

## DELEGATED POWERS AND LAW REFORM COMMITTEE

### Instruments considered by the Committee during the first quarter of the parliamentary year 2017-18

#### 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 2017-18. 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 following on from the Committee agreeing to continue to produce both quarterly and annual reports throughout this session.
3. The report 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.
4. This particular report deals with SSIs considered by the Committee during the period 10 May 2017 to 18 September 2017.
5. The report also touches briefly on the general work of the Committee during this quarter.

#### Overview and analysis

6. During the period 10 May 2017 to 18 September 2017, a total of 68 instruments were considered by the Committee. Of these, 55 instruments were laid by the Scottish Government and 13 instruments were laid by the LPPO.
7. The 55 SSIs laid by the Scottish Government can be broken down as follows—
  - 14 affirmative instruments;
  - 31 negative instruments;
  - 10 laid only instruments.
8. The 13 SSIs laid by the LPPO can be broken down as follows—
  - 1 negative instrument;
  - 12 laid only instruments.

**Table 1: Instruments considered by the DPLR Committee during the period 10 May 2017 to 18 September 2017 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	55	7(11) <sup>1</sup>	13% (20%)	13	2	15%

9. Table 1 shows that of the 55 Scottish Government instruments considered by the Committee, notwithstanding the 4 that were reported by the Committee under reporting ground (j), 7 were drawn to the Parliament's attention, which is just under 13% of instruments considered.

10. 50 instruments laid by the Scottish Government were considered by the Committee during the last quarter of the parliamentary year 2016-17 with the Parliament's attention drawn to 6 of these instruments (disregarding 3 instruments which were reported under reporting ground (j)) which was 12% of those considered.

11. The results for this reporting period are accordingly very similar to those recorded at the end of the last reporting period with a comparable number of instruments laid and a similar number reported on.

12. 6 instruments laid by the LPPO were considered by the Committee during the last quarter of the parliamentary year 2016-17 with the Parliament's attention drawn to just one of them. This quarter, 2 of the 13 LPPO instruments considered by the Committee were drawn to the attention of the Parliament.

13. This illustrates that the Committee considered more than double the number of instruments laid by the LPPO this quarter compared to last with just one additional report.

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

### Withdrawal of instruments

15. The following draft affirmative instrument was withdrawn by the Scottish Government during this period. It was *not* re-laid:

- Mental Health (Safeguards for Certain Informal Patients) (Scotland) Amendment Regulations 2017 [draft].

<sup>1</sup> 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

16. 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

17. 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.

18. 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.

19. 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)**

Ground	Scottish Government		LPPO	
	No.	% of all SSIs laid (55)	No.	% of all SSIs laid (13)
<b>(i)</b> drafting appears to be defective	1	<2%	0	N/A
<b>(g)</b> unusual or unexpected use of powers	1	<2%	0	N/A
<b>(h)</b> meaning could be clearer	3	>5%	0	N/A
<b>(h)</b> <u>and</u> the <b>General</b> ground	1	<2%	0	N/A
<b>General</b> ground (e.g. failures to follow proper drafting practice or legislative process)	1	<2%	2	15%
<b>(j)</b> failure to comply with laying requirements	4	>7%	0	N/A

20. This quarter, just one instrument was drawn to the attention of the Parliament for being defectively drafted - significant ground **(i)** - whilst the previous reporting period (when fewer instruments were considered) saw 3 Scottish Government instruments reported under the more serious grounds.

21. One instrument laid by the LPPO last quarter was reported for being defectively drafted - significant ground **(i)** - whereas this quarter, both LPPO instruments were reported under the far less significant general ground.

## Subject committees

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

**Table 3: Instruments reported on by subject committee**

Committee	Scottish Government			LPPO		
	Total SSIs	Total reported	% of SSIs considered that were reported on	Total SSIs	Total reported	% of SSIs considered that were reported on
Local Government and Communities	7	1(3)	43%			
Justice	10	1	10%	13	2	15%
Rural Economy and Connectivity	5	1	20%			
Health and Sport	15	0	N/A			
Environment, Climate Change and Land Reform	5	1(3)	60%			
Economy, Jobs and Fair Work	2	0	N/A			
Finance and Constitution	1	0	N/A			
Education and Skills	8	2	25%			
Social Security	1	1	100%			
SPPA	1	0	N/A			
<b>TOTAL</b>	<b>55</b>	<b>7(11)</b>	<b>13%</b>	<b>13</b>	<b>2</b>	<b>15%</b>

## **Summary: subject committees**

23. During this reporting period, the Health and Sport Committee had referred to them the largest number of Scottish Government instruments, looking at fifteen in total. None of those instruments were drawn to the attention of the Parliament by the Committee. Including those laid by the LPPO, the Justice Committee were referred twenty-three instruments - more than a third of the overall number of instruments that were considered this quarter.

### ***Rural Economy and Connectivity Committee***

24. One Scottish Government instrument referred to the Rural Economy and Connectivity Committee was drawn to the Parliament's attention for being defectively drafted (reporting ground **(i)**). The Scottish Government acknowledge the drafting error but has thus far declined to take the corrective action recommended by the Committee.

### ***Local Government and Communities Committee***

25. Two of the three instruments referred to the Local Government and Communities Committee that were drawn to the Parliament's attention were done so for breaching laying requirements (reporting ground **(j)**). One of these met a Scottish Government commitment to correct another reported instrument which was drawn to the attention of the Parliament under the general ground.

### ***Education and Skills Committee***

26. One instrument referred to the Education and Skills Committee was drawn to the attention of the Parliament under both the general ground and reporting ground **(h)**. The Scottish Government commitment to correct the errors identified remains outstanding. A further education related instrument was reported under reporting ground **(g)** - unusual or unexpected use of powers.

### ***Environment, Climate Change and Land Reform Committee***

27. Two of the three instruments referred to the Environment, Climate Change and Land Reform Committee that were drawn to the Parliament's attention were done so for breaching laying requirements (reporting ground **(j)**). The other instrument was reported under reporting ground **(h)** in that its meaning could be clearer. The laying of this instrument did however fulfil a commitment given to correct errors identified in a number of instruments considered by the Committee towards the end of the previous parliamentary year.

### ***Justice Committee***

28. One of the ten instruments laid by the Scottish Government and referred to the Justice Committee this quarter was drawn to the attention of Parliament under reporting ground **(h)**. No corrective action is proposed in spite of the Committee's recommendation. The two LPPO instruments reported by the Committee were done so under the general ground. The LPPO has met one of the commitments given to correct the errors identified.

### ***Social Security Committee***

29. One instrument referred to the Social Security Committee was drawn to the attention of the Parliament under reporting ground **(h)**. No commitment was given by the Scottish Government to clarify the meaning of the instrument.

### ***Other Committees***

30. 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**.

**Commitments**

31. 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:

- Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/149) **corrected errors identified in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120)**
- Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/168) **corrected errors identified in the:**
  - **Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/101)**
  - **Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102)**
  - **Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/113)**
  - **Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/114)**
  - **Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115)**
- Seed (Fees etc.) (Scotland) Regulations 2017 (SSI 2017/179) **corrected errors identified in the:**
  - **Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68)**
  - **Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434)**
- Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180) **corrected errors identified in the Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82)**
- Building (Miscellaneous Amendments) (Scotland) Amendment Regulations 2017 (SSI 2017/214) **corrected errors identified in the Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188)**
- Renewables Obligation (Scotland) Amendment Order 2017 [draft] **corrected errors identified in the Renewables Obligation (Scotland) Amendment Order 2015 [draft]**
- Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (SSI 2017/282) **corrected errors identified in the Private and Public Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/346)**

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

- Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180) **to be corrected when regulations are next made in the area of student support**

## **LPPO instruments**

33. In terms of the LPPO 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:

- Act of Sederunt (Rules of the Court of Session 1994 and Summary Application Rules 1999 Amendment) (Miscellaneous) 2017 (SSI 2017/242) **corrected errors identified in the Act of Sederunt (Summary Application Rules 1999 Amendment) (Trafficking and Exploitation Orders) 2017 (SSI 2017/211)**
- Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Miscellaneous) 2017 (SSI 2017/251) **corrected an error identified in the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2017 (SSI 2017/144)**

34. There are no outstanding LPPO commitments.

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

### **Minor Points**

36. The Committee identified a total of 22 instruments on which minor points were raised (generally relating to typographical or referencing errors). 17 of these instruments were laid by the Scottish Government and 5 were laid by the LPPO.

## OTHER BUSINESS

### Introduction

37. 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

#### Contract (Third Party Rights) (Scotland) Bill

38. The Committee published its Stage 1 report on the Bill on 12 May 2017. Minor amendments were made to the Bill at Stage 2 which took place on 27 June 2017. The Bill would be passed following Stage 3 in late September.

#### Other Bills

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

- Wild Animals in Travelling Circuses (Scotland) Bill;
- Forestry and Land Management (Scotland) Bill.

#### Business Planning Day/European Union (Withdrawal) Bill

40. The Committee held a Business Planning day on 29 August 2017 at which it was agreed to issue a call for evidence on the Legislative Consent Memorandum (LCM) relating to the UK Parliament's European Union (Withdrawal) Bill.

41. The LCM was introduced by the Scottish Government on 12 September 2017 and the Committee issued its call for evidence that same week.

#### Social Media [DPLR Committee](#)

42. The Committee now has 177 followers on Twitter - an increase of around 100 since publication of the Committee's last quarterly report.

**(g) unusual or unexpected use of powers**

- Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 (SSI 2017/182) **Education and Skills**

**(i) drafting appears to be defective**

- M90/A90 Trunk Road (Admiralty Interchange to Dalmeny) (Variable Speed Limits, Actively Managed Hard Shoulder and Bus Lane) Regulations 2017 (SSI 2017/129) **Rural Economy and Connectivity**

**(h) meaning could be clearer**

- Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Commencement No. 3, Transitional and Saving Provisions) Regulations 2017 (SSI 2017/155 (C.13)) **Justice**
- Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/168) **Environment, Climate Change and Land Reform**
- Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180) **Education and Skills**
- Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2016/227) **Social Security**

**(j) failure to comply with laying requirements**

- Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/149) **Local Government and Communities**
- Loch Carron Urgent Marine Conservation Order 2017 (SSI 2017/158) **Environment, Climate Change and Land Reform**
- Loch Carron Urgent Marine Conservation (No. 2) Order 2017 (SSI 2017/205) **Environment, Climate Change and Land Reform**
- Building (Miscellaneous Amendments) (Scotland) Amendment Regulations 2017 (SSI 2017/214) **Local Government and Communities**

**General reporting ground**

- Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180) **Education and Skills**
- Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188) **Local Government and Communities**

**LPPO instruments**

- Act of Adjournment (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2017 (SSI 2017/144) **Justice**
- Act of Sederunt (Summary Application Rules 1999 Amendment) (Trafficking and Exploitation Orders) 2017 (SSI 2017/211) **Justice**

## 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*
- Tuberculosis in Specified Animals (Scotland) Order 2015 (SSI 2015/327) *to be corrected in due course*
- Seed Potatoes (Scotland) Regulations 2015 (SSI 2015/395) *to be corrected at the next available opportunity*
- National Health Service (General Dental Services) (Scotland) Amendment Regulations 2016 (SSI 2016/53) *to be corrected early in the next parliamentary session*
- 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*

**Outstanding Scottish Government commitments from this quarter**

- Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180) *to be corrected when regulations are next made in the area of student support*

**Outstanding LPPO commitments**

- None

## 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)

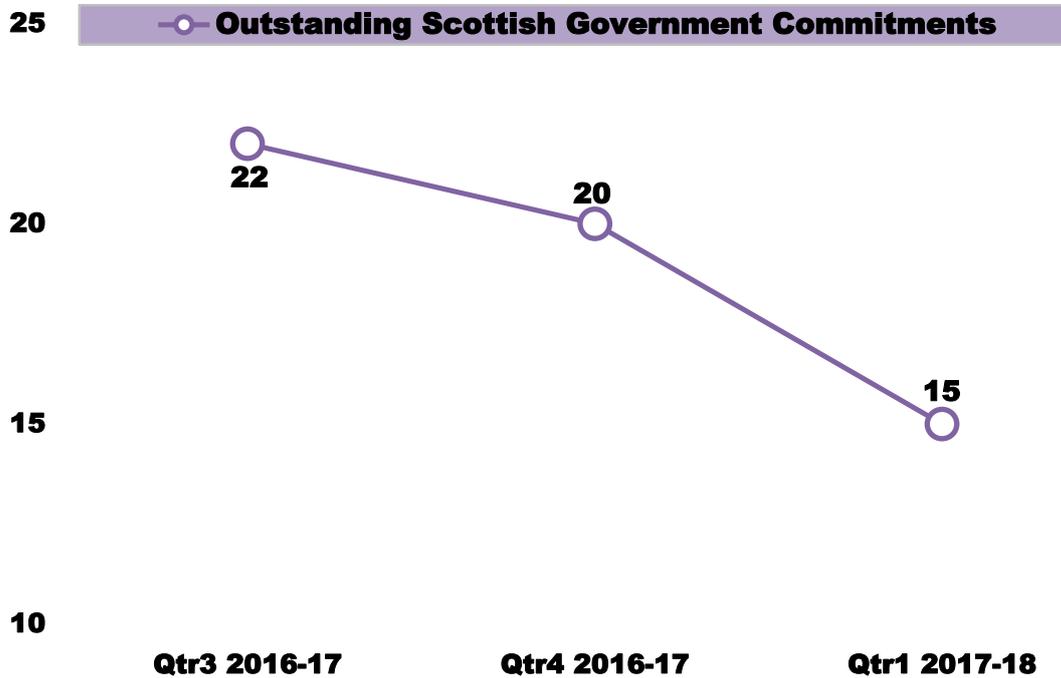
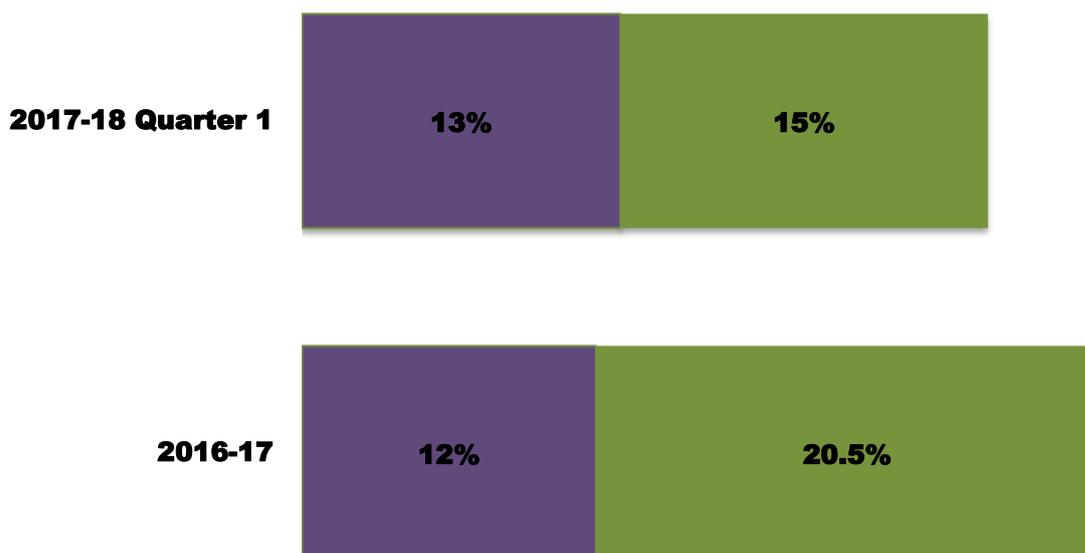
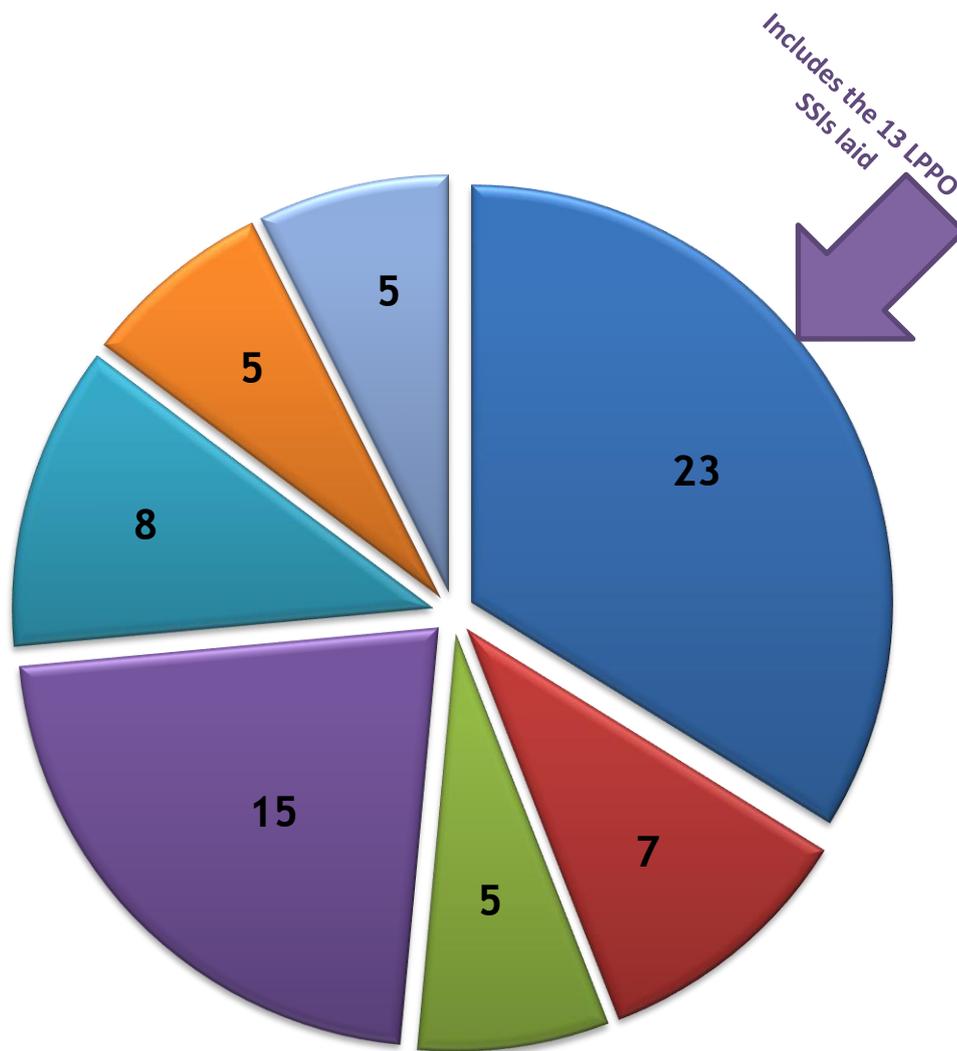


Chart showing the % of SSIs reported on during the first quarter of this parliamentary year compared to the last parliamentary year as a whole

### 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 2017-18**



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