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Period Products (Free Provision) (Scotland) Bill

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The Period Products (Free Provision) (Scotland) Bill places a duty on Scottish Ministers to ensure that period products are made available free of charge on a universal basis; requires education providers to make period products available free of charge in on-site toilets; and enables Scottish Ministers to place a duty on other specified public service bodies to provide free period products. This briefing provides a summary of the bill and preceding consultation.



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Executive Summary

The Period Products (Free Provision) (Scotland) Bill was introduced in the Scottish Parliament by Monica Lennon MSP on 23 April 2019. The Bill:

- places a duty on Scottish Ministers to ensure that period products are made available free of charge on a universal basis
- requires education providers to make period products available free of charge in on-site toilets
- enables Scottish Ministers to place a duty on other specified public service bodies to provide free period products.

Consultation on the draft proposal for the Bill took place in late-2017, with 96% of respondents supporting the general principle of the proposal. The final proposal gained support from 51 MSPs across all political parties.

In the meantime, between September 2017 and October 2019, the Scottish Government announced a number of funding streams aimed at tackling period poverty, including:

- £0.5 million to provide free period products to low-income households.
- £5.2 million to provide students at schools, colleges and universities with sanitary products.
- £4 million of funding would be made available to local authorities to expand the roll-out of free provision of period products beyond schools, colleges and universities.
- £50,000 funding for free provision of period products for members and supporters of local sports clubs.

Although a number of other countries have lowered or abolished VAT on period products, a measure currently unavailable in Scotland due to EU law on VAT, Scotland is the first country to implement such a broad-ranging scheme for free provision of period products. This Bill strengthens and extends these measures.

The estimated costs of implementing the Bill, based on uptake and taking in to account current spending, are between £3.6 million and £9.7 million. This includes the funding already allocated by the Scottish Government, meaning that there are essentially no or minimal expected additional costs beyond the current package of funding.

Background

The proposal for a Bill to ensure free access to sanitary products, including in schools, colleges and universities, was lodged by Monica Lennon MSP on 11 August 2017, accompanied by a consultation document ¹. The Bill proposal sought to ensure that all those who menstruate are able to access sanitary products during menstruation, at no cost, as and when they are required.

The Bill aims to tackle three main issues:

- period poverty
- period stigma
- the effects of periods on education.

There has been rising concern about "period poverty", both in Scotland and internationally. Period poverty is when individuals on low incomes are unable to afford, or access, suitable period products. This has focused on all who menstruate - women, girls, and trans people. According to research undertaken by Plan International UK in 2017 ², 10% of girls in the UK have been unable to afford sanitary wear; 15% have struggled to afford sanitary wear; and 19% have changed to a less suitable sanitary product due to cost.

Period stigma has also been highlighted as a key issue, particularly for young girls. The Plan UK survey found that 48% of girls aged 14-21 are embarrassed by their periods, while 71% admitted that they have felt embarrassed buying sanitary products. ²

The impact of periods on education has also been highlighted as an area for concern. The survey found that 49% of girls have missed an entire day of school because of their period (of which 59% made up an alternative excuse) ².

Action on period poverty

Scottish Government action

Legislation

At present, no legislation in Scotland covers the free provision of period products, though there is legislation relating to the disposal of period products ^{3 4} .

The only legislation in Scotland dealing explicitly with the provision of period products is the Prisons and Young Offenders Institutions (Scotland) Rules 2011, Rule 34(2) of which provides that: "The Governor must provide suitable towels and toiletries as are necessary for the prisoner's health and hygiene, including: soap and shampoo; shaving materials if required; and in the case of female prisoners, sanitary protection." ⁵

VAT

With reference to VAT, although under the Scotland Act 2016 ⁶ the UK Government agreed to assign the first 10p of the standard rate of VAT (20%) and the first 2.5p of the reduced rate of VAT (5%) raised in Scotland to the Scottish Government ⁷ , this has not yet been put in place. This is due to Scottish Government concerns about the data, and there potentially being large fluctuations in the block grant for Scotland as a result ⁸ . As discussed in the section on [UK Government action](#), under EU law VAT on period products cannot be currently reduced below 5%. Should that situation change, either through the UK's departure from the EU, or through changes to EU law, under current legislation the power to set VAT rates would remain reserved to the UK Government ⁹ .

Free provision

The Scottish Government announced, as part of its Programme for Government 2017, that it would look at steps towards "providing access to sanitary products for students in schools, colleges and universities to fight 'period poverty'" ¹⁰ .

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. FareShare will receive funding for both products and delivery. FareShare operates by redistributing surplus food to frontline charities and community groups. FareShare will use their centres in Aberdeen, Dundee, Glasgow and Edinburgh to distribute products. The Scottish Government estimated that this scheme would reach approximately 18,800 people across Scotland ¹¹ .

In August 2018, the Scottish Government pledged a £5.2 million fund to provide students at schools, colleges and universities with sanitary products during the 2018-19 academic year. This figure is being increased to £5.5 million to continue the policy for 2019-20. The

Scottish Government was the first government in the world to provide free period products to schools, colleges and universities ¹² .

Communities Secretary Aileen Campbell announced on 17 January 2019 that an additional £4 million of funding would be made available to local authorities (starting immediately and extending in to 2019-20) to expand work done with FareShare to roll-out free provision of period products beyond schools, colleges and universities ¹³ .

On 4 October 2019, the Minister announced an additional £50,000 funding for free provision of period products for members and supporters of local sports clubs. Under this scheme, up to 500 sport clubs affiliated with *sportscotland* will be provided with £100 grants to allow them to provide free period products to their members, participants and visitors ¹⁴ .

When asked in a Parliamentary Written Question to confirm its standing on free provision of period products in NHS Hospitals, the Scottish Government confirmed:

“ The Scottish Government is clear that access to free sanitary products for patients in hospitals supports equality, dignity and rights for those who menstruate. Executive Nurse Directors are therefore expected to ensure that appropriate stocks of sanitary products are held either on wards or close by and that they are made available to patients when required. Patients should not be expected to rely on taking supplies into hospital with them or have to buy supplies from hospital shops.”

Question S5W-17737, 2018¹⁵

UK Government action

Value Added Tax (VAT)

The Valued Added Tax rate on period products in the UK has been 5% since 2001, which is the lowest rate possible under EU legislation. The UK Government has stated its intention to apply a zero rate of VAT to period products should EU law change to allow it. Since 2015 it has administered a ‘tampon tax fund’ in which the money raised by the 5% VAT on period products, is used to provide funding to women’s organisations and charities ¹⁶ .

There have, however, been concerns raised about this fund. There have been calls for funding to be ringfenced and targeted only towards organisations dedicated to women after, out of the 10 charities chosen to benefit in 2018, only two were specialist women’s organisations. In 2019, only one charity solely focused on supporting women was a recipient of the fund ¹⁷ .

UK Community Foundations, who administer this fund, say that the fund is heavily oversubscribed -

“ Only a quarter of the 1,500 applications for vital women and girls projects could be supported from this stream of funding.”

Civil Society, 2019¹⁸

The EU is currently reviewing its VAT rules for member states as part of its Action Plan on VAT, with the aim of working towards a single EU VAT area ¹⁹. This commitment was agreed to in principle by the European Commission in early-2016 ²⁰. Given the UK's current intention to leave the EU, the relevance of any proposals forthcoming from this work is limited.

The UK Government has not yet announced specific details on post-Brexit VAT proposals in this area, though in answer to a Parliamentary Question on 1 April this year, Treasury Minister Mel Stride reiterated that “the Government remains committed to applying a zero rate of Value Added Tax (VAT) to women’s sanitary products in the UK at the earliest opportunity.” ²¹

Free provision and Period Poverty Taskforce

NHS England, in its standard contract with hospitals for 2019-20, mandated that all women and girls being cared for by the NHS will be given, on request, appropriate sanitary products free of charge. ²²

In May 2019, the then UK Minister for Women and Equalities, Penny Mordaunt MP, announced a new Period Poverty Taskforce ²³. The primary aim of this taskforce will be to tackle stigma and education around periods, alongside improving the accessibility of period products. This is in addition to a UK Government scheme to provide all primary and secondary schools in England with free period products, which is due to be rolled out from January 2020 ²³.

International action

Taxation

Whilst Scotland has been hailed as the first country in the world to provide free period products in education institutions, a number of other countries and states have made provisions to lower or remove the cost of tampons and sanitary pads. In the majority of cases this focuses on taxation, which, as explored in the [section on UK Government action](#), has been exercised as much as is possible under current EU law. These examples include:

- No tax is applied to period products in Kenya, Canada, Australia, India, Columbia, Malaysia, Nicaragua, Jamaica, Nigeria, Uganda, Lebanon and Trinidad and Tobago ²⁴ ²⁵. Tanzania removed tax on period products, but controversially announced that it was rolling back this decision in its 2019-20 budget as retailers had not been reducing their cost to customers ²⁶.
- Unlike the rest of the EU, there is no tax on period products in the Republic of Ireland. This was because a 0% rate was implemented before EU legislation imposed reduced VAT rates on certain goods and services ²⁷.

- Research looking at tax rates on period products in Europe found that the five countries with the highest tax on period products (as at September 2018) were Hungary (27%), Norway (25%), Sweden (25%), Denmark (25%), and Croatia (25%).

Those with the lowest rates of tax on period products were the Republic of Ireland (0%), the UK (5%), France (5.5%), the Netherlands (6%), and Belgium (6%)²⁸. Since this research was carried out, Spain opted in its 2019 Budget to reduce rates to 4%²⁴

United States of America

A handful of US states have passed laws mandating that schools provide period products to students, with New York Governor Andrew Cuomo deeming them "as essential as toilet paper"²⁹. Federal prisons made menstrual products free in 2018³⁰.

Minnesota, Illinois, Nevada, Pennsylvania, New York, Massachusetts, Maryland, New Jersey, Connecticut, Florida, Rhode Island and California have all removed sales tax from period products, either through legislation or as part of budget setting. Other states have considered or are considering the option of removing tax on period products, and others have rejected the move after consideration.³¹

In Georgia, lawmakers shelved a proposal to remove the four percent tax, but allocated funds to provide free menstrual products in schools and community centres in low-income areas.

Action was taken by New York City Council in 2016, which voted to provide sanitary products free of charge in public schools, homeless shelters and prisons.

Nationally, the Menstrual Equity for All Act 2017, introduced to Congress by Republican Grace Meng, (District of New York, 6th District), which would have introduced a tax credit, a tax exclusion, and requirements that apply to the purchase or distribution of menstrual hygiene products.³² The Bill was not enacted, but was reintroduced in 2019³³ in a different form, with the aspiration that free menstrual hygiene products are available to students, low-income individuals, homeless individuals, people who are incarcerated, those working for large employers and in all public federal buildings.

The Period Products (Free Provision) (Scotland) Bill

Draft proposal for a Bill and consultation

The draft proposal for a Members' Bill, "Sanitary Products (Free Provision) (Scotland) Bill - A proposal for a Bill to ensure free access to sanitary products, including in schools, colleges and universities", was lodged on 11 August 2017 by Monica Lennon MSP ¹.

The consultation which accompanied the draft proposal was launched on 12 August 2017. It sought to gather views on the universal provision of sanitary products, a card-based scheme to administer the products, the duty on educational institutions to provide products to their students and the financial implications of the scheme. The consultation closed on 8 December 2017 and attracted 1,753 responses, mostly from individuals (94%) and some from organisations (6%). An independent analysis of the consultation is publicly available ³⁴.

The consultation document proposed that a card system could be used, which would be modelled on the C-card system currently used to administer the provision of free condoms. This scheme would similarly require minimal personal details, and cards would be produced at designated distribution points to claim free sanitary products.

Support for Bill

By 7 March 2018 a total of 51 MSPs expressed support for the final proposal for a Bill ³⁵. The party breakdown was as follows:

- Scottish Labour - 22
- Scottish Conservative and Unionist Party - 12
- Scottish National Party - 8
- Scottish Green Party - 6
- Scottish Liberal Democrats - 3

Introduction

The Period Products (Free Provision) (Scotland) Bill was introduced in the Scottish Parliament by Monica Lennon MSP on 23 April 2019.

This section of the briefing aims to introduce the different sections of the Bill alongside the respective evidence from consultation prior to the introduction of the Bill. It does not aim to replicate the detail set out in the Policy Memorandum ³⁶.

Part 1 - General right to and supply of free period products

The Bill establishes a right for everyone in Scotland who needs to use period products to be able to obtain them free of charge. It sets out the key requirements for a universal period products scheme in order to make this right effective. This is in effect a framework provision, with much of the detail to be set out by the Scottish Government in regulations at a later date.

The Bill essentially sets out that the Scottish Ministers are required to make a period products scheme. They must set out in regulations how this scheme is to work, and which delivery partners they wish to oblige (councils, specified public-facing bodies and/or "other specified persons") to make period products available. The scheme has to be operational within 12 months of the Act receiving Royal Assent. The Bill gives the Scottish Ministers the option to deliver the scheme in a way that involves the issue, conditional on proof of identity, of a "voucher" which can be produced to obtain free period products. This voucher must be cost-free and "reasonably easy" to obtain, and can, in specified circumstances, be used by another on a person's behalf. Such persons using the scheme should be able to obtain period products reasonably easily and with reasonable privacy, with the option of delivery (with postal charges applied) or collection, and there should be a reasonable choice of different types of period products.

Consultation

The following sections set out a summary of the consultation responses³⁴ which relate to Part 1 of the Bill.

General provisions

Overall, the consultation provided a very positive response to the proposed Bill, with 96% of respondents supportive of the proposal (90% fully, 6% partially). The main reasons for full support of the Bill were:

- A need to tackle the problem of period poverty.
- Menstruation is a natural bodily function and women should not be penalised for something that is out of their control.

Some respondents also emphasised:

- Free and accessible sanitary products in schools will reduce instances of girls missing out on education.
- Free provision should be universal to minimise stigma, particularly if it is associated with individuals on low incomes;

The principal reason for partial support was a belief that there should only be limited access available, for those on lower incomes or in receipt of benefits. Some also cited funding concerns for the scheme, particularly as local authority funding has been under pressure in recent years.

Three per cent of respondents were opposed to the scheme (1% fully, 2% partially). Some considered that funds would be better used elsewhere, and there was general opposition to government ‘handouts.’ Those who were partially opposed to the scheme expressed concerns that the system could be open to abuse, because individuals can take as many products as they like.

Card-based scheme

The consultation document set out details of a proposed scheme modelled on the C-card system for free condoms.

There was general support for the proposed card-based scheme, with 57% in favour and 7% opposed. Those who were supportive of the proposal mainly emphasised that it would:

- Be easy to use and require minimal personal details.
- Allow individuals to discreetly and anonymously access products.
- Reduce wastage and abuse, as the system would introduce an element of control.

Some participants were unsure if the scheme would be effective (36%), principally because they viewed the card as a potential barrier for those who need products. This could be due to embarrassment, or to the details that are required. NUS Scotland argued that:

“ Requiring a postcode to register for the card-based system will exclude some of the people with the greatest need for support, such as those who are homeless or in temporary and inconsistent accommodation.”

Proposed Sanitary Products (Free Provision) (Scotland) Bill - Summary of consultation responses, 2018³⁴

Those who were opposed to the card scheme either reiterated their opposition to the proposed bill as a whole or listed reasons similar to those who were unsure. A few responses argued that the scheme could be subject to abuse.

When asked about the availability of the scheme, the largest number of respondents (42%) believed that it should be open to anyone, with unlimited access to free sanitary products.

- 19% thought that the scheme should be universal, but its use should be restricted.
- 15% thought that the scheme should only be available to those on lower incomes or in receipt of benefits, but its use should be unlimited.
- 8% thought that the scheme should only be available to those on lower incomes or in receipt of benefits, and its use should be restricted.
- 11% thought that there should be no card scheme at all.

Part 2 - Provision for pupils, students and others

Part 2 of the Bill places a duty on education providers to make period products free of charge in schools, universities and colleges for pupils or students who need to use them.

It specifies that products should be made available in all appropriate toilets that are normally used by pupils or students. Appropriate toilets are all toilets other than those for use only by males, i.e. all designated female and gender neutral as well as disabled toilets. The aim is to ensure that products are always stocked, with a reasonable choice of different products at times when the toilets are in use by pupils or students. This provision applies to ancillary buildings such as residential accommodation or recreational facilities.

Part 2 also makes provision to allow Scottish Ministers to require specified public service bodies to supply period products for persons in their premises.

Consultation

Respondents were asked whether they thought there should be specific obligations on schools, colleges and universities to provide free sanitary products.

85% of those who answered agreed with the premise, which was mainly down to issues of accessing sanitary products. These responses argued that:

- Pupils spend a long time at school and could not easily leave in order to obtain sanitary products.
- Students and pupils are less likely to be able to afford sanitary products themselves and may be reluctant to ask a family member.
- It would reduce the amount of learning time missed by young girls.

5% thought that there should not be obligations on educational institutions to provide free sanitary products, mainly citing issues about funding and wastage that have already been mentioned.

Part 3 - General

Part 3 of the Bill sets out provisions relating to the implementation of the Bill and associated scheme. These include -

- A requirement for Scottish Ministers, councils and others to publicise the availability of period products.
- Provision enabling the Scottish Ministers to make payments as they see fit to anyone obliged by or under the Act to make period products available free of charge.
- Detail on Regulations under the Act, definitions and commencement. Part 1 of the Bill, obliging the Scottish Ministers to make scheme for free provision of period products would come into force on the day after Royal Assent, however as noted, the scheme itself would need to be operational 12 months after Royal Assent. Sections relating to

free provision of period products in schools, universities and colleges would come into force on 1 August in the year following the year of Royal Assent.

Financial Memorandum

The Financial Memorandum to the Bill ³⁷ acknowledges that there will be financial implications in terms of setting up and administering a free period products scheme, procuring products, and potential staffing required for the distribution of products. It makes the assumption that the majority of costs will fall on those organisations, such as councils and health boards, who will administer the scheme.

The Financial Memorandum notes the funding already provided by the Scottish Government for free provision of period products (see Scottish Government action: [Free provision](#)), but states that -

“ Although the current scheme will benefit a number of those on a low income, the proposals contained within the Bill will enable a much wider provision, benefiting many more people living in relative poverty in Scotland.”

Period Products (Free Provision) (Scotland) Bill: Financial Memorandum, 2019³⁷

The estimated costs, based on the costs of period products, usage data, demographic and poverty data, and potential uptake rates, and taking in to account existing Scottish Government funding, are set out. The suggestion is that the costs of implementing the Bill and creating a statutory requirement for the free provision of period products would not exceed the £9.7 million of funding already committed to by the Scottish Government.

In addition, the Financial Memorandum sets out potential, but unquantified, savings relating the educational attainment and the possible reduction in instances of Toxic Shock Syndrome, which is rare but linked to using a product for longer than is recommended by the manufacturer.

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