

Cabinet Secretary for Communities and Local Government
Aileen Campbell MSP

23 November 2020

Dear James

PERIOD PRODUCTS (FREE PROVISION) (SCOTLAND) BILL

I am writing to you in advance of Stage 3 consideration of the Period Products (Free Provision) (Scotland) Bill to summarise the principles underpinning the Scottish Government Stage 3 amendments that have been lodged, explain the consideration that has been given to points raised during Stage 2, and set out my views on the non-government amendments.

Amendments 1-4 (Section 5) in the name of Monica Lennon

Following Stage 2, I have worked with Monica Lennon on these amendments and as you know have supported them all.

Amendments 1-3 address a concern that the term “comprise” in subsection 3 of section 5 of the Bill as amended may not recognise that not all of the component parts of the premises of an institution may be buildings that are normally used by pupils or students. I believe that the revised wording is clearer on this point.

As you will recall there was debate during Stage 2 about Monica Lennon’s amendment to subsection (3) being too prescriptive, a concern shared by COSLA and the Scottish Funding Council. As I committed to during Stage 2, I have worked with Ms Lennon to better understand stakeholder’s concerns and I believe that amendment 4 proportionately addresses those concerns. I strongly agree that any exception to subsection (3) must be acceptable to pupils or students, rather than education providers being able to unilaterally decide a building is not suitable for the provision of free products.

Amendments 5 and 6 (Section 6D) in my name

One of the central elements of the consultation required by section 6D is to consult on locations or premises where period products should be obtainable free of charge. The changes to Section 5 brought about by the addition of subsection 3 at Stage 2, and the qualification of this by amendment 4 in this group means that consequential amendment to section 6D is required.

Amendment 5 in my name amends the existing subsection (3)(b) which now refers to the new subsection (3A), inserted by amendment 6, which contains all of the provision in relation to consultation about in which premises, and where in those premises, period products are to be obtainable. It changes the consultation requirements in relation to buildings which are normally used by pupils or students under section 5, mandating that consultation covers the locations within those buildings where free period products should be provided. It also requires education providers to consult on

whether free period products should be provided anywhere else on their premises (for example, in any locations not normally used by students or pupils).

Amendment 7 in my name

Amendment 7 is a straightforward amendment to correct an inconsistency arising from the insertion of section 9A by Stage 2 amendment. It ensures that the same position in relation to commencement applies in relation to both of the sections in the Bill that deal with interpretation (that is, sections 9A and 10) – that position being that both commence on the day after Royal Assent.

Amendment 8 in the name of Sarah Boyack

Amendment 8 is the same as subsection (2)(c) of Ms Boyack's Stage 2 amendment 36 which was not pressed to the vote at Stage 2. It seeks to place an additional particular requirement on responsible bodies that products must be obtainable with reasonable privacy. While I understand the thinking behind this amendment my position has not changed from Stage 2 and I remain of the view that it would have potential unintended consequences and therefore I cannot support it.

Placing privacy on the face of the Bill risks stifling potential delivery models that may not meet the requirement for privacy but ought to be open to responsible bodies. For example having products available at a stand in the student union of a University, community centre or library would be unlikely to meet a requirement for reasonable privacy, but would be acceptable under the Bill as it stands. That is the very reason that I supported the incorporation of a need to respect dignity into the Bill at Stage 2. This will ensure that, if privacy is essential in a particular circumstance, it would have to be met.

More fundamentally, I believe that a mandatory requirement for privacy may perpetuate the belief that periods and period products are something to be embarrassed or ashamed of. My fervent hope is that in the future the concerted work this government, and stakeholders, have taken to reduce this stigma means that accessing free period products becomes the normality, so privacy in every situation would be unnecessary. However, if this is a requirement on the face of the Bill, responsible bodies may not be able to develop innovative delivery approaches.

I would hope that Ms Boyack will accept my misgivings on this area, and my reassurance that within the bill, dignity and respect covers privacy where it is necessary and withdraw the amendment.

Amendment 9

Amendment 9 also in the name of Ms Boyack is the same as subsection 2(d) of Stage 2 amendment 36 and would mandate that the ability to obtain free period products could in no way be linked to their entitlement to other goods, services or benefits.

I am in complete agreement that access to free period products should be open to anyone who needs them, with the only eligibility being that a person menstruates. While I believe this amendment is seeking to put this beyond doubt, I believe the Bill

is already clear on this. Section 1(1) and section 9A taken together make it absolutely clear that responsible bodies must make period products obtainable free of charge to all persons who menstruate with no exceptions and therefore your amendment is therefore unnecessary.

I also am of the firm view that it could potentially have unintended consequences. As drafted this amendment would mean local authorities may be unable to provide free products via services accessed by individuals, e.g. via a homeless shelter, or through a service for low income families. Section 1 currently allows for this to happen, but this will not be the only way that people are able to access products. All local authorities' arrangements will need to include at least some provision for products to be generally accessible by the public. So even where a person does have access to products through their use of a particular service, they will also be able to access products through those wider arrangements (for example, provision in libraries or public toilets).

I would hope that Ms Boyack would again withdraw the amendment.

Amendment 10 in the name of Alexander Stewart

Amendment 10 is very similar to amendment 24B, as brought, but not moved, by Mr Stewart at Stage 2. It seeks to mandate that the Guidance that will be issued under section 6B must specifically include Guidance on delivery models that could be used in relation to local authorities' duties under Section 1(3)(b).

My position has not changed since Stage 2. This permissive subsection was included in Section 1 in the event that local authorities choose to include postal delivery as part of their arrangements as otherwise, authorities would be legally obliged to bear the cost of packaging and delivery of products in all cases.

It will be for local authorities to understand, through consultation and consideration of their local circumstances, whether it is necessary or desirable to offer postal delivery at all and if so, on what basis it is reasonable to charge for this. Given that flexibility I do not believe it would be possible for guidance on this point to give clarity on the likely uptake and cost associated with this optional element of their arrangements and therefore I oppose this amendment and would urge Mr Stewart to withdraw it.

Amendment 11 in the name of Annie Wells

I indicated during Stage 2 that I would take the opportunity before Stage 3 to consider again whether additional provisions on Reporting should be placed on the face of the Bill. I have considered the potential benefits, and risks, of this at length and my officials have also discussed this with COSLA.

Following that consideration I agree with Ms Wells that a level of financial reporting is important to both address the concerns of local authorities, COSLA, and education providers, around being adequately funded to meet their duties, and of Scottish Government around having sufficient data to make informed funding decisions. However I do not believe that this time-limited provision is required to be placed on the

face of the Bill, as provided for by amendment 11 and so do not support the amendment and hope the member will therefore withdraw her amendment.

I am pleased to inform the committee that I have agreed with COSLA a more proportionate approach along with a longer term review that I believe will help address the concerns. The exact detail of the data that will be gathered will be agreed by officials. It will be high level enough not to place burdens on local authorities but will provide a level of detail that will be more useful than total costs only, which is provided for in amendment 11. I believe this will enable a better and fuller understanding to be gained. There is a risk that this amendment could undermine that agreement by potentially limiting the data and information gathered if local authorities only meet the duty as set out.

I hope that the information above is helpful to the Committee, who have been robust in their consideration of this Bill. I have also written directly to members who have lodged amendments to explain why I cannot support their amendments and I am copying this to the letter to Ms Lennon.

I'd like to again express my thanks to Committee members past and present whose input has undoubtedly helped to shape this Bill into a deliverable piece of legislation.

I look forward to debating it for a final time at Stage 3 and am hopeful that all members will support this landmark piece of legislation.

AILEEN CAMPBELL