



**Chris Lyttle MLA**

**Chair**

**Committee for Education**

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By email to: [committee.education@niassembly.gov.uk](mailto:committee.education@niassembly.gov.uk)

21 December 2021

Dear Chair,

**Re: Call for Views - Period Products (Free Provision) Bill**

The Northern Ireland Human Rights Commission (the Commission) welcomes the Committee for Education's Call for views on the Period Products (Free Provisions) Bill.

The Commission, pursuant to Section 69(4) of the Northern Ireland Act 1998, shall advise the Assembly whether a Bill is compatible with human rights. In addition, the Commission, pursuant to section 78A(6) of the Northern Ireland Act 1998, must advise the Assembly whether a Bill is compatible with Article 2(1) of the Ireland/Northern Ireland Protocol. In accordance with these functions, the following advice is submitted to the Committee for Education (the Committee) to assist the Committee's scrutiny of the Bill.

The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas.

The Commission highlights below the relevant human rights standards and principles in respect of points for consideration, to assist the development of legislation and support policy in this area.

## **Human Rights Standards**

The Commission welcomes the introduction of the Bill as a step towards the eradication of 'period poverty'. Period poverty affects women, girls and people who menstruate and has a detrimental effect on their right to respect for their private and family life, it does not respect personal dignity, and restricts the realisation of the right to health, education and an adequate standard of living. Women and girls are disproportionately disadvantaged by poverty and socioeconomic inequality. Many are in precarious employment and living on low incomes.

On International Women's Day, in March 2019, a group of Special Rapporteurs called on the international community to break the taboo around menstrual health and to take concrete action to ensure that discriminatory mind-sets are changed. They raised concerns that sanitary hygiene products are often inaccessible and/or prohibitively expensive yet states are often silent on the issue. Women and girls have, as a result, been forced to use improvised, unhygienic materials that may be prone to leaking and consequential infection. This can put their lives seriously at risk. They added that a failure to accommodate the needs of women and girls in educational institutions and workplaces affects their economic participation and advancement and undermines gender equality. The practical measures that were suggested to overcome this include providing for rest periods.<sup>1</sup>

Although human rights treaties do not, yet, refer directly to the right to free period products, the consequences of period poverty engage several rights including the right to bodily integrity, private and family life, freedom from discrimination, the right to an adequate standard of living and the right to education.

## **ECHR**

Article 8 ECHR, provides for the right to a private and family life. The jurisprudence of the European Court of Human Rights (ECtHR) has provided that the scope of Article 8 ECHR can include health care and treatment. Although the right to health is not expressly guaranteed under the Convention or its Protocols, States are under a positive obligation to take appropriate measures to protect the life and health of those within their jurisdiction and an obligation "to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development".<sup>2</sup>

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<sup>1</sup> Office of the High Commissioner for Human Rights, 'News: International Women's Day, 8 March 2019 Women's menstrual health should no longer be a taboo, say UN human rights experts', 8 March 2019.

<sup>2</sup> *Vavříčka and Others v. the Czech Republic*, ECHR 2021.

Article 14 ECHR, provides for the prohibition of discrimination in the exercise of other Convention rights, on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Considering that period poverty disproportionately affects women and girls' accessibility to menstrual products, which may have a detrimental effect on their right to health and education, Article 8 and Article 14 ECHR could be engaged.

The Commission recommends that the Department should conduct a human rights impact assessment to ensure the Bill does not negatively impact on Convention rights, but to also identify ways in which the Bill can provide for the positive realisation of rights.

The following is a brief overview of some of the additional standards and observations.

### UN ICESCR

Article 11 of the UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR), provides for the right to an adequate standard of living and to the continuous improvement of living conditions. It requires the State to take appropriate steps to ensure the progressive realisation of the right. As previously highlighted, the effects of poverty and socioeconomic inequalities experienced by women and girls reduce their access to period products.

Moreover, the UN ICESCR Committee, in its most recent concluding observations on the UK and NI, raised concerns that certain groups are more affected by, or at an increased risk of, poverty. In particular, persons with disabilities, persons belonging to ethnic, religious or other minorities, single-parent families and families with children.<sup>3</sup> The Committee recommended that the State party take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, in particular persons with disabilities, persons belonging to ethnic, religious or other minorities, single-parent families and families with children.<sup>4</sup>

The UN ICESCR Committee further highlighted the disproportionate, adverse impact that austerity measures are having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalised individuals and groups.<sup>5</sup> The Committee reminded the State of its obligations under the Covenant to use

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<sup>3</sup> E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report', 16 July 2016 at para 47.

<sup>4</sup> Ibid, at para 48.

<sup>5</sup> E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report', 16 July 2016 at para 18.

the maximum of its available resources with a view to progressively achieving the full realisation of economic, social and cultural rights.<sup>6</sup>

The UN ICESCR Committee also emphasised the significant vertical and horizontal gender-based segregation in the labour market, which results in women occupying lower-paid positions and facing obstacles to their enjoyment of career opportunities on an equal footing with men.<sup>7</sup>

Furthermore, the UN ICESCR Committee raised concerns about social security cuts about the adverse impact of these changes and cuts on the enjoyment of the rights to social security and to an adequate standard of living by disadvantaged and marginalized individuals and groups, including women, children, persons with disabilities, low-income families and families with two or more children.<sup>8</sup> The Committee recommended the UK and NI governments restore the link between the rates of State benefits and the costs of living and guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food.<sup>9</sup>

## UN CEDAW

The UN Committee for the Convention on the Elimination of Discrimination against Women (UN CEDAW) has also raised concerns regarding women and girls living in poverty and low income, impacting on the realisation of the right to an adequate standard of living, and consequently on the accessibility and affordability of period products.

The UN CEDAW Committee, in its 2019 concluding observations on the UK and NI, highlighted how women continue to be concentrated in lower paying positions in all occupational sectors and in lower paying occupational sectors such as health, education and retail. Furthermore, the Committee noted that women are more likely to be engaged in informal, temporary or precarious forms of employment, including employment with zero-hours contracts.<sup>10</sup>

The UN CEDAW Committee stated it remained concerned about obstacles faced by women belonging to marginalised groups, such as asylum-seeking and refugee women, migrant women, Roma and Traveller women, and victims of trafficking in gaining access to healthcare services, including as a result of their inability to provide identity documentation, proof of address or immigration

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<sup>6</sup> E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report', 16 July 2016 at para 19.

<sup>7</sup> E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report', 16 July 2016 at para 27(b).

<sup>8</sup> E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report', 16 July 2016 at para 41.

<sup>9</sup> E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report', 16 July 2016 at para 42.

<sup>10</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019 at para 43.

status.<sup>11</sup> The Committee recommended that the State party strengthen the implementation of programmes and policies aimed at providing effective access to healthcare for women belonging to marginalised groups, in particular asylum-seeking and refugee women, migrant women, Roma and Traveller women, and victims of trafficking.<sup>12</sup>

## UN CRC

The UN Committee for the Convention on the Rights of the Child (UN CRC) has also raised concerns about poverty and economic inequality effecting children's realisation of the right to an adequate standard of living, health and education.<sup>13</sup> A lack of accommodation of women's and girls' menstruation related health needs, including accessibility and affordability of products, can have a direct impact on education such as missed schooling and periods of absence.<sup>14</sup>

Article 24 UN CRC provides for the right of the child to the enjoyment of the highest attainable standard of health and that no child is deprived of his or her right of access to such health care services. Article 28 UN CRC requires the state to recognise the right of the child to education with a view to achieving this right progressively and on the basis of equal opportunity. This includes offering financial assistance in case of need and taking measures to encourage regular attendance at schools. Therefore, the provision of free period products in educational institutions is a progressive and proactive approach towards the child's realisation of their rights to an adequate standard of health and education.

The UN CRC Committee, in its 2016 concluding observations on the UK and NI, raised concerns about the allocation of resources and fiscal policies that have contributed to inequality in children's enjoyment of their rights, disproportionately affecting children in disadvantaged situations.<sup>15</sup> The Committee recommended the State allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions. In that endeavour, the Committee recommended that the State party:

- a) Utilise a child-rights approach in the elaboration of the State budget, by implementing a tracking system for the allocation and use of resources for children throughout the budget;

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<sup>11</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019 at para 49.

<sup>12</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019 at para 50.

<sup>13</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 12, 13, 58, 72 & 73.

<sup>14</sup> Office of the High Commissioner for Human Rights, 'News: International Women's Day, 8 March 2019 Women's menstrual health should no longer be a taboo, say UN human rights experts', 8 March 2019.

<sup>15</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 12.

- b) Ensure transparent and participatory budgeting through public dialogue, including with children;
- c) Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures and make sure that those budgetary lines are protected even in situations of economic recessions;
- d) Regularly conduct child rights impact assessments of budget and economic decision-making processes and outcomes, including austerity measures, in areas that are directly or indirectly related to children's rights;
- e) Establish mechanisms to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated to the implementation of the Convention.<sup>16</sup>

The UN CRC Committee identified substantial inequalities that persist in educational attainment, particularly for boys, children living in poverty, Roma, gypsy and traveller children, children with disabilities, children in care and newcomer children.<sup>17</sup> The Committee recommended that the State enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all parts of the State party, including for newcomer children without experiences of formal education.<sup>18</sup>

Furthermore, the UN CRC Committee highlighted its concerns at the inequality in access to health services and health outcomes, negatively affecting Roma, gypsy and traveller children, children belonging to other ethnic minorities, migrant children, children living in poverty and in deprived areas, children in care and in custody, children living with HIV/AIDS and lesbian, gay, bisexual, transgender and intersex children.<sup>19</sup>

The Commission welcomes the Bill as a positive and progressive step towards the realisation of the State's obligations to ensure an adequate standard of living, health, education and the elimination of discrimination.

## **General Comments on the Bill**

The Commission notes that other jurisdictions within the UK have introduced legislation providing for the provision of free period products. In Scotland, the Period Products (Free Provision) (Scotland) Act 2021 provides a duty on local authorities and education providers to have free period products available to anyone who needs to use them.<sup>20</sup> In England, the Period Product Scheme for

<sup>16</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 13.

<sup>17</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 72.

<sup>18</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 73.

<sup>19</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 58.

<sup>20</sup> Period Products (Free Provision) (Scotland) Act 2021.



schools and colleges was introduced in 2021.<sup>21</sup> The scheme provides free period products to all state-maintained schools and 16 to 19 education organisations in England. This Bill will therefore bring NI in line with protections offered across other jurisdictions within the UK.

The Commission welcomes the proposed duty, under clauses 1 and 2, on the Department and relevant public service bodies to ensure free period products for all persons who need to use them. The Commission recognises that the provision of free period products will go some way towards ensuring the elimination of period poverty in NI, and contribute to alleviating the broader disadvantage suffered by women and girls and low-income families, who disproportionately suffer from the effects of poverty. Furthermore, the provision of free period products in educational institutions will ensure here is better access to appropriate healthcare and realise the fulfilment of the right to education.

We note that further consultation is proposed. This consultation is directed at the practical realisation of rights and should prioritise the participation of those who will be directly affected by the service.

The draft Bill specifies those public service bodies to which it applies. The Regulations will also include Health and Social Care Trusts, Regional Health and Social Care Boards and any public service body whose premises is a school and a further education institution or higher education institution. The Commission welcomes that but suggests there is an opportunity to widen its scope to include for example prisons, custodial facilities and short-term detention facilities (such as Larne House).

The Commission further suggests that the Committee consider extending provision beyond public service bodies to include for example women's refuges, sheltered accommodation facilities and charities assisting people in poverty. Some may or may not be, technically, public service bodies but they are certainly delivering essential public services. Provision should be as broad as is reasonably possible to prevent divergence in access.

The Commission welcomes clause 3, which provides that period products must be free, easily accessible and obtainable with a reasonable choice of products. That is strengthened by the statutory requirement to consult product users and publish arrangements and to consult product users. The Commission notes that "product users" includes pupils at a school or students at a further or higher education college but suggests that children in all educational and other settings should be included. For example, children within the justice and residential care systems as well as other forms of educational settings. Article 12 UN CRC requires the State to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child,

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<sup>21</sup> Available at: <https://www.gov.uk/government/publications/period-products-in-schools-and-colleges/period-product-scheme-for-schools-and-colleges-in-england>

the views of the child being given due weight in accordance with the age and maturity of the child. That includes in consultations such as this.

The Committee will no doubt want to ensure the specified public bodies have access to a wide range of period products which will likely require additional funding to meet this new obligation.

I hope these comments are helpful. Should any further human rights issues arise, please do not hesitate to contact us. We remain at the disposal of the Committee for further advice or engagement as necessary.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Kilpatrick', written in a cursive style.

**Alyson Kilpatrick BL**  
**Chief Commissioner**