



Stage 3 Briefing for MSPs: Children (Scotland) Bill – 24th August 2020

Stand Up for Siblings supports amendments 43, 44, 45 and 34

Stand Up For Siblings [SUFS] is a coalition of child welfare, children's rights, advocacy and legal organisations and academics within Scotland. SUFS partners have a range of expertise in the promotion and protection of sibling relationships, particularly for those with Care Experience. SUFS has published a roadmap, **Seven Steps to Sibling Relationships**, which details the changes needed to stop sibling estrangement when children become involved with the care system. This and many more resources are available on the **SUFS website**.

The SUFS movement has received high level support for our aims. At our launch in March 2018 First Minister Nicola Sturgeon, talking of sibling separation, said: *"We talk a lot about wanting to put love into the care system, but we should also make sure that we don't inadvertently take it out."*

Supporting sibling relationships is prominent throughout the **Care Review's blueprint for change, 'The Promise'**.

The Children (Scotland) Bill, if passed, will be an important step towards implementing that vision, with the potential to be transformative in how care experienced brother and sisters' relationships are recognised and nurtured in Scotland.

SUFS has been pleased to provide evidenceⁱ throughout the Bill's passage through Parliament, and to see the improvements made to the Bill at Stage 2. We thank Members for the work done ahead of Stage 3, and everyone who has worked hard to ensure the Bill respects and promotes children's right to family life with their brothers and sisters.

The relevant Bill provisions in relation to Care Experienced children:

- Section 10, amending section 17(1) of the Children (Scotland) Act 1995 to place a duty on local authorities to take steps to promote, on a regular basis, personal relations and direct contact between a child in their care and their siblings, as appear to them - having regard to their paramount duty to the child to safeguard and promote their welfare - to be appropriate.
- Section 10 of Bill, amending section 17(3) of the Children (Scotland) Act 1995 to expressly add siblings to persons whose views must be ascertained by local authorities, where reasonably practicable, before they make any decision about a child they are looking after, or are proposing to look after.
- Section 10A of Bill, amending section 29A of the Children's Hearings (Scotland) Act 2011, placing a duty on children's hearings/sheriffs to consider contact with relevant persons and siblings with whom the child does not reside.

The relevant Bill provisions in relation to children in family court actions:

- Section 11, amending section 11 of the Children (Scotland) Act 1995, putting beyond doubt that children under 16 can seek and be granted a contact order under section 11 of the 1995 Act without automatically being given parental responsibilities and rights.
- Section 12, amending section 11 of the Children (Scotland) Act 1995, placing a duty on courts to consider the effect an order might have on the child's important relationships with other people, which would include siblings.

We have welcomed too the Scottish Government commitment to amending the Looked After Children (Scotland) Regulations 2009 to introduce a duty on local authorities to place siblings under the age of 18 together when they are looked after away from home when it is in their best interests.

Stage 3 amendments

THE DEFINITION OF SIBLING - Amendments 43, 44 and 45

We welcome the changes to the definition of sibling in sections 10 and 10A proposed by Rona Mackay MSP. SUFS has called for removal of references to the alienating and outmoded terms ‘half-blood’ and ‘full-blood’.

If **amendments 43 and 44** are agreed to by MSPs, the definition of sibling in section 10 (*Promotion of contact between looked after children and siblings*) would read:

(1A) The persons referred to in subsection (1)(d) are—

(a) a sibling of the child ~~(including a sibling by virtue of adoption, marriage or civil partnership and whether of the half blood or of the whole blood), and~~

(b) any other person with whom the child has lived and with whom the child has an ongoing relationship with the character of a relationship between siblings.

~~() For the purposes of subsection (1A), two people are siblings if they have at least one parent in common.~~

We would underline that the reference to having one parent in common should only be relevant to defining ‘sibling’ in 1A (a). Key in 1A(b) is that the sibling relationship is defined from the perspective of the child (who do they see as brothers and sisters?) rather than being designated from adult relationships. It has the ‘character’ of a relationship between siblings which children would understand as a particular type of connection, emotional bond or kind of belonging. This recognises the diversity in modern families and the range of relationships care experienced children may have which may have the character of a sibling relationship. Guidance should expand on this point for clarity.

We feel it is important to emphasise the broad range of circumstances of children covered by the Bill. It must be clear in accompanying guidance that the provisions in the Bill apply equally to all looked after children, including: those subject to Compulsory Supervision Orders through the Children’s Hearing System; children who are looked after without compulsory measures under section 25 of the Children (Scotland) Act 1995 (the 1995 Act); children who are looked after and are unaccompanied and seeking asylum; children living in kinship care, at home with their birth parent(s), in foster care, residential care, secure care, and children who are looked after and for whom adoption or permanence is planned, or those already subject to Permanence Orders. An appreciation is also needed of particular pathways to sibling estrangement and how risks of estrangement can be mitigated. For example, evidence suggests that children identified for adoption are at particular risk of their sibling relationships being overlooked.ⁱⁱ

Amendment 45 makes parallel changes to section 10 A (*Duty to consider contact when making etc. compulsory supervision order*), which we support. However, we would urge caution in interpreting the word ‘ongoing’. A Hearing would be obliged to consider the child having contact with “any other person with whom the child has resided and with whom the child has an ongoing relationship with the character of a relationship between siblings”, yet we know that children’s relationships naturally change over time. Siblings can become distanced or estranged (not least perhaps as an unintended result of state intervention) but this should not mean they are not supported to maintain that connection so they can reconnect in the future.

We call upon MSPs to support Amendments 43, 44, 45 and place the child’s perspective of who is their sibling at the heart of these reforms.

THE OPPORTUNITY TO PARTICIPATE IN CHILDREN’S HEARINGS - Amendment 34

SUFS supports Amendment 34, which would give individuals - yet to be defined, but on the basis of the Minister’s comments at Stage 2, presumably including siblings - the opportunity to participate in a child’s Hearing. Meaningful participation in Hearings for siblings is an important part of children’s rights to family life. SUFS has called for this in our “Seven Steps to Sibling Relationships”, referenced above.

The Care Review Promise states in relation to decision-making in Children's Hearings that *“there must be particular attention paid to the rights of brothers and sisters to ensure that they have all the necessary legal rights to have their voice heard in relation to their brothers and sisters. That must include the notification of forthcoming hearings about their brothers and sisters and speedy rights of appeal if required.”* (Chapter 2: Voice, page 40).

It is important that in realising this amendment, that decisions about participation in Hearings centre first and foremost around the wants and needs of the child at the centre of the Hearing. Pre-Hearing Panels’ and Hearings’ paramount consideration is the need to safeguard and promote the welfare of the child at the centre of the Hearing throughout the child's childhood, so any participation decisions, as all decisions, would be taken on this basis, having regard to any views the child expresses, taking into account their age and maturity.

We call upon MSPs to support Amendment 34.

ⁱ [SUFS Stage 1 Evidence, November 2019](#); [SUFS Stage 2 Evidence, June 2020](#); [SUFS Supplementary Evidence at Stage 2: SUFS response to consultation on Review of Part 1 of the Children \(Scotland\) Act 1995 and creation of a Family Justice Modernisation Strategy, September 2018](#).

ⁱⁱ Jones, C., Henderson, G., & Woods, R. (2019). Relative strangers: Sibling estrangements experienced by children in out-of-home care and moving towards permanence. *Children and Youth Services Review*, 103, pp 226-235.

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