

## DELEGATED POWERS AND LAW REFORM COMMITTEE

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

#### QUARTER 3 - SUMMARY

1. A similar number of instruments were considered this quarter compared with last quarter (73 and 67 respectively).
2. In terms of the number of instruments being reported, the results for this quarter are more positive than the last (with 9% of instruments being reported by the Committee (excluding ground (j) in cases where the Committee was content with the reasons) compared to 14.5% in the previous quarter).
3. In terms of the seriousness of the reporting grounds, there has also been an improvement. No instruments engaged serious grounds this quarter, compared with two in the previous quarter.

#### QUARTER 3 - INTRODUCTION

4. 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 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 third 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 4 December 2019 to 25 February 2020.

## OVERVIEW AND ANALYSIS

7. During the period 4 December 2019 to 25 February 2020, a total of 69 instruments were considered by the Committee. Of these, 64 instruments were laid by the Scottish Government, 4 instruments were laid by the LPPO and 1 instrument was laid by the Privy Council.

8. The 69 SSIs laid by the Scottish Government can be broken down as follows—

- 32 draft affirmative instruments;
- 2 made affirmative instruments
- 2 'super-affirmative' instruments;
- 21 negative instruments;
- 10 laid only instruments;
- 2 documents subject to consultation

9. The 4 SSIs laid by the LPPO were laid only instruments.

**Table 1: Instruments considered by the DPLR Committee during the period 4 December 2019 to 25 February 2020 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	69	6 (10 <sup>1</sup> )	8.5% (14%)	4	0	0%

10. Table 1 shows that of the 69 Scottish Government instruments considered by the Committee, 10 were drawn to the Parliament's attention, which is 14% (replicating the last quarter figure). However, 4 of these instruments were reported under reporting ground (j) only and in each case the Committee was satisfied with the reasons for the breach of laying requirements. As the Committee was satisfied with the reasons for the breach these 4 instruments are excluded from the headline figure. This leaves 6 instruments in relation to which the Committee had

<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 where the Committee found the reason given by the Scottish Government for the breach to be acceptable. Because the Committee found the reasons for the breach acceptable, these instruments are excluded from the headline figure.

concerns. This is 8.5% of instruments considered, a reduction from 14% last quarter.

11. 62 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 9 of these instruments which was 14.5% of those considered.

12. **Accordingly, the results for this third quarter are more 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 third quarter. This is the same figure as the first and second quarters.**

14. **The instrument laid by the Privy Council was also not reported on.**

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

### 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)**

Reporting Ground	Number of SSIs reported	
	Scottish Government	LPPO & Privy Council
(h) meaning could be clearer	1	0
General ground	5	0
(j) drafting appears to be defective	5*	0

\* SSI 2019/407 was reported under ground (j) and the general ground so is represented twice in this table.

20. **This quarter, no instruments engaged in any of the more serious reporting grounds. The previous reporting period saw two Scottish Government instruments reported under reporting ground (i) of the serious reporting grounds.**

21. **The results for this quarter are therefore more positive in terms of the seriousness of the reporting grounds engaged.**

## SUBJECT COMMITTEES

22. 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	7	2	0	0
Justice	12	1	4	0
Rural Economy and Connectivity	8	4	0	0
Health and Sport	9	2	0	0
Environment, Climate Change and Land Reform	8	0	0	0
Economy, Energy and Fair Work	2	0	0	0
Social Security	8	1	0	0
Finance and the Constitution	6	0	0	0
Standards, Procedures and Public Appointments	3	0	0	0
Culture, Tourism and External Affairs	1	0	0	0
Education and Skills	1	0	0	0
Parliament	3	0	0	0
<b>TOTAL</b>	<b>72</b>	<b>10</b>	<b>4</b>	<b>0</b>

### **Summary: subject committees**

23. During this reporting period, the Justice Committee had the largest number of Scottish Government instruments referred to them, considering 16 in total. Only one of these were drawn to the attention of the Parliament by the Committee. This was under reporting ground (j), breach of laying requirements.

24. Health and Sport Committee followed with 9 instruments, two of which were reported on. One instrument was reported under both grounds (j), a breach of laying requirements, and the general ground. The other instrument was reported under reporting ground (j) only.

25. Eight instruments were referred to the Rural Economy and Connectivity Committee. A total of 4 were drawn to the Parliament's attention. Two under the (j) reporting ground meaning a breach of laying requirements. A third instrument was referred under reporting ground (h) that the meaning could be clearer. The fourth instrument was reported under the general reporting ground.

26. The Social Security Committee considered eight instruments, one of which was reported under the general reporting ground.

27. The Local Government and Communities Committee received seven instruments, two of which the DPLR Committee had reported under the general reporting ground.

28. 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*

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:

- Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/31) ***corrected errors identified in the Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/438)***
- National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/30) ***corrected errors identified in the National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27)***

30. 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

31. The Committee identified a total of 7 instruments on which minor points were raised (generally relating to grammar, typographical or referencing errors). All of these instruments were laid by the Scottish Government.

## OTHER BUSINESS

### Introduction

32. 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

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

- [Period Products \(Free Provision\) \(Scotland\) Bill](#)
- [Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#)
- [Civil Partnership \(Scotland\) Bill](#)
- [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Bill](#)
- [Defamation and Malicious Publication \(Scotland\) Bill](#)
- [Budget \(Scotland\) \(No.4\) Bill](#)

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

- [Scottish National Investment Bank Bill](#)
- [Referendums \(Scotland\) Bill](#)
- [UEFA European Championship \(Scotland\) Bill](#)
- [Non-Domestic Rates \(Scotland\) Bill](#)

### LCMs

The Committee considered two Legislative Consent Memorandum's during this reporting period:

- [European Union \(Withdrawal Agreement\) Bill](#)
- [Direct Payment to Farmers \(Legislative Continuity\) Bill](#)

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

**(h) meaning could be clearer**

- Environmental Impact Assessment (Transport) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/415) **Rural Economy and Connectivity Committee**

**(j) breach of laying requirements**

- Official Controls (Agriculture etc.) (Scotland) Regulations 2019 (SSI 2019/412) **Rural Economy and Connectivity Committee**
- Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421) **Rural Economy and Connectivity Committee**
- National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2020 (SSI 2020/17) **Health and Sport Committee**
- Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/407) **Health and Sport Committee\***
- Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019 (SSI 2019/423) **Justice Committee**

**General reporting ground**

- Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2019 (SSI 2019/419) **Rural Economy and Connectivity Committee**
- Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020 (SSI 2019/draft) **Local Government and Communities Committee**
- Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/438) **Local Government and Communities Committee**
- Council Tax Reduction (Scotland) Amendment Regulations 2020 (SSI 2020/25) **Social Security Committee**
- Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/407) **Health and Sport Committee\***

## 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*
- [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 \(C.1\)\)](#) [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*
- [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*
- [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.*
- [Planning \(Scotland\) Act 2019 \(Commencement No.2 Saving and Transitional Provisions\) Regulations 2019/377](#) [64th Report, 2019. Published 10/12] – *commitment to correct before the instrument comes into force*

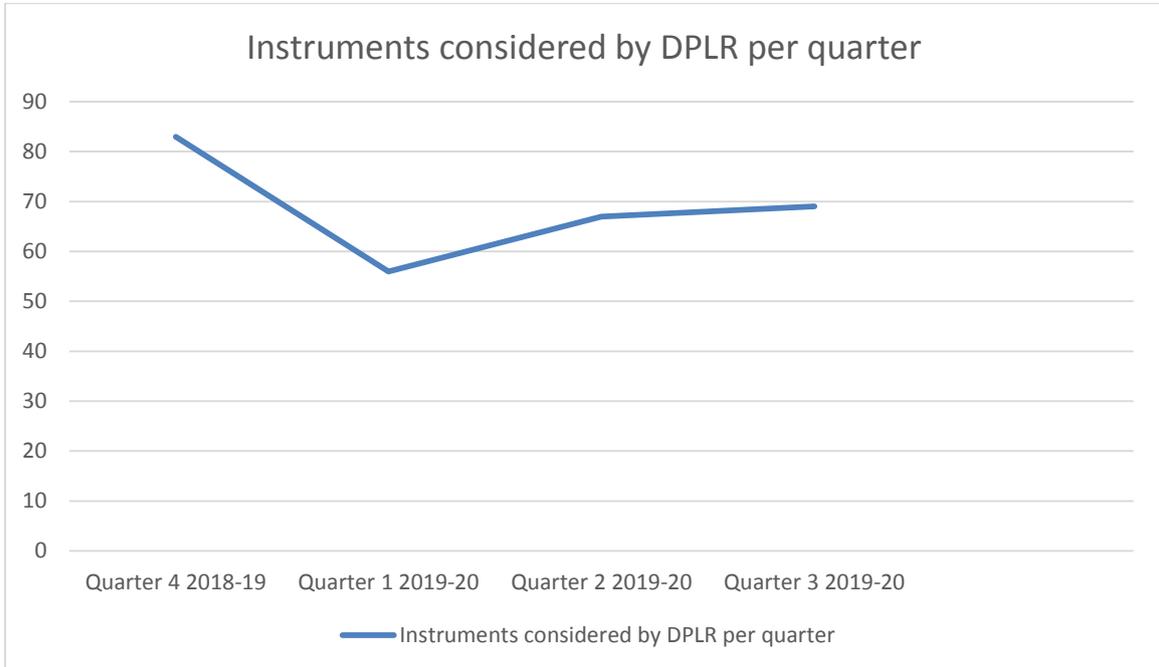
### Outstanding Scottish Government commitments from this quarter

- [Official Feed and Food Controls \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(SSI 2019/407\)](#) [64<sup>th</sup> Report, 2019. Published 10/12/19] – ***commitment to correct at next available opportunity***

- Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2019 (SSI 2019/419) [3<sup>rd</sup> Report, 2020. Published 14/01/20] – **commitment to clarify at an early opportunity**
- Council Tax Reduction (Scotland) Amendment Regulations 2020 (SSI 2020/25) [14<sup>th</sup> Report, 2020. Published 25 February 2020] - **commitment given to rectify at next update**

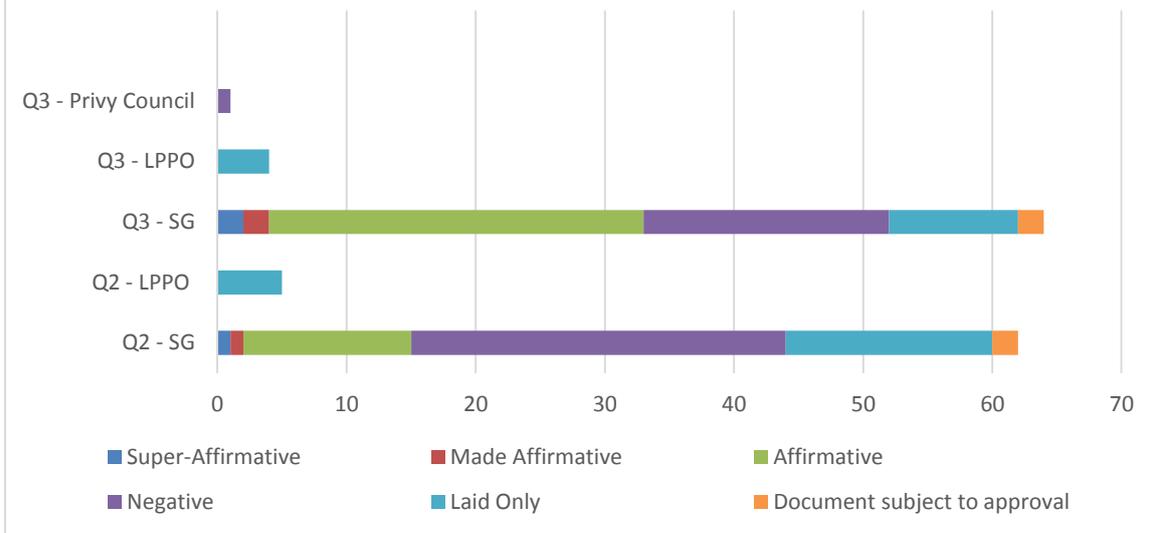
## ANNEX C - GRAPHICS AND CHARTS

**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**

### Type of SG & LPPO instruments considered in Quarter 1 and 2 in 19-20



### Reporting grounds on SG Instruments for Quarters 1 and 2 in 19-20

