

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

QUARTER 2 - SUMMARY

1. There was an increase in the number of instruments considered this quarter compared to the first quarter (67 and 56 respectively).
2. The proportion of reported instruments has increased from 7.5% last quarter to 14.5% this quarter.
3. Two instruments were reported under ground (i), one of the more serious reporting grounds.

QUARTER 2 - INTRODUCTION

4. 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 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.

5. This is the second 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.

6. This report deals with SSIs considered by the Committee during the period 17 September 2019 to 3 December 2019.

OVERVIEW AND ANALYSIS

7. During the period 17 September 2019 to 3 December 2019, a total of 67 instruments were considered by the Committee. Of these, 62 instruments were laid by the Scottish Government and 5 instruments were laid by the LPPO.

8. The 62 SSIs laid by the Scottish Government can be broken down as follows—

- 13 draft affirmative instruments;
- 1 Made Affirmative
- 1 'super-affirmative' instrument;
- 29 negative instruments;

- 16 laid only instruments;
- 2 Document subject to approval

9. The 5 SSIs laid by the LPPO were laid only instruments.

Table 1: Instruments considered by the DPLR Committee during the period 17 September 2019 to 3 December 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	62	9	14.5%	5	0	0

10. Table 1 shows that of the 62 Scottish Government instruments considered by the Committee, 9 were drawn to the Parliament's attention, which is 14.5% of instruments considered (up from 7.5%). No SSIs were reported under reporting ground (j).

11. 54 instruments laid by the Scottish Government were considered by the Committee during the last quarter of the parliamentary year 2019-20 with the Parliament's attention drawn to 4 of these instruments which was 7.5% of those considered.

12. Accordingly, the results for this second quarter are less positive than the numbers recorded at the end of the last reporting period.

13. No instruments laid by the LPPO were reported by the Committee in the course of this second quarter. This is the same figure as the first quarter.

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

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)**

Reporting Ground	Number of SSIs reported	
	Scottish Government	LPPO
(h) meaning could be clearer	4*	0
General ground	4	0
(i) drafting appears to be defective	2*	0

* SSI 2019/345 was reported under ground (h) and ground (i) so is represented twice in this table.

19. This quarter, two instruments engaged in one of the more serious reporting grounds, (i) drafting appears to be defective. The previous reporting period saw no Scottish Government instruments reported under any of the serious 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, broken down by subject committee

Committee	Scottish Government		LPPO	
	Total SSIs	Total reported	Total SSIs	Total reported
Local Government and Communities	8	2	0	0
Justice	16	3	5	0
Rural Economy and Connectivity	12	2	0	0
Health and Sport	9	2	0	0
Environment, Climate Change and Land Reform	7	0	0	0
Economy, Energy and Fair Work	1	0	0	0
Equalities and Human Rights	1	0	0	0
Education and Skills	1	0	0	0
Social Security	5	0	0	0
Finance and the Constitution	1	0	0	0
Standards, Procedures and Public Appointments	1	0	0	0
TOTAL	62	9	5	0

Summary: subject committees

21. During this reporting period, the Justice Committee had the largest number of Scottish Government instruments referred to them, considering 16 in total. Three instruments were drawn to the attention of the Parliament by the Committee. Two instruments were reported under reporting ground (h), meaning could be clearer, and one was reported under the general ground.

22. Rural Economy and Connectivity Committee followed with 12 instruments, two of which were reported on. One instrument was reported under both grounds (i), drafting appears to be defective and (h), meaning could be clearer. The one further reported instruments was reported under the general reporting ground.

23. 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 (i) meaning drafting appears to be defective.

24. The Health and Sport Committee received nine instruments, two of which the DPLR Committee had reported; one under the general reporting ground and the other under reporting ground (h).

25. 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

26. 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:

- Environment (EU Exit) (Scotland) (Amendment etc.) (No. 2) Regulations 2019 (SSI 2019/draft) ***corrected errors identified in the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/26)***
- Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2020 ***corrected errors identified in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019 [draft]***

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

LPPO instruments

There are no outstanding LPPO commitments from this quarter, or from the previous reporting period

Minor Points

28. The Committee identified a total of 15 instruments on which minor points were raised (generally relating to typographical or referencing errors). 14 of these instruments were laid by the Scottish Government and 1 was laid by the LPPO.

OTHER BUSINESS

Introduction

29. 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

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

- [UEFA European Championship \(Scotland\) Bill](#)
- [Referendums \(Scotland\) Bill](#)
- [Female Genital Mutilation \(Protection and Guidance\) \(Scotland\) Bill](#)
- [Consumer Scotland Bill](#)
- [Scottish Elections \(Franchise and Representation\) Bill](#)
- [Disclosure \(Scotland\) Bill](#)
- [Scottish Biometrics Commissioner Bill](#)
- [Scottish Elections \(Reform\) Bill](#)
- [Children \(Scotland\) Bill](#)
- [Animal and Wildlife \(Penalties, Protection and Powers\) \(Scotland\) Bill](#)

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

- [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill](#)
- [Transport \(Scotland\) Bill](#) and [Transport \(Scotland\) Bill](#) supplementary report

LCMs

32. The Committee considered one Legislative Consent Memorandum during this reporting period:

- [Domestic Abuse Bill](#)

**ANNEX A - REPORTING GROUNDS: 17 SEPTEMBER 2019 TO 3
DECEMBER 2019**

(h) meaning could be clearer

- Food Information, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/285) **Health and Sport**
- Fishing Boats Designation (EU Exit) (Scotland) Order 2019 (SSI 2019/345) **Rural Economy and Connectivity**
- Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2019 (SSI 2019/380) **Justice**
- Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2019 (SSI 2019/381) **Justice**

(i) drafting appears to be defective

- Fishing Boats Designation (EU Exit) (Scotland) Order 2019 (SSI 2019/345) **Rural Economy and Connectivity**
- Planning (Scotland) Act 2019 (Commencement No. 2, Saving and Transitional Provisions) Regulations 2019 (SSI 2019/377 (C.19) **Local Government and Communities**

General reporting ground

- Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (Commencement No. 1) Regulations (SSI 2019/277) **Local Government and Communities**
- Firefighters' Pension and Compensation Schemes (Amendment) (Scotland) Order 2019 (SSI 2019/382) **Justice**
- Public Health Scotland Order 2019 (SSI 2019/336) **Health and Sport**

ANNEX B - OUTSTANDING COMMITMENTS

Outstanding Scottish Government commitments

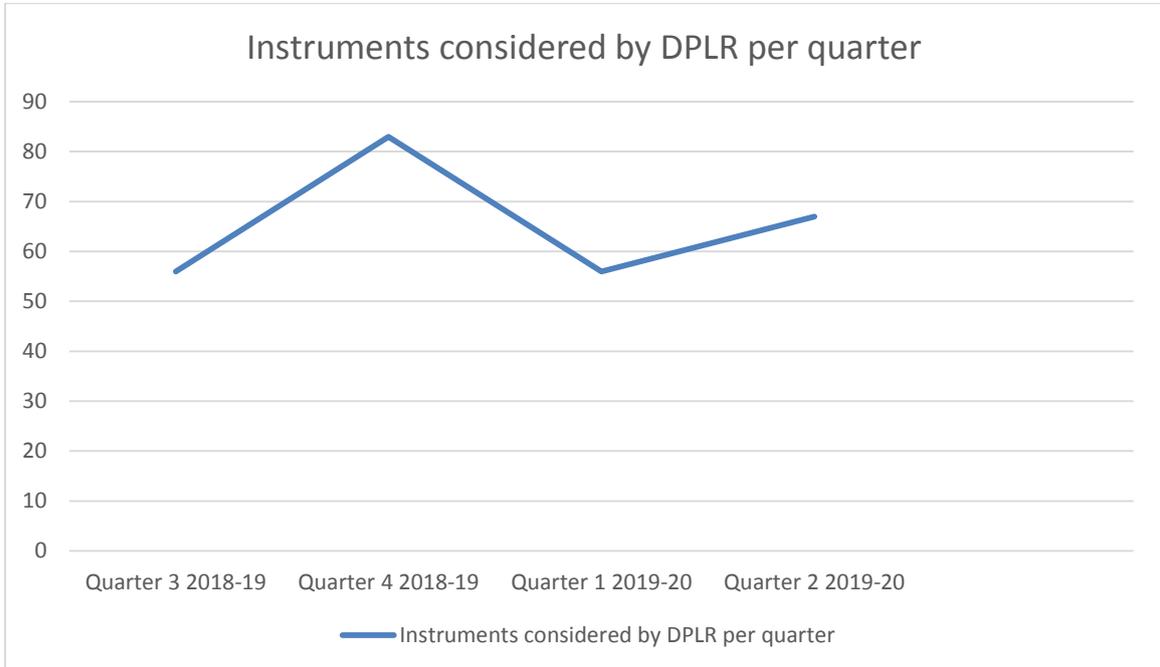
- [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2012 \(SSI 2012/228\)](#) [41st Report, 2012. Published 07/09/ 2012] **to be amended in due course**
- [Sulphur Content of Liquid Fuels \(Scotland\) Regulations 2014 \(SSI 2014/258\)](#) [59th Report, 2015. Published 29/10/2014] **to be amended in due course**
- [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**
- [Forestry and Land Management \(Scotland\) Act 2018 \(Commencement, Transitional and Saving Provisions\) Regulations 2019 \(SSI 2019/47 \(C.1\)\)](#) [11th Report, 2019. Published 06/03/2019] **commitment to correct the errors at the earliest opportunity**
- [Felling \(Scotland\) Regulations 2019 \(SSI 2019/49\)](#) [11th Report, 2019. Published 06/03/2019] **commitment to correct the errors at the earliest opportunity**
- [Education \(Fees and Student Support\) \(Miscellaneous Amendments\) \(EU Exit\) \(Scotland\) Regulations 2019 \(SSI 2019/70\)](#) [12th Report, 2019. Published 12/03/2019] **commitment to correct when next legislating in student support**

Outstanding Scottish Government commitments from this quarter

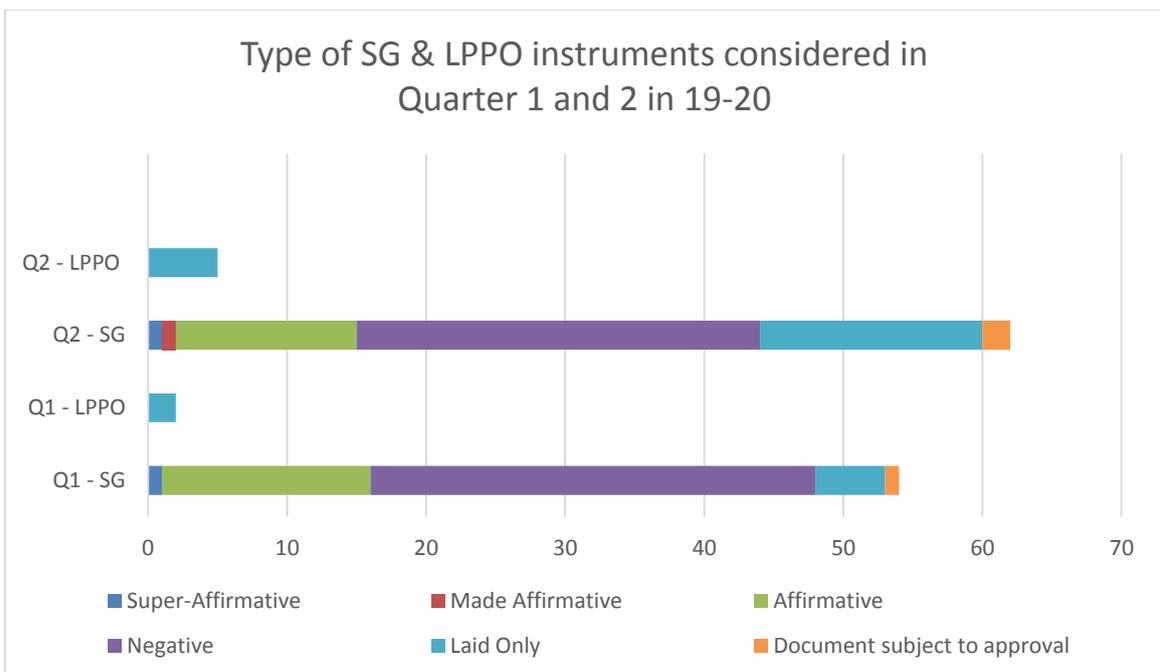
- [Food Information, Labelling and Standards \(EU Exit\) \(Scotland\) Regulations 2019 SSI 2019/285](#) [40th Report, 2019. Published 18/09] **commitment to amend at next available opportunity**
- [Fishing Boats Designation \(EU Exit\) \(Scotland\) Order 2019 \(SSI 2019/345\)](#) [56th Report, 2019. Published 13/11] **commitment to bring amending instrument before this comes into force.**

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 Instruments for Quarters 1 and 2 in 19-20

