

Health, Social Care and Sport Committee
Tuesday 4 March 2025
7th Meeting, 2025 (Session 6)

Note by the Clerk on the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2025 [draft]

Overview

1. At this meeting, the Committee will take evidence from the Minister for Social Care, Mental Wellbeing and Sport and accompanying officials on the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2025 before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [The Community Care \(Personal Care and Nursing Care\) \(Scotland\) Amendment Regulations 2025](#) [draft]

Laid under: Sections 1(2)(a), 2 and 23(4) of the [Community Care and Health \(Scotland\) Act 2002](#)

Laid on: 27 January 2025

Procedure: Affirmative

Lead committee to report by: 16 March 2025

Commencement: If approved, the instrument comes into force on 1 April 2025

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 4 February 2025 and reported on it in its [10th Report, 2025](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

9. The purpose of the instrument is to increase the value of payments for free personal care and nursing care by 2.37%.
10. The policy note states that 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. To help redress this, the Scottish Government 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. For 2024/2025 the rates were increased by 6.68%; due to budgetary pressures it was not possible to make an above GDP Deflator increase.
11. The policy note further states that due to budgetary pressures, it was not possible to make an above GDP Deflator increase for 2025/26. The note explains that the rates will be increased by the GDP Deflator of 2.37% with rates increasing from £248.70 to £254.60 for personal care and increasing from £111.90 to £114.55 for nursing care.
12. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Report

13. A draft report has been pre-prepared and is circulated separately, as a private paper, for consideration later in the meeting.

Clerks to the Committee
March 2025

Annexe: Scottish Government Policy Note

POLICY NOTE

THE COMMUNITY CARE (PERSONAL CARE AND NURSING CARE) (SCOTLAND) AMENDMENT REGULATIONS 2025

SSI 2025/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 2025.

Summary Box

Purpose of Instrument

To increase the value of payments for free personal care and nursing care by 2.37%.

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. For 2024/2025 the rates were increased by 6.68%; due to budgetary pressures it was not possible to make an above GDP Deflator increase.

Due to budgetary pressures, it was not possible to make an above GDP Deflator increase for 2025/26. Therefore the rates will be increased by the GDP Deflator of 2.37% with rates increasing from £248.70 to £254.60 for personal care and increasing from £1111.90 to £114.55 for nursing care. The Scottish Government has budgeted £10 million for this purpose.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

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 2024/25.

Financial Effects

The Minister for Social Care, Mental Wellbeing and Sport confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

HSCS/S6/25/7/2

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 2025