

Transvaginal Mesh Removal Reimbursement Scheme 2023

Laid before the Scottish Parliament by the Scottish Ministers
under section 2(2)(a) of the Transvaginal Mesh Removal
(Cost Reimbursement) (Scotland) Act 2022

SG/2023/279

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The Scottish Ministers make the following Scheme in exercise of the powers conferred by section 1 of the Transvaginal Mesh Removal (Cost Reimbursement) (Scotland) Act 2022¹ and all other powers enabling them to do so.

Citation and commencement

1. This Scheme may be cited as the Transvaginal Mesh Removal Reimbursement Scheme 2023 and comes into force on 1 December 2023.

Interpretation

2. In this Scheme –

“the Act” means the Transvaginal Mesh Removal (Cost Reimbursement) (Scotland) Act 2022;
“the Agency” means the Common Services Agency² constituted by section 10 of the National Health Service (Scotland) Act 1978³;

“arranged”, in relation to qualifying mesh removal surgery, includes where there has been agreement in writing between the person seeking surgery and the healthcare provider that surgery will go ahead, which may include an undertaking for the person seeking surgery to make payment to the healthcare provider, whether or not a specific date for that surgery has been agreed;

“coronavirus” means severe acute respiratory syndrome coronavirus 2 SARS-CoV-2;

“evidence” –

(a) in relation to the arrangement, costs and date of qualifying mesh removal surgery, includes a discharge letter or other correspondence from the healthcare provider, and

(b) in relation to costs that may be reimbursed under this Scheme, includes a receipt, bank or credit card statement;

“managed isolation” means an arrangement, made because of coronavirus, which includes a requirement to stay in designated accommodation and may also include a requirement to use particular transport to that accommodation and a requirement to undergo testing for coronavirus;

¹ 2022 asp 1 .

² The Common Services Agency is commonly known as NHS National Services Scotland (NSS).

³ 1978 c.29.

“qualifying mesh removal surgery” has the meaning given by section 1 of the Act⁴; and “writing” includes electronic communications within the meaning of section 15 of the Electronic Communications Act 2000⁵.

Administration of Scheme

3. The Scottish Ministers appoint the Agency to administer this Scheme on their behalf.

Eligibility

4. Persons who may be eligible for payments under this Scheme (“reimbursement payments”) are —

- (a) a person who underwent qualifying mesh removal surgery arranged on or before 3 June 2022;
- (b) a person who supported the person described in paragraph (a) in connection with that surgery; and
- (c) where the person described in paragraph (a) has died, the next of kin of that person (see paragraph 24).

Applications

5. An application for a payment under this Scheme—
- (a) may be made by any of the persons described in paragraph 4, or by a person authorised by any of those persons to make an application,
 - (b) is to be made in writing on a form provided by the Agency,
 - (c) must be sent prior to 31 March 2024,
 - (d) is to confirm if the applicant received funds from other sources in connection with the qualifying mesh removal surgery (see paragraph 19); and
 - (e) must contain or be accompanied by such information and evidence as this Scheme requires and any additional information and evidence that the Agency requires in order to assess the application.

Payments that may be made

- 6.—(1) Payments may be made under this scheme for—
- (a) the cost of qualifying mesh removal surgery (see paragraph 7), and
 - (b) the costs set out in sub-paragraph (2) where those costs have been incurred in connection with that surgery.

⁴ <https://www.legislation.gov.uk/asp/2022/1/section/1/enacted>. Section 1(2) provides that “mesh removal surgery” is surgery a principal purpose of which is to wholly or partially remove from a person’s body synthetic mesh which was originally implanted transvaginally (that is, by means of insertion through the person’s vaginal wall) for the purpose of treating stress urinary incontinence or pelvic organ prolapse. See also section 1(3) for the definition of “qualifying” in relation to mesh removal surgery.

⁵ 2000 c.7. Section 15 was relevantly amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

- (2) The costs referred to in sub-paragraph (1)(b) are—
- (a) travel (see paragraph 8)
 - (b) accommodation (see paragraph 9)
 - (c) subsistence (see paragraph 10)
 - (d) the following other costs that are specified under section 1(4)(d) of the Act -
 - (i) cost of surgery for any complications arising directly from the mesh removal surgery (see paragraph 11)
 - (ii) cost of pre and post-operative appointments (see paragraph 12)
 - (iii) covid testing and hotel quarantine (see paragraph 13)
 - (iv) cost of a visa or an approved travel authorisation⁶ (see paragraph 14)
 - (v) insurance (see paragraph 15)
 - (vi) loan interest (see paragraph 16)
 - (vii) credit interest (see paragraph 17).

(3) Where a reimbursement request relates to a cost incurred in a currency other than Sterling, a reimbursement payment will be made in Sterling taking into account the exchange rate for that currency that was applicable at the date that the cost was incurred.

Costs – qualifying mesh removal surgery

7. The person making an application must provide the Agency with—
- (a) evidence as to the costs of the qualifying mesh removal surgery, and
 - (b) evidence to confirm the date that that surgery was arranged and the date that surgery took place.

Costs – travel

8.—(1) Reasonable travel costs will be reimbursed.

(2) Economy class travel to and from the place where qualifying mesh removal surgery took place is a reasonable travel cost and will be reimbursed.

(3) The person making an application must provide the Agency with evidence as to the costs of the travel described in this paragraph.

(4) Where the travel includes travel by taxi, and the person making the application is not able to provide the Agency with evidence as to the costs of that travel, the Agency may nevertheless assess the amount of the reimbursement payment for that travel.

(5) The cost of vehicle hire will be reimbursed.

⁶ For travel to the United States of America an application for an authorisation might be made using the Electronic system for travel authorisation known as ESTA.

(6) Where the travel includes motor travel⁷, not being travel by public transport or taxi, and the person making the application is not able to provide the Agency with evidence as to the costs of that travel, that travel will be reimbursed at the rate of £0.45⁸ per mile.

(7) In this paragraph, travel costs include the cost of any travel by air, rail or road from the home of the person who underwent qualifying mesh removal surgery (or the home of the supporter of that person, where applicable) to the place of surgery, and back again.

Costs – accommodation

9.—(1) Reasonable accommodation costs will be reimbursed.

(2) The cost of a standard room is a reasonable accommodation cost and will be reimbursed.

(3) Where a person travelled in support of the person who underwent surgery, and where those persons stayed in separate rooms, the cost of two standard rooms may be reimbursed.

(4) The person making an application must provide the Agency with evidence as to the costs of the accommodation described in this paragraph.

Costs – subsistence

10.—(1) Other than in the circumstances described in sub-paragraph (4), subsistence costs will be reimbursed at a flat subsistence rate and that rate applies to each of the person who underwent surgery and the person who travelled in support.

(2) Subsistence costs include the cost of meals and any travel costs⁹ incurred other than the costs described in paragraph 8.

(3) The subsistence rate is-

(a) £70¹⁰ per day for qualifying mesh removal surgery that was carried out in the United Kingdom, and

(b) \$110¹¹ per day for qualifying mesh removal surgery that was carried out in the United States of America.

(4) Where a person making an application to the Agency has evidence of subsistence costs¹², and those costs are reasonable, subsistence costs will be reimbursed in accordance with the evidence provided.

⁷ This would be where the applicant or the person supporting them had used their own vehicle or had hired a vehicle.

⁸ GBP, British Pounds.

⁹ For example, travel to premises for a meal, or travel from accommodation to place of surgery.

¹⁰ GBP, British Pounds.

¹¹ United States Dollars. This will be converted into GBP for the purposes of making a reimbursement payment, see paragraph 6(3) of this Scheme.

¹² For example, where a person has receipts for meals they can provide those receipts and choose not to be reimbursed at the flat subsistence rate.

Other costs - surgery

11.—(1) The cost of treatment for any complications (referred to in this paragraph as “subsequent treatment”) arising directly from the mesh removal surgery while in the country where that surgery took place will be reimbursed.

(2) Only treatment for complications as described in sub-paragraph (1), and not treatment for any medical issues arising as a result of mesh removal surgery, will be reimbursed under this paragraph.

(3) The cost of travel, accommodation and subsistence incurred in connection with subsequent treatment will be reimbursed in accordance with paragraphs 8 to 10.

(4) The person making an application must provide the Agency with evidence as to the costs of the subsequent treatment, travel and accommodation described in sub-paragraphs (1) and (3).

Other costs – pre and post-operative appointments

12.—(1) The cost of clinically related appointments occurring before or after the qualifying mesh removal surgery, where those costs have been charged separately to that surgery, will be reimbursed.

(2) The appointments described in sub-paragraph (1) must relate directly to the qualifying mesh removal surgery, and any appointments for long term care will not be reimbursed.

(3) The cost of travel, accommodation and subsistence incurred in connection with the appointments described in sub-paragraph (1) will be reimbursed in accordance with paragraphs 8 to 10.

(4) The person making the application must provide the Agency with evidence of the costs of the appointments described in sub-paragraph (1) and any travel and accommodation described in sub-paragraph (3).

Other costs – covid testing and hotel quarantine

13.—(1) The cost of testing for the detection of coronavirus, where that testing was required in connection with travel to and from a country outside of Scotland, will be reimbursed.

(2) The cost of managed isolation, where that managed isolation was required in connection with travel to and from a country outside of Scotland, will be reimbursed.

(3) Where the person who underwent qualifying mesh removal surgery, or the person who travelled in support, incurred necessary costs in relation to accommodation for isolating or quarantining in order to prevent the spread of infection or contamination with coronavirus (other than by way of managed isolation), the cost of such accommodation and subsistence will be reimbursed in accordance with paragraphs 9 and 10.

(4) The person making the application must provide the Agency with evidence of the costs of any testing, managed isolation or accommodation described in sub-paragraphs (1) to (3).

Other costs – visa or approved travel authorisation

14—(1) The cost of a visa or approved travel authorisation, where required in connection with travel to a country outside of Scotland, will be reimbursed.

(2) The person making the application must provide the Agency with evidence of the costs of any visa or approved travel authorisation.

Other costs – insurance

15—(1) The cost of travel insurance, where that insurance was obtained in connection with the qualifying mesh surgery, will be reimbursed.

(2) Where insurance, as described in sub-paragraph (1), is obtained in connection with subsequent treatment (paragraph 11), appointments (paragraph 12) or isolation or quarantine (paragraph 13), that insurance will be reimbursed.

(3) The person making the application must provide the Agency with evidence of the costs of insurance described in sub-paragraphs (1) and (2).

Other costs – loan interest

16.—(1) The cost of loan interest, where that loan interest was incurred in relation to a loan obtained in connection with the qualifying mesh surgery, will be reimbursed.

(2) A loan may be a personal loan or a mortgage (charge on a property).

(3) The person making the application must provide the Agency with evidence of the costs of the loan and interest described in sub-paragraphs (1) and (2).

Other costs – credit interest

17.—(1) The cost of credit interest, where that credit interest was incurred in relation to payments made in connection with the qualifying mesh surgery, will be reimbursed.

(2) Credit interest includes payments made using a credit card.

(3) The person making the application must provide the Agency with evidence of the costs of the credit card interest described in sub-paragraphs (1) and (2).

Exceptional circumstances

18. The Agency may reimburse a cost that exceeds any limits described in paragraphs 8 to 17 where the Agency considers that there are exceptional or unexpected circumstances which justify this.

Deductions from reimbursement payments

19.—(1) The amount of a reimbursement payment may be reduced where a person who underwent qualifying mesh removal surgery received funds, in respect of the costs of that surgery (whether the cost of the surgery itself or costs in connection with the cost of surgery such as accommodation and travel), from a public fund raising campaign.

(2) In this paragraph, a “public fund raising campaign” includes the use of online platforms for crowdfunding.

Decisions

20.—(1) On receipt of an application under paragraph 5, the Agency must as soon as reasonably practicable assess the amount of a reimbursement payment, if any.

(2) The Agency must as soon as reasonably practicable-

(a) notify the person who made the application of the Agency’s decision under sub-paragraph (1); and

(b) where the decision is to make a reimbursement payment that is less than the sum requested by the person applying, provide the person with a summary of the reasons for that decision.

Requests for review

21.—(1) This paragraph applies where a person has received notification of a decision about an application for a reimbursement payment under paragraph 20.

(2) The person may request a review of the decision to the extent it is a decision that the person is not entitled to reimbursement of a cost specified in the application or that the cost to be reimbursed is less than the sum requested.

(3) A request for a review must-

(a) be made in writing to the Agency,

(b) be made before the end of the period of 8 weeks beginning with the date on which notification of the decision was received,

(c) specify why a review is being requested, and

(d) contain or be accompanied by any information the person requesting the review considers relevant.

Review procedure

22.—(1) A review requested under paragraph 21 is to be carried out by an officer of the Agency (“the reviewer”) who was not involved with the decision under paragraph 20 (“the original decision”).

(2) The reviewer is to determine the review on the basis of—

- (a) the evidence on which the original decision was made, and
- (b) any evidence provided under paragraph 21(3)(d) or obtained by the reviewer.

(3) In determining the review, the reviewer may uphold or vary any part of the original decision.

(4) Subject to paragraph 23, the reviewer’s decision is final.

Repayment of reimbursement payments

23.—(1) A person is liable to pay the Agency the value of any reimbursement payment to the extent that it has been paid to that person due to an error (see sub-paragraph (2)).

(2) An error occurs where a decision under paragraph 20, or a review decision under paragraph 22, is made—

- (a) on the basis of incorrect or misleading information, or
- (b) as a result of a calculation error by the Agency.

(3) The Agency may reconsider a decision under paragraph 20 or a review decision under paragraph 22 where they have cause to believe that an error has occurred that has materially affected the sum that has been reimbursed.

(4) For the avoidance of doubt, incorrect or misleading information includes information to the effect that the person making an application has not received funds from a public fund raising campaign in circumstances where such funds have in fact been received.

Next of kin

24.—(1) “Next of kin”, in relation to a deceased person, means-

- (a) the person who, immediately before the death of the deceased person, was-
 - (i) the spouse or civil partner of the deceased person, or
 - (ii) the cohabitant of the deceased person,
- (b) where the condition in sub-paragraph (2) is met, a child of the deceased person.

(2) The condition referred to in sub-paragraph (1)(b) is that-

- (a) there is nobody who falls within sub-paragraph (1)(a) (either because there was no such person or because the person has since died), and
- (b) in a case where the person has since died, the person had not made an application under this scheme in respect of the deceased person.

(3) A payment under this scheme will be made to the next of kin as follows-

(a) the whole payment will be made to a spouse, civil partner or cohabitant,

(b) a share of a payment will be made to a child, being the whole of a payment divided by the total number of surviving children of the deceased person at the date that the application for a payment is made.

(4) In this paragraph-

“child of the deceased person” includes a stepchild of the deceased person, and

“cohabitant of the deceased person” means a person who-

(a) was neither married to nor in a civil partnership with the deceased person, but

(b) was living with that person as if they were married to each other and had been so living for a period of at least 6 months.

Revocation

25. The Transvaginal Mesh Removal Reimbursement Scheme (No.2) 2022 is revoked.

St Andrew's House,
Edinburgh
7 November 2023

A member of the staff of the Scottish Ministers



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