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Convenor, Local Government and
Communities Committee
Scottish Parliament
Edinburgh
EH99 1SP

21st October 2020

Dear James

PERIOD PRODUCTS (FREE PROVISION) (SCOTLAND) BILL

I am writing to you following the deadline for lodging of Stage 2 amendments to the Period Products (Free Provision) (Scotland) Bill. The purpose of this letter is to summarise the principles underpinning the Scottish Government amendments and set out our position on the non-government amendments that have been lodged. I will, of course, provide an explanation of our amendments at Stage 2 but I thought it would be helpful to summarise the key policy changes they make.

As I set out in my letter to you of 20th August, the Scottish Government approach to amending this Bill at Stage 2, takes into account both the findings and recommendations within your Stage 1 report and views expressed by members during the Stage 1 debate. It builds on existing local flexibilities, and removes unnecessary and expensive bureaucracy, like a voucher or card-based system, while maintaining the principle of universality.

The amendments in my name follow the approach that I set out to you in that letter. I am pleased that in recognition of the collaborative approach I have taken, working with Monica Lennon to ensure that the final Bill reflects our shared understanding of how best to enshrine Scotland's world leading work in law, Ms Lennon has added her name in support of all of those amendments. In turn, I have added my name in support of her original amendments 7 and 15 and her additional amendments 24A, 25A and 34 which I am in full agreement with.

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Amendments to Part 1 (17, 18, 19 and Monica Lennon's amendment 7)

Taken together these amendments will replace Part 1 of the Bill with a single Section setting out a legal duty on Local Authorities to make free period products available for all those who need them, protecting in law universal access to period products. Local Authorities will have considerable flexibility in how they meet this duty, subject to provisions brought in by new Sections we are proposing. In the Bill as introduced, the duty required to give effect to the right conferred by Section 1 required a potentially costly bureaucratic national scheme and possibly involved a number of different types of body. In the Bill as amended, responsibility will lie with only one type of body – local authorities.

Amendments on particular requirements (34 and 36)

As already noted above I supported Monica Lennon's amendment 34 when it was lodged as I agree both that there are certain key principles that should apply whenever someone is seeking to access free period products, and that these principles should apply in any setting. Amendment 36 in the name of Sarah Boyack contains some similar provisions however only applies to local authorities, and also seeks to place limits on local authority flexibility as to how they fulfil their duties, therefore I do not support the amendment as a whole, despite agreeing with much of the intent behind it. If both of these amendments were passed it would require significant work at Stage 3 to ensure duplicative provisions were rationalised.

Amendments to Section 5 (20)

In relation to Section 5 Scottish Government amendments will amend the duty on schools (including independent and grant-aided schools), colleges, universities to make period products available for students and pupils but to remove the stipulation that this must be in toilets. In line with our amendments to Part 1, education providers will have the ability to build on existing voluntary arrangements based on local need.

When the provisions under Section 5 are commenced the Period Products in Schools (Scotland) Regulations 2020 will be revoked, bringing all relevant provisions in relation to free period products in education settings into a single piece of legislation.

Monica Lennon's amendment 20A seeks to go further than Scottish Government and mandate that every building normally used by students or pupils must have free period products obtainable. I understand the sentiment behind this amendment and recognise that it is a relaxation from her original requirement. While the Scottish Government position was that this issue was best left to consultation with students themselves, on balance I am minded to support this amendment. I would however point out that passing of this amendment will have a knock-on impact on amendment 26 in relation to the consultation on where products should be obtainable, that may need to be addressed at Stage 3.

Amendments to Section 6 (21, 15 (Monica Lennon), 22, 23)

Some amendments are proposed to Section 6, some of which are technical. The only significant policy change is that our amendments to this Section will mean that any future specified public bodies only have to make available free products to meet the needs of a person while they are on the premises of that body. As indicated above I support amendment 15.

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Amendments introducing new Sections (24, 24A (Monica Lennon), 24B (Alexander Stewart), 25, 25A (ML), 26)

Scottish Government believe that for this Bill to be successfully implemented responsible bodies must put in place a high standard of delivery that will continue to build on existing world-leading access to free period products in Scotland. This is in line with recommendations made in your Stage 1 report. Therefore our amendments introduce 3 new Sections to the Bill which we believe will maintain those high standards. These Sections will place duties on

- Scottish Ministers - to issue Guidance to responsible bodies on meeting their duties under Sections 1,5, 6 and 7
- Responsible bodies - to consult on what local delivery should look like and to publish local statements summarising this and explaining how they have followed the Guidance

While these new Sections add to the length of the Bill, they contain detail that would have been required to be set out in secondary legislation required under the Bill as introduced therefore I believe that the overall legislative process is simplified by putting these provisions on the face of the Bill. I support Monica Lennon's amendments to both amendments 24 and 25 to ensure that both the Guidance and Statements on exercise of functions take account of the particular requirements set out in her amendment 34.

Alexander's Stewart's amendment 24B seeks to mandate that the Guidance must also specifically include Guidance in relation to Section 1(3)(b). This provision was included in Section 1 as otherwise, local authorities would be legally obliged to bear the cost of packaging and delivery of products under section 1. However it is a permissive rather than directive provision, only for where local authorities choose to include postal delivery as part of their arrangements, and we do not therefore consider it necessary to mandate that the Guidance specifically covers this issue. Scottish Government therefore does not support amendment 24B.

Amendment 35 in the name of Annie Wells

This amendment seeks to impose duties on all responsible bodies to report on the exercise of their functions under the Act. It mandates reporting annually, however in practice this means that local authorities would have to report twice – once at the end of the financial year in relation to Section 1 duties and then again at the end of the academic year in relation to Section 5 duties. Responsible bodies must consult with individuals in the local authority area, students, pupils and product users as appropriate in preparing their reports. This level of reporting would be a significant and disproportionate burden on responsible bodies.

Scottish Government therefore does not support amendment 35. However we are willing to consider whether the Bill should be amended at Stage 3 to include a more proportionate reporting process, and I am happy to discuss this with Ms Wells and any other member.

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Additional amendments (27-33)

Amendment 27 amends Section 7 to place duties for informing the public about the arrangements for accessing free period products on responsible bodies rather than Scottish Ministers. Amendments 28 and 29 remove Sections from the Bill that are no longer necessary, and amendments 30 and 31 change definitions, in many cases consequential to previous amendments.

Amendments 33 and 33 relate to commencement. These provide flexibility in commencement of the substantive duties on responsible bodies (within 2 years), which will provide time to allow the steps set out in the new Sections which must be taken before responsible bodies have to begin delivery of access to free products under the Bill. It will also allow us to better understand the likely cost of implementation.

Cost of delivery and supplementary documents

Accurately assessing the potential cost of this demand-led entitlement was a concern for both Scottish Government and the Committee at Stage 1. Due to Covid pressures (both in Scottish Government and Local Authorities) officials were not able to complete the full analysis of data on spend to date across the different sectors that I highlighted at Stage 1. However, we will seek to obtain more data on spend and uptake from local authorities, colleges and universities prior to commencement of the duties under Section 1 and 5. This should allow us, based on data as far as possible, to determine what additional funding may be required to enable responsible bodies to deliver the duties imposed by the Bill.

I would like to point out that, despite significant pressures in contributing to the response to the ongoing pandemic, Scottish Government officials have spent considerable time ensuring that the Bill as a whole continues to build on existing policy and approaches. In recognition that the bulk of the changes have been driven by Scottish Government, officials have agreed to draft any revised supplementary documents that are required following Stage 2, including a revised Financial Memorandum, but of course we will agree these documents with Monica Lennon.

I hope that the Committee will be supportive of the approach that Scottish Government has taken to ensure that the final Bill is deliverable and as cost-effective as possible and look forward to explaining our amendments, and our views on non-government amendments in more detail at Stage 2.

AILEEN CAMPBELL

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