POLICY NOTE

THE COMMUNITY CARE (PERSONAL CARE AND NURSING CARE) (SCOTLAND) AMENDMENT REGULATIONS 2026

SSI 2026/157

The above instrument will be made in exercise of the powers conferred by sections 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 2026.

Summary Box

Purpose of Instrument
To increase the value of payments for free personal care and nursing care by 2.23%.

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, 2022/23 and

2023/24. For 2024/2025 it was not possible to make an above GDP Delator increase due to budgetary pressures; the rates were increased by 6.68%.

Again, due to budgetary pressures, it was not possible to make an above GDP Deflator increase for 2025/26, the rates were increased by the GDP Deflator of 2.37%. The Scottish Government allocated £10 million for this purpose.

For 2026/27 the rates will again be increased by the GDP Deflator of 2.23%. The rate for personal care will increase from £254.60 to £260.30 and the rate for nursing care will increase from £114.55 to £117.10. The Scottish Government has budgeted £7 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 2026 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

A Child Rights and Wellbeing Impact Assessment has been completed on the Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2026. This impact assessment identified no children's impact issues.

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 2025/26.

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.

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
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