

# **PERIOD PRODUCTS (FREE PROVISION) BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by Pat Catney MLA (“the Member”), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. England, Scotland and Wales each have varying schemes in place to provide sanitary products free of charge in schools and some other public buildings. Northern Ireland has been the only place in the United Kingdom where such products are not provided free of charge in schools (although pilots are now commencing in schools and higher education institutions). The Member considers that there is an undeniable need to provide sustained free access to period products in education settings and other public buildings.
4. The Period Products (Free Provision) Bill has three broad policy objectives:
  - a. To place a duty on the Department of Health to ensure that period products are available free of charge on a universal basis in appropriate locations.
  - b. To require Departments to specify by way of regulations public service bodies who have a duty to ensure period products are widely obtainable free of charge in their premises. These regulations must include Health and Social Care Trusts; and any public service body whose premises is a school, a further education institution or a higher education institution.
  - c. To place a number of duties on the Department of Health and other specified public service bodies in respect of their obligations under this Bill and to place a duty on Departments to issue guidance on the exercise of the functions conferred on specified public service bodies.

## **CONSULTATION**

5. The Member conducted a consultation exercise over an eight-week period between December 2020 and February 2021. The Member also shared his legislative proposal with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland.

## **OPTIONS CONSIDERED**

6. **Option 1:** Do nothing.
7. **Option 2:** Proceed with the Bill.

The Member notes progress in relation to pilot schemes being put in place at schools and universities. However, following consultation and deliberation, the Member considers that primary legislation is the best mechanism to ensure sustained access to period products in key public buildings. The broader scheme proposed by the Bill will help to establish a comprehensive provision of products in a range of settings, and will therefore achieve the policy objectives of tackling period poverty for the longer term.

## **OVERVIEW**

8. The bill has 11 clauses and no schedules. A commentary on each of the clauses follows below. However, where a clause or part of a clause does not seem to require an explanation or comment, none is given.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Provision of free period products: Department scheme**

Clause 1 of the Bill places a duty on the Executive Office to make period products obtainable free of charge within Northern Ireland by all persons who need to use them, in accordance with arrangements established and maintained by the Executive Office (clause 1(1)). “Period products” are defined by clause 8(a) as “manufactured articles the purpose of which is to absorb or collect menstrual flow”.

The Bill gives the Executive Office discretion as regards the precise arrangements made, but those arrangements must be consistent with the duty to make period products obtainable free of charge. For example, the Executive Office’s arrangements could require a person to register for a card in order to obtain free period products at a particular location, e.g. from a pharmacy, similar to the current “C card” scheme. However, those unable to register for a card should be able to obtain free products via other arrangements made. The arrangements put in place must also respect the particular requirements set out in clause 3, which are that products should be

accessible with reasonable ease and in a way that respects the dignity, privacy and confidentiality of product users; that a reasonable choice of different types of products is obtainable; and that the availability of such products, and the arrangements for obtaining them, is advertised.

Under the arrangements, the free period products must be obtainable by another person on behalf of the person who needs the products (clause 1(3)(a)). This allows, for example, a parent to obtain products for a child or a carer to obtain products for the person they care for. The Department may also include delivery options in its arrangements for ensuring that period products are obtainable free of charge, and may require the person to whom the products are delivered to pay costs associated with packing and delivery, except where the person could not be reasonably expected to obtain the products in any other way (clause 1(3)(b)). For example, if a person who needs to obtain free period products has a disability, it may not be reasonable to expect them to collect products if all locations at which the Department is making products obtainable are at some distance from that person's residence. Whether or not packing and delivery are free or charged for, the period products themselves must be free of charge.

A person is entitled to obtain (or have someone else obtain on their behalf) sufficient products to meet their needs "while in Northern Ireland" (clause 1(2)). For a person who lives in Northern Ireland, all their needs are to be regarded as arising while in Northern Ireland (clause 1(8)). So, for a person who lives in Northern Ireland, products are obtainable for use in Northern Ireland and elsewhere, for example if the person is going on holiday. In contrast, visitors to Northern Ireland are only entitled to obtain, free of charge, such period products as they need during their stay in Northern Ireland.

The Department must consult on its proposed arrangements, including on where products should be obtainable, which types of product should be obtainable and the ways in which free products should be obtainable (clause 1(4)), and publish a written statement describing the consultation and the arrangements to be put in place (clause 1(5)) and publish, annually, information about where the free period products are obtainable (clause 1(6) and (7)).

## **Clause 2: Provision of free period products: public service bodies**

Clause 2(1) places a duty on each department of the Northern Ireland Executive to specify via regulations which of the public service bodies within its functions must make period products obtainable free of charge in its premises. A "public service body" is a statutory body (i.e. a body constituted by or under an enactment) that either provides services to the public or otherwise serves the public interest (clause 9). Regulations must be made to specify the bodies listed in clause 2(2), so that free period products are made available from health care locations and educational establishments, e.g. schools. Each such body must be consulted by the relevant department before the requirement is imposed on it (clause 2(7)).

The duty to provide free period products is to be discharged by specified public service bodies via arrangements to be established in line with subsequent provisions (clause 2(3)). This allows the body either to provide period products itself, or to secure their provision through arrangements made with a third party, for example a washroom services contractor. Free period products are to be provided in such locations within its premises as are specified in those arrangements (clause 2(4)). If the body has multiple sites, it must make provision at each site (clause 2(5)). The body is required to make sufficient products available to meet the needs of persons while they are on the premises, but not products for use elsewhere (clause 2(6)). Obligations under this section (to provide free period products) may be imposed on bodies individually or as a class (clause 2(8)).

Regulations under clause 2 that impose on a public service body the obligation to provide free period products to users of its premises are subject to the affirmative procedure, meaning that the regulations only become law if approved by resolution of the Assembly (clause 2(12)). Clause 2(10) allows regulations to make different provisions of the Bill take effect, in relation to a public service body, on different days. For example, an earlier date may be set for when a body becomes subject to the requirements of clauses 4 and 5, and a later date for when it becomes subject to the requirements of clause 2 itself. That would ensure the body has to have regard to guidance, carry out consultation and then publish a statement of its plans before it has to begin making period products obtainable free of charge on its premises. Each department must review and, if necessary, update the regulations specifying public service bodies under subsections (1) and (2) every three years (clause 2(13)).

### **Clause 3: Arrangements under sections 1 and 2: particular requirements**

Clause 3 requires the Executive Office and the specified public service bodies, in putting in place the arrangements to fulfil their functions under clauses 1 and 2 respectively, to ensure reasonably easy access to products, to respect dignity, privacy and confidentiality, to make a reasonable choice of types of product obtainable, having regard for reusable options, and to publicise their availability.

Clause 3(2) provides that arrangements established and maintained by specified public service bodies must provide for period products to be obtainable at all times when the specified public service body's premises are in use to persons on their premises, whether or not in use by the public.

### **Clause 4: Reporting**

Clause 4 requires the Executive to review and produce a report on the operation of the provisions in clauses 1 and 2. This report must include the number of public service bodies specified under clause 2 (clause 4(2)(a)); a review of the efficiency and effectiveness of the provisions under clause 1 and 2 (clause 4(2)(b)) and can contain any other information the Executive deem to be appropriate. The report must be laid before the Assembly for scrutiny (clause 4(3)(a)). The first report must be published

within three years of Royal Assent and at subsequent intervals of no more than three years (clause 4(3)(b)).

### **Clause 5: Guidance**

Clause 5 requires each department to issue guidance to specified public services bodies to support them in the exercise of their duties under clauses 2 and 6. For example, guidance could provide more detail on what would constitute a reasonable choice of types of products and what constitutes a dignified approach. A department may do so jointly with one or more departments (clause 5(6)).

Before any guidance is first issued, the department must consult persons or bodies that represent the interests of responsible bodies and may consult with others (clause 5(5)).

The department must issue the guidance as soon as reasonably practicable after a body is specified (clause 5(2)). The guidance is to be maintained, so the department can issue revised guidance from time to time, for example to share emerging good practice between responsible bodies and take account of new approaches, and it is not required to consult in the production of revised guidance.

When putting in place the arrangements by which they will exercise their functions, the specified public service bodies must have regard to the guidance as it is in force at the time and as it relates to them (clause 5(4)).

### **Clause 6: Statement on arrangements**

As soon as is reasonably practicable after guidance is first issued by a department under clause 5, each specified public service body is to publish a written statement describing how it has had regard to the guidance, and consulted on and developed its arrangements for the provision of free period products (clause 6(1) and 6(4)). It can publish subsequent statements at any time in the future.

Before drafting the statement, the body must consult those likely to access period products in its premises, including on the ways in which free period products should be obtainable, where they should be obtainable and what types of products should be obtainable. Individuals who may need to obtain period products in the future should be consulted. This will ensure, for example, that younger pupils in a school will have a say in how the products they will need to access in the future are made obtainable (clause 6(3) and 6(7)).

### **Clause 7: Duty to publish information**

Clause 7 requires each department (individually or jointly with another department) to publish information about the locations where free period products would be available pursuant to the regulations made under clause 2. The department can choose how best to do so, e.g. advertising, or via its website.

This is a distinct and separate duty from that imposed by clause 3, which requires the Departments and specified public service bodies to publicise the specific locations at which products would be available under the arrangements made pursuant to the duties imposed under clauses 1 and 2.

### **Clauses 8 to 10: Final provisions**

Clause 8 (Key definitions) provides definitions for two key terms used throughout the Act, namely “period products”, with examples, and references to a person’s needs. In line with modern drafting practice for gender neutral drafting, “needs” is defined in terms of menstruation by a woman, girl or other person, ensuring the Bill applies to anyone who menstruates (including transgender and non-binary persons), and not just to women and girls.

Clause 9 provides definitions for other terms used in the Act, using existing statutory definitions so far as possible.

“Department” refers to the Departments Act (Northern Ireland) 2016.

“School”, “higher education institution”, “further education institution”, and “pupil” use existing Northern Ireland statutory definitions or refer to existing Northern Ireland statutory provisions. In particular, “school”, by using the definition in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986, covers all primary and secondary schools, whether grant-aided or independent. The definitions of further and higher education institution also include every publicly funded college and university in Northern Ireland. The definition of “student” follows the Scottish precedent but refers to the defined terms “higher education institution” or “further education institution”.

“Health and Social Care Trusts” means a body established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991.

The definition of “public service body” is that used in the Scottish precedent.

Clause 10 provides that clauses 2(1), 2(7) – 2(12), 7, 8 and 10 come into force the day after Royal Assent, and that the Executive Office can appoint by regulations dates for commencement of the remaining provisions of the Act, so long as those dates are within 2 years of Royal Assent. Different provisions can be commenced at different times. This would allow, for example, the provisions in relation to departments issuing guidance, and specified public service bodies carrying out consultation and then publishing a statement on the exercise of their functions, to take effect prior to the main duties on those bodies to make period products obtainable free of charge.

### **FINANCIAL EFFECTS OF THE BILL**

9. Based on information provided in respect of the pilot scheme proposed by the Department of Education in 2020, the Member believes that the annual cost of

period products in relation to schools under the proposed legislation would be around £2m per annum in the first year and less than £1m per annum subsequently. This reflects reducing costs as the system of provision becomes embedded.

The Member estimates that the maximum product cost of a scheme of universal provision of period products is likely to be less than £3m per annum accounting for the target group experiencing period poverty. Based on an assumption of high uptake, a figure of £3.08 million would represent the upper range of possible product costs. Given the provisions of the Bill require Departments to designate public service bodies, exact costs will be in part dependent on the implementation of the scheme. The commencement clause for key provisions of the Bill allows time for planning, implementation and learning from existing schemes. The Member believes that the Bill will not give rise to any significant additional expenditure, as the scheme should not require dedicated additional resources to manage, but could be absorbed within the workload of departments.

## **HUMAN RIGHTS ISSUES**

10. The Member is satisfied that the bill is human rights compliant.

## **EQUALITY IMPACT ASSESSMENT**

11. An Equality Impact Assessment has not been undertaken, as communications between the Member and the Equality Commission for Northern Ireland and legal advice the Member has received did not identify any equality implications of the Bill. Therefore, it is considered the Bill will not have an adverse impact on any of the groups identified in section 75 of the Northern Ireland Act 1998. For policy implementation, Departments should consider Equality Impact Assessments as appropriate.

## **LEGISLATIVE COMPETENCE**

12. At Introduction, the sponsor of the Bill, Mr Pat Catney, had made the following statement under Standing Order 30:

*“In my view the Period Products (Free Provision) Bill would be within the legislative competence of the Northern Ireland Assembly”*

## **SECRETARY OF STATE CONSENT**

13. The Secretary of State’s consent under Section 8 of the Northern Ireland Act 1998 is not required for the Bill.



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