

Period Products (Free Provision) (Scotland) Bill

Delegated Powers Memorandum

Purpose

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of Monica Lennon in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Period Products (Free Provision) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. This Bill makes provision to ensure that all who menstruate can access period products, at no cost, as and when they are required.

3. The Bill contains 12 sections in 3 Parts:

- Part 1 establishes a right to obtain period products free of charge for everyone in Scotland who needs them and requires Scottish Ministers to make a period products scheme ("the scheme") to make this right effective and to facilitate it.
- Part 2 specifically requires educational establishments to make period products available free of charge for pupils and students; and enables Scottish Ministers, by regulations, to make similar provision for other public service bodies.
- Under Part 3 Scottish Ministers must publicise the availability of free period products. Everyone else obliged by the Bill to make period products available free of charge may provide information about the availability of those products to those who may need them. This part of the Bill also enables Scottish Ministers to make payments to bodies required to provide free period products, and makes provision about regulations, definitions and commencement as well as the short title.

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4. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

Rationale for subordinate legislation

5. The Bill contains a number of delegated powers provisions, described in more detail below.

Section 2(1) with 2(3) – products scheme	power to make a period
Power conferred on:	the Scottish Ministers
Power exercisable by: instrument	regulations made by statutory
Parliamentary procedure:	affirmative (if making the period products scheme for the first time or replacing a previous scheme); negative in all other cases.

Provision

6. Section 2(1), read with 2(3), requires the Scottish Ministers, by regulations, to make a scheme to set out and regulate the right to free period products (established by section 1) and facilitate its exercise.

Reason for taking power

7. The right to obtain period products free of charge, given by section 1(1) to everyone who needs it, is to be made effective and facilitated through the scheme, which the Scottish Ministers must make by way of secondary legislation (section 2(1) with 2(3)). These regulations will set out the details of how the scheme is to be set up and run to secure its full and efficient operation. The Scottish Ministers must choose whom to oblige as their delivery partners; i.e. whether they will deliver the scheme by imposing obligations on councils (local authorities), specified public-facing bodies or other specified persons (as defined in section 10(1) and (2) of the Bill), or any combination thereof, to make period products available for the purposes of Part 1. The option for Scottish Ministers to specify, in the regulations, particular public-facing bodies and/or persons as delivery agents for the scheme is set out in sections 2(2)(b) and (c) of the Bill. The Scottish Ministers can also specify these bodies or persons by reference to a class they are in, i.e. referring to them by a collective term rather than specifying them individually. Section 2(4) stipulates that the scheme must be operational no later than 12 months after the Bill receives Royal Assent.

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8. The Scottish Ministers can decide how the scheme is to work. However, section 3 provides a preliminary procedure option whereby a person seeking to access the scheme would first have to obtain a voucher, which the person would then have to produce (or alternatively evidence that the person has it) each time they wish to obtain free period products. Section 3(2) sets out various further requirements of any such voucher-based preliminary scheme. One of these (paragraph (c)) is that the scheme must set out what personal information a person is required to provide in order to obtain a voucher, and Scottish Ministers may specify the details of the personal information required. If, however, the scheme contains a preliminary procedure provision that is different from the one described in the Bill, it must still comply with section 3(2)(b)(i) and (ii) – that is, the preliminary process must still be cost free and relatively easy for the person using it and it must still be possible for the process to be followed by a proxy in circumstances specified (in regulations) by the Scottish Ministers. Section 4 sets out requirements on the scheme in terms of its use and operation. Section 10(1)(a) clarifies that specified, for the purposes of Part 1, means specified in the scheme.

Choice of procedure

9. Section 9(2)(a) sets out that regulations under section 2 that make a period products scheme for the first time, or replace a previous scheme, are subject to the affirmative procedure. The level of scrutiny that this procedure provides to the Parliament reflects the significance of making the scheme, as well as any amendments to it that are so significant that they would amount to a complete replacement of the previous set of rules.

10. Section 9(3) sets out that all those regulations not specifically listed in section 9(2) are subject to the negative procedure. It is expected that Scottish Ministers, when first making the scheme, will cover all aspects of it comprehensively – that is, there will be a single set of scheme regulations, which will be subject to the affirmative procedure. The underlying policy is to give Scottish Ministers flexibility in how they wish to operate the scheme, and as such it is expected that the parameters of such delivery will change over time. Any later changes to details of the scheme would require the making of further regulations. Assuming they do not amount to general replacement of the existing scheme, it is considered that the negative procedure is the appropriate level of scrutiny for such modifying regulations.

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Section 5(2)(c) – power to specify requirements about how education providers are to fulfil their duty to make period products available free of charge in their premises

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative

Provision

11. Section 5(2)(c) enables Scottish Ministers by regulations to specify any requirements beyond those set out in the rest of the section on how education providers must make free period products available for pupils and students who need to use them.

Reason for taking power

12. The power to specify requirements is sought to provide Scottish Ministers with the option to set out further requirements to impose a degree of Scotland-wide consistence in terms of how the education providers discharge their duty under section 5. It is an optional power, and Scottish Ministers may wish to leave it to the individual education providers to fulfil the duty in their own way within the parameters set by section 5 or encourage consistency and good practice by non-statutory means. The power also provides flexibility, should the need arise now or in future, to reflect changing public expectations or circumstances.

Choice of procedure

13. In line with section 9(3), any use of this power is subject to the negative procedure. The power may be used to put additional requirements on education providers as to how they are expected to make period products available in their premises. The potential impact of this is considered small, and therefore the negative procedure is considered the appropriate level of Parliamentary scrutiny.

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Section 6(1) – power to specify particular public service bodies required to make products available in their premises

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative

Provision

14. Section 6(1) provides Scottish Ministers with powers to specify other public service bodies to provide free period products in their premises. Public service bodies are defined in section 10(4) as those constituted by or under an enactment and having functions that consist of or include providing public services or otherwise serving the public interest.

Reason for taking power

15. The policy driver is to achieve a step change whereby the availability of free period products in all premises to which members of the public have access becomes the norm, like the provision of toilet paper. In line with this, the purpose of this power is to allow Scottish Ministers to extend the reach of the Bill in the future. Following recent relevant campaigns, some health boards have for example already taken steps to provide free period products to patients in hospitals. Scottish Ministers may for example wish to use their power to require all health boards to make such provisions to ensure a consistent strategy. Section 6(4) sets out that bodies may be specified by reference to a class they are in, and section 6(3) requires Scottish Ministers to consult each public service body before taking the power to specify them to make free period products available in their premises.

Choice of procedure

16. Section 9(2)(b) sets out that regulations under section 6(1) are subject to affirmative procedure. This choice of procedure reflects the significance of imposing on additional specified public bodies, or categories of body, new obligations which may have budgetary, staffing and other implications for them.

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Section 6(2) – power to specify how, where and when products are to be made available by specified public service bodies

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: affirmative when used for the first time or when replacing provision about how, where and when period products are to be made available; otherwise negative

Provision

17. Section 6(2) enables Scottish Ministers, when specifying a public service body that is to make free period products available in its premises, to make detailed provisions about how, where and when those products are to be made so available.

Reason for taking power

18. The policy is to give Scottish Ministers flexibility on the details of how, where and when products are to be made available, recognising that requirements might vary depending on the type of body and the needs of those frequenting its premises.

Choice of procedure

19. According to section 9(2)(c), regulations under section 6(2) when made for the first time or when replacing provisions about how, where and when products are to be made available, are subject to the affirmative procedure. This reflects the impact that these detailed requirements will have on the bodies in question. In practice, it is expected that, each time the Scottish Ministers specify particular public service bodies under section 6(1), they will set out for the first time, in the same regulations, the details of how, where and when those bodies are to make the products available. However, Scottish Ministers are provided with sufficient flexibility to adopt to future changes in circumstances that might require a change in requirements for how products are to be made available. It is considered sufficient and appropriate that any such amendment regulations, assuming they do not amount to a complete replacement of a previous set of provisions on the details, would be subject to the negative procedure.

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Section 7(2)(b) – power to specify actions councils etc. must take to inform persons seeking to obtain them about the availability of products

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: negative

Provision

20. Section 7(2)(b) provides the Scottish Ministers with the power to set out requirements as to how councils, bodies, persons and education providers, obliged to make free period products available in their premises, are to provide information about the availability of these products.

Reason for taking power

21. This power is taken to allow Ministers to ensure that appropriate information is made available to the prospective users of free period products on how, where and when those products can be obtained. If Ministers do not exercise this power, each council, body, person or education provider can inform the relevant people as they see fit (under section 7(2)(a)); if the power is exercised, they must ensure that the way they do it conforms to the requirements specified.

Choice of procedure

22. Under section 9(3), regulations made under section 7(2) are subject to the negative procedure. The nature of the power is such that Scottish Ministers can add specific requirements for publicising the availability of period products to the public as they consider necessary, which is not of such significance as to require affirmative procedure. The negative procedure is, therefore, considered appropriate for this power.

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