

Period Products (Free Provision) (Scotland) Bill [As Amended at Stage 2]

Revised Delegated Powers Memorandum

Purpose

1. This revised Delegated Powers Memorandum has been prepared by the Scottish Government on behalf of Monica Lennon MSP, the member in charge of the Period Products (Free Provision) (Scotland) Bill, to accompany the Bill (as amended at Stage 2), as required under Rule 9.7.10 of the Parliament's Standing Orders. It describes the purpose of each of the subordinate legislation provisions in the Bill as amended at Stage 2 and outlines the reasons for seeking the proposed powers.
2. As the Bill was extensively amended at Stage 2, the original Delegated Powers Memorandum has been superseded, and this Revised Delegated Powers Memorandum replaces it entirely.

Outline of Bill Provisions

3. This Bill makes provision to ensure that everyone in Scotland who menstruates can access period products, at no cost, as and when they are required.
4. The Bill consists of 12 sections:
 - Section 1 places a duty on local authorities to make period products obtainable free of charge in their area via arrangements to be established in line with subsequent provisions.
 - Section 5 places a duty on education providers to make period products obtainable free for charge to pupils and students in every building normally used by pupils or students via arrangements to be established in line with subsequent provisions
 - Section 6 establishes a power for Scottish Minister to specify via Regulations public service providers which have to make period products obtainable free of charge in their premises

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- Section 6A sets out particular requirements that must be met by responsible bodies in putting in place the arrangements to fulfil their functions under sections 1, 5 or 6
- Sections 6B-6D set out a series of duties on both Scottish Ministers and responsible bodies to help ensure a high standard of delivery of duties under sections 1,5 and 6
- Section 7 states that responsible bodies must provide information on the availability of free period products for those who need them
- Sections 9A to 12 make provision about definitions and commencement as well as the short title.

Rationale for Subordinate Legislation

5. Section 2 of the Bill, which conferred a power for the Scottish Ministers to make (in regulations) a scheme to set out and regulate the right to obtain period products free of charge created by section 1 of the Bill (as introduced), has been removed. Section 9, which included provision about the procedure to which those regulations (and regulations under section 6) were to be subject, has also been removed. The delegated power provisions contained in the Bill as amended are described in more detail below.

Section 6(1) – Power to Specify Public Service Bodies Required to Ensure Period Products Are Obtainable Free of Charge by Persons in Their Premises

Power Conferred On: The Scottish Ministers

Power Exercisable By: Regulations Made by Statutory Instrument

Parliamentary Procedure: Affirmative

Provision

6. Section 6(1) provides Scottish Ministers with power to specify other public service bodies to provide free period products in their premises. Public service bodies are defined in section 6(6) as those constituted by or under an enactment and having functions that consist of or include providing public services or otherwise serving the public interest. Section 6(4) sets out that bodies may be specified by reference to a class they are in, and section 6(3) requires Scottish Ministers to consult each public

service body before taking the power to specify them to make free period products available in their premises. Section 6(5B) allows Scottish Ministers to include in the regulations any ancillary (i.e. incidental, supplementary, consequential, transitional, transitory or saving) provisions needed in relation to the specification of a public service body.

Reason for Taking Power

7. The policy driver is to ensure that, where any gaps in public service access to free period products arise, they could be addressed by specifying public service bodies under this section. Scottish Ministers may for example wish to use their power to require all health boards to make period products obtainable in their premises. This power was included in the Bill as introduced, including that the regulations could specify how, where and when products were to be made available. However this section has been modified by the introduction of subsections (1A), (1B) and (1C) to ensure that the provisions are, as far as possible, in line with duties on local authorities and education providers under sections 1 and 5. The ability to make ancillary provision is considered to be appropriate for flexibility given that the power to impose a duty on a public service body might be exercised a significant time after the initial implementation of the Act. Without the power to make ancillary provision, it might be necessary to return to the Parliament, through subsequent primary legislation, to deal with technical, operational or implementation matters clearly within the scope and policy intentions of the original Bill. The power is limited to the extent that it can only be used if Ministers consider it appropriate to do so, for the purposes of, or in connection with, specifying a public service body. Subsection (5A) allows for different provisions to take effect on different days (for example, allowing preparatory steps around guidance, statement on exercise of functions and consultation to be taken in advance of the section 6(1) duty itself taking effect in relation to a particular public service body).

Choice of Procedure

8. The choice of procedure reflects the significance of imposing on additional specified public bodies, or categories of body, new obligations which may have budgetary, staffing and other implications for them and ensures appropriate parliamentary scrutiny of this decision.

Section 6b – Power to Issue Guidance to Responsible Bodies About the Exercise of Their Functions

Power Conferred On: The Scottish Ministers

Power Exercisable By: Guidance (Non-Statutory)

Parliamentary Procedure: No Procedure

Provision

9. Section 6B is a new section added to the Bill at Stage 2. It requires Scottish Ministers to issue guidance to responsible bodies about the exercise of their functions under sections 1, 5, 6 and 7 (including in particular the requirements set out in section 6A). Subsection (3)(b) allows the guidance to also cover sections 6C and 6D if Ministers wish. By virtue of section 7 of the Interpretation and Legislative Reform (Scotland) Act 2010, Ministers may issue new guidance under this section from time to time.

10. Subsection (4) provides that a person to whom the guidance applies must have regard to it.

Reason for taking power

11. The duties under sections 1, 5 and 6 allow responsible bodies to put in place local arrangements to meet the generally agreed principle that local bodies are best place to decide on how best to meet their duties. However, guidance is required to provide more detail for responsible bodies around some of the provisions in the Bill – for example, in relation to section 6A, what constitutes a reasonable choice of different types of period products. It is considered appropriate for the Scottish Ministers to have the power to issue guidance from time to time to assist bodies to deliver their functions under the Act, including the sharing of good practice examples and ensuring as high a standard of delivery as possible by all responsible bodies. Guidance is considered appropriate in these circumstances, where the content is operational and practical in nature. Without this section, Ministers would have a general power to issue guidance, but responsible bodies would not be required to have regard to guidance issued in that way. Section 6B ensures that responsible bodies do have to have regard to the guidance, and also ensures that such guidance will always be in place to support responsible bodies. The guidance can be prepared in advance of implementation of the substantive duties. The level of detail that is required in the guidance is beyond that which would normally be contained in primary legislation.

Choice of Procedure

12. In line with the usual approach for guidance of this nature, it will not be subject to Parliamentary procedure. For transparency, the guidance will be published as soon as reasonably practicable. The guidance to be produced covers a range of operational matters concerning the exercise of the duties under the Act and will be updated from time to time in light of practical experience. The guidance will cover matters of technical and practical detail and will expand upon the principles within the Bill that are already subject to parliamentary scrutiny. However, as guidance does not have the force of law, requiring the Parliament to scrutinise the guidance itself would not be the best use of parliamentary time.

Section 11 – Power to Appoint the Date of Commencement of Sections 1-9

Power Conferred On: Scottish Ministers

Power Exercisable By: Regulations Made by Statutory Instrument

Parliamentary Procedure: Laid Only, No Procedure

Provision

13. Section 11 enables Scottish Ministers to commence those provisions in the Bill that do not come into force on the day after Royal Assent by commencement regulations. Such regulations must come into force within 2 years of the date of Royal Assent. Regulations under this section may make different provision for different purposes. It allows Scottish Ministers to make by regulations any transitional, transitory or saving provisions needed in relation to the coming into force of a provision.

Reason for Taking Power

14. It is typical for the commencement date of a Bill's substantive provisions to be appointed by regulations. Having them come into force on a date appointed by regulations means that the Government can appoint a date having ensured that everyone who needs to prepare for the new duties has had the necessary time to do so, within the 2 year limit. Commencement of sections 1-9 will be phased, with sections 6B, 6C, 6D and 7 being commenced in advance of the others, This will allow sufficient time for Scottish Ministers to publish guidance under section 6B, responsible bodies to consult and set out their arrangements are required by sections 6C and D, and to provide information to the public (as per

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section 7) in advance of the duties set out under sections 1 and 5 initially coming into force. If section 1 and 5 duties were to come into force earlier there is a risk that responsible bodies would not be able to fulfil the duties placed on them by sections 6C, 6D and 7 and therefore they would not be able to fully fulfil their functions. Subsection (3)(a) is necessary as it is often required for commencement regulations to make transitional, transitory or savings provision related to the provisions appointed to come into force on a specified date by the regulations. Subsection (3)(b) is necessary to ensure different sections can be commenced on different days and in case it is necessary to commence a section initially only in its application to one class of bodies with duties under the Bill.

Choice of Procedure

15. In line with the usual approach for commencement regulations, the power is subject only to the default laying requirement, as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

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