

## DELEGATED POWERS AND LAW REFORM COMMITTEE

### Instruments considered by the Committee during the first quarter of the parliamentary year 2019-20

#### QUARTER 1 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the first quarter of the parliamentary year 2019-20. 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 first quarterly report of the parliamentary year. It is intended to be more statistical than analytical and along with the subsequent quarterly reports will help inform the Committee's annual report which goes into more detail on the work carried out by the Committee during the parliamentary year.

3. This report deals with SSIs considered by the Committee during the period 10 May 2019 to 16 September 2019.

#### Overview and analysis

4. During the period 10 May 2019 to 16 September 2019, a total of 56 instruments were considered by the Committee. Of these, 54 instruments were laid by the Scottish Government and 2 instruments were laid by the LPPO.

5. The 54 SSIs laid by the Scottish Government can be broken down as follows—

- 15 affirmative instruments;
- 32 negative instruments;
- 5 laid only instruments;
- 1 'super-affirmative' instrument;
- 1 Document subject to approval

6. The 2 SSIs laid by the LPPO were laid only instruments.

**Table 1: Instruments considered by the DPLR Committee during the period 10 May 2019 to 16 September 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	54	4(7) <sup>1</sup>	<7.5% (13%)	2	0	N/A

7. Table 1 shows that of the 54 Scottish Government instruments considered by the Committee, excluding the three SSIs that were reported by the Committee under reporting ground (j), just 4 were drawn to the Parliament's attention, which is 7.5% of instruments considered.

8. 71 instruments laid by the Scottish Government were considered by the Committee during the last quarter of the parliamentary year 2018-19 with the Parliament's attention drawn to 15 of these instruments (disregarding the instruments reported under reporting ground (j)) which was 21% of those considered.

9. **Accordingly, the results for this first quarter are a marked improvement on the numbers recorded at the end of the last reporting period.**

10. **No instruments laid by the LPPO were reported by the Committee in the course of this first quarter. This is down from one instrument reported in the last quarter of the parliamentary year 2018-19.**

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

### Withdrawal of instruments

12. The following instruments were withdrawn by the Scottish Government during this period **on the recommendation of the lead committee**

- Presumption Against Short Periods of Imprisonment (Scotland) Order 2019

<sup>1</sup> 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

13. 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*

14. 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.

15. 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.

16. 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
<b>(h)</b> meaning could be clearer	1	0
<b>General</b> ground	3	0
<b>(j)</b> failure to comply with laying requirements	3	0

17. **This quarter, no instruments engaged any of the more serious reporting grounds. The previous reporting period (when more instruments were considered) saw three Scottish Government instruments reported under reporting ground (i) which is one of the more serious grounds.**

## Subject committees

18. 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	11	2		
Justice	8	0		
Rural Economy and Connectivity	10	0		
Health and Sport	5	2		
Environment, Climate Change and Land Reform	6	1		
Economy, Energy and Fair Work	2	0		
Equalities and Human Rights	2	0		
Education and Skills	8	0		
Social Security	4	2		
<b>TOTAL</b>	<b>56</b>	<b>7</b>	<b>0</b>	<b>0</b>

## **Summary: subject committees**

19. During this reporting period, the Local Government and Communities Committee had the largest number of Scottish Government instruments referred to them, considering eleven in total. Notwithstanding one instrument which was reported for breaching laying requirements and another under the general ground, none of the other instruments were drawn to the attention of the Parliament by the Committee. Rural Economy and Connectivity Committee closely followed with 10 instruments, none of which were reported on.

### ***Local Government and Communities Committee***

20. One instrument referred to the Local Government and Communities Committee was drawn to the Parliament's attention under the **general** reporting ground. A second instrument was referred under reporting ground (j) meaning a failure to comply with laying requirements. The committee was content with the reasons for non-compliance.

### ***Social Security Committee***

21. Two instruments referred to the Social Security Committee were drawn to the attention of the Parliament; one under reporting ground (h) and the other under reporting ground (j) meaning a failure to comply with laying requirements.

### ***Health and Sport Committee***

22. The Health and Sport Committee received two instruments which the DPLR Committee had reported on under the general reporting ground.

### ***Environment, Climate Change and Land Reform Committee***

23. One instrument referred to the Local Government and Communities Committee was drawn to the attention of Parliament on under reporting ground (j).

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

#### Scottish Government instruments

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:

- Public Procurement etc. (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/173) **corrected errors identified in the Public Procurement etc. (Scotland) (amendment) (EU Exit) Amendment Regulations 2019 (SSI 2019/112)**
- Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Amendment Regulations 2019 (SSI 2019/204) **corrected issued identified by Legal in the Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/161)**
- Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2019 (SSI 2019/232) **corrected errors identified by committee in the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (SSI 2019/193)**
- Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (2019/273) **corrected errors identified in the Town and Country Planning and Electricity Works (EU Exit) Scotland Amendment Regulations 2019**

26. Two other outstanding Scottish Government commitments in terms of the instruments that were laid this quarter have since been met:

- Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/289) **laid 12/09/19 to correct issues identified in Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 (SSI 2019/209)**
- Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 (SSI 2019/draft) **corrected errors identified in Public Services Reform Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2019 [draft] – Proposed Draft Order**

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

#### LPPO instruments

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

## Minor Points

29. The Committee identified a total of 26 instruments on which minor points were raised (generally relating to typographical or referencing errors). 25 of these instruments were laid by the Scottish Government and 1 was laid by the LPPO.

## OTHER BUSINESS

### Introduction

30. 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

31. The Committee published reports on the following Bills at Stage 1:

- [Non-Domestic Rates \(Scotland\) Bill](#)

32. The Committee published reports on the following Bills after Stage 2:

- [Fuel Poverty \(Targets, Definition and Strategy\) \(Scotland\) Bill](#)
- [South of Scotland Enterprise Bill](#)
- [Census \(Amendment\) \(Scotland\) Bill](#)
- [Human Tissue \(Authorisation\) \(Scotland\) Bill](#)
- [Management of Offenders \(Scotland\) Bill](#)

### LCMs

33. No Legislative Consent Memorandums were considered during this reporting period.

**ANNEX A - REPORTING GROUNDS: 10 MAY 2019 TO 16 SEPTEMBER  
2019**

**(h) meaning could be clearer**

- Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (SSI 2019/193)  
**Social Security**

**(j) failure to comply with laying requirements**

- Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Amendment Regulations 2019 (SSI 2019/204) **Local Government and Communities**
- Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2019 (SSI 2019/232) **Social Security**
- Plant Health (Miscellaneous Amendments) (Scotland) Order 2019 (SSI 2019/242) **Environment, Climate Change and Land Reform**

**General reporting ground**

- Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/161) **Local Government and Communities**
- Public Services Reform Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2019 [draft] – Proposed Draft Order (SG/2019/66)  
**Health and Sport**
- Scottish Public Services Ombudsman (Healthcare Whistleblowing) Order 2019 [draft] – Proposed Explanatory Document (SG/2019/67) **Health and Sport**

## ANNEX B - OUTSTANDING COMMITMENTS

### Outstanding Scottish Government commitments

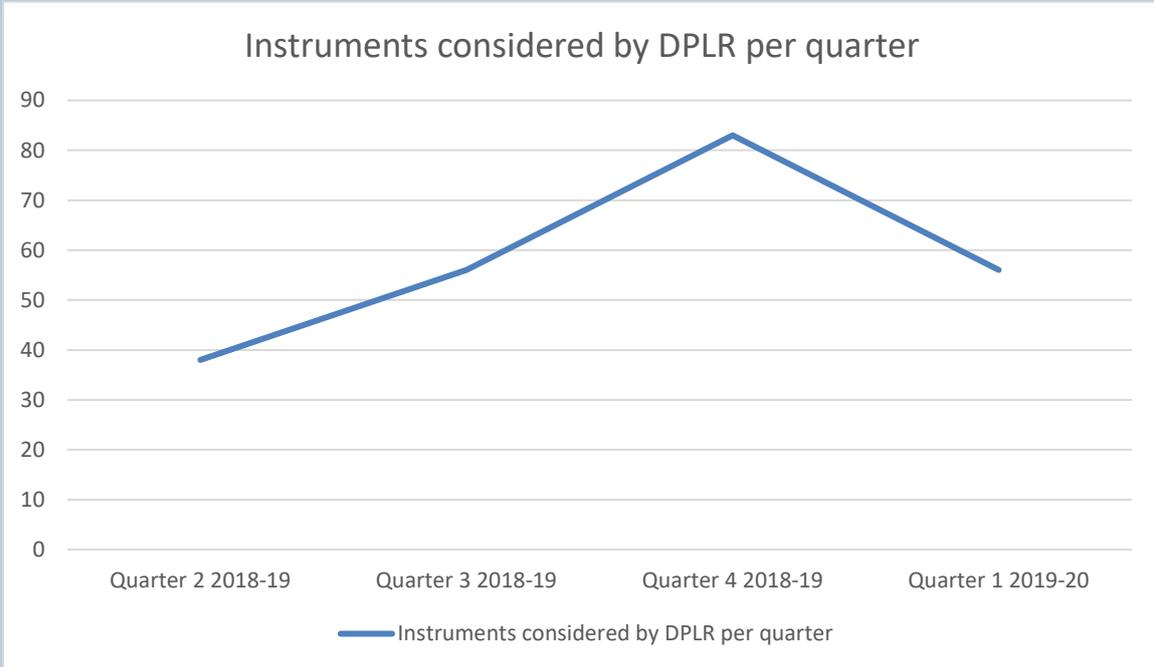
- Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015 (SSI 2015/166) **to be corrected at the next appropriate opportunity**
- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) **to be corrected as soon as is reasonably practical**
- Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126) **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**
- Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7) **to be corrected in the next amending instrument**
- Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/26) *commitment to correct by way of correction slip* [10<sup>th</sup> Report, 2019. Published 27/02/2019]
- Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2019 (SSI 2019/32) [10<sup>th</sup> Report, 2019. Published 27/02/2019] *commitment to correct the error at the next legislative opportunity*
- Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019 [draft] [12<sup>th</sup> Report, 2019. Published 12/03/2019] *commitment to correct error the next time the order was required to be amended*
- Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft] [14<sup>th</sup> Report, 2019. Published 20/03/2019] *committee called on the Scottish Government to correct*
- Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80) [15<sup>th</sup> Report, 2019. Published 26/03/2019] *commitment to bring forward an amending instrument*
- Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Saving Provisions) Regulations 2019 (SSI 2019/47 (C.1)) [11<sup>th</sup> Report, 2019. Published 06/03/2019] **commitment to correct the errors at the earliest opportunity**
- Felling (Scotland) Regulations 2019 (SSI 2019/49) [11<sup>th</sup> Report, 2019. Published 06/03/2019] *commitment to correct the errors at the earliest opportunity*
- Equine Animal (Identification) (Scotland) Regulations 2019 (SSI 2019/30) [10<sup>th</sup> Report, 2019. Published 27/02/2019] *commitment to bring forward an amendment at the earliest opportunity*
- Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 (SSI 2019/183) [11<sup>th</sup> Report, 2019. Published 06/03/2019] *commitment to bring forward an amendment at the earliest opportunity*
- Education (Fees and Student Support) (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/70) [12<sup>th</sup> Report, 2019. Published 12/03/2019] *commitment to correct when next legislating in student support*

**Outstanding Scottish Government commitments from this quarter**

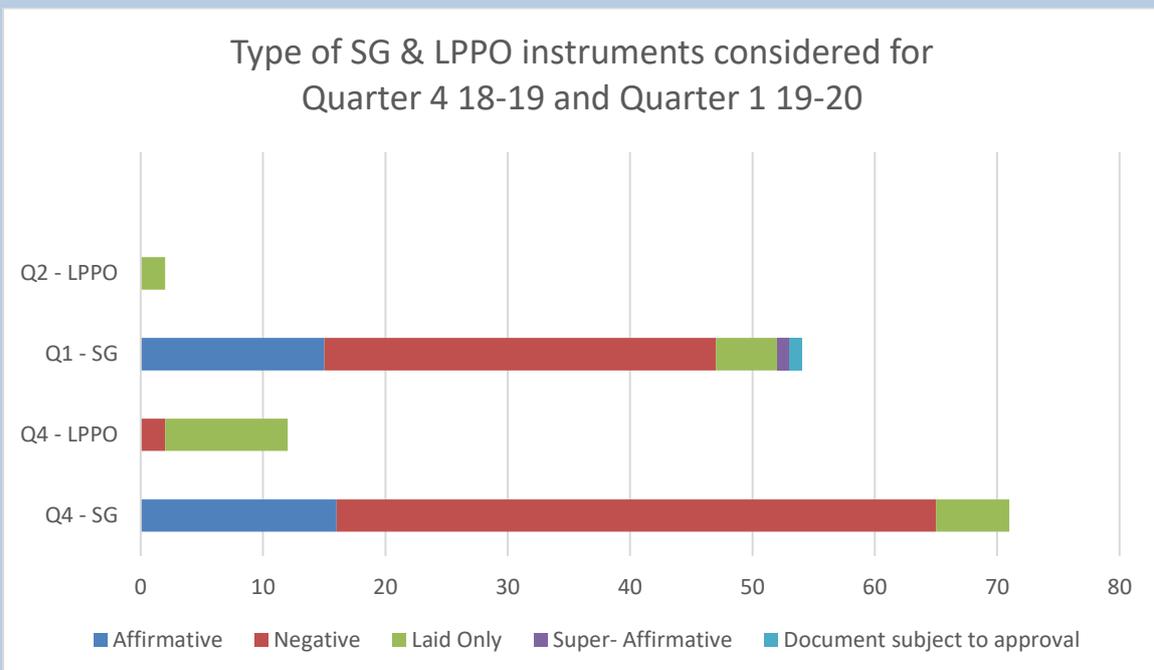
There are no outstanding commitments from this quarter.

## ANNEX C - GRAPHICS AND CHARTS

**Line chart showing the number of Scottish Government instruments considered by the Committee over the course of the last 4 reporting periods**



**Instruments received by type of instrument over the last 2 quarters**



### Reporting grounds on SG & LPPO Instruments for Quarter 4 18-19 and Quarter 19-20

