

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

QUARTER 3 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the third 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 10 January 2017 to 13 March 2017.
3. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

4. During the period 10 January 2017 to 13 March 2017, a total of 54 instruments were considered by the Committee. Of these, 52 instruments were laid by the Scottish Government and 2 instruments were laid by the LPPO.
5. The 52 SSIs laid by the Scottish Government can be broken down as follows—
 - 19 affirmative instruments;
 - 25 negative instruments;
 - 6 laid only instruments;
 - 1 super-affirmative instrument;
 - 1 provisional affirmative instrument.
6. The 2 SSIs laid by the LPPO were both laid only instruments.

Table 1: Instruments considered by the DPLR Committee during the period 10 January 2017 to 13 March 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	52	6	11.5%	2	0	N/A

Scottish Government SSIs

7. Table 1 shows that of the 52 Scottish Government instruments considered by the Committee, only 6 were drawn to the Parliament's attention, which is just over 11% of instruments considered.

8. 55 Scottish Government instruments were considered by the Committee during the previous quarter of the current parliamentary year. The attention of the Parliament was drawn to 13 of those instruments which was just under 24% of Scottish Government instruments considered by the Committee.

9. Although there were slightly fewer Scottish Government instruments considered by the Committee this quarter compared to last, a far smaller number were drawn to the attention of the Parliament. The figures for this period therefore point to a marked decrease in the percentage of Scottish Government instruments reported on.

Lord President's Private Office SSIs

10. Table 1 shows that 2 LPPO instruments were considered by the Committee and that none were drawn to the Parliament's attention.

11. 10 instruments laid by the LPPO were considered by the Committee during the second quarter of the current parliamentary year with the attention of the Parliament drawn to only one of those instruments.

12. Where the LPPO is concerned, the results for this period and last point to a marked decrease in the number of instruments reported on compared to quarter one when 4 of 11 instruments considered by the Committee were drawn to the attention of the Parliament.

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

Withdrawal of instruments

14. The following instruments were withdrawn and subsequently re-laid during this period—

- Upper Tribunal for Scotland (Transfer of Functions of the Upper Tax Tribunal for Scotland) Regulations 2017 [draft];
- First-tier Tribunal for Scotland (Transfer of Functions of the First-tier Tax Tribunal for Scotland) Regulations 2017 [draft].

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.	No.
(f) raises a devolution issue	1	0
(i) drafting appears to be defective	2	0
(h) meaning could be clearer	1	0
General ground (e.g. failures to follow proper drafting practice or legislative process)	2	0

19. The previous quarter of this parliamentary year saw just one instrument reported under one of the significant grounds - significant ground **(i)** - for being defectively drafted. This quarter, of the 6 instruments drawn to the attention of the Parliament by the Committee, half of them were done so under one of the **significant** reporting grounds.

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	11	2	18%	0	0	N/A
Justice	13	0	N/A	2	0	N/A
Rural Economy and Connectivity	7	1	14%	0	0	N/A
Health and Sport	8	1	12.5%	0	0	N/A
Environment, Climate Change and Land Reform	1	0	N/A	0	0	N/A
Delegated Powers and Law Reform	1	0	N/A	0	0	N/A
Finance and Constitution	3	0	N/A	0	0	N/A
Education and Skills	3	1	33%	0	0	N/A
Economy, Jobs and Fair Work	2	0	N/A	0	0	N/A
Social Security	1	1	100%	0	0	N/A
Equalities and Human Rights	1	0	N/A	0	0	N/A
Parliament	1	0	N/A	0	0	N/A
TOTAL	52	6	11.5%	2	0	N/A

Summary: subject committees

21. Including those laid by the LPPO, the Justice Committee were referred the largest number of instruments - fifteen in total - with none drawn to the attention of the Parliament. As was the case last quarter, the Local Government and Communities Committee had referred to them the next largest number of instruments, looking at eleven all told. Two of these instruments were drawn to the Parliament's attention by the Committee.

Local Government and Communities Committee

22. Of the two instruments referred to the Local Government and Communities Committee that were drawn to the attention of the Parliament, one was done so under the significant ground **(i)** as being defectively drafted. The Scottish Government gave a commitment to correct the errors identified in that instrument and the commitment is currently outstanding. The other instrument was drawn to the Parliament's attention under the **general** reporting ground. No commitment was given to correct the errors in the instrument.

Social Security Committee

23. The one instrument referred to the Social Security Committee was drawn to the Parliament's attention under the significant ground **(f)** as raising a devolution issue.

Health and Sport Committee

24. The Health and Sport Committee had eight instruments referred to them with one drawn to the Parliament's attention under the significant reporting ground **(i)** for being defectively drafted. The Scottish Government gave a commitment to correct the errors identified in that instrument and the commitment is currently outstanding.

Rural Economy and Connectivity Committee

25. 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 that instrument and the commitment is currently outstanding.

Education and Skills Committee

26. One of the three instruments laid by the Scottish Government and referred to the Education and Skills Committee this quarter was drawn to the attention of Parliament under the **general** reporting ground. No commitment was given to correct the errors in the instrument.

Other Committees

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

28. Information detailing specific SSIs and the grounds that they were reported on is provided in **ANNEX A**.

SCOTTISH STATUTORY INSTRUMENTS - GENERAL

Scottish Government instruments

Commitments

29. 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. A link to the relevant report documenting the commitment given to correct is footnoted below:

- Civil Partnership, Marriage Between Persons of Different Sexes and Same Sex Marriage (Prescribed Bodies) (Scotland) Amendment Regulations 2016 (SSI 2016/427) **corrected an error identified in the Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/304)**¹
- Bankruptcy and Protected Trust Deeds (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft] **corrected errors identified in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] and Bankruptcy (Scotland) Regulations 2016 [draft]**²

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

- Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C.42)) **provisions to be corrected before they have effect**
- Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434) **to be corrected at the next available opportunity**
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27) **to be corrected when the Regulations are next amended**

LPPO instruments

Commitments

31. There are no commitments to be met from this reporting period though one commitment remains outstanding from Quarter 1.

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

Minor Points (all instruments)

33. The Committee identified a total of 12 instruments on which minor points were raised (generally relating to typographical or referencing errors). All 12 of these instruments were laid by the Scottish Government.

¹ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/84444.aspx>

² <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/101943.aspx>

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

35. The Committee published Stage 1 reports on the following Bills after considering the delegated powers provisions therein:

- Budget (Scotland) Bill;
- Limitation (Childhood Abuse) (Scotland) Bill;
- Railway Policing (Scotland) Bill;
- Air Departure Tax (Scotland) Bill.

36. The Committee was also designated as the lead committee for the Contracts (Third Party) Rights (Scotland) Bill. The Committee issued a call for written evidence on 24 February 2017.

Legislative Consent Memorandums (LCMs)

37. The Committee considered one Legislative Consent Memorandum (LCM) 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 LCM considered by the Committee was on the:

- Digital Economy Bill (UK Parliament Legislation).

Engagement

Video

38. A short video was produced and added to the Committee's webpage. The aim of the video is to explicate the notion of delegated powers in Bills with reference to ensuing secondary legislation. Click on the image below to watch.



Twitter

39. The Committee surpassed 100 followers on Twitter.

ANNEX A - REPORTING GROUNDS: 10 JANUARY 2017 TO 13 MARCH 2017

(f) *raises a devolution issue*

- Council Tax Reduction (Scotland) Amendment Regulations 2017 (SSI 2017/41) ***Social Security***

(i) *drafting appears to be defective*

- Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C.42)) ***Local Government and Communities***
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27) ***Health and Sport***

(h) *meaning could be clearer*

- Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434) ***Rural Economy and Connectivity***

General reporting ground

- Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016 (SSI 2016/421) ***Local Government and Communities***
- Schools (Consultation) (Scotland) Act 2010 (Modification) Regulations 2017 [draft] ***Education and Skills***

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 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*
- [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 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*
- [Seed \(Licensing and Enforcement etc.\) \(Scotland\) Regulations 2016 \(SSI 2016/68\)](#) *to be corrected at the earliest available opportunity³*
- [Police Pensions \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(SSI 2016/75\)](#) *to be corrected in a future amending instrument*

³ The laying of SSI 2016/434 was intended to correct errors identified by the Committee but that instrument in itself is now in need of correction. See below: 'Outstanding Scottish Government commitments from this quarter'.

- 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

- Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C.42)) **provisions to be corrected before they have effect**
- Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434) **to be corrected at the next 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 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 each of the first three quarters of the parliamentary year

Scottish Government SSIs and LPPO SSIs

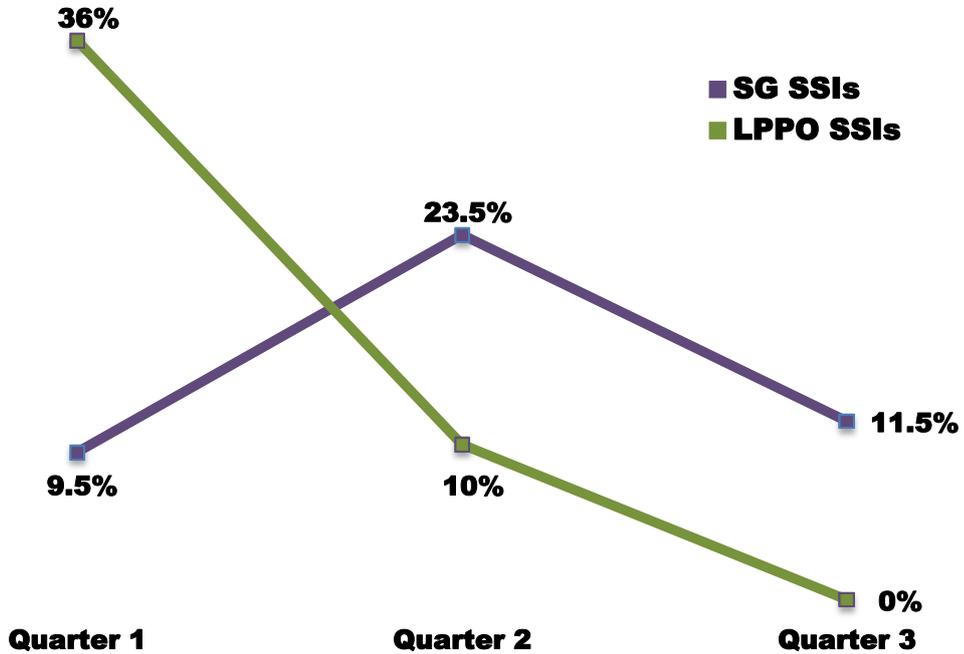
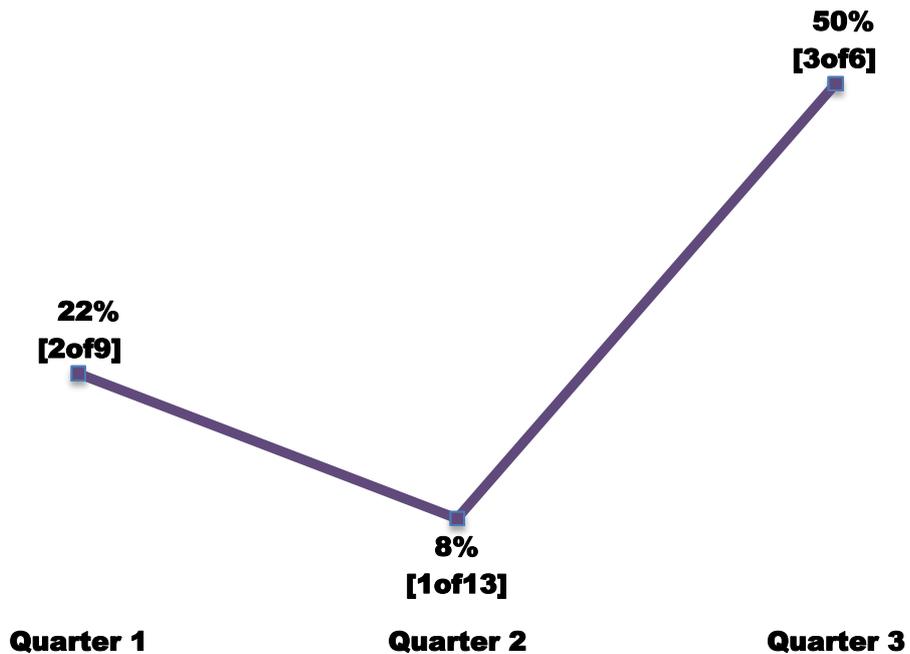
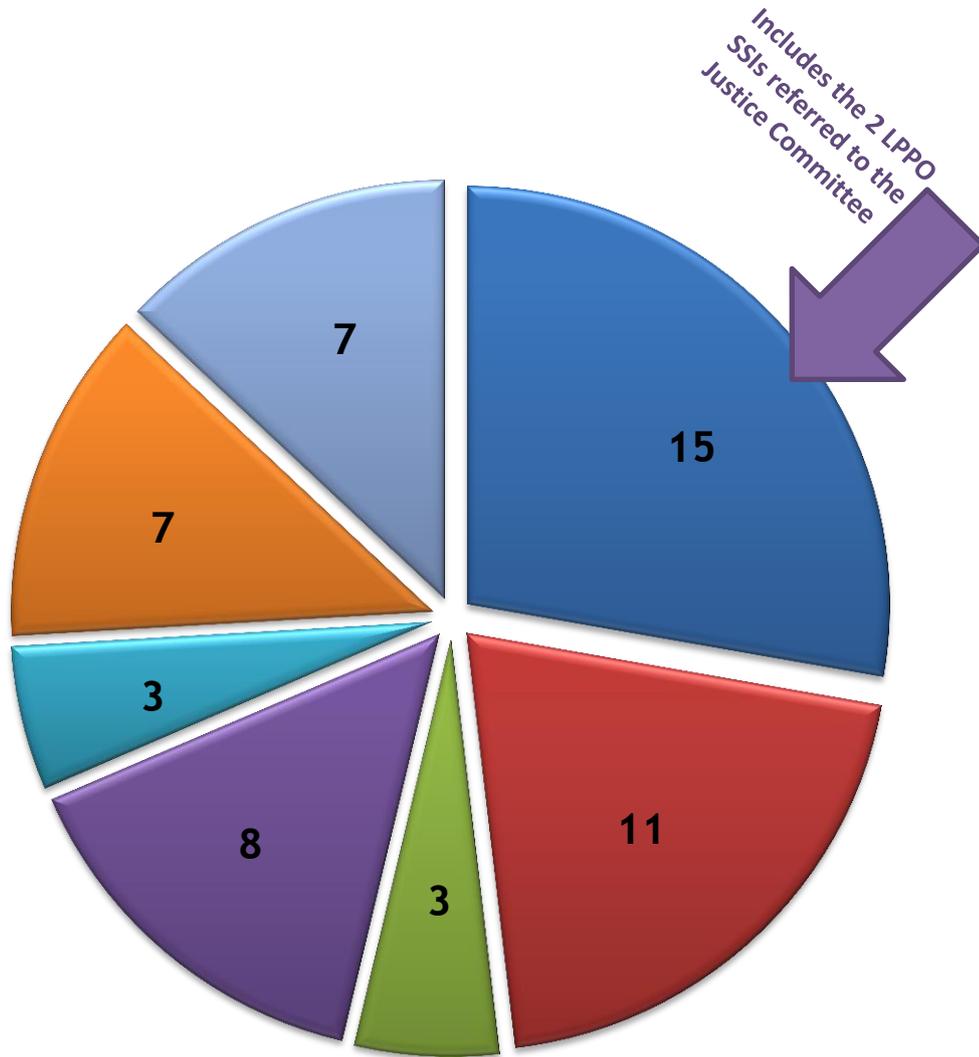


Chart showing the % of Scottish Government SSIs reported under one or more of the significant reporting grounds during each of the first three quarters of the parliamentary year



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



- **Justice**
- **Local Government and Communities**
- **Finance and Constitution**
- **Health and Sport**
- **Education and Skills**
- **Rural Economy and Connectivity**
- **Others**