

DELEGATED POWERS AND LAW REFORM COMMITTEE

Instruments considered by the Committee during the first quarter of the parliamentary year 2018-19

QUARTER 1 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the first quarter of the parliamentary year 2018-19. The report sets out details of instruments considered by the Committee which were drawn to the attention of the Parliament during the reporting period on one or more of the reporting grounds set out in [Standing Orders](#). It also touches briefly on the commitments made by the Scottish Government and the Lord President's Private Office (LPPO) in response to the Committee's comments, and details any action that has been taken. In addition, the report briefly outlines the Committee's activity in respect of other matters within its remit.
2. This is the first quarterly report of the parliamentary year. It is intended to be more statistical than analytical and along with the subsequent quarterly reports will help inform the Committee's annual report which goes in to more detail on the work carried out by the Committee during the parliamentary year.
3. This particular report deals with SSIs considered by the Committee during the period 9 May 2018 to 17 September 2018.
4. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

5. During the period 9 May 2018 to 17 September 2018, a total of 63 instruments were considered by the Committee. Of these, 58 instruments were laid by the Scottish Government and 5 instruments were laid by the LPPO.
6. The 58 SSIs laid by the Scottish Government can be broken down as follows—
 - 14 affirmative instruments;
 - 34 negative instruments;
 - 8 laid only instruments;
 - 1 'super-affirmative' instrument;
 - 1 Code of Practice.¹
7. The 5 SSIs laid by the LPPO can be broken down as follows—
 - 1 negative instrument;
 - 4 laid only instruments.

¹ Laid for 40 days during which period the Scottish Parliament could have resolved that the code should not be issued.

Table 1: Instruments considered by the DPLR Committee during the period 9 May 2018 to 17 September 2018 reported on by the Committee

	Scottish Government			LPPO		
	Total SSIs	Total drawn to the Parliament's attention	%	Total SSIs	Total drawn to the Parliament's attention	%
Total	58	4(5) ²	<7% (<9%)	5	0	N/A

8. Table 1 shows that of the 58 Scottish Government instruments considered by the Committee, excluding the one SSI that was reported by the Committee under reporting ground (j), just 4 were drawn to the Parliament's attention, which is under 7% of instruments considered.

9. 46 instruments laid by the Scottish Government were considered by the Committee during the last quarter of the parliamentary year 2017-18 with the Parliament's attention drawn to 6 of these instruments (disregarding one instrument which was reported under reporting ground (j)) which was 13% of those considered.

10. **Accordingly, the results for this first quarter are a marked improvement on the numbers recorded at the end of the last reporting period.**

11. **No instruments laid by the LPPO were reported by the Committee in the course of this first quarter or during the last three quarters of the parliamentary year 2017-18.**

12. **ANNEX C** comprises graphics showing trends and comparisons between this reporting period and previous reports.

Withdrawal of instruments

13. The following draft affirmative instrument was withdrawn by the Scottish Government during this period on the recommendation of the lead committee (*Economy, Jobs and Fair Work*):

- Common Financial Tool (Scotland) Regulations 2018 [draft]

² The higher figure in brackets here and throughout the report includes those instruments that were reported under reporting ground (j) for breaching laying requirements. In each case, the Committee found the reason given by the Scottish Government for the breach to be acceptable so these instruments are excluded from the headline figure.

Reporting grounds

14. Under paragraph (a) of Rule 6.11 of Standing Orders, the Committee may determine that the attention of the Parliament should be drawn to an SSI on one or more of a range of technical and legal grounds. These grounds are set out in [Rule 10.3.1 of the Standing Orders](#).

Reporting grounds: significant

15. The Committee considers some reporting grounds to be of more significance than others. The Committee has therefore determined that it has particular concerns where an instrument is drawn to the attention of the Parliament on one of the following grounds—

- ground **(e)** – doubt as to whether it is intra vires;
- ground **(f)** – raises a devolution issue; and
- ground **(i)** – drafting appears to be defective.

16. These are referred to as *the significant reporting grounds*. The Committee considers every report under one of these grounds to be a serious matter as these raise fundamental legal questions and so there is the potential for the validity of the instrument to be questioned.

17. The following table details the instruments reported on broken down by reporting ground:

**Table 2: Instruments reported on broken down by ground
(No SSIs were reported on under grounds other than those listed below)**

Reporting Ground	Number of SSIs reported	
	Scottish Government	LPPO
(f) raises a devolution issue	1	0
(h) meaning could be clearer	1	0
(h) and the General ground	2	0
(j) failure to comply with laying requirements	1	0

18. **This quarter, just one Scottish Government instrument was drawn to the attention of the Parliament under one of the significant reporting grounds - ground (f) for raising a devolution issue. The previous reporting period (when fewer instruments were considered) saw 3 Scottish Government instruments reported under the more serious grounds.**

Subject committees

19. The following table provides a breakdown of the instruments referred to, and reported on, by subject committee.

Table 3: Instruments reported on, broken down by subject committee

Committee	Scottish Government		LPPO	
	Total SSIs	Total reported	Total SSIs	Total reported
Local Government and Communities	10	1		
Justice	10	0	5	0
Rural Economy and Connectivity	11	0(1)		
Health and Sport	7	0		
Environment, Climate Change and Land Reform	7	1		
Economy, Jobs and Fair Work ³	3	0		
Finance and Constitution	3	0		
Education and Skills	2	0		
Social Security	5	2		
TOTAL	58	4(5)	5	0

³ The Economy, Jobs and Fair Work Committee became the Economy, **Energy** and Fair Work Committee on 9 September 2018 following parliamentary approval of motion S5M-13781

Summary: subject committees

20. During this reporting period, the Rural Economy and Connectivity Committee had referred to them the largest number of Scottish Government instruments, looking at eleven in total. Notwithstanding one instrument which was reported for breaching laying requirements, none of the instruments were drawn to the attention of the Parliament by the Committee. Including those laid by the LPPO, the Justice Committee were referred fifteen instruments - almost a quarter of the overall number of instruments that were considered this period.

Rural Economy and Connectivity Committee

21. The Rural Economy and Connectivity Committee was referred one instrument which was drawn to the Parliament's attention for breaching laying requirements (reporting ground **(j)**). The Committee was content with the reason given by the Scottish Government for non-compliance.

Local Government and Communities Committee

22. One instrument referred to the Local Government and Communities Committee was drawn to the Parliament's attention under the **general** reporting ground and for lack of clarity (reporting ground **(h)**). The Scottish Government commitment to correct the errors identified by way of correction slip remains outstanding.

Social Security Committee

23. Two instruments referred to the Social Security Committee were drawn to the attention of the Parliament; one under reporting ground **(f)** in that it raised a devolution issue, and the other under reporting ground **(h)**. Despite the apparent lack of clarity in the latter instrument, no commitment to correct was forthcoming from the Scottish Government.

Environment, Climate Change and Land Reform Committee

24. One instrument referred to the Environment, Climate Change and Land Reform Committee was drawn to the Parliament's attention under the **general** reporting ground and for lack of clarity (reporting ground **(h)**). The instrument in question was a 'super-affirmative' and the Scottish Government have committed to correcting the errors identified in the next set of draft Regulations.

Other Committees

25. No other subject committees were referred instruments that were drawn to the attention of the Parliament by the Committee. Information detailing specific SSIs and the grounds that they were reported on is provided in **Annex A**.

SCOTTISH STATUTORY INSTRUMENTS - GENERAL

Commitments

Scottish Government instruments

26. In terms of the Scottish Government committing to the laying of amending instruments to correct errors identified and reported on by the Committee, the following amending instruments were laid during this period:

- Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (SSI 2018/164) **corrected errors identified in the Tuberculosis in Specified Animals (Scotland) Order 2015 (SSI 2015/327)**
- Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2018 (SSI 2018/171) **corrected errors identified in the Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180)**
- Sheriff Court Fees Amendment Order 2018 (SSI 2018/194) **corrected errors identified in Sheriff Court Fees Order 2018 (SSI 2018/81)**

27. There is one outstanding Scottish Government commitment in terms of the instruments that were laid this quarter:

- Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141) **to be corrected by way of correction slip**

28. A list of all outstanding Scottish Government commitments can be found at **Annex B**.

LPPO instruments

29. There are no outstanding LPPO commitments from this quarter, or from previous reporting periods.

Minor Points

30. The Committee identified a total of 13 instruments on which minor points were raised (generally relating to typographical or referencing errors). 11 of these instruments were laid by the Scottish Government and 2 were laid by the LPPO.

OTHER BUSINESS

Introduction

31. Although the focus of this report is primarily on the Committee's activities in relation to its scrutiny of instruments, the following section briefly outlines the Committee's activity in respect of other matters.

Bills

Prescription (Scotland) Bill

32. As lead committee for the Bill, the Committee published its [Stage 1 report](#) on 14 June 2018.

Other Bills

33. The Committee published reports on the following Bills at Stage 1:

- [Management of Offenders \(Scotland\) Bill](#);
- [Age of Criminal Responsibility \(Scotland\) Bill](#).

34. The Committee published reports on the following Bills after Stage 2:

- [Islands \(Scotland\) Bill](#);
- [Housing \(Amendment\) \(Scotland\) Bill](#);
- [Historical Sexual Offences \(Pardons and Disregards\) \(Scotland\) Bill](#).

Legislative Consent Memorandums

Trade Bill (UK Parliament legislation)

35. Oral evidence on the Legislative Consent Memorandum (LCM) relating to the Trade Bill was taken in early September from both the relevant UK Government Minister and the Cabinet Secretary for Government Business and Constitutional Relations.

(f) raises a devolution issue

- Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2018 (SSI 2018/211) **Social Security**

(h) meaning could be clearer

- Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] (SG/2018/103) **Environment, Climate Change and Land Reform**
- Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141) **Local Government and Communities**
- Scotland Act 1998 (Agency Arrangements) (Specification) Order 2018 (SI 2018/626) **Social Security**

(j) failure to comply with laying requirements

- Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 (SSI 2018/202) **Rural Economy and Connectivity**

General reporting ground

- Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] (SG/2018/103) **Environment, Climate Change and Land Reform**
- Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141) **Local Government and Communities**

ANNEX B - OUTSTANDING COMMITMENTS

Outstanding Scottish Government commitments

- Marketing of Horticultural Produce (Scotland) Amendment Regulations 2011 (SSI 2011/324) *to be amended at the earliest available opportunity*
- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228) *to be amended in due course*
- Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013 (SSI 2013/151) *to be amended at the next available opportunity*
- Sulphur Content of Liquid Fuels (Scotland) Regulations 2014 (SSI 2014/258) *to be amended in due course*
- Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015 (SSI 2015/105) *to be corrected when the principal scheme is next amended*
- Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015 (SSI 2015/166) *to be corrected at the next appropriate opportunity*
- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) *to be corrected as soon as is reasonably practical*
- Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75) *to be corrected in a future amending instrument*
- Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84) *to be corrected at the next convenient legislative opportunity*
- Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126) *to be corrected at the next available opportunity*
- Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190) *to be corrected at the earliest available opportunity*
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27) *to be corrected when the Regulations are next amended*
- Teachers' Superannuation and Pension Scheme (Additional Voluntary Contributions) (Scotland) Regulations 2017 (SSI 2017/283) *to be corrected in the next set of regulations to include amendments of this instrument*
- Police Pension Scheme (Scotland) Amendment Regulations 2017 (SSI 2017/387) *to be corrected at the first legislative opportunity to do so*
- Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7) *to be corrected in the next amending instrument*

Outstanding Scottish Government commitments from this quarter

- Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141) *to be corrected by way of correction slip*

ANNEX C - GRAPHICS AND CHARTS

Line graph showing the number of outstanding Scottish Government commitments as at the end of each of the last three reporting periods (quarterly reports)

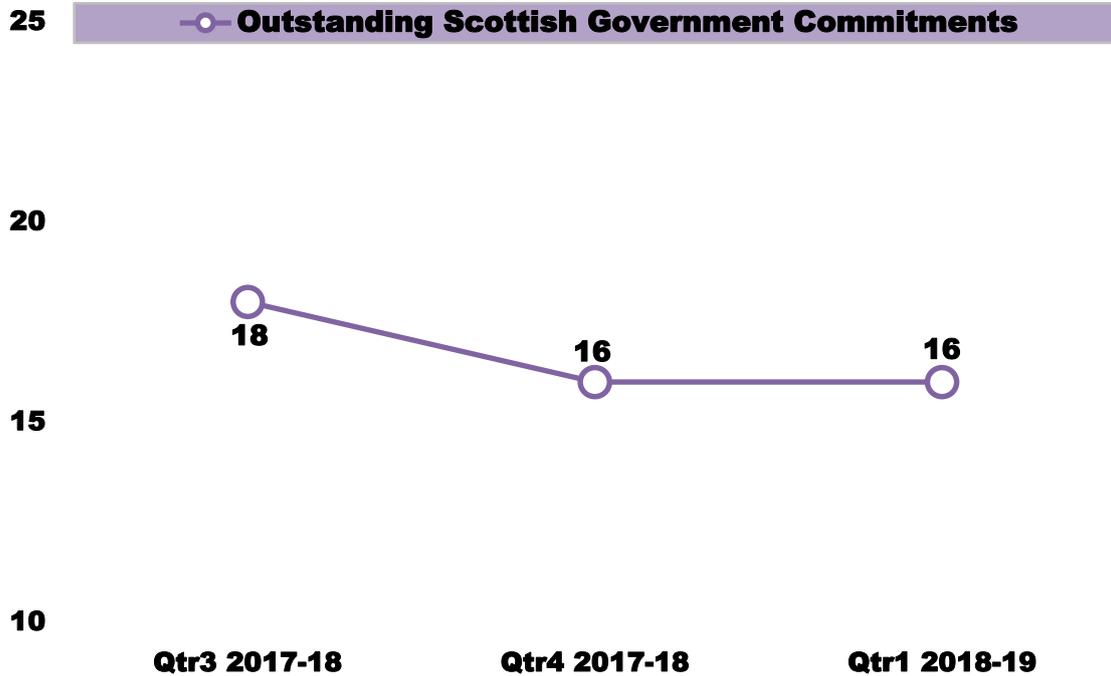
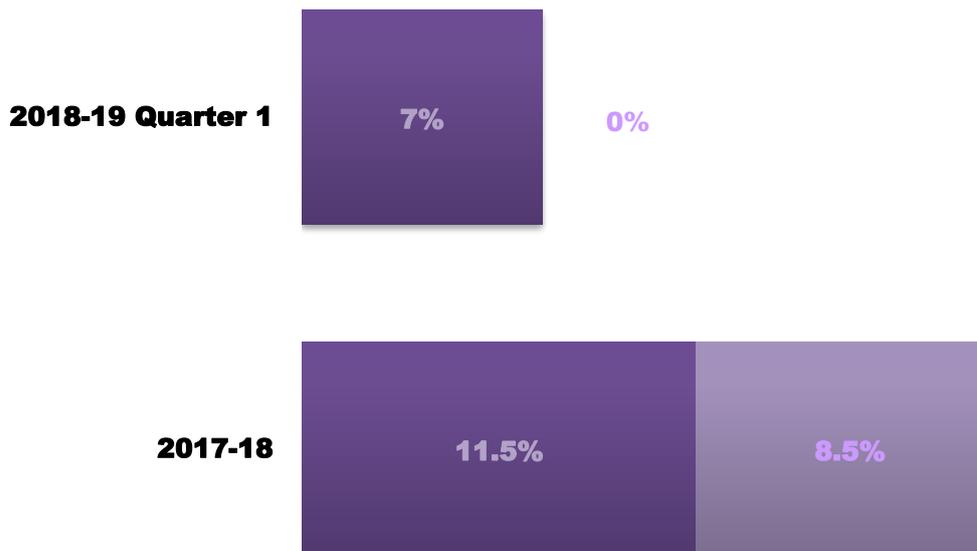
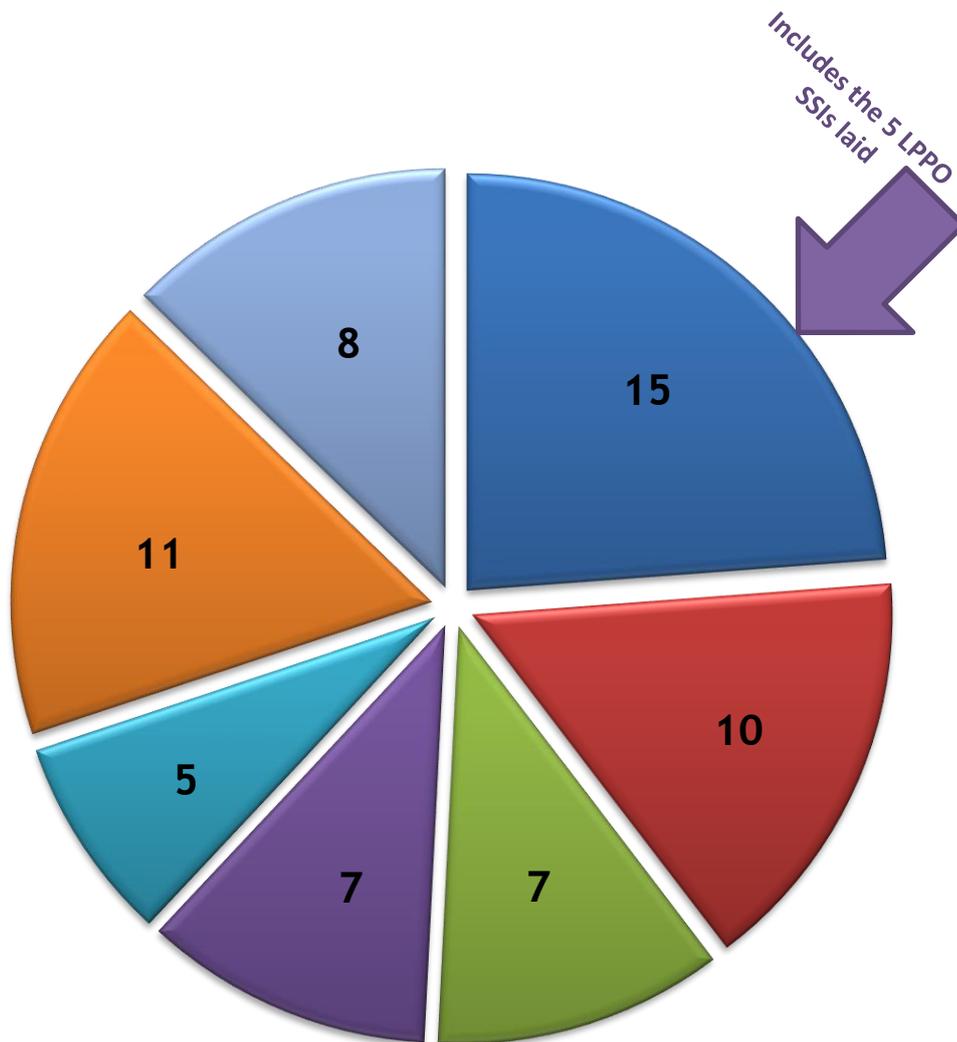


Chart showing the % of SSIs reported on during the first quarter of this parliamentary year compared to the last parliamentary year as a whole

Scottish Government SSIs and LPPO SSIs



Number of instruments that were referred to the various subject committees during the first quarter of the parliamentary year 2018-19



- **Justice**
- **Local Government and Communities**
- **Environment, Climate Change and Land Reform**
- **Health and Sport**
- **Social Security**
- **Rural Economy and Connectivity**
- **Others**