



The Scottish Parliament
Pàrlamaid na h-Alba

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Local Government and Communities Committee

11 December 2019

Dear James

Period Products (Free Provision)(Scotland) Bill

In advance of the Committee's Stage 1 evidence sessions and following the closing date for the Committee's call for written evidence, I thought the Committee may find it useful to have an update on developments regarding my Bill. I would also like to take the opportunity to comment on some of the issues raised in the Scottish Government's submission to the Committee of 5 November.

As the Committee will be aware, the principle behind the Bill is that access to free period products to all who need them should be a right. The Bill sets a minimum framework for what the universal scheme must contain, and purposely gives the Scottish Ministers as much freedom as possible in terms of what the scheme will look like and what arrangements would be set up for the scheme's delivery.

I am extremely encouraged by the wide support the Bill continues to attract from a diverse range of sectors – from the 96 per cent of respondents to the original proposal for a Bill, to the submissions received by the Committee, to other expressions of support I have received from stakeholder groups. Most recently, I held a roundtable in Parliament on the 6 November attended by representatives from the Scottish Youth Parliament, youth and women's organisations, carers' organisations, trade unions and the education sector, who are all supportive of the Bill and keen to see its progression.

In its response to the Committee, the Scottish Government suggests that current action "is reaching a significant number of people" and that "it is unclear at this point the number of people who need to access products who cannot do so through the provision that is already in place, and whether legislation will enhance this". In my view, putting the provision into legislation will ensure that the ongoing work of the Scottish Government – which I welcome – continues, thus protecting future generations against any rolling back of the substantial progress which has been made so far. The universal scheme is the best way to ensure there are no gaps in access and provision.

In view of the strong cross-party consensus in favour of my Bill, it is disappointing that the Scottish Government has not responded more positively in some of the observations it has made in its submission to the Committee. Nonetheless, I remain committed to building consensus on this important issue because period poverty is a problem we must overcome. I wish to address some apparent misunderstandings and, where legitimate concerns have been raised, suggest ways in which the Bill could

be adjusted to address them. This should allow us all to move forward towards delivering on our shared aspirations.

Yours sincerely,

Monica Lennon MSP

Response to Scottish Government submission

Universal scheme (Part 1)

Flexibility

The Scottish Government states that: “We believe that bringing a universal scheme into statute could lead to a loss of these local flexibilities with a resulting reduction in the quality of services for people in communities.” (para 39) and that: “There is a risk of loss of these wider benefits with the prescriptive facilities management approach suggested for education settings”. (para 41)

I do not see why there should be a loss of flexibility resulting from the universal scheme set out in the Bill, as it leaves Ministers significant latitude in how to design the universal scheme. This means it is up to Ministers to do this in a way that allows local need to be met, and that ensures a quality service.

Opt-in nature of the scheme

The Policy Memorandum states that the universal scheme should be opt-in and open to everyone, with no means-testing or referral. The Scottish Government is of the view that “This is a contradiction, as if it requires a specific opt-in then it is not really universal and people may miss out on accessing products.”

The scheme that Part 1 requires is a “universal” scheme because it is based on the right of anyone who needs free products to get them (and to do so easily), without means-testing. It is “opt-in” because it allows each person to decide whether to use the scheme to obtain period products, or whether to obtain them in other ways (e.g. by purchasing them, as most do currently). I see no contradiction between these two things.

Requirement of proof of identity

I was particularly concerned to see the Scottish Government make the argument that the requirement for proof of identity when applying for a voucher “may cause embarrassment or concern for individuals for whom ID could show them as male, when they are in fact transgender and menstruating” (para 45). This criticism is based on a mis-reading of the Bill. The Bill does not require Ministers to establish the universal scheme in such a way that vouchers are required, nor does it require people to produce “proof of identity” to obtain a voucher. All it says is that IF Ministers wish to have a voucher-style system, it can’t require MORE than a person’s name and the first half of their postcode as proof of identity (or alternative details of Ministers’ choosing). So, if a transgender man who has changed his ID from female to male, but

still menstruates, was required to produce his ID that could only be because Ministers had deliberately chosen to impose that requirement; it is not a requirement of the Bill. This criticism is therefore misplaced. I have consulted LGBT equality organisations to ensure I am properly understanding their views on this.

Eligibility of non-Scots

The Scottish Government queries who “everyone in Scotland” is and whether “this includes people who are visiting Scotland, for example, or who work in Scotland but live just over the border in England (and vice versa), or who would check on residency and therefore eligibility.” (para 33)

The “right” is given effect by the universal scheme that Ministers are obliged to make. Whether the scheme is delivered in a way that allows people visiting Scotland, or who live in England but work in Scotland, to use it is a matter for Ministers to decide, when working out the delivery mechanism and what (if any) preliminary procedure to put in place. It is not expected that people would need to provide proof of where they live to get access to the scheme – which is also important to ensure that people who are homeless are not excluded.

People with medical conditions

There is a claim that ensuring that “a person does not obtain more products than are needed appears to be contradictory to the reference in the PM to people with medical conditions” (para 44).

The point of the relevant provision of the Bill is to ensure that each person can get what that person needs (which for some with a medical condition may be a lot more than for others – as noted in the Policy Memorandum). The Bill does not fix a quota of products based on the average number that people in general use. If the Scottish Government decides to implement the scheme in a way that restricts most people in the number of products they can claim, then it will be for them to ensure they do this appropriately – i.e. without embarrassing people who need more for good reasons.

Delivery partners – pharmacies and GP practices

The Scottish Government points to additional costs that may arise if the universal scheme was delivered through pharmacies and GP practices, which generally operate as private businesses. But nothing in the Bill requires the Scottish Government to use pharmacies or GP practices as delivery partners and it would be for Ministers to take the cost implications into account in making that choice.

Education providers (section 5)

Requirement to provide products in toilets

Stage 2 amendments could be lodged to fine-tune the provisions about which toilets products must be available in (for example, to exempt en-suite toilets in halls of residence), if the committee believes that would strike a better balance between accessibility and cost.

Application to nursery schools

The Scottish Government states that: “the requirement for products to be in each non-male toilet also applies to ... nursery schools which is unnecessary if the aim of this section is to reach menstruating pupils.” (para 35)

However, section 5(1) of the Bill sets out that education providers must make period products available free of charge **for pupils and or students who need to use them**. It is explained in paragraph 22 of the Explanatory Notes that the duty to provide products in toilets does not extend to nursery schools.

Power to extend to other public-service bodies (Section 6)

NHS and hospitals

Section 6 of the Bill gives Scottish Ministers power to require specified public bodies to provide free period products in their premises. The Policy Memorandum mentions Health Boards as an example. The Scottish Government claims that “introducing a blanket duty on the NHS would introduce complexities outwith hospital settings, as GP practices operate, on the whole, as independent businesses and careful consideration would have to be given as to their classification as “public bodies”” (paragraph 54).

However, section 6 does not limit Ministers to imposing a “blanket duty” on the NHS; using the flexibility of s.6(2), they could impose a duty on Health Boards to make products available in hospitals only (and not in other NHS facilities such as GP practices). That is, indeed, the example given in the Policy Memorandum.

I accept that there would be significant cost implications from imposing a s.6 duty on Health Boards, even just in respect of hospitals. That is precisely why this is only an option for the Scottish Government to pursue, if it thinks fit, and why Ministers must consult before imposing such duties on any specific public service body. Regulations under section 6 are subject to the affirmative procedure – ensuring that the Parliament can consider the likely costs, should the Scottish Government ever bring forward such regulations.

It is worth noting that the Scottish Government has already made a policy commitment to the provision of period products in hospital settings for in-patients, after I brought to Ministers’ attention Freedom of Information requests I collated in 2018 which identified serious gaps in hospital provision that were not meeting patient needs.

Financial Memorandum and cost implications

Product costs

The Scottish Government’s submission refers to the 9p per product figure used in the FM, saying that: “... in practice, this cost sits at the very lowest end of product costs available through the Framework that is in place for local authorities to purchase period products, where the product cost ranges from 8p to 81p” (paragraph 16).

The Scottish Government argues that, if its own average product costs and population figures had been used, the £8.8 million estimate given in the FM for products for both schemes would be £19.4 million per year for the same assumed uptake levels.

The Scottish Government does not explain how this £19.4 million figure has been arrived at, and it does not appear to relate to the higher product costs cited in its submission. (See Annex for further explanation.)

As the FM explains, the 9p product cost used in the FM was based on the information available at the time, from Scottish Government documentation. If recent experience indicates that actual product costs would be higher, then of course that will push up the likely implementation cost of the Bill (although I struggle to see how product costs could have increased by up to 9 times in a relatively short timescale).

If product costs are indeed higher, presumably the Scottish Government is already spending higher amounts already, so providing a statutory underpinning of a free products scheme should not (in itself) increase what is currently being spent.

Costings not covered in the FM

I recognise that there are some specific costs which the FM does not allow for:

- *Product costs for pupils and students in term time on non-working days*
- *Cost of publicity campaign*
- *Postage costs to those who ask to have products delivered*

The Scottish Government also suggests that the FM underestimates set-up and running costs.

Product costs for pupils and students in term time on non-working days

As the Scottish Government has pointed out, in working out how many people may use the universal scheme, the FM includes costs for students (at school, college, university) outside term time but assumes they get their products from their school, college or university during term time (7 days/week). However, the FM's calculations of the cost to local authorities, independent schools, colleges and universities are all based on term-time usage in only 5 or 6 days out of 7. I recognise that, as a result, there is a gap in the overall costings. Had a more consistent methodology been used, the figures in the FM would have been higher by around £0.35m (see Annex for full explanation).

Cost of publicity campaign

Section 7(1) of the Bill requires Scottish Ministers to publicise the availability of period products and how and where they can be obtained. The Scottish Government submission points out that the FM does not include an estimate of what this might cost; it also says that requiring Ministers to establish a website with a mapping function, as proposed in the Policy Memorandum, would be "unreasonable and burdensome". However, para 62 of the PM is very clear that using a website with a mapping function is the member's preference only. It will be for Ministers to decide whether to take that approach or a different one, with cost no doubt a factor in their choice.

In 2017-18, total Scottish Government marketing spend was £5.7m¹, an amount that paid for a range of separate campaigns ranging in cost from £7,000 to £750,000. It would therefore be quite possible for the Scottish Government to use part of its marketing budget to publicise a period products scheme within the flexibility already provided by this budget, and without any overall increase.

Postage costs to those who ask to have products delivered

The Scottish Government points out that the FM does not include postage costs for those the Bill entitles to have products delivered without charge. This is a fair point, and I am happy to address this omission. It is difficult to estimate what proportion of users would opt for delivery and, of those, how many would be entitled to delivery free of charge; but if 1% of people using the universal scheme opted for delivery and were entitled to it for free, the total cost is likely to be between £30,000 and £120,000 per annum (see Annex for explanation).

If the Committee feels that a right to free delivery of products is a step too far, it would of course be possible to remove this requirement at Stage 2.

Set-up and running costs

The FM suggests that the universal scheme is “likely to have similar set-up and running costs regardless of the number of people using it”. The Scottish Government believes “this assumption to be flawed: for example, the more people using the scheme, the higher the number of requests for postage, with the associated costs, or the more time required to re-stock and re-order products.” (paragraph 19)

I acknowledge that there may be additional resources required if usage of the scheme increases. (The FM does not claim that there would be no variations, just that the costs were “likely” to be “similar”.) But there should certainly be economies of scale, and a higher level of take-up would – if the scheme was well-designed by Ministers – presumably indicate that the current approach has only partly addressed the demand that is out there.

Future costs

Distortion of market

The Scottish Government argues that: “There is a risk that the introduction of a universal entitlement scheme with increasing uptake could distort the market for these products ... could have an adverse impact on some private sector suppliers, and may lead to less private provision and/or higher prices for those who want to choose their own products” (paragraph 51).

This seems to me just an assertion, however, and it is not backed by any evidence or explanation. It’s also not clear why free provision on a larger scale would result in higher prices in the shops, or in paid-for products becoming harder to find.

¹ Source: <https://www.gov.scot/publications/marketing-spend-2017-2018/>

Change of behaviour – reliance on taxpayer

Similar considerations arise with the argument at paragraph 53 that “[the] introduction of a right to free period products has the potential to change behaviour and therefore we would expect uptake to increase over time and exceed the estimates in the FM which would have long term financial implications for Scottish Ministers”.

This seems to me a surprising argument for the Scottish Government to make. It has already committed itself to providing free products to people on a general basis, so the risk that this becomes accepted as “normal” and that uptake creeps up as a result is already there. Unless the Government brings in means-testing, with all the bureaucratic complexity that would involve, its own scheme risks free products being provided, at taxpayer expense, not just to those who would otherwise be in period poverty, but to many others as well. I don’t see that as an objection, but if it is an objection to the Bill, it is surely also an objection to what the Government is already doing.

ANNEX

How total product costs would increase if unit prices were higher

The Scottish Government derives its £8.8 million total for products costs from figures in the FM (all calculated on the basis of 9p/product), using in each case the highest level of uptake projected – i.e. the £5.8 million figure in Table 2 (20% uptake of the universal scheme); the £1 million figure in Table 3 (50% uptake among local authority school pupils); the £1.9 million figure in Table 4 (50% uptake among college/university students) and the £63,000 figure in Table 5 (35% uptake among independent school pupils). These sum to £8,763,000, which rounds to £8.8m.

However, adjusting that total in proportion to the various higher product costs cited in paragraph 17 of the Scottish Government submission gives the following totals:

- 11.6p/product: £11.3 million
- 16.1p/product: £15.7 million
- 17.6p/product: £17.2 million.

None of these proportionally-higher figures amounts to £19.4 million. It is therefore not clear how the Scottish Government's figure has been arrived at. If the Committee would find it helpful to have further information on how the figure was calculated, it would need to ask the Scottish Government for an explanation.

Estimate of costs for providing products for pupils/students on days when they are not in education premises during term time

The omission of the above costings in the FM could be corrected in either of two ways:

- by assuming that pupils and students use the universal scheme for the 1 or 2 days a week in term time they are not at school, college or university – this would increase the annual product costs of the universal scheme to between £1.6m and £6.2m (instead of between £1.5m and £5.8m, as set out in Table 2 and paragraph 26) – a total increase of between £0.1m and £0.4m; or
- by assuming that pupils and students use campus products for 7 days a week in term time – this would increase product costs for:
 - LA schools to between £0.58m and £1.45m (instead of between £0.4 and £1m, paragraph 47),
 - for colleges and universities to between £0.88m and 2.2m (instead of between £0.8m and 1.9m, paragraph 56) and
 - for independent schools to between £21,000 and £74,000 (instead of between £18,000 and 63,000, paragraph 61),a total increase of between £0.26m and £0.75m.

Overall, then, the FM underestimates product costs by (mid-range) around £0.35m.

Estimate of costs of postage

A 2nd class small parcel (Royal Mail) costs £3. Packing costs would add to this – say £1.50.

If 1% of people using the universal scheme opt to get them delivered and (depending on the criteria set by Scottish Ministers) are not charged for delivery, that would be 530 – 2,200 people (see Table 2, left-hand column figures) getting 12 monthly deliveries/year at £4.50 p&p each time. That would cost between £29,000 and £119,000 per annum.

[530 x 12 x £4.50 = £28,620; 2,200 x 12 x £4.50 = £118,800.]