



The Scottish Parliament  
Pàrlamaid na h-Alba

## LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

### AGENDA

2nd Meeting, 2020 (Session 5)

Wednesday 15 January 2020

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.
2. **Period Products (Free Provision) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—  
  
Monica Lennon, MSP, Member in charge of the Bill;  
  
Kirsty-Louise Hunt, Researcher, MSP staff, Scottish Labour Party;  
  
Claudia Bennett, Solicitor, Office of the Solicitor to the Scottish Parliament, Mary Dinsdale, Senior Assistant Clerk, and Andrew Mylne, Head of Non-Government Bills Unit, Scottish Parliament.
3. **Period Products (Free Provision) (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting and on the 8 January 2020.

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The papers for this meeting are as follows—

**Agenda item 2**

Note by the Clerk

LGC/S5/20/2/1

PRIVATE PAPER

LGC/S5/20/2/2 (P)

**Local Government and Communities Committee****2<sup>nd</sup> Meeting 2019 (Session 5), Wednesday 15 January 2020****Stage 1 Scrutiny of the Period Products (Free Provision) (Scotland) Bill****Note by the Clerk****Introduction**

1. The Period Products (Free Provision) (Scotland) Bill was introduced into the Scottish Parliament by Monica Lennon MSP on 23 April 2019. It is a Member's Bill. The Bill and accompanying documents can be found [here](#). The Committee, which is the lead Committee at Stage 1, will hold its third evidence session on the Bill on 15 January 2020 with the member in charge of the bill, Monica Lennon. Written submissions from Monica Lennon, received on [11 December 2019](#) and [9 January 2020](#) are attached at Annexe A. The submission of 11 December responds directly to concerns raised in [the Scottish Government's letter of 5 November 2019](#). The submission of 9 January 2020 responds to [the Delegated Powers and Law Reform Committee report on the Bill](#).
2. More information on the Period Products Bill can be found in the Scottish Parliament Information Centre [briefing](#) on the Bill.

**Current provision**

3. At present no legislation in Scotland covers the free provision of period products.
4. On 30 May 2018 the Scottish Government announced that £0.5 million would be awarded to the charity FareShare to provide free period products to low income households, with funding for both products and delivery. In August 2018, the Scottish Government pledged £5.2 million to provide students at schools, colleges and universities with period products during the 2018-2019 academic year. This figure was then increased to £5.5 million for 2019-20.
5. On 17 January 2019 an additional £4 million was made available to local authorities to expand work undertaken by FareShare to roll out free provision of period products beyond schools, colleges and universities. On 4 October 2019 the Scottish Government announced an additional £50,000 funding for free provision of period products for local sports clubs. Up to 500 sports clubs affiliated with sportscotland will be provided with £100 grants to provide free period products to members, participants and visitors.

**The Bill**

6. The Bill was introduced both to address "period poverty", where individuals struggle to afford period products, and to widen access to products. The Bill's aim is to ensure that everyone in Scotland who needs to use period products can

obtain them free of charge through a “period products” scheme that the Scottish Government would have to set up. The Bill requires primary and secondary schools, colleges and universities to make period products free in all appropriate toilets and enables Ministers to place a similar duty on other organisations. Those using the scheme must be able to obtain period products “reasonably easily” and with “reasonable privacy” and can choose to have the products delivered or collected. The scheme must also ensure that a choice of different types of period products are available. Scottish Ministers must publicise the scheme and may compensate those obliged to provide free products.

7. More information on the detail of the Bill is set out in the bill’s [policy memorandum](#). Paragraph 5, states that the three underlying policy aims are to:
  - place a duty on Scottish Ministers to ensure that period products are made available free of charge on a universal basis;
  - require education providers to make period products available free of charge in on-site toilets; and
  - enable Scottish Ministers to place a duty on other specified public service bodies to provide free period products.

### **Stage 1 so far**

8. The Committee’s issued a [call for evidence](#) on 16 September which closed on 5 November 2019. The Committee received 50 responses the majority of which supported the aims of the Bill. All written submissions can be reviewed [here](#).
9. The Committee held its first evidence session on 18 December and heard firstly from [Plan International UK](#), [Engender](#), [Scottish Youth Parliament](#), [Unite](#) and On the Ball and then from [Universities Scotland](#), [COSLA](#), [Hey Girls](#), [The Orkney Partnership](#) (via video link) and [North Ayrshire Council](#). Members heard evidence as to whether witnesses consider period poverty to be a serious issue in Scotland, whether they consider legislation is required, their experiences of the Scottish Government’s existing measures and its effectiveness and views on how a scheme should be funded.
10. The Committee then held an evidence session on 8 January 2020 with Aileen Campbell, Cabinet Secretary for Communities and Local Government. The Committee explored the Scottish Government’s concerns around legislation to make free provision of period products universal and how this would impact upon the Government’s existing schemes to make products available, the potential cost of implementing the Bill as drafted, how they are measuring the success of their current provision and what form a scheme for free provision might take.

### **Evidence session on 15 January 2020 and next steps**

11. This session with Monica Lennon will explore the aims of the legislation, why she feels that legislation is necessary in view of the Scottish Government’s existing measures to make products available and her response to the Scottish Government’s concerns about the Bill.

12. As the lead Committee at Stage 1, it falls to the Committee to gather evidence and information on the Bill and to report to the Parliament on whether to agree to the general principles of the Bill. There will then be a debate of the whole Parliament at Stage 1 on whether to agree to the general principles. This session is likely to be the Committee's last evidence session on the Bill.

## **11 December 2019 Submission 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 £5.7m<sup>1</sup>, 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.

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<sup>1</sup> 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.]

**9 January 2020 Submission**

**Period Products (Free Provision) (Scotland) Bill: Delegated Powers and  
Legislative Reform Committee Report**

I refer to the DPLR Committee's report in relation to the Period Products (Free Provision) (Scotland) Bill.

The Local Government and Communities Committee will be aware that I have already expressed a willingness to the DPLR Committee to lodge an amendment at Stage 2 to make any regulations under section 2 that specify any public-facing body or other person in a scheme for the first time subject to the affirmative procedure.

The DPLR Committee, in its report, was also of the view that the Bill should include a statutory duty to consult public-facing or other persons before they are specified in any regulations made under section 2. In earlier correspondence with the DPLRC I said that I didn't think such a duty would add any practical benefit, as consultation would almost certainly take place in any case. By the same token, I recognise that making consultation a statutory duty cannot do any harm. So, in view of the DPLRC's conclusion on this point, I am happy to confirm my willingness to lodge an amendment at Stage 2 to address this concern.

I am copying this letter to the Convener of the DPLR Committee for that Committee's information.

Yours sincerely,

Monica Lennon MSP