

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

QUARTER 4 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the fourth 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 final 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 27 February 2018 to 8 May 2018 inclusive.
5. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

6. During the period 27 February 2018 to 8 May 2018, a total of 47 instruments were considered by the Committee. Of these, 46 instruments were laid by the Scottish Government and 1 instrument was laid by the LPPO.
7. The 46 SSIs laid by the Scottish Government can be broken down as follows—
 - 5 affirmative instruments;
 - 33 negative instruments;
 - 7 laid only instruments;
 - 1 document subject to approval.
8. The 1 SSI laid by the LPPO was a negative instrument.

Table 1: Instruments considered by the DPLR Committee during the period 27 February 2018 to 8 May 2018 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	46	6(7) ¹	13% (15%)	1	0	N/A

9. Table 1 shows that of the 46 Scottish Government instruments considered by the Committee, notwithstanding the one SSI that was reported by the Committee under reporting ground (i), 6 were drawn to the Parliament's attention which is just over 13% of instruments considered.

10. 72 instruments laid by the Scottish Government were considered by the Committee during the third quarter of the parliamentary year with the Parliament's attention drawn to just 5 of these instruments (disregarding 2 SSIs which were reported under reporting ground (j)) which was under 7% of those considered.

11. **The results for this reporting period compared to last show a marked decrease in the number of Scottish Government instruments considered by the Committee.**
12. **A much higher percentage of instruments were drawn to the attention of the Parliament this quarter. That said, the figures for quarter 3 were somewhat exceptional and the percentage of instruments reported this time round is more in keeping with the average for a quarterly period.**
13. **Although only a solitary LPPO instrument was considered by the Committee, this quarter marks the third in succession where no instruments laid by the LPPO have engaged any of the reporting grounds as set out in Standing Orders.**

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

Withdrawal of instruments

15. The following document was withdrawn and re-laid by the Scottish Government during this period:

- Code of Conduct for Councillors 2018 (SG/2018/65)

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

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
	Number of SSIs reported	
(i) drafting appears to be defective General ground +	2	0
(f) raises a devolution issue	1	0
General ground (e.g. failures to follow proper drafting practice or legislative process)	3	0
(j) failure to comply with laying requirements	1	0

20. **Last quarter, just one instrument was drawn to the attention of the Parliament for being defectively drafted - significant ground **(i)** - whilst this reporting period, 3 of the 6 Scottish Government instruments that were reported were done so under the more serious grounds.**

Subject committees

21. 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	Total SSIs	Total reported
Local Government and Communities	10	0		
Justice	8	1	1	0
Rural Economy and Connectivity	6	1		
Health and Sport	10	3 (4)		
Environment, Climate Change and Land Reform	7	0		
Economy, Jobs and Fair Work	1	0		
Finance and Constitution	1	0		
SPPA	1	0		
Social Security	1	1		
Parliament	1	0		
TOTAL	46	6 (7)	1	0

22. During this reporting period, both the Health and Sport Committee and the Local Government and Communities Committee had 10 Scottish Government instruments referred to them. Whilst none of the SSIs referred to the latter Committee were drawn to the attention of the Parliament, four of those submitted to the Health and Sport Committee for consideration engaged one or more of the reporting grounds as set out in Standing Orders.

Summary: subject committees

Health and Sport Committee

23. Four instruments laid by the Scottish Government and referred to the Health and Sport Committee this quarter were drawn to the attention of the Parliament. The commitment given to correct the two instruments reported under both serious ground **(i)** and the **general** ground were met by the laying of a single amending instrument which breached laying requirements - with the Committee finding the reasons given for the breach to be acceptable. The commitment given to correct an instrument reported solely under the **general** reporting ground remains outstanding.

Social Security Committee

24. The one instrument referred to the Social Security Committee was drawn to the attention of the Parliament under reporting ground **(f)** for raising a devolution issue.

Rural Economy and Connectivity Committee

25. One instrument referred to the Rural Economy and Connectivity Committee was drawn to the attention of the Parliament under the **general** reporting ground. The commitment given to correct the error identified was swiftly met by way of correction slip.

Justice Committee

26. One instrument referred to the Justice Committee was drawn to the attention of the Parliament under the **general** reporting ground. The commitment given by the Scottish Government to correct the error identified has been met by the laying of an amending instrument albeit out-with this reporting period.

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:

- National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (SSI 2018/94) **corrected errors identified in the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (SSI 2018/66) and the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (SSI 2018/67)**
- National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) (No. 2) Regulations 2017 Amendment Regulations 2018 (SSI 2018/123) **corrected errors identified in the National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) (No. 2) Regulations 2017 (SSI 2017/434)**

29. The commitment given to correct the Common Agricultural Policy (Miscellaneous Amendments) (Scotland) Regulations 2018 (SSI 2018/122) by way of Correction Slip was also met.

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

- Sheriff Court Fees Order 2018 (SSI 2018/81) **to be corrected should an amending opportunity arise**
- National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018 (SSI 2018/124) **to be corrected in the next set of amending Regulations**

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 18 instruments on which minor points were raised (generally relating to typographical or referencing errors). All of these instruments were laid by the Scottish Government.

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 reports on the following bills at Stage 1:
- Planning (Scotland) Bill;
 - Scottish Crown Estate Bill.
36. The Committee also reported on the following bills after Stage 2:
- Social Security (Scotland) Bill;
 - Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Prescription (Scotland) Bill

37. The Committee was designated lead committee for the Bill by the Parliamentary Bureau on 21 February 2018. The Committee agreed its approach to the scrutiny of the Bill at Stage 1 a week later and issued a call for written evidence. [14 submissions](#) were received.

38. The Committee began taking oral evidence on the Bill on 20 March 2018 and heard from the following stakeholders:

- **20 March** - Scottish Government and the Scottish Law Commission
- **27 March** - Law Society of Scotland, Faculty of Advocates, Brodies LLP, Pinsent Masons, Burness Paull LLP, Shepherded and Wedderburn
- **17 April** - Dr Andrew Simpson, University of Aberdeen, Dr Eleanor Russell, Glasgow Caledonian University, David Wedderburn OBE (on behalf of RIAS)
- **24 April** - Mike Dailly, Govan Law Centre and Mike Holmyard, Citizens Advice Scotland
- **1 May** - Annabelle Ewing MSP, Minister for Community Safety and Legal Affairs and Scottish Government officials

39. The Committee intends to publish its stage one report on the Bill before summer recess.

European Union (Withdrawal) Bill [UK Parliament legislation]

40. The Committee published its report on the Supplementary Legislative Consent Memorandum in relation to the European Union (Withdrawal) Bill after taking oral evidence on the delegated powers provisions within the Bill from the Secretary of State for Scotland, the Minister for the Constitution and the Minister for UK Negotiations on Scotland's Place in Europe.

ANNEX A - REPORTING GROUNDS: 27 FEBRUARY 2018 TO 8 MAY 2018

(f) raises a devolution issue

- Council Tax Reduction (Scotland) Amendment Regulations 2018 (SSI 2018/69) **Social Security**

(i) drafting appears to be defective

- National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (SSI 2018/66) **Health and Sport**
- National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (SSI 2018/67) **Health and Sport**

(j) failure to comply with laying requirements

- National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (SSI 2018/94) **Health and Sport**

General reporting ground

- National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (SSI 2018/66) **Health and Sport**
- National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (SSI 2018/67) **Health and Sport**
- Sheriff Court Fees Order 2018 (SSI 2018/81) **Justice**
- Common Agricultural Policy (Miscellaneous Amendments) (Scotland) Regulations 2018 (SSI 2018/122) **Rural Economy and Connectivity**
- National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018 (SSI 2018/124) **Health and Sport**

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)²**
- 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)³**
- 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*
- Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7) *to be corrected in the next amending instrument*

² This commitment has since been met by the laying of SSI 2018/164 which was considered by the Committee out-with this reporting period. This will be detailed in the Quarter 1 report for 2018/19.

³ This commitment has since been met by the laying of SSI 2018/171 which was considered by the Committee out-with this reporting period. This will be detailed in the Quarter 1 report for 2018/19.

Outstanding Scottish Government commitments from this quarter

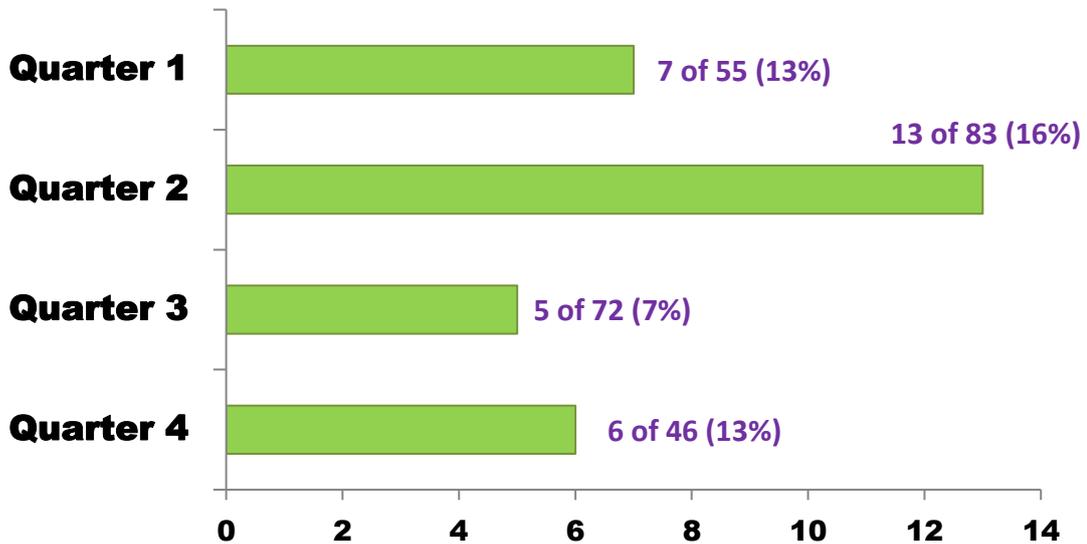
- **Sheriff Court Fees Order 2018 (SSI 2018/81)⁴**
- National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018 (SSI 2018/124) *to be corrected in the next set of amending Regulations*

⁴ This commitment has since been met by the laying of SSI 2018/194 which was considered by the Committee out-with this reporting period. This will be detailed in the Quarter 1 report for 2018/19.

ANNEX C – GRAPHS AND CHARTS

Chart showing the number and % of Scottish Government instruments reported by the Committee during each of the four quarters of the parliamentary year 2017-18

Scottish Government SSIs



Number of instruments that were referred to the various subject committees during the fourth quarter of the parliamentary year 2017-18

