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29 December 2021

Dear Aoibhinn

**PERIOD PRODUCTS (FREE PROVISION) BILL – COMMITTEE REQUEST FOR
WRITTEN COMMENTS ON THE BILL**

Thank you for your correspondence of 9 December 2021 requesting input from the Department of Education on the Period Products (Free Provision) Bill.

Please see responses and commentary from DE in blue in the attached document.



PETER BURNS
DEPARTMENTAL ASSEMBLY LIAISON OFFICER



**Northern Ireland
Assembly**

To: Peter Burns, DE DALO

From: Aoibhinn Treanor, Committee Clerk

Date: 09 December 2021

Subject: Period Products (Free Provision) Bill

Dear Peter,

As you will be aware, the Committee for Education is leading the Committee Stage of the Period Products (Free Provision) Bill.

Given the short period available for this, the Committee has agreed to ask for written responses from the main Departments specified and made subject to duties in the Bill.

Accordingly, I would be grateful if you could co-ordinate a reply to the following questions by 23 December 2021. Please provide as full a response as possible on the logistical, financial and legal impacts you anticipate each clause will have for the Department. In particular, please draw on the Department's experience of the Period Dignity pilot scheme to inform the Committee's discussion of costs, uptake, footfall, impact on attendance and covid-proofing of the proposed scheme.

With kind regards,

Aoibhinn

Background:

The Period Products (Free Provision) Bill passed Second Stage on 9 November and began its Committee Stage in the Education Committee the following day.

The 30-day Committee Stage will conclude on 11 January but the Committee has agreed to seek an extension, under Standing Order 33(4), until 2 February 2022.

The Committee has begun its evidence gathering on the Bill via an online questionnaire on the Citizen Space platform; and by contacting directly the stakeholders of the Education, Communities, Health and Economy Committees to encourage their response to the questionnaire.

The call for written evidence will close on 18 December.

Focus on clauses:

Clause 1 Provision of free period products: Department scheme

Clause 1 of the Bill places a duty on the Department of Health 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 Department (clause 1(1)).

The clause requires the Department to consult about how to provide free period products, the locations at which to provide them and what kind of products to provide.

The clause sets out a timeframe in which the arrangements decided upon after consultation and a summary of the consultation are to be publicised.

What is the Department of Education response to this proposal of a duty of “universal” provision?

DE response

While clause 1 relates to a duty that is to be placed the Department of Health, we note that under clause 2(6), schools will be required to provide sufficient product **for use while on the premises** i.e. not to take home/use elsewhere. Needs, when not on school premises, would be met through the universal scheme to be put in place

by the Department of Health under this Clause. If this is indeed the policy intention, then costs of provision of free products in schools may reduce / transfer, depending on the timing, scale and scope of the universal scheme.

What is the scale and cost of existing or pilot DE period product provision initiatives? The Department currently provides free period products. Please detail the remit of this scheme, as well as the criteria which have been used to determine funding allocations to schools, how much was allocated to each school, and any early available data on cost, uptake, footfall, impact on attendance, feedback and lessons learned so far.

The pilot scheme to address period dignity in schools is available in all primary schools, post primary schools, special schools and EOTAS settings. It is not currently available in EA's 84 Youth settings however EA Youth Service have been delivering a related initiative in 2021/22 using funding made available to target social needs. See Annex C. Provision under the schools' scheme is for pupils - not teachers, staff and school visitors. Schools are advised that need will vary between pupils. Some will access it just once or twice when they perhaps get 'caught out', with their family buying their products the remainder of the year; some may intend to use the scheme every month but their period will start at the weekend or during school holidays; and some will use it throughout the academic year. Provision is calculated across 10 months and does not include summer holidays.

We originally estimated an ongoing annual cost for free period products for schools under the scheme of £0.9m, once the scheme is fully embedded.

Based on prices secured through the public procurement exercise and the current combination of products being ordered by schools, the cost is more likely to be in the region of £0.7m per annum. The pilot scheme is however at a very early stage of implementation. It is also important to remember that the scheme is a pilot because of the lack of robust data upon which to forecast demand. This remains the case. A wider response to this question is provided in the overview at Annex A.

How would this new duty compare to existing arrangements?

The duty under clause 1 relates to a universal scheme to be put in place by the Department of Health.

The duties under the Bill that *would* apply to schools sector under the Bill are broadly aligned to the arrangements DE is piloting in schools. The Department and the 'specified bodies' in the sector would therefore be in a good position to implement responsibilities as they relate to schools, if the Bill is passed.

There are some key differences however to bear in mind. The Bill, as drafted, would make provision of free products while 'on the premises', not to take home or use elsewhere. This element of need would be covered by universal scheme to be introduced by the Department of Health under Clause 1. Further, it would appear that it is intended under the Bill to make free period products available to school staff and visitors. Provision under the current DE pilot scheme is for pupils only. Finally, Statutory Youth settings would be included and these are not part of the current pilot scheme. DE/EA may therefore be starting from a different position in terms of guidance and consultation for Youth settings compared with schools, however note information at Annex C on work that has been carried out by EA Youth Service in relation to period poverty this year.

We refer to these key differences again, under the relevant clauses of the Bill, later in the response.

Please advise not only the Department's view on the proposed duty, but on the reasonableness of the consultation arrangements and timeframes proposed.

The duty under Clause 1 is for the Department of Health.

The Clause 1 duty includes a number of factors to be taken into account, such as dignity, accessibility, choice, differently able people, travel arrangements and advertisement of arrangements for provision of period products.

The Department may also wish to comment on these factors of the proposal.

While the scheme under Clause 1 is for the Department of Health, DE considers that the *'factors to be taken into account, such as dignity, accessibility, choice ...'* are an important aspect of the existing pilot scheme to address period dignity in schools. These factors also align with the approach adopted in other parts of the UK.

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 for use on the premises.

Clause 2(2) specifies bodies such as schools, further education premises, HSC trusts and boards which must do so.

The Clause 2 duty is more limited than that in clause 1, as it is confined to the needs of service users while they are on specified premises or other public service bodies to be specified by parent departments in due course.

Please give the Department's response to the Clause 2 duty.

Are there other bodies in the Education estate that you are likely to specify?

How should this duty differ from the current level of provision afforded?

Under Clause 2(1) *'Each department must in respect of the public service bodies within its functions, within the period of one year beginning with the day on which this Act is passed, specify by regulations those public service bodies to which the duty in subsection (3) applies'*.

DE suggests that the term 'within its functions' is open to interpretation and could be more clearly defined in the Bill. Further DE would suggest that the timescale of one year, set out in this clause, is inconsistent with Clause 9 (Commencement). Under Clause 9, Clause 2 would come into force *'on such day within the period of 2 years beginning with the day of Royal Assent as the Executive Office may by regulations appoint'*.

Under Clause 2(2) it appears that schools would be captured in the regulations as a specified public service body. It should be noted that, as drafted, nursery schools would also be captured. Since the drafting of clause 2(3) appears to include teachers, staff and visitors in a school, it is perhaps intentional that nursery schools have not been excluded, even though they will not have pupils of menstruating age. Teachers, staff and school visitors are not included in the current pilot scheme to address period dignity in schools.

DE suggests that the Bill be amended to clarify where duties under the Bill sit in relation to provision of period products for schools to ensure that the duty is placed on *managers* of each type of school in Northern Ireland. This could be based on the definition at Paragraph 54(1)(a) of Schedule 1 to the Freedom of Information Act (2000), adapted to include independent schools (See Annex B).

Clause 2 also takes into account all necessary aspects of preparation to roll out the scheme, such as:

- identification of relevant public service bodies;
- provision of free period products at each of their sites;
- provision only for use while on those premises;

Clause 2(3) provides that *‘Each public service body specified in regulations made by a department (a “specified public service body”) under subsection (1) must ensure that period products are obtainable free of charge (in accordance with arrangements established and maintained by the body) by persons in its premises who need to use them’.*

The arrangements under Clause 2(3) can specify the premises/locations in relation to which the products are to be available. The premises must however be premises of the specified public body, ‘its premises’. Reference is also made to premises of public services bodies in 2 (4) and 2 (5). This would appear to provide cover for schools and any off-site school premises such as sports facilities.

DE also considers that youth premises belonging to the Education Authority are captured by the Bill since the Education Authority fits the definition of a public service

body* and the youth settings are premises of that body. It should be noted that provision under the scheme being piloted in schools does not extend to EA's 84 youth settings and the Department and EA may be starting from a different position in relation to consultation and the development of guidance for these settings. Note however information at Annex C on work that has been carried out by EA Youth Service in relation to period poverty this year.

* "public service body" means a body—

- (a) constituted by or under an enactment;
- (b) having functions that consist of or include providing public services or otherwise serving the public interest;

It may also be appropriate to clarify through drafting if a and b above are cumulative.

Note that the Youth Council could also be specified as a public service body however it has not been operational since 2019 and prior to that did not have any premises.

The drafting '*by **persons** in its premises who **need to use them***' could legitimately include staff, visitors and members of the public, if that is what the arrangements ultimately state. This is because the term 'persons' is used, rather than 'product user'. 'product user' in relation to schools, is defined in the Bill as a pupil. It should be noted that provision under the pilot scheme to address period dignity in schools is for pupils and does not extend to teachers, staff or school visitors.

Clause 2(3) could perhaps be restricted to persons with 'legitimate cause' to be on those premises, given safeguarding issues in relation to schools.

Clause 2 (6) provides that the period products obtainable free of charge by a person under the arrangements established and maintained under subsection (3) are to be sufficient products to meet the person's needs **while the person is in the premises**.

As drafted, the policy intention of the Bill seems to be that products that are made available in school are not for taking home or using elsewhere. Needs, when not on school premises, would be met through the universal scheme to be put in place by the Department of Health under Clause 1. If this is indeed the policy intention, then cost of provision of free products in schools may reduce/transfer, depending on the timing, scale and scope of the universal scheme.

Clause 2 (7) provides that - Before specifying a body under this section, a department (a) must consult the body; and (b) may consult any other body or person they think appropriate.

The consultation would be informed by learnings from DE's period dignity pilot scheme.

DE would suggest that the text underlined above be replaced with 'public service body' for consistency within the Bill. Similar clarification could be provided under clause 2 (8) and 2 (9).

the ability for departments to make regulations about these arrangements on a phased basis;

the principal of making regulations of a phased basis

Please give the Department's view on the reasonableness of the phased basis proposed for the exercise of the regulation-making powers in Clause 2.

Clause 2 (10) provides that '*Regulations under this section may specify that different provisions of this Act are, in relation to a public service body specified in the regulations, to take effect on different days*'.

Any provision which will allow implementation in manageable steps is to be welcomed as this will allow time for sufficient consultation and planning.

DE would however suggest that there may be a significant technical issue with this clause which should be addressed. Commencement is provided for under clause 9, through regulations made by TEO.

and the ability for the Assembly to use affirmative procedure to give a relatively high level of scrutiny to these regulations

Given that this is new and cross-cutting provision, it would seem sensible to use the affirmative procedure.

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

Clause 3 requires the Department of Health 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, to make a reasonable choice of types of product obtainable, 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, whether or not in use by the public.

Is it the Department's view that the principles set out in clause 3 – easy access, dignity, choice and publicised arrangements - are relevant, proportionate and comprehensive principles to underpin the implementation of this scheme?

The principles of easy access, dignity, choice and publicised arrangements are aligned to guidance provided to schools under the pilot scheme to promote period dignity in schools and with practice on other parts of the UK.

Case studies of best practice for schemes being delivered elsewhere are provided and a 'key considerations' section includes guidance on: consulting and engaging

students, ordering, offering choice, practicalities around availability, ease of accessibility, protecting dignity, awareness raising and education.

Does the Department have any other comments on clause 3?

Clause 3 (2) provides that ‘Arrangements established and maintained under section 2 (3) must provide for period products to be obtainable at all times when the specified public service body’s premises are in use, whether or not in use by the public’.

DE is concerned that, under the current drafting, it could be construed that schools are a location open to the public when not in normal use and that an obligation could be being placed on schools to make available period products to the general public, at any time they are in use. It would be important that clarification be brought to the provision, particularly since clause 2(3) is not restricted, encompassing ‘persons in its premises’. (DE has suggested earlier in this response that Clause 2(3) could be restricted to persons with ‘legitimate cause’ to be on those premises).

Clause 4: Guidance

This Clause makes provision for guidance to be published and maintained.

What is the Department’s view if any of the clause 4 provision in relation to guidance?

Clause 4 (1) provides that ‘Each department must publish and maintain guidance on the exercise of the functions conferred on a specified public service body by section 2 and 5’.

Guidance to schools has been developed in relation to the pilot scheme to address period dignity in schools. As previously indicated, this does not extend to Youth settings however note information at Annex C on work that has been carried out by EA Youth Service in relation to period poverty this year. Comprehensive guidance has also recently been published in relation to the Period Products (Free Provision) (Scotland) Act 2021 which will be a useful point of reference here.

The Department will therefore be in a relatively good position to perform this duty should the Bill be enacted.

Clause 4 (2) provides that *'the guidance must be first issued as soon as reasonably practicable after a body (or class of bodies) is first specified in regulations under section 2'*.

DE considers that once one set of Regulations is made under Clause 2 that a requirement for all Departments to issue Guidance may be triggered. An amendment to the drafting of the Bill may be required.

Clause 4(3) provides that *'Guidance issued under subsection (1) must in particular include guidance about the matters in relation to which section 2 imposes requirements'*.

DE would suggest that it would be clearer to state what “the matters” are.

Clause 4 (4) provides that *'Each specified public service body to which guidance is issued under this section must have regard to the guidance as it relates to that body'*.

DE would suggest that this clause be amended to make it clear that public service bodies must have regard to the Guidance provided by its relevant Department, if this is the intention of the Bill.

Clause 4(5) provides that, *before the first issue of the guidance mentioned in subsection (1), a department*

(a) must consult the specified public service bodies to which the guidance relates;
and

(b) may consult any other person or body they think appropriate.

The principle of consulting on the arrangements is important, and is an approach advocated in the period dignity pilot.

Clause 4(6) provides that '*a department may issue guidance jointly with another department*'.

We would suggest that this clause could be amended so departments can issue guidance with one or more departments.

Clause 5: Statement on Arrangements

Clause 5 places a duty on each specified public service to publish a written statement describing how it has had regard to the guidance issued under clause 4.

As part of Clause 5(2) and Clause 5(3), each public service body must consult product users who are likely to be in the premises of the specified public service body. The consultation with appropriate product users must explore the ways in which products may be obtained, the locations where the products will be available, and the types of period products which ought to be obtainable free of charge.

Clause 5(4) specifies that the statement must describe the information obtained from the consultation subsection (2) and (3).

What is the Department's view if any of this requirement to publish a statement describing the outcome of consultation with stakeholders?

This approach aligns with the pilot scheme to address period dignity in schools, which aims to have participating schools develop a period dignity policy.

Clause 5 also requires public service bodies (before preparing the statement) to consult product users which, in the case of schools, is defined in 5 (7) as pupils.

Under 5(7) individuals who may need to obtain period products *in the future* should also be consulted. It is worth considering however that the definition of pupil would include all age groups, even nursery. It would seem sensible to qualify what is meant by 'future' in clause 5(7) e.g. in the next 2 years.

It would seem sensible that while public service bodies could consult with others who may be on the premises and need to use products, there is no requirement to do so.

The principle of consulting on the arrangements is important, and is an approach advocated in the pilot scheme to address period dignity in schools, including the requirements set out under 5(3).

DE considers there is a typo in the Bill and clause 5(4)(b) specifically the words ‘the arrangements mentioned in section 3’ should read ‘the arrangements mentioned in section 2(3)’.

Clause 6: Duty to Publish Information

This Clause requires each department to publish the locations at which free period products are available. Clause 6 (2) requires this information to be published within one year of making regulations and on at least an annual basis thereafter. Clause 6 (3) allows departments to publish information jointly with another department.

What is the Department’s view if any of the proposed duty to publish a list of locations at which free period products are available?

As a minimum, this information could be published on the DE/EA website.

Clause 7: Key Definitions

Clause 7 provides definitions for “period products”, types of period products, and references to a person’s needs. “Needs” is defined in terms of menstruation by a person, ensuring the Bill applies to anyone who menstruates, including transgender and non-binary persons as well as women and girls.

Does the Department have a view as to whether the Clause provides a comprehensive list of key definitions of terminology used throughout this Act; or for instance wish to suggest other definitions to be added?

Similarly, does the Department have a view as to the terminology described in clause 8?

We have proposed the inclusion of a definition of school managers in relation to Clause 2.

Clause 9: Commencement

Clause 9 is a "commencement" clause. It says that if the Bill becomes an Act, there will be two years for specified public bodies to provide the appropriate products.

Clause 9 (3) (a) allows for transitional, transitory or saving provision.

Clause 9 (3) (b) allows for different provisions to be made for different purposes.

Please give the Department's view as to whether two years is sufficient to allow DE and school stakeholders to prepare for this new law; and how this correlates with any experience to date of introducing such a scheme.

DE considers that 2 years is sufficient to prepare for this new law but note our comments under clause 2 (1) and 2 (10).

Finally, please give the Department's view as to whether there is anything further that needs to be provided on the face of the Bill to give effect to these measures. This input will help inform the Committee's report and may even give rise to a Committee amendment to add to the comprehensiveness of the Bill's proposals.

Aoibhinn Treanor

Committee Clerk

21628

Annex A

Overview of pilot scheme to address period dignity in schools

What is the scale and cost of existing or pilot DE period product provision initiatives?

The Department currently provides free period products. Please detail the remit of this scheme, as well as the criteria which have been used to determine funding allocations to schools, how much was allocated to each school, and any early available data on cost, uptake, footfall, impact on attendance, feedback and lessons learned so far.

Objectives and Scope of the scheme

The pilot scheme to address period dignity in schools launched on 22 September 2021. The Project is overseen by a Steering Group, drawn from DE, EA, CCEA, ETI, schools' representatives (primary, post-primary, special and a school pupil) as well as the Homeless Period Belfast. The project objectives are:

- i. To introduce a pilot scheme to provide free period products in schools.
- ii. To support and increase pupils' confidence in managing periods in school.
- iii. To address the stigma associated with periods while promoting the scheme.
- iv. To support pupils to attend school and carry out their normal activities during their period.
- v. To make provision on a similar basis to schools in England, Scotland and Wales, promoting fairness and equality.

The pilot scheme to address period dignity in schools is available in all primary schools, post primary schools, special schools and EOTAS settings. It is not currently available in EA's 84 Youth settings. Note however information at Annex C on work that has been carried out by EA Youth Service in relation to period poverty this year. Provision under the scheme is for pupils - not teachers, staff and school visitors. Schools are advised that need will vary between pupils. Some will access it

just once or twice when they perhaps get ‘caught out’, with their family buying their products the remainder of the year; some may intend to use the scheme every month but their period will start at the weekend or during school holidays; and some will use it throughout the academic year. Provision is calculated over 10 months and does not include summer holidays.

Costs of the Scheme

We originally estimated an ongoing annual cost for free period products under the scheme of £0.9m, once the scheme is fully embedded.

Based on prices secured through the public procurement exercise and the current combination of products being ordered by schools, the cost is more likely to be in the region of £0.7m per annum. The pilot scheme is however at a very early stage of implementation. It is also important to remember that the scheme is a pilot because of the lack of robust data upon which to forecast demand. This remains the case.

Baseline Survey Results

The scheme was welcomed by 98.2% of pupils (1,680) and 98.8% (760) of teachers responding to CCEA’s baseline survey in June 2020. A follow up survey will be launched in January and at the end of the school year to help assess the impact of the scheme in meeting its objectives.

School Engagement

31% of schools had placed orders at end November 2021. This level of engagement is in keeping with the experience in other parts of the UK and is to be expected, given that the scheme is in its early stages, having launched on 22 September 2021. The table below provides a further breakdown of engagement by schools.

	Total schools in sector	Schools placing at least one order	%
Grammar	73	28	38%
Preps	10	0	0%
Primary	779	202	26%
Secondary	144	73	51%

Special	35	19	54%
Total	1,041	322	31%

Some of the 273 period dignity champions attending training in November and December this year had decided not to order products until after their training.

The Education Authority is actively promoting the scheme, particularly to post primary schools, via their Link Officers which is a direct and effective way of engaging with schools on the importance of the scheme.

The Education Authority has also been asked to consider the feasibility of allocating stock directly to primary schools to ease the administrative burden and provide an opportunity to promote the scheme and its relevance to this age group.

A communication is planned for post-primary and special schools in the New Year to encourage them to place orders and engage with the wider scheme over time.

Figures of numbers of pupils accessing the scheme have not been collected to date.

Basis of amendment to place duties on ‘school managers’.

This definition at Paragraph 54(1)(a) of Schedule 1 to the Freedom of Information Act (2000) could be the basis of an amendment to place duties on managers of schools, but would need to be adapted to include independent schools.

Paragraph 54 provides:-

(1)The managers of—

(a)a controlled school, voluntary school or grant-maintained integrated school within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986, or

(b)....

(2)In sub-paragraph (1) “managers” has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

Period Poverty – EA Youth Service

The following is an extract from the EA's 20/21 report on how they used funding made available to target social needs (which is incorporated within the youth budget):

Period Poverty

Period Poverty was highlighted as a significant issue for young women across N. Ireland, with many unable to access sanitary products and other emotional and sensitive products during the pandemic. When the EA Youth Service provided care packs to support targeted groups of young people, the feedback from young people and their parents highlighted the positive impact this provision had on young people.

Following this, EA Youth Service provided free sanitary products across all its centres, ensuring that period poverty would not prevent a young person's involvement in youth services. The Minister of Education subsequently announced that sanitary products would be made available in schools.

A similar scheme was announced for Voluntary sector youth providers. Groups applied to a fund to deliver programmes relating to period poverty. 35 groups were awarded a total of £241,351 to deliver key themes to meet the needs of young women.

The Choose to Challenge Period Poverty programme was created to allow young people to explore issues relevant to this theme and was linked to International Women's Day.

Programme Impact

- 26 staff across Youth Services drove the project forward with groups of young people across all areas. A project of this size has never been completed before across the service
- Groups produced over 90 short films linked to their exploration of period poverty. These were created on phones, tablets and online with young people
- Completed a 24-hour challenge on social media with 43,800 people engaging with social media across the 24-hour period
- 31 young people registered and completed an OCN in Planning and Hosting an Event.

Learning Outcomes:

- Raised awareness of a prevalent issue and recognised how to share information

- *Created a platform for young people to discuss the issues around periods and period poverty and explore their own values around the topic*
- *Young people recognised and expressed views and opinions and had a safe space to talk*
- *Young people were motivated and enthusiastic about the topic and challenge. They all worked together and took on their own part of the challenge and fed back to the group on their progress*
- *Young people developed their communication skills, working as part of a team to achieve an end goal, and taking responsibility for their role within the group*
- *Young people held themselves accountable for the role they played, whilst supporting others to be accountable*
- *Young people developed awareness of their own strengths and what they could contribute to the development of the event*
- *Young people's ICT skills were developed and enhanced*
- *Young people developed a sense of belonging to a group and working together to create social change*
- *Young people know more about period poverty and how to have their voices heard about an issue that affect them.*

EA's ability to continue to provide such funding will be determined by the amount of funding available against priority of assessed needs.