

# Health, Social Care and Sport Committee

## 4th Meeting, 2023 (Session 6), Tuesday, 31 January 2023

### Subordinate legislation – Affirmative SSI

1. This paper invites the Committee to consider the following affirmative instrument:

- Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2023

Parliamentary procedure:

2. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
3. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).
4. It is usual practice for the lead committee to take evidence from the relevant Scottish minister in advance of considering the instrument. The committee can ask the minister and any officials questions about the SSI.
5. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.
6. The lead committee must report its recommendation to Parliament within 40 days of the SI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

**Title of Instrument:** Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2023

**Laid Date:** 12 January 2023

**Reporting deadline:** 1 March 2023

**Type of instrument:** Affirmative

### **Purpose**

7. The instrument increases the value of payments for free personal care and nursing care by 9.5%.
8. This is an annual increase. The policy note states that emerging evidence in recent years shows that the cost of providing personal and nursing care has increased significantly and the payment made to providers by Local Authorities for self-funding residents has not kept pace with this.
9. Weekly payment rates were increased at levels above the GDP Deflator for 2021/22 and 2022/23. This resulted in increases of 7.5% for 2021/22 and 10% for 2022/23. For 2023/24 it was again decided to make an above GDP Deflator increase of 9.5% to these rates.
10. The policy note is included at **Annexe A**.

### **Delegated Powers and Law Reform Committee consideration**

11. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [24 January 2023](#) and made no recommendations in relation to this instrument.

### **For decision**

12. The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 1 March 2023.

### **Clerks to the Committee**

**26 January 2023**

**Annexe A****POLICY NOTE****THE COMMUNITY CARE (PERSONAL CARE AND NURSING CARE) (SCOTLAND) AMENDMENT REGULATIONS 2023****SSI 2023/XXX**

The above instrument will be made in exercise of the powers conferred by section 1(2)(a), 2 and 23(4) of the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”). The instrument is subject to affirmative procedure. If approved by the Scottish Parliament, it will come into force on 1 April 2023.

**Policy Objectives**

The background is that section 1(1) of the 2002 Act provides that a local authority are not to charge for social care provided by them (or the provision of which is secured by them) if that social care is “personal care” as defined in paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010; “personal support” as so defined; care mentioned in schedule 1 of the 2002 Act or nursing care. That requirement may be qualified by regulations. Section 2 gives the Scottish Ministers the power to make regulations to determine what is to be regarded as accommodation provided by local authorities under social work and mental health legislation. This power has been exercised with the effect that persons provided with accommodation by a local authority under the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 are not charged in respect of personal and nursing care up to set figures. Since 1 April 2019 the rules in relation to free personal care have applied to all eligible adults regardless of age and there is no age limit in relation to free nursing care.

Payments for personal and nursing care to self-funders in care homes remained static at £145 per week for personal care and £65 per week for nursing care between 2002 and 2007. The Concordat had specifically included the commitment to increase the payments in line with inflation in 2008- 09, 2009-10 and 2010-11, and following agreement with COSLA a further inflationary increase was included as a specific commitment in the settlement agreement for 2011-12 and the increase applied from April 2011.

From 2011/12 to 2015/16 the payment rates were increased in line with inflation using the GDP Deflator. The following year 2016/17 was static due to forecasts of inflation rates being too high and Ministers agreed to keep to this rate for the year of 2017/18. For the years 2018/19 to 2020/21 Ministers approved payment rates to be increased once again in line with inflation using the GDP Deflator.

Emerging evidence in recent years shows that the cost of providing personal and nursing care has increased significantly and the payment made to providers by Local Authorities for self-funding residents has not kept pace with this. To help redress this it was decided to increase the weekly payment rates at levels above the GDP Deflator for 2021/22 and 2022/23. This resulted in increases

of 7.5% for 2021/22 and 10% for 2022/23. For 2023/24 it was again decided to make an above GDP Deflator increase of 9.5% to these rates.

It has been estimated that this increase will cost Local Authorities around £15 million. This will be funded by Scottish Government via the Local Government Settlement.

**Consultation**

Annual rises in these rates are routine. Prior to bringing these Regulations forward, the Cabinet Secretary for Health and Social Care and COSLA have been consulted.

**Impact Assessments**

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2022/23.

**Financial Effects**

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases, considered as part of the Budget process. Local Government will receive additional funds from the Scottish Government to cover the increased costs.

**Scottish Government**

**Social Care and National Care Service Development Directorate January 2023**