

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

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 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 third quarterly report of the parliamentary year. It is intended to be more statistical than analytical and along with the subsequent quarterly report 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 4 December 2018 to 25 February 2019.
4. The report also touches briefly on the general work of the Committee during this quarter.

Overview and Analysis

5. During the period 4 December 2018 to 25 February 2019, a total of 58 instruments were considered by the Committee. Of these, 56 instruments were laid by the Scottish Government and 2 instruments were laid by the LPPO.
6. The 56 SSIs laid by the Scottish Government can be broken down as follows—
 - 25 affirmative instruments;¹
 - 24 negative instruments;
 - 6 laid only instruments;
 - 1 document subject to approval.
7. The 2 SSI laid by the LPPO were both laid only instruments.

¹ This figure includes the Land and Buildings Transaction Tax (Tax Rates and Tax Bands etc) (Scotland) Amendment Order 2018 (SSI 2018/372) which was subject to the provisional affirmative procedure.

Table 1: Instruments considered by the DPLR Committee during the period 4 December 2018 to 25 February 2019 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 | 56 | 4 | c.7% | 2 | 0 | N/A |

8. Table 1 shows that of the 56 Scottish Government instruments considered by the Committee, only 4 were drawn to the Parliament's attention, which is just over 7% of instruments considered.

9. 38 instruments laid by the Scottish Government were considered by the Committee during the second quarter of the current parliamentary year with the Parliament's attention drawn to 3 of these instruments which was, likewise, around 7% of those considered.

10. **Accordingly, the results for this third quarter are very similar to quarter two in terms of the percentage of instruments reported by the Committee - notwithstanding the greater number of instruments considered this quarter compared to last.**

11. **The Committee was content with the two instruments laid by the LPPO this quarter and it has now been six 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—

- Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 [draft];
- Genetically Modified Organisms (Deliberate Release etc.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft];
- INSPIRE (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft];
- Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 [draft];
- Budget (Scotland) Act 2018 Amendment Regulations 2019 [draft].

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 |
| (h) meaning could be clearer | 1 | 0 |
| General ground | 3 | 0 |

18. Last quarter, 2 of the 3 Scottish Government instruments reported were done so under one of the significant reporting grounds. This quarter, no instruments engaged any of these more serious reporting grounds - the first time this Session that this has been so.

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 | 9 | 1 | | |
| Justice | 10 | 0 | 2 | 0 |
| Rural Economy and Connectivity | 8 | 1 | | |
| Health and Sport | 10 | 1 | | |
| Environment, Climate Change and Land Reform | 2 | 1 | | |
| Economy, Energy and Fair Work | 4 | 0 | | |
| Finance and Constitution | 1 | 0 | | |
| Education and Skills | 1 | 0 | | |
| Social Security | 10 | 0 | | |
| Parliament | 1 | 0 | | |
| TOTAL | 56 | 4 | 2 | 0 |

Summary: subject committees

Environment, Climate Change and Land Reform (ECCLR) Committee

20. One instrument referred to the ECCLR committee was drawn to the attention of the Parliament under the **general** reporting ground. The Scottish Government commitment given to correct the errors identified remains outstanding - though it is worth noting that the reported instrument did meet a long-standing commitment to correct an instrument that was reported by the Committee back in 2015.

Health and Sport Committee

21. During this reporting period, one instrument referred to the Health and Sport committee was reported under the **general** ground for failing to follow proper drafting practice. The drafting errors were minor in detail and the Committee agreed that no immediate corrective action was required. Again, it is worth noting that the reported instrument met a long-standing commitment to correct an instrument that was reported by the Committee back in 2016.

Local Government and Communities Committee

22. One instrument referred to the Local Government committee was drawn to the attention of the Parliament under reporting ground **(h)** in that its meaning could be clearer. The Committee recommended that the affirmative instrument in question be withdrawn and re-laid, with the errors identified corrected, which the Scottish Government agreed to do.

Rural Economy and Connectivity (REC) Committee

23. During this reporting period, one instrument referred to the REC committee was reported under the **general** ground, again for failing to conform to proper drafting practice. The Committee did not feel it necessary to pursue corrective action, principally because the drafting practice followed, though flawed, was consistent with that adopted by both DEFRA and the Welsh Government.

Other Committees

24. 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

25. 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 Housing and Property Chamber (Procedure) Amendment Regulations 2018 (SSI 2018/378) **corrected errors identified in the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (SSI 2017/328)**
- Foods for Specific Groups (Medical Foods) (Miscellaneous Amendments) (Scotland) Regulations 2018 (SSI 2018/392) **corrected errors identified in the Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190)**
- Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) (Scotland) Regulations 2018 (SSI 2018/391) **corrected errors identified in the Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015 (SSI 2015/105) and the Marketing of Horticultural Produce (Scotland) Amendment Regulations 2011 (SSI 2011/324)**
- Council Tax Reduction (Scotland) Amendment Regulations 2019 (SSI 2019/29) **corrected errors identified in the Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (SSI 2018/295)**
- Food and Feed Safety and Hygiene (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/52) **corrected errors identified in the Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84)**

26. The Scottish Government also withdrew and re-laid the draft Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 which corrected errors in the draft as initially laid despite not giving a commitment to do so.

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

- Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) (Scotland) Regulations 2018 (SSI 2018/391) **to be corrected at the earliest possible opportunity**

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

LPPO instruments

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

Minor Points

30. The Committee identified a total of 21 instruments on which minor points were raised (generally relating to typographical or referencing errors). 20 of these instruments were laid by the Scottish Government, 1 by the LPPO.

OTHER BUSINESS

31. 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

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

- [Budget \(Scotland\) \(No.3\) Bill](#);
- [South of Scotland Enterprise Bill](#).

Legislative Consent Memorandums

33. The Committee published a report on the following Legislative Consent Memorandum—

- [Fisheries Bill \(UK Parliament legislation\)](#).

European Union (Withdrawal) Act 2018

34. The Committee began to scrutinise Scottish Statutory Instruments laid by Scottish Ministers using powers contained within the European Union (Withdrawal) Act 2018.

35. 12 Brexit related SSIs were considered under the [protocol agreed between the Scottish Government and the Scottish Parliament](#) which sets out a shared understanding on the process for considering Scottish Statutory Instruments laid under the Act.

36. 10 of these Brexit related SSIs were also subject to the Committee's usual technical scrutiny of instruments during this period.

Evidence session with the Minister for Parliamentary Business and Veterans

37. On 11 December 2018, the Minister for Parliamentary Business and Veterans, Graeme Dey MSP, appeared before the Committee to answer questions on matters arising from the work carried out by the Committee during the parliamentary year 2017-18. The Minister was also questioned by Members on future Scottish Government business, including expected secondary legislation relating to Brexit. Click on the image below to watch.



(h) meaning could be clearer

- Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 [draft] **Local Government and Communities**

General reporting ground

- Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) (Scotland) Regulations 2018 (SSI 2018/391) **Environment, Climate Change and Land Reform**
- Foods for Specific Groups (Medical Foods) (Miscellaneous Amendments) (Scotland) Regulations 2018 (SSI 2018/392) **Health and Sport**
- Zootechnical Standards (Scotland) Regulations 2019 (SSI 2019/5) **Rural Economy and Connectivity**

ANNEX B - OUTSTANDING COMMITMENTS

Outstanding Scottish Government commitments

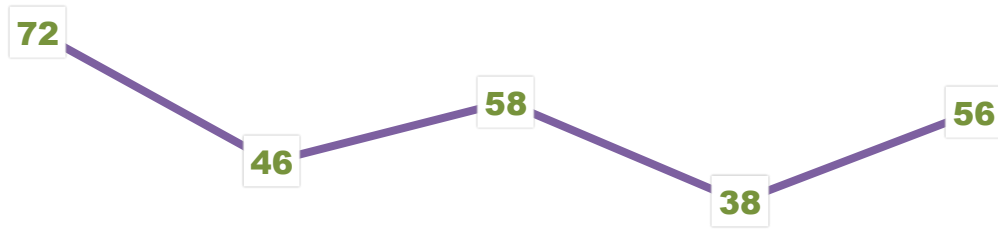
- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228) **to be amended in due course** [41st Report, 2012. Published 07/09/2012]
- Sulphur Content of Liquid Fuels (Scotland) Regulations 2014 (SSI 2014/258) **to be amended in due course** [59th Report, 2015. Published 29/10/2014]
- 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** [27th Report, 2015. Published 06/05/2015]
- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) **to be corrected as soon as is reasonably practical** [15th Report, 2016. Published 24/02/2016]
- Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75) **to be corrected in a future amending instrument** [17th Report, 2016. Published 02/03/2016]
- Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126) **to be corrected at the next available opportunity** [21st Report, 2016. Published 08/03/2016]
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27) **to be corrected when the Regulations are next amended** [10th Report, 2017. Published 22/02/2017]
- 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** [39th Report, 2017. Published 27/09/2017]
- Police Pension Scheme (Scotland) Amendment Regulations 2017 (SSI 2017/387) **to be corrected at the first legislative opportunity to do so** [56th Report, 2017. Published 28/11/2017]
- Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7) **to be corrected in the next amending instrument** [5th Report, 2018. Published 30/01/2018]
- Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141) **to be corrected by way of correction slip** [22nd Report, 2018. Published 15/05/2018]

Outstanding Scottish Government commitments from this quarter

- Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) (Scotland) Regulations 2018 (SSI 2018/391) **to be corrected at the earliest possible opportunity** [5th Report, 2019. Published 23/01/2019]

ANNEX C - GRAPHICS AND CHARTS

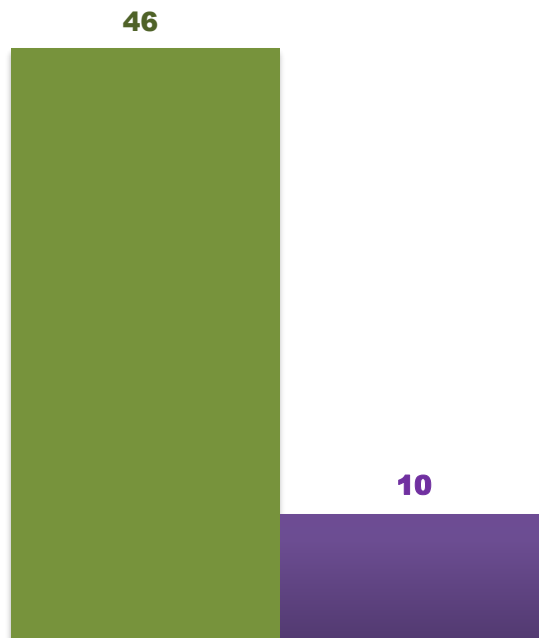
Line chart showing the number of Scottish Government instruments considered by the Committee over the course of the last 5 reporting periods



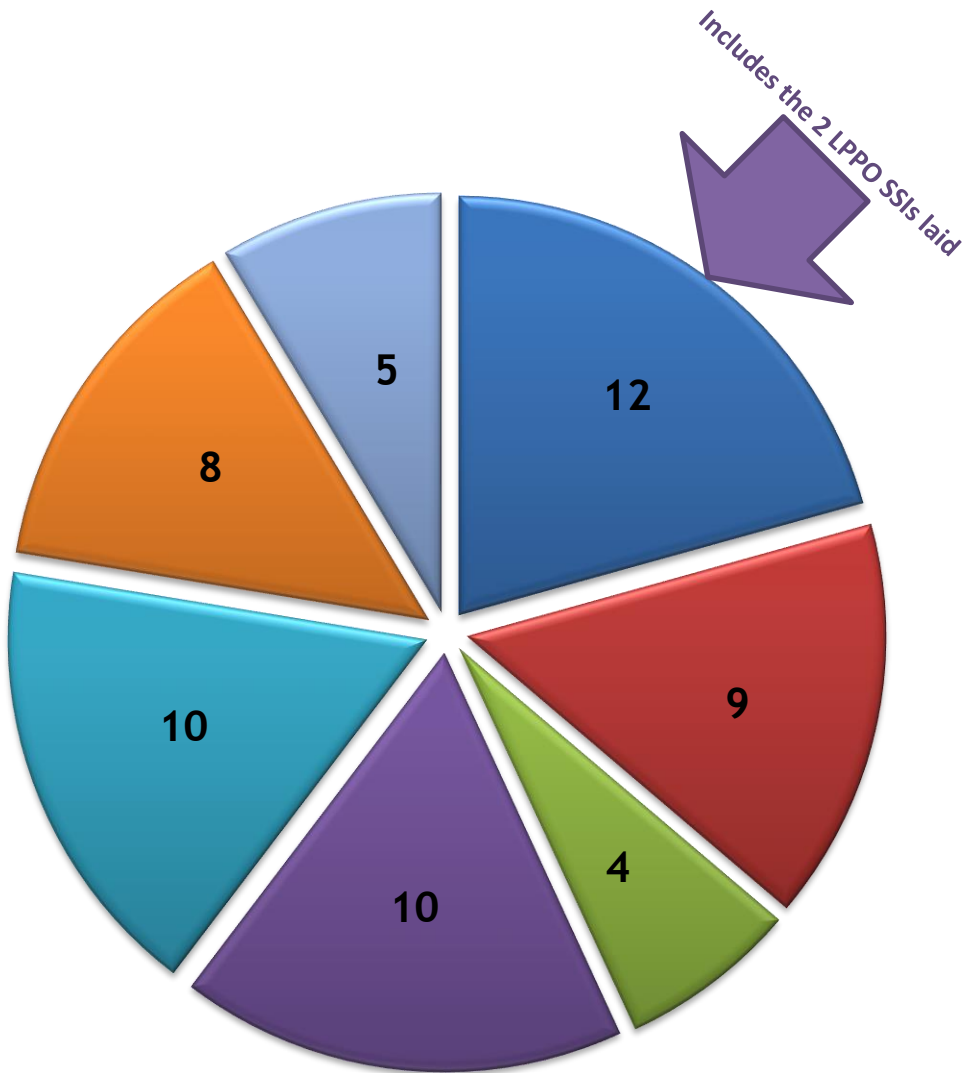
Quarter 3 2017-18 Quarter 4 2017-18 Quarter 1 2018-19 Quarter 2 2018-19 Quarter 3 2018-19

Chart showing the number of Brexit related SSIs and non-Brexit related SSIs considered by the Committee during the reporting period

Non-Brexit related | Brexit related



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



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