

DELEGATED POWERS AND LAW REFORM COMMITTEE

Instruments considered by the Committee during the second quarter of the parliamentary year 2016-17

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 2016-17. 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 particular report deals with SSIs considered by the Committee during the period 26 October 2016 to 9 January 2017.
3. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

4. During the period 26 October 2016 to 9 January 2017, a total of 65 instruments were considered by the Committee. Of these, 55 instruments were laid by the Scottish Government and 10 instruments were laid by the LPPO.
5. The 55 SSIs laid by the Scottish Government can be broken down as follows—
 - 9 affirmative instruments;
 - 31 negative instruments;
 - 15 laid only instruments.
6. The 10 SSIs laid by the LPPO can be broken down as follows—
 - 2 negative instruments;
 - 8 laid only instruments.

Table 1: Instruments considered by the DPLR Committee during the period 26 October 2016 to 9 January 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	13	23.5%	10	1	10%

Scottish Government SSIs

7. Table 1 shows that of the 55 Scottish Government instruments considered by the Committee, 13 were drawn to the Parliament's attention, which is just under 24% of instruments considered.

8. 95 instruments laid by the Scottish Government were considered by the Committee during the first quarter of the current parliamentary year. The attention of the Parliament was drawn to 9 of those instruments, which was just under 10% of Scottish Government instruments considered.

9. Although there were far fewer instruments considered by the Committee this quarter compared to last, an increased number were drawn to the attention of the Parliament meaning that the figures for this period point to a marked increase in the percentage of Scottish Government instruments reported on.

Lord President's Private Office SSIs

10. Table 1 shows that of the 10 LPPO instruments considered by the Committee, just 1 was drawn to the Parliament's attention, which is 10% of instruments considered.

11. 11 instruments laid by the LPPO were considered by the Committee during the first quarter of the current parliamentary year. The attention of the Parliament was drawn to 4 of those instruments, which was just over 35% of LPPO instruments considered.

12. Where the LPPO is concerned the results for this period point to a marked decrease in the percentage of instruments reported on.

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

Withdrawal of instruments

14. No instruments were withdrawn during this period.

Revocation of instruments

15. One negative instrument (SSI 2016/383) was revoked and replaced by the Scottish Government during this period after significant drafting errors in the instrument were identified by the Committee's legal advisers.

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 (10)
General ground (e.g. failures to follow proper drafting practice or legislative process)	2	3.5%	1	10%
(h) meaning could be clearer	5	9%	0	0
(h) <u>and</u> the General ground	4	7%	0	0
(i) <u>and</u> the General ground	1	2%	0	0
(j) failure to comply with laying requirements	1	2%	0	0

20. The first quarter of this parliamentary year saw 2 Scottish Government instruments reported under the significant grounds. During this quarter, just one instrument was reported under one of the significant grounds - significant ground **(i)** - for being defectively drafted.

21. One instrument laid by the LPPO last quarter was reported for being defectively drafted - significant ground **(i)**. During this quarter of the parliamentary year, no LPPO instruments were reported on under any of the significant grounds.

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	12	5	41.5%	0	0	N/A
Justice	11	1	9%	8	0	N/A
Rural Economy and Connectivity	8	1	12.5%	0	0	N/A
Health and Sport	7	3	43%	0	0	N/A
Environment, Climate Change and Land Reform	8	1	12.5%	0	0	N/A
Delegated Powers and Law Reform	5	2	40%	2	1	50%
Finance and Constitution	1	0	N/A	0	0	N/A
Education and Skills	3	0	N/A	0	0	N/A
TOTAL	55	13	23.5%	10	1	10%

Summary: subject committees

23. As was the case last quarter the Local Government and Communities Committee had referred to them the largest number of Scottish Government instruments, looking at twelve in total. Five were drawn to the attention of the Parliament by the Committee. Including those laid by the LPPO, the Justice Committee were referred the largest number of instruments - nineteen in total - which is almost a third of all instruments considered.

Justice Committee

24. One Scottish Government instrument referred to the Justice Committee was drawn to the Parliament's attention under the general reporting ground. No commitment was given to correct the errors in the instrument. None of the LPPO instruments referred to the Committee were drawn to the Parliament's attention.

Local Government and Communities Committee

25. Five of the twelve instruments referred to the Local Government and Communities Committee were drawn to the attention of the Parliament - all under either the general ground, reporting ground **(h)** or a combination of both. The Scottish Government gave a commitment to correct the errors identified in three of the instruments and that commitment was met.

Health and Sport Committee

26. The Health and Sport Committee had seven instruments referred to them with three drawn to the Parliament's attention. One was done so under the significant reporting ground **(i)** for being defectively drafted. The Scottish Government gave a commitment to revoke and replace the defective instrument and that commitment was met. The corrective instrument was reported for breaching laying requirements (ground **(j)**) with the Committee accepting the reason given by the Scottish Government for the breach.

Rural Economy and Connectivity Committee

27. One instrument referred to the Rural Economy and Connectivity Committee was drawn to the Parliament's attention under reporting ground **(h)**. The Scottish Government gave a commitment to correct the errors identified in the instrument and that commitment was met.

Environment, Climate Change and Land Reform Committee

28. One of the eight instruments laid by the Scottish Government and referred to the Environment, Climate Change and Land Reform Committee this quarter was drawn to the attention of Parliament under reporting ground **(h)**. No commitment was given to correct the errors in the instrument.

Delegated Powers and Land Reform Committee

29. Seven instruments were considered by this Committee, all of which were related to Bankruptcy consolidation. Three of the instruments were drawn to the Parliament's attention. The Scottish Government gave a commitment to correct the errors in two of these instruments and those commitments remain outstanding. The LPPO met its commitment to correct the errors identified in a Bankruptcy related instrument it laid which was reported under the general ground.

Other Committees

30. No other subject committees were referred instruments that were drawn to the attention of the Parliament by the Committee.

31. 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

32. 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:

- Upper Tribunal for Scotland (Rules of Procedure) Amendment Regulations 2016 (SSI 2016/333) **corrected errors identified in the Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231)**
- Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Amendment Regulations 2016 (SSI 2016/389) **corrected errors identified in the Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366)**
- Community Empowerment (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/411) **corrected errors identified in the:**
 - **Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358);**
 - **Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360);**
 - **Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362)**

33. There are two outstanding Scottish Government commitments in terms of the instruments that were laid this quarter:

- Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] **to be corrected at the next legislative opportunity**
- Bankruptcy (Scotland) Regulations 2016 [draft] **to be corrected at the next legislative opportunity**

LPPO instruments

34. 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 Sheriff Court Rules Amendment) (No. 4) (Simple Procedure) 2016 (SSI 2016/315) **corrected errors identified in the Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200)**
- Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/367) **corrected errors identified in the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 (SSI 2016/313)**

35. A full list of all outstanding commitments can be found at **ANNEX B**.

Minor Points

36. The Committee identified a total of 26 instruments on which minor points were raised (generally relating to typographical or referencing errors). 21 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

38. The Committee had its first look at a Bill this session, agreeing its approach to the delegated powers provisions in the Limitation (Childhood Abuse) (Scotland) Bill.

Legislative Consent Memorandums (LCMs)

39. The Committee considered two Legislative Consent Memorandums (LCMs) during this reporting period. These relate to Westminster Bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The LCMs considered by the Committee were on the:

- Policing and Crime Bill (UK Parliament Legislation);
- Criminal Finances Bill (UK Parliament Legislation)

ANNEX A - REPORTING GROUNDS: 26 OCTOBER 2016 TO 9 JANUARY 2017

(i) drafting appears to be defective

- Caseins and Caseinates (Scotland) Regulations 2016 (SSI 2016/383) **Health and Sport**

(h) meaning could be clearer

- Bankruptcy (Scotland) Regulations 2016 [draft] **Delegated Powers and Law Reform**
- Crown Estate Scotland (Interim Management) Order 2017 [draft] **Environment, Climate Change and Land Reform**
- Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357) **Local Government and Communities**
- Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) **Local Government and Communities**
- Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (SSI 2016/359) **Local Government and Communities**
- Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360) **Local Government and Communities**
- Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362) **Local Government and Communities**
- Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366) **Rural Economy and Connectivity**
- National Health Service (Dietitian Supplementary Prescribers and Therapeutic Radiographer Independent Prescribers) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/393) **Health and Sport**

(j) failure to comply with laying requirements

- Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 (SSI 2016/422) **Health and Sport**

General reporting ground

- Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] **DPLR**
- Bankruptcy (Scotland) Regulations 2016 [draft] **DPLR**
- First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 (SSI 2016/339) **Justice**
- Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) **Local Government and Communities**
- Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360) **Local Government and Communities**
- Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362) **Local Government and Communities**
- Caseins and Caseinates (Scotland) Regulations 2016 (SSI 2016/383) **Health and Sport**

LPO instruments

- Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 (SSI 2016/313) **Delegated Powers and Law Reform**

ANNEX B - OUTSTANDING SCOTTISH GOVERNMENT COMMITMENTS

- Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102) **to be amended at the next available opportunity**
- 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 at the next available opportunity**
- 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 at the next available opportunity**
- Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/304) **to be corrected when the Regulations are next amended**
- 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 at the next available legislative opportunity**
- Private and Public Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/346) **to be corrected at the next suitable opportunity**
- 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 at the first opportunity**
- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) **to be corrected as soon as is reasonably practical**
- Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) **to be corrected at the earliest available opportunity**
- Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75) **to be corrected in a future amending instrument**

- Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82) **to be corrected at the next available opportunity**
- 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**
- Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2016 (SSI 2016/187) **to be corrected at the first opportunity**
- Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190) **to be corrected at the earliest available opportunity**

Outstanding Scottish Government commitments from this quarter

- Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] **to be corrected at the next legislative opportunity**
- Bankruptcy (Scotland) Regulations 2016 [draft] **to be corrected at the next legislative opportunity**

OUTSTANDING LPPO COMMITMENTS

- Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300) **to be corrected at the next available legislative opportunity**

Outstanding LPPO commitments from this quarter

None

ANNEX C - GRAPHICS AND CHARTS

Chart showing the % of SSIs reported on during this second quarter of the parliamentary year compared to the first quarter

Scottish Government SSIs and LPPO SSIs

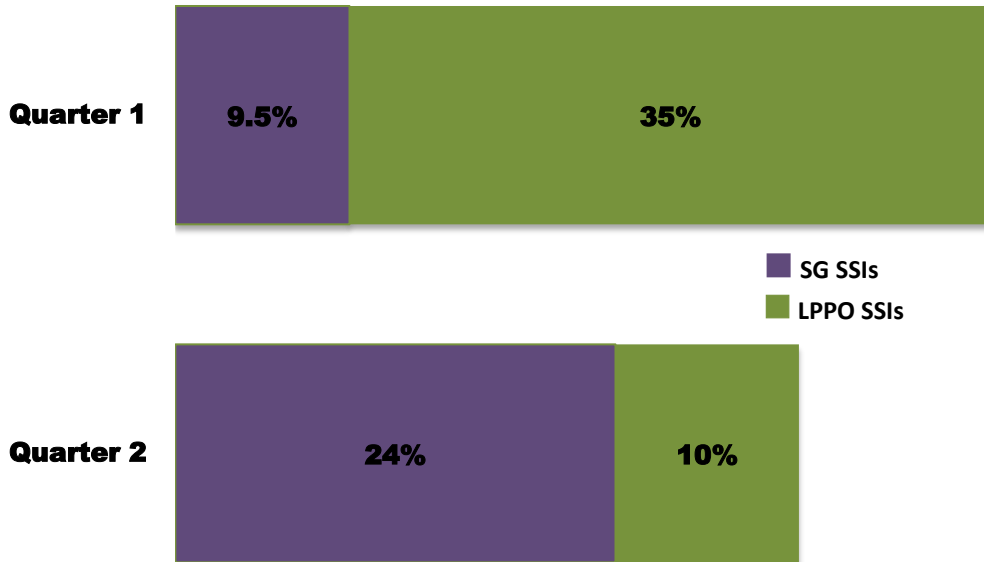
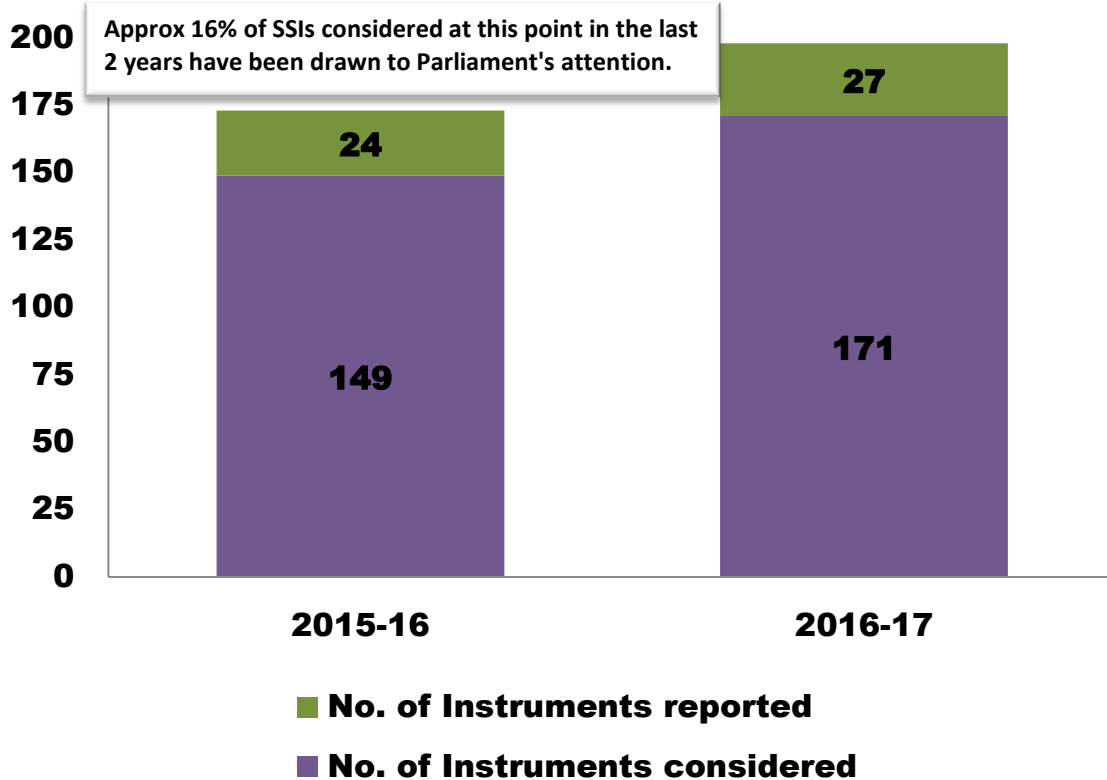
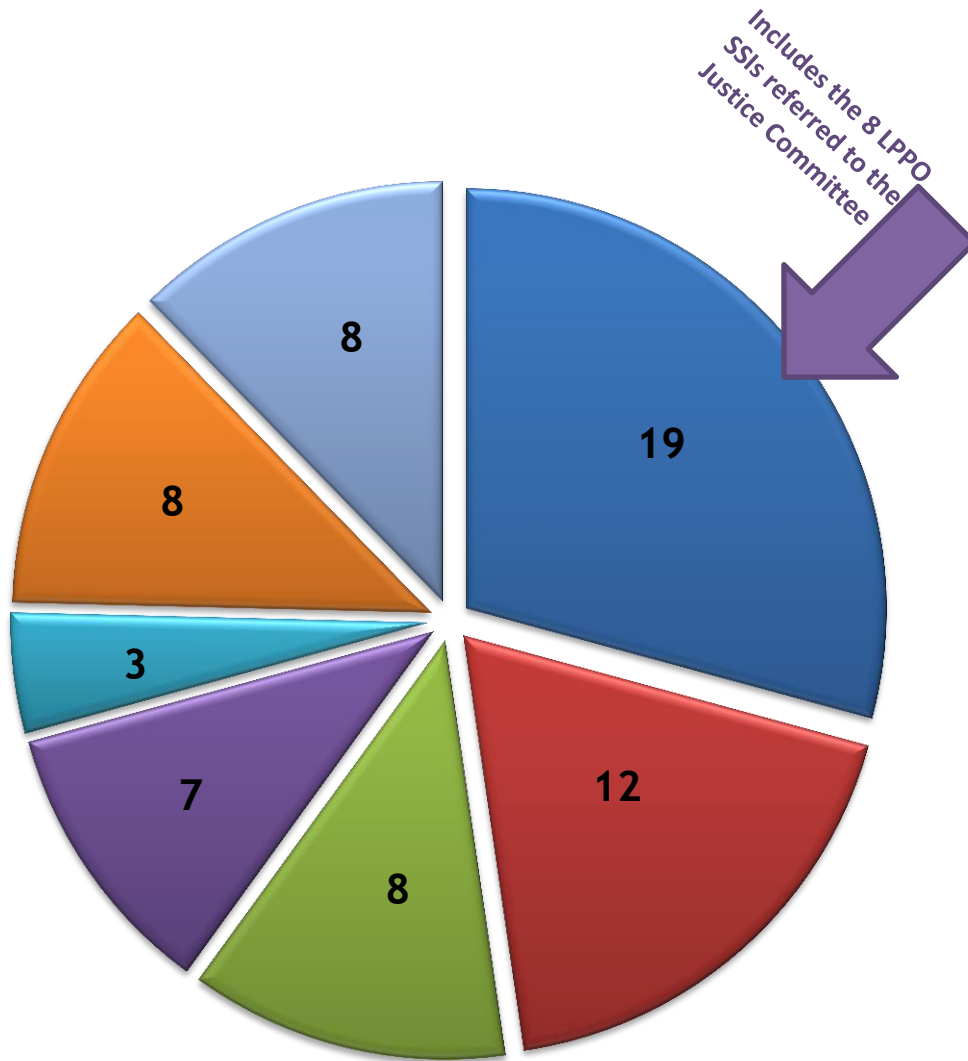


Chart showing the number of SSIs considered and reported on as at the end of the second quarter of the last two parliamentary years



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



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