



The Scottish Parliament
Pàrlamaid na h-Alba

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11 September 2020

Dear James,

Period Products (Free Provision) (Scotland) Bill – Stage 2 amendments

I am writing to update the Local Government and Communities Committee on the approach to Stage 2 of the Period Products (Free Provision) (Scotland) Bill, further to the letter from the Cabinet Secretary on 20 August and the Financial Resolution passed by Parliament on 8 September.

During the course of Stage 1 consideration of the Period Products (Free Provision) (Scotland) Bill, I made a number of commitments to the Committee about the amendments I would be prepared to lodge to the Bill. I have therefore lodged these, but I have been continuing positive discussions with the Cabinet Secretary and I am in broad agreement with her proposed changes to the Bill at Stage 2.

My lodged amendments, along with an explanation behind each of them, are set out below.

Affirmative procedure

Amendment 16 addresses concerns raised by the Delegated Powers and Law Reform Committee.

Section 2(2) requires that the period products scheme (which is made by regulations) must oblige any or all of the bodies specified in the scheme to make period products available (or secure that they are made so available).

The Bill requires the regulations to be subject to the affirmative procedure when the scheme is set out for the first time or when a scheme is replaced; but any other changes to the scheme are subject to the negative procedure. As a result, regulations modifying the scheme by specifying an additional body or person under section 2(2)(b) or (c) would be subject only to the negative procedure. This was questioned by the DPLR Committee.

This amendment has the effect that any regulations which specify a public-facing body or other person (and so impose obligations on them for the first time) are subject to the affirmative procedure.

Amendment 16:

In section 9, page 4, line 23, leave out from <or> to end of line 24 and insert <, replace a previous scheme or otherwise impose the obligations of a scheme on councils or on a body or person for the first time>

Duty to consult

Amendment 5 also addresses concerns expressed by the DPLR Committee. Unlike a similar provision specifying bodies for the purpose of Part 2 of the Bill (section 6), there is currently no requirement to consult any body or person before they are specified in a period products scheme made under section 2 of the Bill.

The amendment requires Ministers to consult a public-facing body or person before specifying them in any period products scheme regulations made under section 2 of the Bill.

Amendment 5:

In section 2, page 1, line 19, at end insert –

< () It may not impose an obligation on councils or on any body or person unless the Scottish Ministers have consulted the councils, body or person.>

Voucher-based procedure

Under the Bill, Ministers can, if they choose, include in the scheme provision requiring people who wish to access free period products first to obtain a voucher. Section 3 sets out more detail of how any such voucher-based procedure must work. At Stage 1, the Minister and other MSPs made clear that they did not favour any voucher-based procedure, arguing that it would increase bureaucracy and could act as a barrier to access.

These amendments remove reference to the voucher scheme option, but preserve the requirement that any preliminary procedure that is to be followed before a person can access the scheme must be, for the person, cost-free and reasonably easy, and must allow for proxy applications.

Amendments 7 and 13:

Leave out section 3

In section 4, page 2, line 38, at end insert -

<() The scheme must be such that any specified procedure that a person has to follow before obtaining period products -

(a) is, for the person, cost-free and reasonably easy, and

(b) can, in specified circumstances, be carried out by another on the person's behalf.>

Evaluation of existing scheme and timescale for implementation

Under the Bill, Ministers are required to ensure that the period products scheme is operational no later than 12 months after Royal Assent. Ministers expressed concern that this might not be enough time to fully evaluate current schemes and ensure that the statutory scheme captures best practice. These amendments extend the timescale for making the scheme operational to allow time for such evaluation.

In order to provide the Committee with options, a range of amendments have been lodged. Two amendments retain a fixed deadline for having the scheme in operation, but extend that deadline

from 12 months to either 18 months or two years. Another set of amendments allows the deadline to be extended later by resolution of the Parliament. That set of amendments would work with any of the possible deadlines – the current deadline of 12 months, or either extended deadline (18 months or 2 years) – making a total of 6 possible options for the Committee to choose amongst.

Amendments 1, 2, 3, 4 and 6:

**In section 2, page 1, line 19, after <than> insert—
<(a)>**

In section 2, page 1, line 19, leave out <12> and insert <18>

In section 2, page 1, line 19, leave out <12 months> and insert <2 years>

In section 2, page 1, line 19, at end insert <, or -

(b) such later date as the Scottish Ministers may fix in substitution.>

In section 2, page 1, line 21, at end insert -

<() The Scottish Ministers may fix a date under subsection (4)(b) only if—

(a) they have informed the Scottish Parliament of the date they propose and their reasons for proposing it, and

(b) the Parliament has, by resolution, agreed to the proposal.>

Education providers - requirement to provide products in toilets

Section 5(2)(a) requires period products to be provided in each appropriate toilet in each of those school, university or college buildings or other premises that are normally used by the pupils or students. Concerns were expressed that it may not be appropriate or cost-effective to have products available in all “appropriate toilets” (eg in every en-suite facility in halls of residence).

The amendment makes a specific exception for halls of residence – so that, in those buildings, the minimum requirement is one appropriate toilet per building, or one per floor.

Amendment 14:

In section 5, page 3, line 22, at end insert -

<(3A) However, in relation to residential accommodation, the education provider’s duty to provide period products extends only to providing them in one appropriate communal toilet -

(a) on each storey of the building, or

(b) where the building has only one storey, on that storey.

(3B) In subsection (3A), a “communal” toilet is one that is available for general use by pupils or students in the building.>

Postal delivery

Under section 4(2) of the Bill, the scheme must enable people to choose to have products delivered to them; section 4(3) allows Ministers to specify circumstances in which people who make that choice can be charged the cost of postage or delivery. Concerns were raised at Stage 1 that these provisions could add significant cost. For example, the Bill does not allow Ministers to cap the number of people opting to have products delivered, and although section 4(3) allows the postage or delivery costs to be recovered in certain cases, it would not allow the associated administrative costs to be recovered.

While these concerns are acknowledged, there is a balance to be struck. A delivery option may be vital to meet the needs of people living in remote communities or who have difficulty accessing products because of illness, disability or other inequalities. Further, as with many areas of public policy, the Covid-19 pandemic may now require a revised response, as there may now be a greater need for postal delivery as a result of homeworking, shielding and so on. Four options for amendments have been drafted.

The first option – amendment 9 – involves softening section 4(2) by changing “must” to “may” –

In section 4, page 2, line 31, leave out <In particular, it must> and insert <For those purposes, it may>

The second option – amendment 10 (a variation of 9) – would enable Ministers to specify circumstances in which people may opt to have products delivered –

In section 4, page 2, line 31, leave out from <In> to first <to> and insert <For those purposes, it may specify circumstances in which those persons may>

With either of these options, a consequential amendment to section 4(3) would be needed – amendment 11:

In section 4, page 2, line 33, leave out from <But> to <may> and insert <And, if it does, it may (despite section 1)>

A third option would be to remove section 4(4) – to give Ministers greater latitude in specifying circumstances in which people must pay the delivery charges. This is amendment 12 –

In section 4, page 2, leave out subsection (4)

The final option is to remove section 4(2) to 4(4) altogether. This would not prevent Ministers making provision for postal delivery, but it would remove any statutory constraints on whether this was included in the scheme and, if so, on how it would work. This is amendment 8 –

In section 4, page 2, leave out subsections (2) to (4)

Technical amendment

Amendment 15 is a technical amendment for clarification. Section 6(5) is there to ensure that, if Ministers wish to specify a class of public service body in regulations, they must first consult every body that is a member of the class. The current drafting of 6(5) wrongly suggests that these bodies are specified first and then consulted. The amendment adjusts the wording of the subsection to make clear the order in which things are to happen.

Amendment 15:

In section 6, page 3, line 36, after <are> insert <proposed to be>

I hope the above is helpful and I am grateful to the Committee for its continuing work on the Bill.

Yours sincerely,

Monica Lennon MSP