

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

QUARTER 2 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the second 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 second 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 18 September 2018 to 3 December 2018.
4. The report also touches briefly on the general work of the Committee during this quarter.

Overview and Analysis

5. During the period 18 September 2018 to 3 December 2018, a total of 39 instruments were considered by the Committee. Of these, 38 instruments were laid by the Scottish Government and 1 instrument was laid by the LPPO.
6. The 38 SSIs laid by the Scottish Government can be broken down as follows—
 - 10 affirmative instruments;
 - 25 negative instruments;
 - 3 laid only instruments.
7. The 1 SSI laid by the LPPO was a laid only instrument.

Table 1: Instruments considered by the DPLR Committee during the period 18 September 2018 to 3 December 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	38	3	<8%	1	0	N/A

8. Table 1 shows that of the 38 Scottish Government instruments considered by the Committee, only 3 were drawn to the Parliament's attention, which is just under 8% of instruments considered.

9. 58 instruments laid by the Scottish Government were considered by the Committee during the first quarter of the current parliamentary year with the Parliament's attention drawn to 4 of these instruments (disregarding one instrument which was reported under reporting ground (j)) which was around 7% of those considered.

10. **Accordingly, the results for this second quarter are very similar to quarter one in terms of the percentage of instruments reported by the Committee - notwithstanding the fact that the overall number of instruments considered this quarter is comparatively low.**

11. **The Committee was content with the one instrument laid by the LPPO this quarter and it has now been five consecutive reporting periods since an LPPO instrument was reported by the Committee.**

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

Withdrawal of instruments

13. The following draft affirmative instruments were withdrawn by the Scottish Government during this period—

- First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft];¹
- Agricultural Holdings (Scotland) Act 1991 (Variation of schedule 5) Order 2018 [draft];²
- Common Financial Tool (Scotland) Regulations 2018 [draft].³

¹ Withdrawn and re-laid after being considered by the Committee.

² Withdrawn and re-laid prior to consideration by the Committee following issues raised with the Scottish Government by the Committee's legal advisers.

³ Withdrawn following concerns raised by the Economy, Energy and Fair Work Committee.

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
(i) drafting appears to be defective	1	0
(e) doubt as to whether it is intra vires	1	0
(h) <u>and</u> the General ground	1	0

18. **This quarter, 2 of the 3 Scottish Government instruments reported were done so under one of the significant reporting grounds. Last 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 which the Committee have since agreed not to broach going forward.**

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	3	0		
Justice	3	0	1	0
Rural Economy and Connectivity	8	0		
Health and Sport	1	0		
Environment, Climate Change and Land Reform	1	0		
Economy, Energy and Fair Work	4	0		
Finance and Constitution	2	0		
Education and Skills	3	0		
Social Security	12	3		
Equalities and Human Rights	1	0		
TOTAL	38	3	1	0

Summary: subject committees

Social Security Committee

20. During this reporting period, almost a third of Scottish Government instruments considered were referred on to the Social Security Committee with three of those drawn to the attention of the Parliament; one under reporting ground **(i)** in that it was defectively drafted, one under reporting ground **(h)** and the **general** ground and the other under reporting ground **(e)**. This latter instrument was withdrawn and re-laid, and in terms of the commitments given to correct the errors identified in the other two, one was met and one remains outstanding.

Other Committees

21. 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

22. 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—

- First-tier Tribunal for Scotland Social Security Chamber (Rules of Procedure) Amendment Regulations 2018 (SSI 2018/343) **corrected errors identified in the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (SSI 2015/273)**

23. The Scottish Government also withdrew and re-laid the draft First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 which corrected errors in the draft as initially laid despite not giving a commitment to do so.

24. During this period, it was also determined that the commitment given to correct the error identified in the *Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013 (SSI 2013/151)* was no longer required to be met since the erroneous provision is no longer in force. The correction needed in schedule 3 of that instrument was repealed by the *Animal Health (Miscellaneous Fees) (Scotland) Regulations (SSI 2018/177)*.

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

- Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (SSI 2018/295) **to be corrected in the next instrument which deals with council tax reduction (likely early 2019)**

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

LPPO instruments

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

Minor Points

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

OTHER BUSINESS

29. 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

30. Stage 2 proceedings took place on 25 September 2018 before the Bill was considered at Stage 3 on 8 November 2018 when the Bill was passed by motion of the Parliament.

Other Bills

31. The Committee published reports on the following bills at Stage 1—

- [Health and Care \(Staffing\) \(Scotland\) Bill](#);
- [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Bill](#);
- [Children \(Equal Protection from Assault\) \(Scotland\) Bill](#);
- [Damages \(Investment Returns and Periodical Payments\) \(Scotland\) Bill](#);
- [Restricted Roads \(20 mph Speed Limit\) \(Scotland\) Bill](#);
- [Census \(Amendment\) \(Scotland\) Bill](#);
- [Human Tissue \(Authorisation\) \(Scotland\) Bill](#);
- [Transport \(Scotland\) Bill](#);
- [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill](#).

32. The Committee published a report on the following bill after Stage 2—

- [Scottish Crown Estate Bill](#).

Legislative Consent Memorandums

33. The Committee published reports on the following Legislative Consent Memorandums—

- [Trade Bill \(UK Parliament legislation\)](#);
- [Offensive Weapons Bill \(UK Parliament legislation\)](#);
- [Counter-Terrorism and Border Security Bill \(UK Parliament legislation\)](#).

Annual Report 2017-18

34. The Committee agreed and published its report on the [Work of the Delegated Powers and Law Reform Committee in 2017-18](#).

ANNEX A - REPORTING GROUNDS: 18 SEPTEMBER 2018 to 3 DECEMBER 2018

(e) doubt as to whether it is intra vires

- First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft] **Social Security**

(h) meaning could be clearer

- First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (SSI 2018/273) **Social Security**

(i) drafting appears to be defective

- Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (SSI 2018/295) **Social Security**

General reporting ground

- First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (SSI 2018/273) **Social Security**

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

Outstanding Scottish Government commitments from this quarter

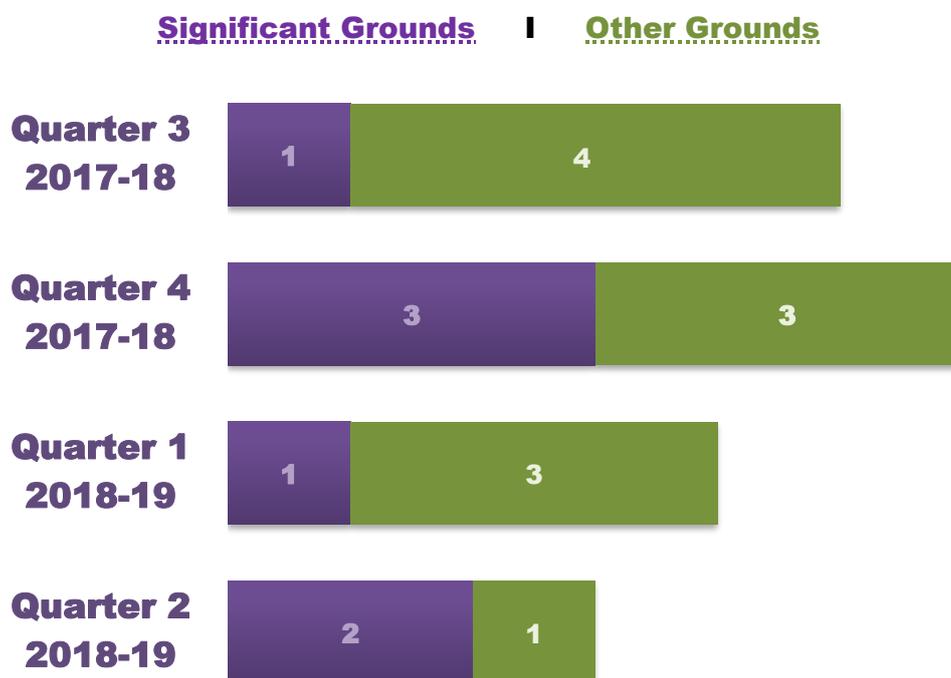
- Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (SSI 2018/295) *to be corrected in the next instrument which deals with council tax reduction (likely early 2019)*

ANNEX C - GRAPHICS AND CHARTS

Line chart showing the number of Scottish Government instruments considered by the Committee over the course of the last 4 reporting periods

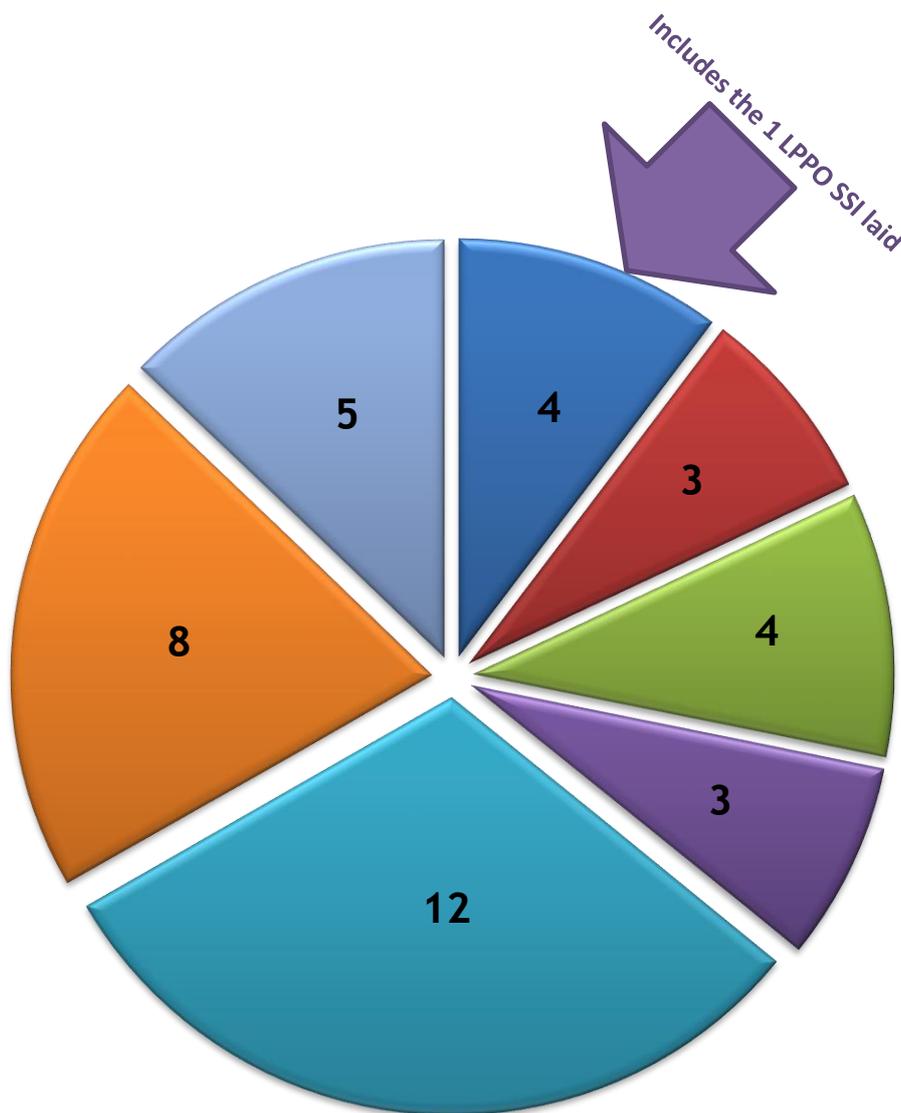


Chart showing the number of Scottish Government SSIs reported under the 'significant' grounds and 'other' reporting grounds⁴ over the last 12 months



⁴ Excluding reporting ground (j) for breaching laying requirements

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



- **Justice**
- **Local Government and Communities**
- **Economy, Jobs and Fair Work**
- **Education and Skills**
- **Social Security**
- **Rural Economy and Connectivity**
- **Others**