

PERIOD PRODUCTS (FREE PROVISION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by Scottish Parliament and Scottish Government officials on behalf of Monica Lennon MSP, the member who introduced the Bill for this Act in the Parliament, in order to assist the reader of the Period Products (Free Provision) (Scotland) Act 2021. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation, none is given.

THE ACT

3. The Act ensures that everyone in Scotland who menstruates can have reasonably convenient access to period products, free of charge, as and when they are required. While bodies on whom duties are placed by the Act (“responsible bodies”) have flexibility around how they meet those duties, they must meet three overarching principles, namely ease of access, dignity and choice. Responsible bodies must have regard to guidance issued by Scottish Ministers, consult product users, and publish statements on the exercise of their functions.

SUMMARY OF AND BACKGROUND TO THE ACT

4. The Act consists of 12 sections:
 - Section 1 places a duty on local authorities to make period products obtainable free of charge in their areas via arrangements to be established in line with subsequent provisions.
 - Section 2 places a duty on education providers to make period products obtainable free for charge in every building normally used by pupils or students via arrangements to be established in line with subsequent provisions
 - Section 3 establishes a power for Scottish Ministers to specify via regulations public service bodies which must make period products obtainable free of charge in their premises
 - Section 4 requires responsible bodies, in putting in place the arrangements to fulfil their functions under sections 1, 2 or 3, to ensure reasonably easy access to products, to respect dignity and to make a reasonable choice of types of product obtainable
 - Sections 5 to 7 require responsible bodies to have regard to guidance issued by Scottish Ministers and, having consulted product users, to prepare written statements on how they will exercise their functions under sections 1, 2 and 3

These notes relate to the Period Products (Free Provision) (Scotland) Act 2021 (asp 1) which received Royal Assent on 12 January 2021

- Section 8 states that responsible bodies must provide information on the availability of free period products for those who need them
- Sections 9 to 12 make provision about definitions and commencement as well as the short title.

COMMENTARY ON SECTIONS

Local authorities to ensure period products generally obtainable free of charge

5. Section 1 requires local authorities to ensure that anyone within their local area who requires period products can obtain them free of charge, in sufficient quantities to meet their needs. Local authorities meet this duty by establishing and maintaining arrangements for making period products obtainable. They have flexibility as to how they do this; however, the arrangements put in place must respect the particular requirements set out in section 4, which are that products are accessible with reasonable ease, in a way that respects dignity and that a reasonable choice of different types of products is obtainable. In addition, local authorities must consult people in their area about the premises in which, and where in those premises, free products should be obtainable, which types of product should be obtainable and the ways in which free products should be obtainable (as provided for in section 7).
6. Period products are defined (in section 9(a)) as manufactured articles the purpose of which is to absorb or collect menstrual flow. A person is entitled to obtain (or have someone else obtain on their behalf) sufficient products to meet their needs while in Scotland. A person's needs are their needs arising from menstruation by the person (section 9(c)). Therefore, a local authority must take into account the fact that some people experience very heavy periods and that such persons are entitled to obtain sufficient products to meet all of their needs in a way that respects their dignity.
7. The arrangements made could include those that provide for period products to be obtainable free of charge only in certain locations by certain people. For example, the local authority's arrangements might include making period products available to persons using a particular service in a particular location, such as a homeless shelter. Those unable to access that location would be able to obtain products via other arrangements made by the local authority (and users of that particular service would not be limited to obtaining products from that location).
8. Section 1(3)(a) requires local authorities to ensure that free period products are obtainable by another person on behalf of the person who needs the products. This allows, for example, a carer to obtain products on behalf of the person they care for.
9. Local authorities may include delivery options in their arrangements for ensuring that period products are obtainable free of charge. Section 1(3)(b) permits a local authority which chooses to offer delivery to 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 from the local authority in any other way. 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 local authority is making products obtainable are at some distance from the person's residence. Whether or not packing and delivery are free or charged for, the period products themselves must be free of charge.
10. People are not limited to obtaining products from the local authority area in which they live. For example, if a person who lives in one local authority but works in another finds it more convenient to obtain some or all of the products they need in the area in which they work, they are entitled to do that.
11. Section 1(4) states that the needs of a person who lives in Scotland are to be regarded as all arising while the person is in Scotland. So, for a person who lives in Scotland,

products are obtainable for use in Scotland and elsewhere, for example if the person is going on holiday. In contrast, visitors to Scotland are only entitled to obtain, free of charge, such period products as they need during their stay in Scotland.

Education providers to ensure period products obtainable free of charge by pupils and students

12. Section 2 places a duty on education providers (defined in section 10) to establish and maintain arrangements for period products to be obtainable free of charge during term time on their premises, including in particular in every building normally used by pupils and students. This includes buildings used by students for non-educational purposes (e.g. eating, leisure or sport), as well as those used for learning (e.g. classrooms, lecture-theatres, laboratories), so long as they form part of the premises of the education provider and are suitable for the provision of products. This duty is placed on all primary and secondary schools in Scotland (including independent, special and grant-aided schools) as well as on all publicly-funded Scottish colleges and universities. While products must be obtainable in every building normally used by pupils and students and suitable for the provision of products, education providers will still have the flexibility to decide (subject to consultation (under section 7)) which products should be made obtainable and in what way and in which locations in each such building. For example, an education provider may choose, following consultation, to put individual single-use products in toilets in each building, while also making larger volumes of products, including reusable products, available in other locations.
13. Subsection (2) allows an education provider either to provide period products itself, or to secure their provision through arrangements made with a third party, for example a washroom services contractor.
14. Subsection (4) makes clear that products do not have to be provided in a building, even if it is normally used by pupils or students, if the building is not suitable. This might be, for example, because there are no toilets or changing facilities in the building. It also makes clear that education providers must consult with users on the suitability of buildings before decisions are taken.
15. Under subsection (6), education providers are obliged to provide free period products to meet a pupil or student's needs during term time only for the relevant course of study. Pupils and students will be able to obtain products outside term time through the arrangements put in place by local authorities under section 1. As local authorities will have duties under sections 1 and 2 in relation to school pupils, they will have the flexibility to decide to meet their section 1 duties by making additional products obtainable in advance of holidays, or by providing holiday packs.
16. Education providers do not have to put in place special arrangements to provide products to students at Scottish institutions who are studying abroad or remotely (from elsewhere in Scotland). But such students are entitled to collect sufficient products for their term-time needs while on their home institution's premises.
17. Residential accommodation for pupils at local authority schools (often referred to as school hostels) is not covered under section 2 duties. Local authorities will be required to provide all pupils who are accommodated in hostels with sufficient products, on school premises, for their term-time needs. While there is no requirement on local authorities to provide products in hostels, pupils will be able to take products from school in bulk for use in hostels. In addition, guidance could recommend that local authorities, in terms of their section 1 duties, make products obtainable from hostels.
18. University or college-owned halls of residence are part of the institution and so education providers must make period products obtainable from at least one location in each hall of residence. Privately-operated halls of residence are not covered by section 2 duties. However, education providers have to make enough products available at locations on campus (e.g. in departments, libraries etc.) to meet the term-time needs

of students, so students living in private halls will be able to collect the products they need from these locations. In addition, students (whether staying in private or college/university-owned halls) could also obtain the products they need through the local authority arrangements under section 1.

Specified public service bodies to ensure period products obtainable free of charge by persons in their premises

19. Section 3 allows Scottish Ministers to specify (in regulations) additional public service bodies that must make free period products obtainable in their 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. Obligations under this section (to provide free period products) may be imposed on bodies individually or as a class; but each such body must be consulted before the requirement is imposed on it. Regulations under section 3 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 Parliament. A specified public service body would be required to make sufficient products available to meet the needs of persons while they are on the premises, but would not be required to provide products for use elsewhere.
20. Subsection (2) allows a specified public service 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.
21. Subsection (8) 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 sections 5 to 7, and a later date for when it becomes subject to the requirements of section 3 itself. That would ensure the body has to have regard to Scottish Ministers’ 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.

Arrangements under sections 1, 2 and 3: particular requirements

22. Section 4 sets out particular requirements that the arrangements put in place by all responsible bodies must meet, namely that they must make products reasonably easy to obtain, respect dignity and offer a reasonable choice of types of period products.

Guidance

23. Section 5 requires Scottish Ministers to issue guidance to responsible bodies to support them in the exercise of their duties under sections 1, 2 or 3 and 8 as well as in relation to the particular requirements set out by section 4. The guidance can also cover the duties imposed by sections 6 and 7 which are detailed below. For example, in relation to section 4, guidance could provide more detail on what would constitute a reasonable choice of types of products and what constitutes a dignified approach.
24. Before any guidance is first issued, Scottish Ministers must consult persons or bodies that represent the interests of responsible bodies and may consult with others. The guidance might be one document or may be different documents targeted at different responsible bodies.
25. Scottish Ministers must issue the guidance as soon as reasonably practicable. They will be able to issue revised guidance from time to time, for example to share emerging good practice between responsible bodies and take account of new approaches. They are not required to consult in the production of revised guidance. The issuing of guidance to a responsible body for the first time triggers the requirements on that body to consult and then prepare a statement under sections 6 and 7; however, the issue of revised guidance does not.

26. When putting in place the arrangements by which they will exercise their functions, responsible bodies must have regard to the guidance as it is in force at the time and as it relates to them.

Additional duties on responsible bodies

27. Section 6 requires each responsible body to publish a written statement on the exercise of their functions. Responsible bodies must publish their first statement as soon as is reasonably practicable after the first receipt of guidance issued by Scottish Ministers under section 5 and can publish subsequent statements at any time in the future. The statement must explain how the body has met the particular requirements set out in section 4 and how it has had regard to the guidance issued under section 5. It must also include a summary of the arrangements put in place for exercise of their functions set out in sections 1, 2 or 3 and 8. Each statement produced under this section is to be published by the responsible body.
28. Before drafting a statement, responsible bodies must carry out consultation as set out in section 7, which also sets out who should be consulted and what the consultation should cover, including 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.
29. The consultation will inform the development of the arrangements that each responsible body is required to establish and maintain in order to ensure that period products are obtainable free of charge by everyone who needs to use them. Period products are only obtainable free of charge in accordance with these arrangements, whatever they are. So, while people will be able to express views about what the arrangements should be during the consultation, a responsible body will not, once its arrangements are in place, be obliged to make products obtainable in ways that are not specified in its arrangements (for example, in ways specified in another responsible body's arrangements).
30. Section 8 requires responsible bodies to make information available to people about the arrangements in place through which they can obtain free period products under sections 1, 2 and 3. The people who need to be informed are, under section 1, members of the public in the local authority area; under section 2, pupils or students; and under section 3, people in the premises of the public service body. The information to be provided is that period products are obtainable free of charge and how, where and when people can obtain free products under those arrangements. Responsible bodies have the flexibility to choose how to make this information available.

Final provisions

31. Section 9 provides definitions for three key terms used throughout the Act, namely "period products", types of period products, and references to a person's needs. By defining a person's needs in terms of menstruation by the person, this section ensures that the Act applies to transgender and non-binary people who menstruate, and not just to women and girls.
32. Section 10 provides definitions for other terms used in the Act.
33. "School" is defined to have the meaning given in section 135(1) of the Education (Scotland) Act 1980, therefore covering local authority, grant-aided and independent schools. This definition includes "a nursery school". However, as the duty is to make period products obtainable for free only for pupils who need them, the Act has no application to nursery schools.
34. The definitions of further and higher education institution include every publicly funded college and university in Scotland. Although private further education institutions are

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not within this definition, students at such institutions will be able to obtain free period products through the arrangements put in place by local authorities under section 1.

35. Section 11 provides that sections 9, 10, 11 and 12 come into force the day after Royal Assent, and that Ministers 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 Scottish Ministers issuing guidance, and local authorities and education providers 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.

PARLIAMENTARY HISTORY

36. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and references to the Official Report of those proceedings. It also shows the dates on which Committee reports and other papers relating to the Bill were published, and gives references to those reports and other papers.

<i>PROCEEDINGS AND REPORTS</i>	<i>REFERENCE</i>
BEFORE INTRODUCTION	
Draft proposal – lodged 11 August 2017	Proposed Sanitary Products (Free Provision) (Scotland) Bill
Final proposal – lodged 7 March 2018	
INTRODUCTION	
Bill (as introduced) – 23 April 2019	SP Bill 45, Session 5 (2019)
SPICe briefing on the Bill (as introduced) – published 30 October 2019	SPICe briefing SB 19-67
STAGE 1	
(a) Lead committee – Local Government and Communities Committee	
32 nd meeting, 2019, 18 December 2019	Columns 2-54
1 st meeting, 2020, 8 January 2020	Columns 2-31
2 nd meeting, 2020, 15 January 2020	Columns 2-46
Stage 1 report – 5 February 2020	2nd Report, 2020 (Session 5), SP Paper 668
(b) Delegated Powers and Law Reform Committee	
Report on the Bill: Stage 1 – 19 December 2019	67th Report, 2019 (Session 5), SP Paper 653
(c) Consideration by the Parliament	
Stage 1 debate – 25 February 2020	Columns 20-68
STAGE 2	
Local Government and Communities Committee	
Stage 2 proceedings – 28 October 2020	Columns 3-28

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<i>PROCEEDINGS AND REPORTS</i>	<i>REFERENCE</i>
Bill (as amended at Stage 2) – (date)	SP Bill 45A, Session 5 (2020)
AFTER STAGE 2	
Delegated Powers and Law Reform Committee	
Report on the Bill (as amended at Stage 2) – 23 November 2020	68th Report, 2020 (Session 5), SP Paper 862
STAGE 3	
Consideration by the Parliament	
Stage 3 proceedings – 24 November 2020	Columns 65-91
Bill (as passed) – 24 November 2020	SP Bill 45B, Session 5 (2020)
ROYAL ASSENT	
12 January 2021	Period Products (Free Provision) (Scotland) Act 2021 (asp 1)