

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

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 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 second quarterly report of the parliamentary year.
3. The quarterly reports are intended to be more statistical than analytical and 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 19 September 2017 to 4 December 2017.
5. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

6. During the period 19 September 2017 to 4 December 2017, a total of 87 instruments were considered by the Committee. Of these, 83 instruments were laid by the Scottish Government and 4 instruments were laid by the LPPO.
7. The 83 SSIs laid by the Scottish Government can be broken down as follows—
 - 2 '*super-affirmative*' instruments
 - 25 affirmative instruments;
 - 46 negative instruments;
 - 10 laid only instruments.
8. The 4 SSIs laid by the LPPO can be broken down as follows—
 - 1 negative instrument;
 - 3 laid only instruments.

Table 1: Instruments considered by the DPLR Committee during the period 19 September 2017 to 4 December 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	83	13(15) ¹	16% (18%)	4	0	N/A

9. Table 1 shows that of the 83 Scottish Government instruments considered by the Committee, notwithstanding the 2 that were reported by the Committee under reporting ground (j) alone, 13 were drawn to the Parliament's attention which is just under 16% of instruments considered.

10. 55 instruments laid by the Scottish Government were considered by the Committee during the first quarter of the parliamentary year with the Parliament's attention drawn to 7 of these instruments (disregarding 4 instruments which were reported under reporting ground (j)) which was 13% of those considered.

11. The results for this reporting period compared to last show a marked increase in the number of Scottish Government instruments considered by the Committee, with a larger percentage of those instruments drawn to the attention of the Parliament.

12. The first quarter of the parliamentary year saw 2 of the 13 LPPO instruments considered by the Committee drawn to the attention of the Parliament. This quarter, there were only 4 LPPO instruments considered and none of these engaged any of the reporting grounds set out in Standing Orders.

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

Withdrawal of instruments

14. The following draft affirmative instrument was withdrawn and re-laid *twice* by the Scottish Government during this period:

- First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Cases and Upper Tribunal for Scotland (Composition) Regulations 2018 [draft].

¹ 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

15. 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

16. 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.

17. 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.

18. 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 (83)	No.	% of all SSIs laid (4)
(i) drafting appears to be defective	1	<2%	0	N/A
(e) there appears to be a doubt as to intra vires (i) (h) and General	1	<2%	0	N/A
(i) and (h)	1	<2%	0	N/A
(f) raises a devolution issue	1	<2%	0	N/A
(f) and (j)	1	<2%	0	N/A
(g) unusual or unexpected use of powers	1	<2%	0	N/A
(h) meaning could be clearer	2	>2%	0	N/A
General ground (e.g. failures to follow proper drafting practice or legislative process)	5	>6%	0	N/A
(j) failure to comply with laying requirements	2	>2%	0	N/A

19. Last quarter, just one instrument was drawn to the attention of the Parliament for being defectively drafted - significant ground **(i)** - whilst this reporting period saw 5 Scottish Government instruments reported under the more serious grounds - with one instrument alone engaging two such grounds, **(e)** and **(i)**.

Subject committees

20. 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	10	2	20%			
Justice	25	4	16%	4	0	N/A
Rural Economy and Connectivity	15	2(3)	13% (20%)			
Health and Sport	7	0	N/A			
Environment, Climate Change and Land Reform	11	1(2)	9% (18%)			
Economy, Jobs and Fair Work	3	0	N/A			
Finance and Constitution	1	0	N/A			
Education and Skills	8	2	25%			
Social Security	3	2	66%			
TOTAL	83	13(15)	16% (18%)	4	0	N/A

Summary: subject committees

Justice Committee

21. Four instruments laid by the Scottish Government and referred to the Justice Committee this quarter were drawn to the attention of the Parliament - three under the general reporting ground. Two of the three commitments to correct the errors identified were met, as was the commitment given to correct a further instrument which was reported under four separate grounds including the significant reporting grounds **(e)** and **(i)**.

Rural Economy and Connectivity Committee

22. 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 commitment to correct the drafting error was quickly met. One instrument was drawn to the Parliament's attention for breaching laying requirements (reporting ground **(j)**) with another reported under reporting ground **(h)** in that its meaning could be clearer.

Local Government and Communities Committee

23. One of the two instruments referred to the Local Government and Communities Committee that were drawn to the attention of the Parliament was done so under the rarely engaged ground **(g)** for an unexpected use of powers. The commitment given to correct the discrepancy was met. An affirmative instrument was drawn to the Parliament's attention under reporting ground **(h)** and the commitment given to clarify the meaning of that instrument remains outstanding.

Education and Skills Committee

24. Two instruments referred to the Education and Skills Committee were drawn to the attention of the Parliament under the general reporting ground. The Scottish Government gave a commitment to correct the errors identified in both of those instruments and one of those commitments remains outstanding.

Environment, Climate Change and Land Reform Committee

25. One of the two instruments that were drawn to the Parliament's attention and referred to the Environment, Climate Change and Land Reform Committee was done so for being defectively drafted (reporting ground **(i)**). The commitment given to correct the errors identified was quickly met although the amending instrument was reported under reporting ground **(j)** for breaching laying requirements.

Social Security Committee

26. Two instruments referred to the Social Security Committee were drawn to the attention of the Parliament under significant reporting ground **(f)** in that they raised a devolution issue.

Other Committees

27. 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

28. 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:

- Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 (SSI 2017/285) **corrected errors identified in the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2016 (SSI 2016/187)**
- National Health Service (General Dental Services) (Scotland) Amendment Regulations 2017 (SSI 2017/289) **corrected errors identified in the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2016 (SSI 2016/53)**
- Public and Private Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/321) **corrected errors identified in the Public Water Supplies (Scotland) Amendment Regulations 2017 (SSI 2017/281)**
- Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017 (SSI 2017/346 (C.26)) **corrected errors identified in the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017 (SSI 2017/293 (C.21))**
- Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) (Modern Limited Duration Tenancies) Miscellaneous Amendments Regulations 2017 (SSI 2017/370) **corrected errors identified in the Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) Regulations 2017 (SSI 2017/299 (C.23))**
- Public and Private Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/321) **corrected errors identified in the Public Water Supplies (Scotland) Amendment Regulations 2017 (SSI 2017/281)**
- First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (SSI 2017/369) **corrected errors identified in the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (SSI 2017/328)**
- Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017 (SSI 2017/346 (C.26)) **corrected errors identified in the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017 (SSI 2017/293 (C.21))**
- First-tier Tribunal for Scotland Health and Education Chamber and General Regulatory Chamber Charity Appeals (Procedure) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/398) **corrected errors identified in the:**
 - **First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals (Procedure) Regulations 2017 (SSI 2017/364)**
 - **First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 (SSI 2017/366)**

29. The commitment given to correct the draft Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 has also been met by the laying of the Letting Agent (Registration and Code of Practice) (Scotland) Amendment Regulations 2017 (SSI 2017/428) although that amending instrument was considered by the Committee out-with this reporting period on 19 December 2017.

30. There are therefore two outstanding Scottish Government commitments in terms of the instruments that were considered by the Committee this quarter:

- 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***

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

LPPO instruments

32. No LPPO instruments were drawn to the attention of the Parliament this quarter and there are no outstanding LPPO commitments.

Minor Points

33. The Committee identified a total of 34 instruments on which minor points were raised (generally relating to typographical or referencing errors). 32 of these instruments were laid by the Scottish Government and 2 were laid by the LPPO.

OTHER BUSINESS

Introduction

34. 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

European Union (Withdrawal) Bill [UK Parliament legislation]

35. The Bill contains provisions that confer new powers to make subordinate legislation on the Scottish Ministers thus engaging the remit of the Committee.

36. Following a call for written evidence, oral evidence on the Legislative Consent Memorandum (LCM) relating to the Bill was taken from academics, stakeholders, UK Government Ministers and the relevant Scottish Government Minister and officials over the period September to November. The Committee agreed its [report on the LCM](#) at its meeting on 14 November and it was published shortly thereafter.

Other Bills

37. The Committee published reports on the following bills at Stage 1:
- Gender Representation on Public Boards (Scotland) Bill;
 - Children and Young People (Information Sharing) (Scotland) Bill;
 - Social Security (Scotland) Bill;
 - Islands (Scotland) Bill;
 - Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill;
 - Housing (Amendment) (Scotland) Bill.
38. The Committee also reported on the following bills after Stage 2:
- Child Poverty (Scotland) Bill;
 - Seat Belts on School Transport (Scotland) Bill.

Draft Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018

39. The Committee issued a call for written evidence and also took oral evidence with a view to forming a response to the Scottish Government's consultation on the Proposed Draft Order. That [response](#) was agreed on 21 November.

Lobbying (Scotland) Act 2016

40. The Committee agreed that it was content with the Lobbying (Scotland) Act 2016 (Reporting Procedures) Resolution 2017 as set out in motion [S5M-07795](#). The resolution was referred to the Committee in accordance with [rule 3C.2.7 of Standing Orders](#).

(e) doubt as to whether it is intra vires

- First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (SSI 2017/328) **Justice**

(f) raises a devolution issue

- Council Tax Reduction (Scotland) Amendment (No.2) Regulations 2017 (SSI 2017/326) **Social Security**
- Council Tax Reduction (Scotland) Amendment (No. 2) Amendment Regulations 2017 (SSI 2017/357) **Social Security**

(g) unusual or unexpected use of powers

- Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017 (SSI 2017/293 (C.21)) **Local Government and Communities**

(i) drafting appears to be defective

- Public Water Supplies (Scotland) Amendment Regulations 2017 (SSI 2017/281) **Environment, Climate Change and Land Reform**
- Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) Regulations 2017 (SSI 2017/299 (C.23)) **Rural Economy and Connectivity**
- First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (SSI 2017/328) **Justice**

(h) meaning could be clearer

- Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 [draft] **Local Government and Communities**
- Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) Regulations 2017 (SSI 2017/299 (C.23)) **Rural Economy and Connectivity**
- Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc. Provisions) (Scotland) Regulations 2017 (SSI 2017/300) **Rural Economy and Connectivity**
- First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (SSI 2017/328) **Justice**

(j) failure to comply with laying requirements

- Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/317) **Rural Economy and Connectivity**
- Public and Private Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/321) **Environment, Climate Change and Land Reform**
- Council Tax Reduction (Scotland) Amendment (No. 2) Amendment Regulations 2017 (SSI 2017/357) **Social Security**

General reporting ground

- Teachers' Superannuation and Pension Scheme (Additional Voluntary Contributions) (Scotland) Regulations 2017 (SSI 2017/283) **Education and Skills**
- Individual Learning Account (Scotland) Amendment Regulations 2017 (SSI 2017/288) **Education and Skills**
- First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (SSI 2017/328) **Justice**
- First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals (Procedure) Regulations 2017 (SSI 2017/364) **Justice**
- First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 (SSI 2017/366) **Justice**
- Police Pension Scheme (Scotland) Amendment Regulations 2017 (SSI 2017/387) **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*
- 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*
- 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 Scottish Government commitments from this quarter

- [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*

ANNEX C – GRAPHS AND CHARTS

Chart illustrating the increase in the number of Scottish Government instruments considered by the Committee during quarter 2 compared to quarter 1 - with the opposite being the case for LPPO instruments

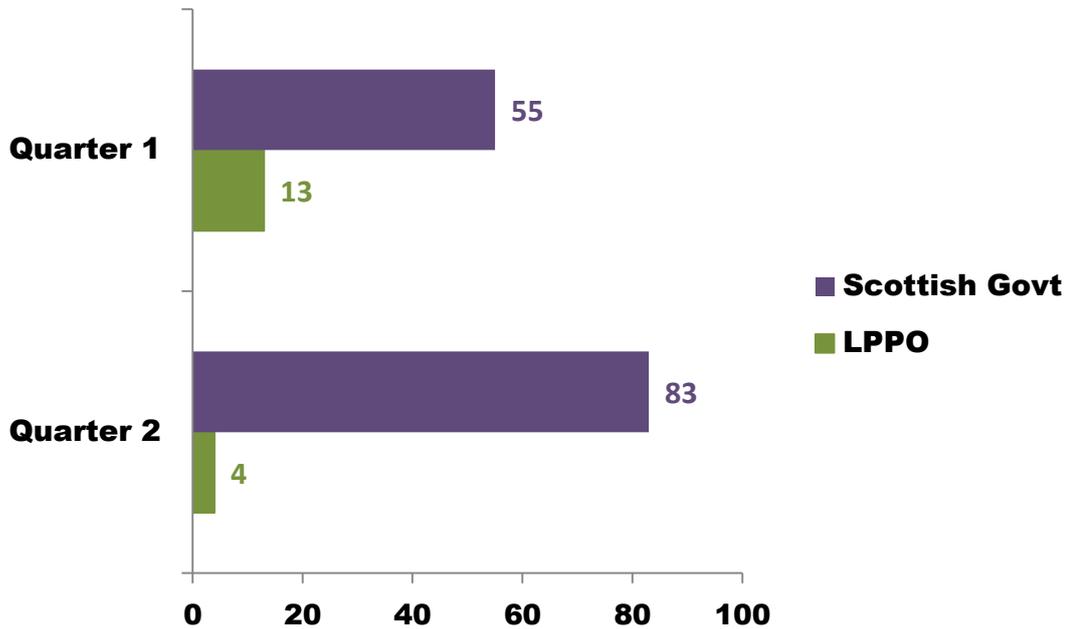
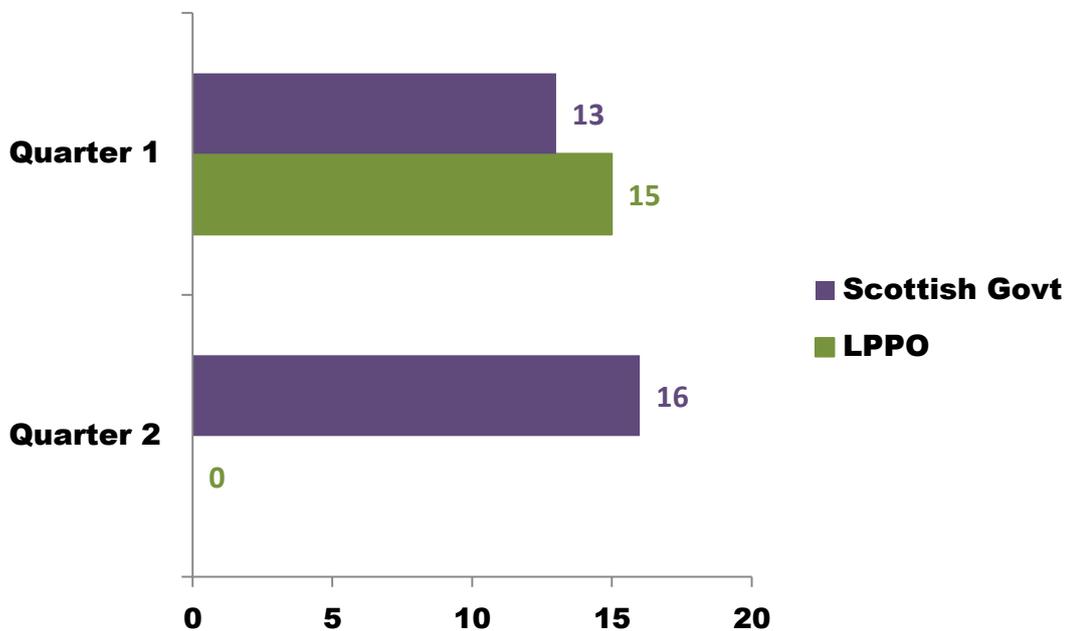
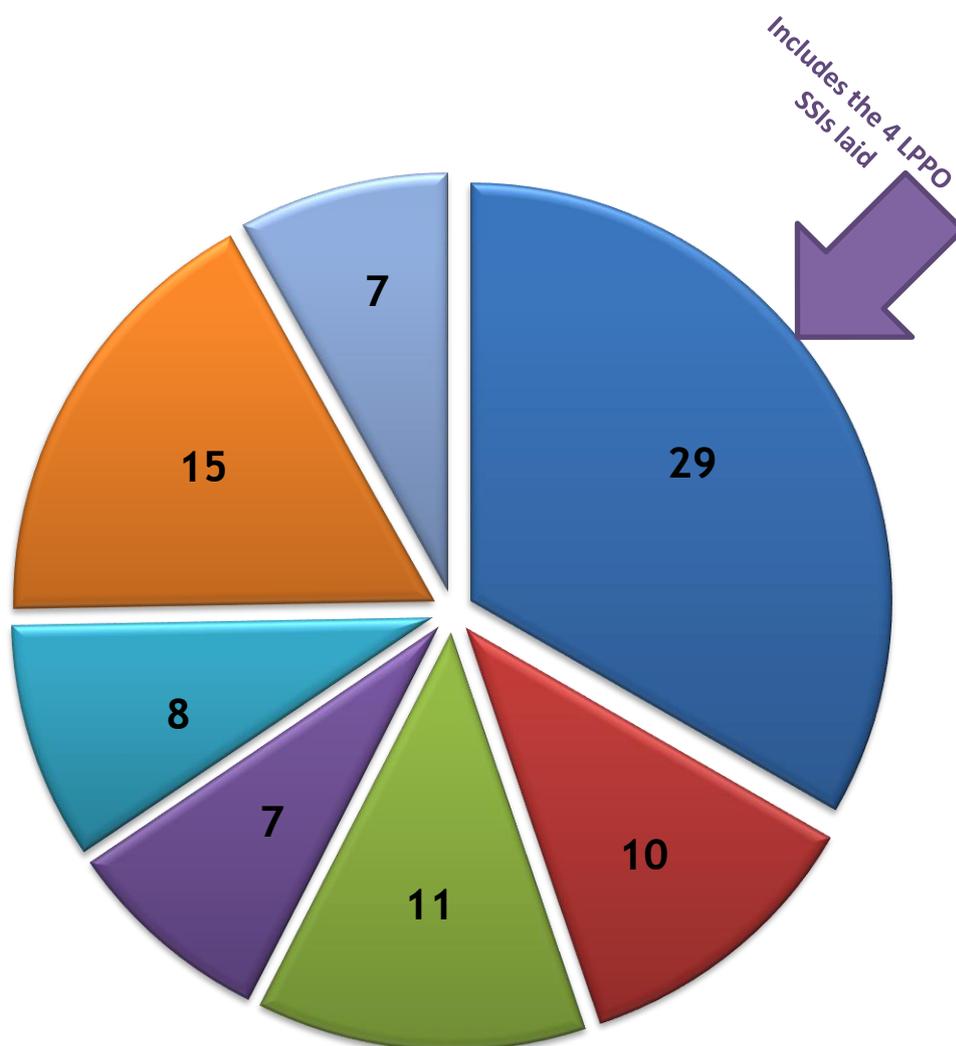


Chart showing the % of instruments reported by the Committee over the course of the first two quarters of the parliamentary year



Number of instruments that were referred to the various subject committees during the second 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**