

Period Products (Free Provision) (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Period Products (Free Provision) (Scotland) Bill, introduced in the Scottish Parliament on 23 April 2019. They have been prepared by the Non-Government Bills Unit of behalf of Monica Lennon MSP, the member who introduced the Bill.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and Monica Lennon MSP, the member who introduced the Bill (SP Bill 45–LC);
- a Financial Memorandum (SP Bill 45–FM);
- a Policy Memorandum (SP Bill 45–PM).

3. The Explanatory Notes are intended to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

The Bill

4. The aim of the Bill is to ensure that all who menstruate can have reasonably convenient access to period products, free of charge, as and when they are required.

5. The Bill will:

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- place a duty on Scottish Ministers to ensure that period products are made available free of charge on a universal basis;
- require education providers to make period products available free of charge in on-site toilets; and
- enable Scottish Ministers to place a duty on other specified public service bodies to provide free period products.

6. The Bill is in three parts. Part 1 establishes the right to free period products for those who need them in Scotland and requires Scottish Ministers to establish a period products scheme to make this right effective and facilitate it.

7. Part 2 places a duty on educational establishments to make period products available for free in all appropriate toilets in each of those buildings or premises normally used by pupils or students. This duty is placed on all primary and secondary schools in Scotland (including independent schools) as well as on all Scottish colleges (including private colleges) and universities. This Part of the Bill also enables Scottish Ministers to make similar provision, by regulations, in respect of other such public-service bodies as are specified.

8. 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, and must comply with publication requirements that the Scottish Ministers may set out in regulations. This Part of the Bill also enables Scottish Ministers to make payments as they see fit to anyone required to provide free period products, and makes provision about regulations, definitions and commencement, as well as the short title.

Commentary on sections

Part 1 – General right to and supply of free period products

9. Section 1 establishes the right of everyone in Scotland who needs them to obtain period products free of charge. To make that right effective, section 2 requires the Scottish Ministers to establish (by regulations) a “period products scheme” and to set out how the scheme is to work. In doing so, Ministers must choose whether to implement a scheme by imposing obligations on councils (local authorities), on other public-facing bodies

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(bodies or organisations whose premises are frequently accessed by members of the public) or on other persons (which could include, for example, private sector bodies) – or any combination of these. Bodies or persons may be specified as a class, rather than being named individually in the regulations. The scheme must be operational within 12 months of the Bill receiving Royal Assent.

10. Section 3 gives Ministers the option of including in the scheme a preliminary procedure under which anyone seeking to obtain free period products must first apply for a “voucher” and then, in order to obtain the products, produce the voucher (or supply evidence that the person has it – e.g. by citing a voucher number in any online or telephone ordering process). If this preliminary procedure is included in the scheme, applicants must provide sufficient proof of identity in order to obtain a voucher; the information that counts as sufficient is either the applicant’s name and the first part of their postcode, or such other personal information as the Scottish Ministers may specify in regulations. Such a preliminary procedure must also be cost-free and reasonably easy for applicants to follow, and must enable, in specified circumstances, people to make proxy applications – that is, where one person (who may not need period products themselves) applies for a voucher and collects products on behalf of someone else (who does need them but may be unable to apply for a voucher or collect products by reason of, for example, a disability). While there is no requirement to include in the scheme the preliminary procedure outlined in section 3, any preliminary procedure that is included (i.e. any alternative process that people must follow in order to obtain free period products) must still be cost free and reasonably easy for applicants to follow, and must still allow for proxy applications.

11. Under section 4, Scottish Ministers are required to ensure that the period products scheme allows individuals to obtain free period products with reasonable ease and privacy. It also requires a reasonable choice of different period products (e.g. towels and tampons) to be made available under the scheme and that individuals should, under circumstances to be established by Scottish Ministers, be able to have products delivered to them rather than collecting them from a designated location. Section 4(3) allows Scottish Ministers to charge for the delivery of period products in cases where it would be reasonable to expect individuals to collect the products in person. This section gives Scottish Ministers a general power to make further provision (in the regulations) to ensure the scheme is fully effective and works

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efficiently, and to protect it from abuse, including by preventing people obtaining more products than they reasonably need for their own use.

Part 2 – Provision for pupils, students and others

12. Section 5 places a duty on education providers to make period products available free of charge in schools, colleges and universities for the pupils or students who need them. “Education providers” are (see section 10(3)):

- in relation to each school, the education authority (i.e. the local authority in the exercise of its education function), the proprietors if it is an independent (fee-paying) school or the managers if it is a grant-aided school;
- in relation to a college or university, whoever is responsible for managing it (e.g. a governing body, board of management or board of governors).

13. Under section 5(2) free period products must be made available in all appropriate toilets in each school or campus building or other premises normally used by pupils or students. This applies to buildings or premises not directly used for education, and so covers (for example) college sports facilities and halls of residence as well as departments, lecture theatres, laboratories and libraries; but doesn’t apply to buildings or premises used only by college staff or to which students don’t normally have access.

14. “Appropriate toilets” are defined (in section 10(3)) to include all toilets other than those designated for use only by males – so include all designated-female and gender-neutral toilets, including accessible toilets designed for use by disabled people.

15. The education provider must do all it reasonably can (for example, by checking and re-stocking dispensers regularly) to ensure that products are available, and that there is a reasonable choice of types, while the toilets are in use by pupils or students. This obligation does not apply, for example, while a university building is used for other purposes (not by students) during a vacation. The education provider must also comply with any requirements (as to the provision of free period products) specified by Ministers in regulations.

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16. Section 6 of the Bill allows Scottish Ministers to specify (in regulations) other public service bodies that are to provide free period products in their premises. Details of how, where and when products are to be made available are to be set out in regulations, and this may vary according to the type of body and the needs of those who use their premises. A “public service body” (under section 10(4)) is a statutory body (i.e. a body constituted by or under an enactment) that either provides services to the public or otherwise serves the public interest. Obligations under this section (to provide free period products) may be imposed on bodies individually or as a class; but each such body must be consulted before the requirement is imposed on it.

Part 3 – General

17. Section 7 requires the Scottish Ministers to publicise the existence of the period products scheme made under Part 1, and how, where and when people can obtain free products under that scheme. It also enables the councils, bodies, persons and education providers that are obliged to make period products available free of charge in their premises to provide information, to those who may wish to obtain those products, about how, where and when to do so. A university, for example, might inform its students about how, where and when they can obtain products in campus toilets. While it is generally for the councils, bodies, persons and education providers to decide what (if any) information to provide, they must comply in doing so with any requirements imposed on them by the Scottish Ministers in regulations.

18. Section 8 enables Scottish Ministers to make payments, as they see fit, to anyone obliged by or under the Bill to provide free period products. This is something that Ministers would be able to do anyway (without specific provision in the Bill) in respect of publicly-funded bodies; this provision ensures they can also do so in respect of other bodies and persons should they consider it appropriate.

19. Section 9 sets out the Parliamentary procedure applicable to the various regulation-making powers in the Bill. Regulations that contain the first period products scheme made under Part 1, or any replacement scheme, are subject to the affirmative procedure – that is, they must be laid before the Scottish Parliament for approval by resolution. Later regulations modifying such a scheme (but not amounting to a replacement scheme) are subject to the negative procedure – that is, they would be subject to annulment by the Scottish Parliament within 40 days of being laid. Similarly,

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regulations under section 6(1) that first impose on a public-service body the obligation to provide free period products to users of its premises are subject to the affirmative procedure, as are regulations (under section 6(2)) defining how, where and when such a body is to make those products available; but later regulations modifying the “how, where and when” provision (but not amounting to a replacement of it) are subject to the negative procedure. Other regulations – for example, those under section 7(2)(b) imposing requirements on to how people are to be informed about the availability of period products – are subject to the negative procedure.

20. Section 10 provides definitions for various key terms used in the Bill.

21. Subsection (2) defines “councils” as those constituted under section 2 of the Local Government etc. (Scotland) Act 1994.¹ In practice, this means the 32 unitary local authorities in Scotland.

22. Section 10(3) defines “school” by reference to section 135 of the Education (Scotland) Act 1980.² This defines a school as “an institution for the provision of primary or secondary education or both ... being a public [i.e. local authority] school, a grant-aided school or an independent school [i.e. any school that is not a public or grant-aided school; in practice, a fee-paying school], and includes a nursery school and a special school”. As the duty is to provide period products only for those who need them, however, the Bill has no application to nursery schools; it will also for example have no application to any boys-only school (unless it has menstruating transgender pupils).

23. Section 10(3) defines “university” and “college” by reference to the Further and Higher Education (Scotland) Act 1992.³ For universities, that means any “designated institution” (that is, any institution providing higher education and designated as such under section 44 of that Act) or higher education institution established under section 46. In addition, it means any of the older universities defined by section 16(1) of the Universities (Scotland) Act 1966. There are four older universities (St Andrews,

¹ Local Government etc. (Scotland) Act 1994, section 2:
<http://www.legislation.gov.uk/ukpga/1994/39/section/2>

² Education (Scotland) Act 1980, section 135(1)
<https://www.legislation.gov.uk/ukpga/1980/44/section/135>

³ Further and Higher Education (Scotland) Act 1992:
<http://www.legislation.gov.uk/ukpga/1992/37/contents>

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Glasgow, Aberdeen and Edinburgh), and 11 other universities in Scotland (Abertay, Dundee, Edinburgh Napier, Glasgow Caledonian, Heriot-Watt, University of the Highlands and Islands, Queen Margaret University Edinburgh, Robert Gordon, Stirling, Strathclyde, and the University of the West of Scotland) plus four other higher education institutions (the Glasgow School of Art, the Open University in Scotland, the Royal Conservatoire of Scotland and Scotland's Rural College). Colleges are defined as educational establishments providing further education within the meaning of section 1 of the 1992 Act, that is "any programme of learning, not being school education, provided for persons over school age" ("programme of learning" being further defined within section 6 of the Act).⁴ This includes 26 colleges in Scotland that are "fundable bodies" for the purposes of the Further and Higher Education (Scotland) Act 2005 (see section 6 and Schedule 2)⁵, plus other further education institutions (i.e. colleges that are not "fundable bodies" under the 2005 Act).

24. Section 11 covers commencement. Part 1, obliging Ministers to establish a universal scheme, comes into force on the day after Royal Assent, although, as previously noted under section 2(4) of the Bill, the scheme itself need not be operational until 12 months after Royal Assent. Section 5, obliging schools, colleges and universities to provide free period products, comes into force on 1 August in the year next following the year of Royal Assent (e.g. on 1 August 2020 if Royal Assent is in December 2019, but 1 August 2021 if Royal Assent is in January 2020). This ensures that the obligation will apply from the beginning of a new academic year, with a minimum lead-time of seven months. Section 6, which enables Ministers to apply obligations to other public service bodies, comes into force, like Part 1, on the day after Royal Assent. It will be for Ministers to specify, in any regulations made under section 6, the date from which the bodies to which the regulations apply must comply with their new obligations.

⁴ Further and Higher Education (Scotland) Act 1992, section 1 (1) <https://www.legislation.gov.uk/ukpga/1992/37/section/1>

⁵ The 26 colleges listed in Schedule 2 to that Act of 2005 include some that form part of the University of the Highlands and Islands but does not include Scotland's Rural College (SRUC), which counts as a university.

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