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James Dornan MSP
Convener
Local Government and Communities Committee
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Dear James

I am writing to you following my attendance at the Committee on 8th January 2020 to give evidence on the Period Products (Free Provision) (Scotland) Bill.

I would like to reiterate that the Scottish Government is firmly committed to period products being available to all those who need them. We want to help people live their lives with equality and dignity and recognise that there are both poverty and equality elements to this issue. I strongly believe that the Scottish Government's current approach tackles both these aspects, underpinned by a rights-based approach.

Our clear priority is to support those on low incomes who may not be able to access products themselves. We believe that Ms Lennon shares this position, but do not believe that the Bill itself has a clear policy intent and the evidence you have heard to date reflects that view. This makes it very difficult for parliament to consider the general principles of the Bill.

Ms Lennon has said recently that this is a Framework Bill, yet the Bill does not actually set out a Framework that Scottish Government could build on through Regulations. What it does is establish a right for everyone in Scotland to receive period products for free, sets out that these must be available by post, and then leaves it to the Scottish Government to design and implement this new public service through Regulations for delivery across 32 local authorities and an unquantified number of public-facing bodies and public service bodies. It does not require us to consult with those bodies, although Ms Lennon has indicated that she will lodge an amendment on this following a recommendation by DPLRC. I cannot think of any other Bill - Members or Government - which has set requirements for Scottish Government to bring in Regulations that would have such an impact on so many public bodies in this manner.

Ms Lennon wrote to me last week offering to make a number of amendments to the Bill at Stage 2 in return for our support for the Bill. However, given the number of amendments proposed by her, and that she is not proposing removing Section 1, which sets out an absolute right to products, I am unconvinced that this Bill could be amended to make it workable.

You requested that I provide a breakdown of our estimate that if there was a 5% increase on the uptake of products each year, the cost over the lifetime of the next Parliament could be £80 million. A table setting out figures is provided in an Annex. I would like to clarify that this is based not on Scottish Government's assessment of a total annual cost of £24 million, but on Monica Lennon's estimated annual cost of £9.7 million.

Given the lack of clarity about what the 'scheme' to set out, regulate and facilitate the exercise of a right will ultimately look like, it has been very difficult to estimate in advance what this Bill might cost.. As I noted last week, we can assume that as the provisions set out in the Bill would be demand-led, costs would rise in the future as uptake increases, which is not an unreasonable expectation as increasing numbers of people exercise their right to access free products..

The Bill's current Financial Memorandum assumes a maximum of 20% uptake of the universal scheme among those not in full-time education. If we assume a five percentage point increase in uptake of this element of cost every year above 20% , even using Ms Lennon's conservative figures, the total annual cost for delivering the Bill could increase by £1.5m per year, reaching a total of over £80m to the end of the next Parliament.

Clearly the £0.9 million that is set out in the current Financial Memorandum is totally insufficient for the administration of a rights-based scheme, and the product cost used does not reflect current costs. Using Scottish Government figures, beginning with £24.1 million in year 1, and adding in an estimate for the postal delivery element, the same increase in uptake could lead to costs of over £200m to the end of the next Parliament.

In addition I would also like to take this opportunity to re-state the main concerns Scottish Government has about this Bill, covering three key areas.

Rights

In his questioning last week, Mr Wightman questioned whether I believe that access to free period products is a right. The Committee will be aware of the Scottish Government's view on rights, which is evidenced by the commitments that the First Minister has made, and continues to make, on this issue, including the establishment of the National Taskforce on Human Rights Leadership.

We will take the advice of the Taskforce, however our existing policy on access to period products already ensures that a range of fundamental rights can be met, including the right to an adequate standard of living and the right to education. We recognise the importance of action both to respect and enhance human rights and to address period poverty, but believe that the most effective vehicle for protecting all rights is through a future framework for human rights.

Deliverability

Ms Lennon has said that she simply wants the Bill to 'lock-in' existing action but as we have not yet assessed the effectiveness of current action, this risks locking in an approach that may not deliver effectively. Under current requirements of the Bill, Scottish Ministers would have to design a scheme that both meets the requirements of the Bill to "set-out, regulate and facilitate the exercise" of a right to period products, but which also allows local flexibility. We believe that this could be challenging in the following key ways.

Firstly, the wording of Section 2(1) seeks to place a duty on Scottish Ministers to design the delivery mechanism or 'scheme', essentially how the right is to operate, and therefore it is not clear how this would impact on potential flexibility.

Secondly, introducing a postage system as per Section 4 would require systems to implement this that could cost more to administer than the cost of the products being posted out themselves. It would introduce significant bureaucracy to a system that is currently operating through making products broadly available across public settings, with the primary focus on settings accessed by those on low incomes.

Timing

We are less than 18 months into delivery of world leading provision of services to students. As the survey published by Young Scot last week shows that this seems to be working well in many areas - there is room for improvement, but it is still very early days for such a new service.

We are not yet in a position to assess whether the wider community service is sufficient or whether there are any gaps, as it has been up and running for less than a year and it not due to be reviewed until the end of March. A number of those who responded to your written call for evidence and gave evidence to you on 18th December noted that it would be sensible to allow current policy to bed in and be reviewed before taking the step to legislation.

Timing is also an issue in relation to the wider plans for legislation on Human Rights as set out above as the first step should be to set out an overall framework for rights in Scotland and then consider whether further legislation is required.

You may wish to note that, considering the significant lack of clarity in the Bill and my continuing concerns, I have offered a further meeting with Ms Lennon, which she has accepted. This provides an opportunity to agree a way forward that delivers on our shared ambition to ensure all those who need them can access period products with equality and dignity.

AILEEN CAMPBELL

ANNEX

Table 1: The estimated annual costs to the end of the next Parliament, given a five percentage point increase in uptake among those not in full-time education.

Year	Estimated annual cost (rounded to nearest £100,000)		Anticipated uptake			
	Financial Memorandum	Scottish Government*	Universal not in full-time education	School pupils**	College & university students**	Independent school pupils**
Year 1	£9.7m	£24.8m	20%	50%	50%	35%
Year 2	£11.2m	£29.3m	25%	50%	50%	35%
Year 3	£12.7m	£33.9m	30%	50%	50%	35%
Year 4	£14.1m	£38.4m	35%	50%	50%	35%
Year 5	£15.6m	£43.0m	40%	50%	50%	35%
Year 6	£17.1m	£47.5m	45%	50%	50%	35%
TOTAL	£80.4m	£216.9m	-	-	-	-

* Figures include the estimated cost of a postal schemes, assuming 1 in 20 people not in full-time education receive monthly postal deliveries at £4.50 each.

** The presented uptake rates are the maximum assumed for product costings in the Financial Memorandum.