to accept the offer of advice or support.

EI should provide a proportionate and effective multi-agency forum for information sharing, assessment, and decision-making. Focusing primarily on the needs of the child, children and parents should be actively included from the earliest opportunity. Whilst the child's best interests are a primary consideration, they are not the only consideration; their rights and interests do not override the human rights of other individuals or groups. Therefore, a considered and balanced approach is required.

7.1 Sufficiency of evidence

Police Scotland is responsible for examining the evidence in each case and ensuring that there is sufficient evidence to proceed. This does not mean that there must be an admission from the child to police. Children and families' initial responses to police may be affected by emotionally charged, affected by shock or stress. As mentioned earlier, an initial denial is common. 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 a legal guardian. Every child that is charged has a right to prompt and direct information of the charges as per [UNCRC Article. 40\(2\) \(b\) \(ii\)](#). The United Nations Committee on the Rights of the Child (2007) outlines that this right also relates to when authorities 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) which states 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).

7.2 Suitability of Offence for EI

It is the responsibility of Police Scotland to identify cases suitable for discussion/referral to EI. All offences should be considered for EI 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 EI is a response to alleged offending or concerning behaviour as a potential indicator of need, decisions made as to the suitability of EI are primarily based on the gravity of offence and whether compulsory measures of supervision may be required. Where referral to EI is not offence-based then referrals may come from a range of sources; it is important at the local level to ensure multi-agency partners are familiar with the referral pathways and contacts.

7.3 Notification

The police should explain to a child and their parent/legal guardian (where appropriate) that their case may be referred to appropriate local partners. They should be made aware of what this involves, how long it should take, and what information may be shared.

- If under 16 parent/carer must be notified
- Consent is not required in order for Police Scotland to make an EEI referral. . However, consent is required from any child aged 16-17 who is 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

7.4 SCRA check

If a child has been referred to a 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 an offer of support being made to the child and their family in the interim whilst the formal process is followed. Checking to establish whether a child is an open referral to SCRA or subject to a CSO is permissible if done in accordance with data protection legislation.

7.5 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 is involved, relative to their knowledge of the child; this should reflect the Team Around the Child meeting (TAC). Those in attendance at these meetings should have the necessary level of authority to a) provide agency information to the meeting and b) receive referrals from the meeting. In addition, good practice, in line with 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 reasons already outlined in this section. The 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.

7.6 Practitioners

Practitioners must use their professional judgement when sharing information between agencies and ensure that the information shared is proportionate and relevant to the

wellbeing concern that's been identified. Practitioners undertaking interventions with children must ensure the following:

- There is a variable range of content that can be utilised to focus on the areas of need identified
- Consideration is given to how long the intervention sessions run for, and what the child can tolerate
- A flexible approach to adapting the content and format of sessions

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 and establish what, if anything, got in the way of it being meaningful previously.

In addition interventions should set realistic expectations: children will not always be able to make good choices in all situations, especially when less positive influences are more immediate. Where similar behaviour has resulted in re-referral, it may be helpful to explore the barriers the child experienced when putting into practice any new skills or learning.

7.7 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's 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 concern 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 should be 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.

7.8 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 matter referred to EEI. [UNCRC Article 12 \(1\)](#) states that the child has the right to express their views freely in all matters affecting them; these views should be given due weight in accordance with the age and maturity of the child. Practitioners should ascertain whether the child requires / would benefit from any assistance in responding to the charge. Inclusion in the multi-agency/TAC meeting would also be in line with ensuring clear and transparent processes; children and

families should also be given the 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; information regarding the specific child or children involved should be excluded. Instead it should explain 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.

7.9 Information sharing

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

7.10 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](#).

8. Conclusion

EEI provides opportunities to ensure children receive the right help at the right time in a proportionate and holistic manner, avoiding labelling and stigmatisation. It is important that these opportunities recognise the individuality of each child and their context; Responses should be flexible, adapted to the needs of the child, rather than fitting the child into available services. Sometimes the most appropriate response is no response. On all occasions EEI should be a clear and transparent process that upholds rights and build strengths. Collaborative working between and across agencies, as well as the meaningful inclusion and participation of children and their families, must be at the core of EEI practice if it is to embrace the challenge of being a rights-respecting process going forward.

9. 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. doi:10.1057/s41300-018-0046-7
- Case, S., & Hazel, N. (Eds.). (2023). *Child First Developing a New Youth Justice System* Palgrave Macmillan
- 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. doi:doi:10.1177/1748895809360971
- 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. (2008). *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. (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>

[hKb7yhsqIkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%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

Walker, M. (2005). *The Statutory Social Worker's Role in Prevention and Early Intervention with Children*. Stirling: University of Stirling Social Work Research Centre.