

# Transvaginal Mesh Removal (Cost Reimbursement) (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders, in relation to the Transvaginal Mesh Removal (Cost Reimbursement) (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

### Outline of Bill Provisions

3. The main purpose of the Bill is to give power to the Scottish Ministers to reimburse persons who have entered into arrangements privately and have paid to have transvaginal mesh removed from their body, in relation to the costs of removal surgery and also reasonable connected expenses.
4. The Bill has 5 sections. In summary, they make provisions as follows:
  - Section 1 empowers the Scottish Ministers to reimburse relevant persons for costs relating to transvaginal mesh removal surgery by putting in place a scheme for the making of such reimbursement payments. Section 1 defines "mesh removal surgery" and sets the criteria for mesh removal surgery which qualifies for reimbursement. The provision also sets out what reimbursable costs are incurred in relation to qualifying mesh removal surgery.

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- Section 2 makes further provision about the scheme of reimbursement payments. This includes provision on application and applicant requirements and review processes.
- Section 3 confers power on the Scottish Ministers to make ancillary provision in relation to the Bill.
- Section 4 provides for commencement, and Section 5 sets out the short title of this Bill.

## Rationale for Subordinate Legislation

5. The Bill contains two delegated powers which are explained in more detail below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

6. The Scottish Government has had regard, when deciding where and how provision should be set out in delegated legislation rather than on the face of the Bill, to:

- The need to strike a balance between the importance of this issue and providing flexibility to respond to changing circumstances (for example, the outcome of NHS National Services Scotland's tendering exercise<sup>1</sup>);
- The need to make proper use of valuable parliamentary time; and
- The need to anticipate unexpected issues arising which might otherwise frustrate the purpose of provisions in primary legislation approved by the Parliament. The Bill confers powers on the Scottish Ministers which are set out below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate.

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<sup>1</sup> See paragraph 11 of the Policy Memorandum for the Bill.

## Delegated Powers

### **Section 1 – Power for the Scottish Ministers to reimburse costs relating to the removal of transvaginal mesh**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: a scheme**

**Parliamentary procedure: none (other than requirement to lay scheme before the Scottish Parliament)**

#### Provision

7. Section 1(1) empowers Scottish Ministers to make a scheme under which they will be able to make payments reimbursing costs incurred in connection with qualifying mesh removal surgery. The remainder of section 1 defines some terms and sets out the types of costs that will be reimbursable.

#### Reason for Taking Power

8. This power has been taken to allow the Scottish Ministers to make detailed provisions as regards the reimbursement of costs associated with transvaginal mesh removal. The scheme will set out the processes for applications and other matters such as provision for review and for a person to administer the scheme. It is considered that this level of detail is appropriate to be set out in the scheme. The power will also provide the Scottish Ministers with the flexibility to make adjustments to these processes and matters if required from time to time after the scheme is made.

#### Choice of Procedure

9. This is a very focused Bill, and certain essential concepts that define the ambit of the payments to be made under the scheme are clearly set out within the Bill itself. Furthermore, the detail remaining to be set out in relation to the scheme is largely administrative in nature. Section 1 does not create any power to alter the purpose and principles of the scheme overall. As such, the Scottish Ministers consider that no procedure is required over and above the procedure of the Bill. The Bill requires that the scheme is laid before the Scottish Parliament and published. The Scottish

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Ministers consider that the Bill strikes an appropriate balance between affording Parliament scrutiny of the scheme via the detail that is contained on the face of the Bill and the requirement to lay the scheme before Parliament on the one hand; and the need to avoid delaying implementation of the scheme by requiring the remaining administrative detail to be set out in a statutory instrument on the other.

### **Section 3 – Power to make ancillary provision in relation to the Bill.**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative if amending primary legislation, otherwise negative**

#### **Provision**

10. This section allows the Scottish Ministers to make various types of ancillary provision if such provision turns out to be needed in order for the Bill to operate effectively.

#### **Reason for Taking Power**

11. As with any new body of law, this Bill may give rise to a need for a range of ancillary provision. It may be that consequential provision is required in order to make necessary changes to related legislation. The Scottish Ministers consider the power to be necessary to provide flexibility and that it should extend to the modification of primary legislation. Otherwise it might be necessary to return to Parliament for further primary legislation to make a small technical adjustment to another statute where it is obvious that the adjustment has to be made if the intentions of Parliament in passing this Bill are to be given effect. That would not be an efficient use of resources by the Parliament or the Scottish Government.

#### **Choice of procedure**

12. Sections 3(3)(a) and 3(3)(b) of the Bill provides that any regulations made under section 3 will be subject to affirmative procedure if they contain provisions that require changes to an Act. Otherwise, they will be subject to

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negative procedure. This provides the appropriate level of parliamentary scrutiny for the textual amendment of primary legislation, while allowing efficient use of parliamentary time for regulations that do not require that level of scrutiny.

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