

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

Section 4: Early and Effective Intervention & Diversion from Prosecution

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1. Introduction

This section focuses on Early and Effective Intervention (EEI) and diversion from prosecution for children who are at the early stages of being involved in low to moderate level offending behaviour. EEI is positioned within the context of the legal frameworks for children and criminal justice services providing an opportunity to divert them from formal systems where appropriate for 8 to 17 year olds in Scotland. Diversion as referred to in this guidance is in relation to those aged 16 and 17 years diverted from prosecution by the Crown Office and Procurator Fiscal Service (COPFS), however, diversion from prosecution can also be used for over 18s.

EEI and diversion should be anchored in Getting It Right For Every Child (GIRFEC) and fulfil the aspirations of the United Nations Convention on the Rights of the Child and Child Friendly Justice, all of which promotes a child centred approach in responding to offending behaviour, and the maximisation of diversion opportunities from formal judicial processes. EEI is a voluntary process in which children and their families should be provided with the information to enable them to make informed and considered decisions about their involvement in any interventions offered to address offending behaviour. It should not lead to unnecessary interventions into the lives of children as further formal action is not always required. Any identified needs should be met through the offer of support from universal services including education, health and employment/training where possible. Given the potential impact offending behaviour can have on the lives of children, their families, the wider community, those harmed and affected by such behaviour, it is important that EEI provide a clear, consistent and credible response to such behaviour. Ultimately, it should lead to improved outcomes in the lives of children, which promotes their development into confident individuals, effective contributors, successful learners and responsible citizens.

Diversion from prosecution is an alternative to prosecution where the Procurator Fiscal (PF) has deemed that it would not be in the public interest to prosecute. The PF offers an opportunity for the child to engage in a period of intervention to address any issues which may have contributed to their involvement in the alleged offence and address any identified risks and needs. This is a deferred model of prosecution and should the child choose not to participate in the diversion scheme or their engagement and participation is not of a meaningful level then their case will be returned to the PF with an available option being prosecution in the criminal justice system.

Changes in legislation may affect the delivery and application of EEI and diversion from prosecution thus measuring existing practice and processes against any legislative changes to ensure compliance and identify any necessary adaptations or developments is crucial. Particularly relevant for EEI and diversion are the General Data Protection Regulations ([GDPR](#)) effective from May 2018 as is pending legislation regarding Age of Criminal Responsibility (ACR) and the outstanding aspects of the *Children and Young People (Scotland) Act 2014* (The 2014 Act) Parts 4 and 5 in relation to Named Person Service and the Child's Plan. Further amendments to this guidance will be required as these aspects are finalised. Both the [Scottish Government](#) and the [Information Commissioner's Office](#) (ICO) are clear that agencies should reassure themselves that practice adheres to the necessary legislation for sharing information and consent.

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

Definition

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

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

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 1) under 16 years old 2) those referred to the children's reporter prior to their 16th birthday and 3) those young people age 16 and 17 who are subject to a Compulsory Supervision Order (CSO) through the Children's Hearings System. The 2014 Act has not changed this definition
- The [Adult Support and Protection \(Scotland\) Act 2007](#) defines an adult as someone over the age of 16 years
- The [Criminal Justice \(Scotland\) Act 2016](#), which came into force on 25th January 2018, refers to 'younger child', which is anyone under 16 years or aged 16 or 17 years, and subject to a CSO, an 'older child' as 16-17 years and not subject to CSO

All under 18 years will be referred to as 'child' within this chapter.

2. Messages from Research

Predictive Factors:

Many research studies stress the importance of age and stage in determining likelihood of future serious offending. There may be significant offending trajectories for children who start to offend at the pre/early adolescence stage, and those who start in their teenage years.

Moffitt (1993) differentiates between early onset, life course, persistent and adolescent limited anti-social behaviour.

Features of the early onset group include neuro-cognitive deficits, adverse parenting, family, environment, and uncontrolled temperament. Significant features of those who start offending in adolescence are social factors including the influence of negative peer relationships. It is not always easy to distinguish between the two types in adolescence, but their histories and adult outcomes are different.

Lipsey and Derzon (1998) rank predictive characteristics of violent or serious offending. For six to 11 year olds, the highest predictors are general offences, substance use, being male, family socio-economic status and anti-social behaviour. For 12 to 14 year olds the highest ranking is social ties and anti-social peers, followed by general offences. Slightly weaker predictors include aggression, school related issues, IQ and psychological conditions.

McAra and McVie (2010) note both similarities and differences in respect of early and late onset offending. In particular, early onset children are more likely to live within a family affected by parental separation and to live in a deprived area. They are more likely to be known to agencies by age five. They are eventually more likely to truant or be excluded from school and become more frequent serious offenders.

Early onset offending:

Children who start offending or demonstrating significant emotional and behavioural difficulties under 12 years are two or three times more likely to become involved in long term persistent and serious or violent offending than their peers (McGarrell, 2001). Clusters of risk factors have significance: a 10 year old exposed to six or more risk factors is 10 times more likely to commit a violent act by age 18 than a 10 year old exposed to one risk factor (Herrenkohl et al., 2000).

Findings indicate that children under 12 who possess a cluster of risk factors are much more likely to go on to become involved in serious, persistent, violent or sexual offending behaviours, than those who start offending behaviour later on in adolescence. Not all will go on to offend in adulthood and support in identified areas of vulnerability can increase the likelihood of a positive adulthood.

Exposure to early trauma can predispose children to future violent offending. Ford et al. (2007) specifically consider children and young people's exposure to traumatic events in respect of levels of subsequent offending. They note a strong link between the witnessing of trauma in early childhood, internal problems (e.g. depression and anxiety) and externalised difficulties (e.g. aggression, conduct problems, oppositional defiant behaviour). This is linked with increased risk of involvement in child welfare and juvenile justice systems. It suggests an early onset trajectory for offending.

Fraser et al. (2010) provide a comprehensive consideration of factors that predispose towards violent offending. Research with adult offenders with a long-term pattern of serious and violent offending frequently highlights: a background of childhood abuse or neglect, domestic abuse, poor parental attachments, a higher than average experience of being in the care system, behavioural problems, truancy and poor educational outcomes.

Late Onset Offending:

Children who start offending later in adolescence fall into different groups in terms of risk factors, offending patterns and desistance. Some will be involved in relatively minor offending over a few years and stop around 16 or 17. Others may continue, often into their early 20s, committing serious or violent offences. The Edinburgh Study of Youth Transitions in Crime provides a Scottish perspective on predictive factors, outcomes in respect of offending and recommends keeping children out of formal systems, thereby using EEI and diversion.

Aspects of parenting are good predictors of juvenile delinquency at age 13. Important factors include parents' tracking and monitoring behaviour, the child's willingness to disclose information to their parent, parental consistency, reduced parent/child conflict and excessive punishment (Smith and Stern, 1997). There is an overall correlation between levels of offending and poor neighbourhoods (Smith, 2004). Offending at age 15 to 16 is associated with school truancy and exclusion at age 13 and 14 (Smith, 2006). Ford et al. (2007) found an association between children and adolescents who witness or become victims of violence, experience traumatic stress and are involved in offending. They consider how the stress of the juvenile justice system, court hearings, detention and imprisonment can exacerbate an already underlying trauma and thereby increase the risks of violent offending.

Based on the evidence, the premise of EEI is that earlier and more coordinated information sharing will be able to effectively identify needs and deeds as they arise, in order for them to be dealt with in an appropriate setting.

3. Legislation and Policy

EEI practice with its focus on wellbeing, is at the heart of Scottish policy and legislation relating to children. For example:

- [The Kilbrandon Report 1964](#) underpinned the *Social Work (Scotland) Act 1968* and established the Children's Hearing System in Scotland. This emphasised the importance of early intervention to prevent the development of future problems, linking the needs of children involved in offending behaviour with those in need of care.
- There is an underlying theme of EEI within the [Children \(Scotland\) Act 1995](#) with its focus on minimum intervention and providing support to children in need
- [Getting It Right For Every Child \(GIRFEC\)](#), which has been developed since 2006, is now in statute through the 2014 Act, and emphasises the ethos of Kilbrandon within current youth justice policy. The GIRFEC approach upholds that intervention should be appropriate, proportionate and timely. It prioritises acting early on concerns or in response to a crisis to prevent escalation of concerns or deterioration in wellbeing, recognising children and family pressures and understanding the impact of these, and building on strengths. It emphasises that where planning is required to meet a child's wellbeing needs through the delivery of targeted interventions, this will be done through the single planning framework of the Child's Plan, which links support

and activities to desired outcomes and requires professionals to work together and share information proportionately and appropriately.

- [Preventing Offending; Getting it right for children and young people who offend \(2015\)](#) includes EEI as part of its advancing Whole System Approach agenda. The emphasis is on supporting partners to integrate EEI with the implementation of the 2014 Act as well as additional legislative changes as they occur such as compliance with information sharing legislation ([GDPR](#) from May 2018) and Age of Criminal Responsibility. To ensure that best practice evolves to support and promote an improvement culture among national and local partners. The strategy also emphasises the need to maximise the opportunities for and encourage greater use of diversion across the Criminal Justice System (CJS) and formal processes, to respond swiftly and bring action on offending much closer to the offence.

4. Back to basics

Knowledge about children's physical and emotional development and theories about the impact of this on their personalities, behaviour and ultimately their life chances has become more complex over the decades. 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 in the community often display behaviour 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 impacts negatively on the child, their opportunities and their relationships.

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

5. General Principles

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

- Assessments and supports offered should take account of the age and developmental stage of each individual, building up the child's skills, capacity and protective factors, and where appropriate promoting supports for children and their families that can be universally accessed
- Children who become involved in offending behaviour come from a wide array of social backgrounds and cultures, and have often faced a range of difficulties and

adversities, which may have affected them to varying degrees. Thus, the responses required to support them must be varied and individualised recognising their strengths and vulnerabilities.

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

6. Models of EEI

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

- A multi-agency group decision making forum
- A lead contact who screens referrals, making some individual decisions and referring other children to an EEI group

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

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

The most important feature in any EEI model is that decisions are based on all available, proportionate and appropriate information from a range of agencies, and are timely and in proportion to the wellbeing needs identified. Wherever appropriate, children should be diverted from formal processes and supported within their community.

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

EEI disposals include:

- Police direct measures

- Current measures are appropriate, no further action required
- Single agency referral – 3rd sector partners, social work, education, health, fire & rescue are only some examples and as appropriate could undertake specific intervention or support such as Restorative Justice or substance misuse work
- No further action - for a number of reasons it may be appropriate to take no further formal action in response to an alleged offence
- Referral to Scottish Children’s Reporter Administration (SCRA) – although this should not be an alternative to offering support through EEI if appropriate and timely, but an option where compulsory measures of care may be considered necessary
- In exceptional circumstances, it may be appropriate to refer a child to COPFS, however, this is unlikely if agencies are working together to identify the right children for EEI.

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

7. Core Elements

For EEI to be effective, it must be aligned with the principles of GIRFEC. It should enable timely and proportionate responses to offending behaviour by children, which understands their behaviour in the holistic context of each child and their surrounding systems. The understanding that EEI is a voluntary process, ensuring children and their family are aware of this, and that they have a choice whether they wish to participate in any intervention offered or not is paramount. EEI should complement GIRFEC policy and promote collaborative working across partner agencies as appropriate to the needs and risks for individual children and their family, encouraging their meaningful participation and contribution to any decision making. This reflects the position regarding Named Person Service, which is also a voluntary scheme and children and their family do not need to take up the support offered through this scheme. EEI should provide a proportionate and effective multi-agency information sharing, assessment, and decision-making forum that focuses primarily on the needs of the child whilst recognising the impact upon victims and communities. It should be firmly rooted in children’s rights and uphold these meaningfully.

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

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

- Lord Advocate’s Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of Offences Alleged to Have Been Committed by Children for under 16s

- Crown Office Framework on the Use of Police Direct Measures and Early and Effective Intervention for 16 & 17 Year Olds; or
- Police deem a referral to SCRA is necessary

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

Notification: The police should explain to a child and their parent (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 but is preferable. However, consent is required from any child aged 16-17 years and not subject to a CSO
- Initial denial of the offence should not prevent the offence being referred to EEI
- Attitude of the child to police/parents should be recorded where possible
- The child and family/ carer 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: The police will confirm with SCRA if the young person is on a CSO or if there is an open referral being investigated. If the child is the subject of an open referral, the police have no option but to submit the referral to SCRA.

Multi-Agency Group: Where multi-agency meetings are in operation, these should be held at minimum fortnightly in order to fulfil the aims and objectives of EEI (15 working days from the child being charged to meeting). Each local EEI arrangement should ensure that a range of core agencies is represented at the multi-agency meeting stage. 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.

Practitioners: 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.

Examples of information, as detailed within the [EEI Core Elements](#), (though this document requires updating in view of current situation regarding the 2014 Act) which may be shared per agency, are detailed below and must always be proportionate and in accordance with current information sharing legislation:

Police

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

Social Work

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

Education

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

Health

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

Community Safety/ Antisocial behaviour services

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

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

If the disposal of the EEI process is that compulsory measures of supervision are required, the police should submit the Standard Prosecution Report (SPR2) to SCRA with additional information from EEI advising the reasons for the referral. This should be done within 5 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 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 agencies protocols in deciding whether further referral is required to social work services or SCRA if compulsory measures of care may be necessary.

Communication: The child and their parents should be notified in person or in writing of the EEI outcome within five working days of the decision. The outcome of the EEI process should also be reported to the victim with no information regarding the specific child or children involved but rather explaining the EEI process and possible outcomes, unless the provision of the information would be detrimental to the best interests of the child concerned (or any other child connected in any way with the case). This requires timely information being fed back to the Reporting Officer. It is the responsibility of Police Scotland either through representation at the EEI Meeting or following information from the EEI Coordinator to ensure this information is passed to the Reporting Officer.

Information Sharing: Ensuring EEI complies with GDPR enforced from May 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 checking with the appropriate service/ agency legal representative or Data Protection Officer for direction is recommended.

In a letter to the Education and Skills Committee, John Swinney said that it was necessary to continue current practice and share information in accordance with the relevant current legislation.

“It is important that public authorities continue to share information appropriately and in accordance with the requirements of the legislation such as the Data Protection Act and the Human Rights Act, when providing services to children and families. Officials are working with the Information Commissioner’s Office to provide further guidance on current practice in relation to sharing information.” (Swinney, 2016)

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”

Both the existing *Data Protection Act 1968* and the pending GDPR are clear that consent should only be sought where it is the most necessary legal basis for sharing information and there is a genuine choice. Where information will be processed irrespective of consent then it is not appropriate to seek consent, as it is [misleading and unfair](#). Where there is a clear position of power, then such bodies such as public bodies should avoid relying on consent unless they can evidence that it is freely given. As stated within this guidance checking your current practice against DPA 1968, incoming GDPR for information sharing and consent practices will ensure adherence to the legislative requirements and where updating may be required. ICO provides detailed guidance regarding the [GDPR and consent](#).

8. 16 and 17 year olds

Given the complexity of the legal system in Scotland, which provides that children aged 16 and 17 can be legally defined as children or as adults depending on which system they are

in, the following section deals with those defined as children under the *Children's Hearings (Scotland) Act 2011* and the *Children (Scotland) Act 1995* and those defined as adults under *Criminal Procedure (Scotland) Act 1995* separately.

16 and 17 year old children

A 16 or 17 year old may be considered by either the Children's Hearing System or the adult criminal justice system depending on whether or not they are subject to a compulsory supervision order (CSO). If a child is not subject to a CSO and they are charged with a crime after their 16th birthday but are under 17.5 years, and are convicted in court, the Sheriff can request advice from the Children's Hearing System regarding the most appropriate disposal for the child. If minded to do so, the Sheriff can remit the case to the Children's Hearing System for disposal. In these circumstances, good practice would be to place the child on a CSO to support their wellbeing needs. However, the Children's Panel will make a decision based on the wider context of that child and their needs, the legal criteria as to whether the test for compulsory measures are met and the least restrictive measure required in accordance with the *Children (Scotland) Act 1995* which may not result in compulsory measures being imposed. The Sheriff can however choose to deal with the child in the adult Criminal Justice System.

The principles of the Whole System Approach (WSA) encourage social workers and Children's Hearing Panel members to keep children on a CSO for as long as the child requires support to make positive life decisions. The approach emphasises that non-compliance with the child's care plan does not suggest that they are making good decisions; therefore, termination of the child's CSO would not be considered in their best interests. In addition, a child who is subject to a CSO may still be prosecuted in the criminal justice system and this should not be used as a reason to terminate their CSO. By their very nature of being a child in an adult system, Child Friendly Justice stipulates they should have additional support.

For 16 and 17 year olds who are subject to a CSO and commit offences out with the COPFS guidelines for EEI, there will be communication between the Procurator Fiscal and Children's Reporter. Taking into account the overall circumstances of the case and the available evidence, the PF will decide whether to retain the case or whether to pass it to the Children's Reporter.

16 and 17 year old children defined as adults

Sixteen and 17 year olds who are involved in offending behaviour that is not dealt with via the Children's Hearing System or through a formal Court appearance will generally be dealt with as part of EEI, by a Recorded Police Warning (RPW) or through the Diversion from Prosecution process.

Police direct measures, which include RPW and EEI, are intended to address minor offending behaviour, particularly offences that if reported to the Procurator Fiscal may result in a non-Court disposal.

With regard to EEI for this age group there is a significantly smaller number of offences than those considered for the under 16 age group and this may go some way to explaining the low numbers of 16 and 17 year olds being considered by EEI.

The present RPW Scheme was implemented in January 2016. RPWs can be issued to all adults, which include children aged 16 and 17. 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. A RPW is only available as a disposal for 16 and 17 year olds who are not subject to a CSO. Each time a RPW is issued it should be accompanied by the submission of a wellbeing concern form to relevant partners who may consider any wellbeing concerns that may not have been directly addressed by the administration of a RPW. It will be the decision of local partners as to whether any further intervention is required to address any wellbeing concerns identified.

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

9. Diversion

There can be confusion between the terms **early intervention** and **diversion**. In this guidance, the term diversion means diversion from prosecution.

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

There is now a national structure for the consideration (Initial Case Processing) of cases by the PF. The national unit is responsible for marking all reported cases (i.e. those on summons), which form a significant part of the diversion workload. The national Initial Case Processes Structure deals with all undertaking and custody cases. Diversion from prosecution aims to address unmet needs and reduce the prospect of further offending behaviour. Diversion is a 'direct measure' as an alternative to prosecution, available to the PF in all areas where there are diversion schemes¹. PFs are responsible for identifying which of the accused reported to them by the police are potentially suitable for diversion into social work interventions. Police and social work can highlight to the PF the cases they feel could be diverted. Procurators make the decision by anticipating that this will have an impact that is more beneficial on future offending behaviour than a prosecution. The evaluation of the WSA (Murray et al., 2015) recommended that diversion from prosecution should be the default position rather than prosecution for 16 and 17 year olds.

¹ The CYCJ scoping study (2016) identified that 31 out of 32 local authorities offered diversion to 16 and 17 year olds

Diversion can be a useful intervention with positive outcomes in respect of reoffending. Most current youth justice diversion schemes adopt a deferred prosecution model and prosecution is suspended until the child has successfully completed the diversion programme. An agency such as social work, addiction services or restorative justice manages the diversion programme. Normally a child is involved in individual and /or group work sessions which cover a range of areas such as offending behaviour, alcohol and drug use, social skills, education, employment and training and problem solving. The content of intervention undertaken should not be prescribed but flexible. The intensity and frequency should reflect an individualised response to that child's needs and risks identified through an assessment of the details of the alleged offence, the child's wider situation and collaboration with the child and where possible their family. This creates a collaborative approach where priorities identified by the child and from the assessment are both worked towards.

When the PF refers a child for diversion this decision is made against [relevant guidelines](#) and a view that prosecution is not in the public interest. It is important that the local authority response is as creative as possible to meet the needs of the child and reduce the risks associated with their involvement in the alleged offence or any future offending behaviour. When the PF has made the decision to divert that offence, the local authority is not assessing the suitability of the offence but the individual child, their wider situation as well as their agreement to participate. Therefore, returning a referral to the PF on the basis that an offence is unsuitable, is discriminatory and fails to take recognition that alternative intervention has been deemed in the public interest, which should be a priority of all diversion from prosecution schemes. Following completion of the diversion from prosecution intervention a report is submitted. In recognition of the individualistic response advocated for diversion interventions, there may be situations when the intervention will be undertaken during the initial assessment phase. In such cases where assessment reports are part of the local process this would be sufficient to highlight completion of intervention and recommendation with no further input required.

The completion report should focus on the depth of engagement from the child in consideration of their capacity and ability to participate and engage. Reflecting how the intervention undertaken and the child's participation has addressed the areas of need and risk from the initial assessment is crucial. Stating the number of sessions attended provides no analysis or information as to what the child has taken from the intervention or contributed to it. Highlighting strengths whether developing or existing and evidence of application of any of the learning from the intervention out with sessions should be included. Noting areas of unmet need and attempts to address these or limitations to doing so should be included. In addition, referrals to other services for support beyond the diversion scheme intervention are also important to note.

Not all those referred to diversion from prosecution will successfully complete the intervention easily and some may not engage at all. It is important that every effort is made to support children to participate whether that involves numerous home visits, repeated attempts to engage them, persistence and tenacity on the part of the workers. Recognising they require additional supports merely by the fact of their being a child in an adult system is crucial. Their [cognitive abilities](#) are still developing and may be compounded by additional factors such as a learning difficulty, often undiagnosed, they may become homeless during their participation, susceptible to peer influence, breakdown in family situations, and employment or college commitments or ignoring the situation in the hope it goes away

without an appreciation for what may be the consequence- prosecution in court. A flexible approach that is transparent by being clear about the expectations of the child's participation, what is acceptable and what is not and the consequences once the boundaries have been over stepped is necessary. How this information is explained and the opportunity to remind the individual is important to their ability to process and remember.

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

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

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

[The Diversion from Prosecution Toolkit 2011](#) offers guidance in relation to the processes and procedures required to develop a person responsive diversion from prosecution scheme, which is applicable across both youth and adult justice. It outlines what is required to deliver a more effective, tailored and appropriate intervention for under 18s involved in offending behaviour, though is also applicable to over 18s. It offers detailed guidance on establishing and maintaining a youth justice diversion scheme. Updated guidance in relation to diversion from prosecution for both under 18s and adults is required and is anticipated to be completed in the next 12 months.

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

10. The Children and Young People (Scotland) Act 2014

Parts 4 and 5 of the 2014 Act are not yet enacted in legislation and presently there is no indication as to when this may occur. However, there has been no change to the GIRFEC policy, which enshrines the Named Person Service (NPS) and Child's Plan. In some Local Authority areas, they will have been providing an NPS to children for some time providing a point of contact for families to seek information, support and guidance in relation to their child if desired. There is no compulsion for families to engage with NPS and nor should any

decision not to utilise the NPS be viewed in a negative light. The provision of a NPS is in line with the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) which clearly states the role of the state in supporting parents and guardians in undertaking their roles and responsibilities to ensure every child has an upbringing providing 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.

Following the outcome of the Scottish Governments proposed Information Sharing Bill 2017 which was the response to the [Supreme Court Judgement](#) (July 2016) on the information sharing provisions within the 2014 Act changes may be required to EEI and youth justice practice overall. In relation to the child's plan, the Scottish Government is working with Parliament to agree a timetable to enable commencement of the [Child's Plan in 2018](#).

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.

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