

## DELEGATED POWERS AND LAW REFORM COMMITTEE

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

#### QUARTER 4 - SUMMARY

1. Slightly fewer instruments were considered this quarter compared with last quarter (62 and 73 respectively).
2. In terms of the number of instruments being reported, the results for this quarter are far more positive than the last (with 1.5% of instruments being reported by the Committee (excluding ground (j) in cases where the Committee was content with the reasons) compared to 9% in the previous quarter).
3. In terms of the seriousness of the reporting grounds, no instruments engaged serious grounds this quarter, which is the same result as the previous quarter.
4. This quarter did see a significant rise in the number of instruments being reported under ground (j) – breaching of laying requirements. All of these instruments were COVID-19 related negative instruments which breached the 28 day rule. The Committee was content in all cases.

#### QUARTER 4 - INTRODUCTION

5. 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 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.
6. This is the fourth 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.
7. This report deals with SSIs considered by the Committee during the period 26 February to 9 May 2020.

## OVERVIEW AND ANALYSIS

8. During the period 26 February to 9 May 2020, a total of 62 instruments were considered by the Committee. Of these, 62 instruments, all were laid by the Scottish Government and one was laid by the LPPO.

9. The 61 SSIs laid by the Scottish Government can be broken down as follows—

- 13 affirmative instruments;
- 6 made affirmative instruments;
- 29 negative instruments;
- 13 laid only instruments

10. The number of made affirmative instruments rose from 2 in the third quarter to 6 in this reporting period. These were laid in response to COVID-19.

11. The one LPPO instrument was a laid only instrument.

**Table 1: Instruments considered by the DPLR Committee during the period 26 February 2020 to 9 May 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	61	1(9) <sup>1</sup>	1.5% (14.5%)	1	0	0%

12. Table 1 shows that of the 61 Scottish Government instruments considered by the Committee, excluding the ten SSIs that were reported by the Committee under reporting ground **(j)** with which the Committee were content, just 1 was drawn to the Parliament's attention, which is 1.5% of instruments considered.

13. 69 instruments laid by the Scottish Government were considered by the Committee during the third quarter of the parliamentary year 2019-20 with the Parliament's attention drawn to 6 of these instruments (disregarding the instruments reported under reporting ground **(j)**) which was 8.5% of those considered.

<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.

14. **Accordingly, the results for this quarter are a marked improvement on the numbers recorded at the end of the last reporting period.**
15. **The high number of instruments reported under ground (j) resulted from legislation laid in response to the COVID-19 pandemic. In all cases the Committee was content with the reasons given for the breach.**

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

### Withdrawal of instruments

17. The following instrument was withdrawn by the Scottish Government during this period:

- UEFA European Championship (Scotland) Act 2020 (Ticket Touting Offence) (Exceptions for Use of Internet etc.) (Scotland) Regulations 2020 (SSI 2020/draft)

### Reporting grounds

18. 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*

19. 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.

20. 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.

21. 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
(j) failure to comply with laying requirements	8	0

22. **This quarter, no instruments engaged any of the more serious reporting grounds. This is the same result as the previous quarter.**
23. **The Committee did invite the lead committee to consider the Direct Payments (Crop Diversification Derogation) (Scotland) Regulations 2020 (SSI 2020/135). The vires of this instrument was tied to policy considerations as a consequence of how this had been brought into retained EU law. This meant that the Committee could not take a definitive view on whether the instrument was within vires so highlighted this issue for the lead committee to consider.**

## SUBJECT COMMITTEES

24. 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	17	3	0	0
Justice	2	1	1	0
Rural Economy and Connectivity	6	0	0	0
Health and Sport	6	1	0	0
Environment, Climate Change and Land Reform	5	0	0	0
Economy, Energy and Fair Work	2	1	0	0
Equalities and Human Rights	3	0	0	0
Education and Skills	2	1	0	0
Social Security	5	2	0	0
Finance and the Constitution	2	0	0	0
Culture, Tourism and External Affairs	4	0	0	0
COVID-19	1	0	0	0
Standards, Procedures and Public Appointments	1	0	0	0

Parliament	4	0	0	0
<b>TOTAL</b>	<b>60</b>	<b>9</b>	<b>1</b>	<b>0</b>

### **Summary: subject committees**

25. During this reporting period, the Local Government and Communities Committee had the largest number of Scottish Government instruments referred to them, considering seventeen in total. Two instruments were reported for breaching laying requirements and one instrument was reported under reporting ground (h), meaning could be clearer.

26. The Health and Sport Committee followed with six instruments with one being reported under reporting ground (j), breach of laying requirements.

#### ***Rural Economy and Connectivity Committee***

27. Six instruments were referred to Rural Economy and Connectivity Committee. None were drawn to the attention of Parliament. Last quarter 8 instruments were considered by the Committee with half of the instruments being reported on.

#### ***Social Security Committees***

28. Five instruments were referred to the Social Security Committee. Two were drawn to the attention of Parliament under reporting ground (j).

#### ***Justice Committee***

29. The Justice Committee received three instruments one of which was reported on under reporting ground (j).

#### ***Education and Skills Committee***

30. The Education and Skills Committee also received three instruments one of which was reported on under reporting ground (j).

#### ***Economy, Energy and Fair Work Committee***

31. The Economy, Energy and Fair Work Committee received 2 instruments, one of which was reported under reporting ground (j).

32. No other Committee was referred an instrument that was reported on by the Committee.

33. The COVID-19 Committee was set up specifically to look at legislation relating to the Coronavirus (Scotland) Act. The Committee considered one instrument in this quarter which was not reported on.

34. 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*

35. 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 instrument was laid during this period:

- Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2020 (SSI 2020/64) ***corrected errors identified in the Council Tax Reduction (Scotland) Amendment Regulations 2020 (SSI 2020/25)***

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

#### *LPPO instruments*

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

### Minor Points

38. The Committee identified a total of 5 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

39. 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

40. The Committee did not consider any Bills at Stage 1.

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

- [Scottish Biometrics Commissioner Bill](#)
- [Consumer \(Scotland\) Bill](#)
- [Disclosure \(Scotland\) Bill](#)

42. This is a relatively low number of Bills being considered in comparison to other quarters. This is because there was reduced business so that resources were freed up to focus on the COVID-19 pandemic and associated regulations.

### LCMs

43. Two Legislative Consent Memorandums were considered during this reporting period.

- [Coronavirus Bill](#)
- [Agriculture Bill](#)

**ANNEX A - REPORTING GROUNDS: 26 February 2020 to 9 May 2020**

**(h) meaning could be clearer**

- Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/31) **Local Government and Communities Committee**

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

- Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/124) **Local Government and Communities Committee**
- Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 (SSI 2020/101) **Local Government and Communities Committee**
- Public health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2020 (SSI 2020/51) **Health and Sport**
- Council Tax Reduction (Scotland) Amendment (No. 3) (Coronavirus) Regulations 2020 (SSI 2020/108) **Social Security Committee**
- Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020 (SSI 2020/117) **Social Security Committee**
- Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122) **Justice Committee**
- Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/123) **Economy, Energy and Fair Work Committee**
- Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/128) **Education and Skills Committee**

## ANNEX B - OUTSTANDING COMMITMENTS

### Outstanding Scottish Government commitments

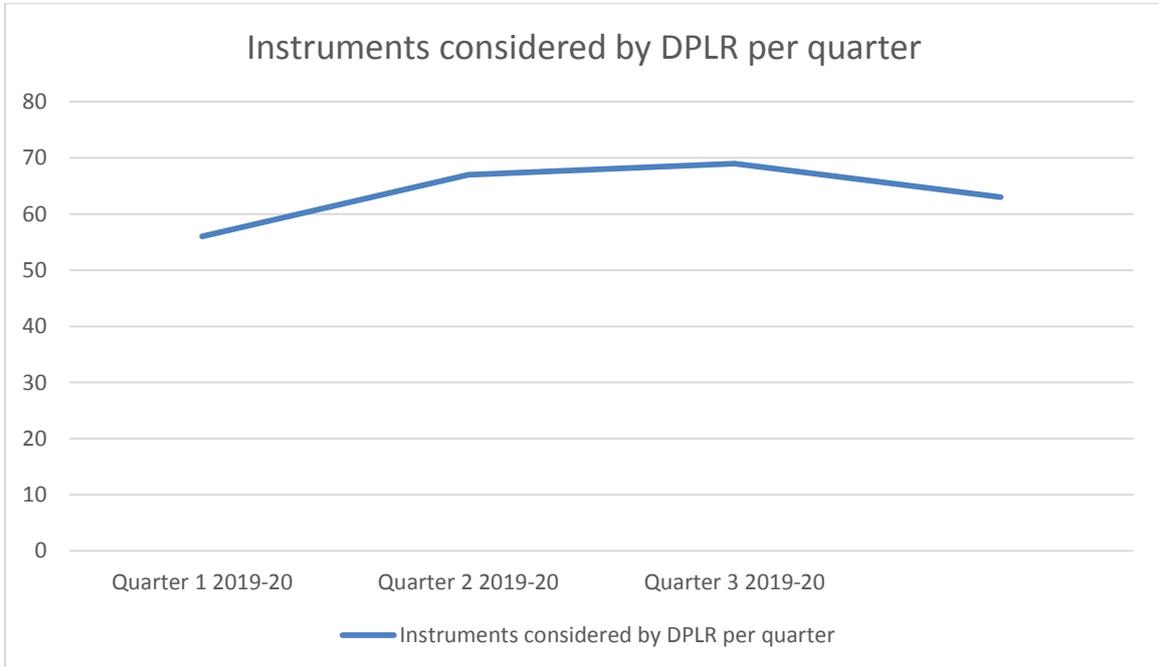
- [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2012 \(SSI 2012/228\)](#) [41st Report, 2012. Published 07/09/ 2012] *to be amended in due course*
- [Sulphur Content of Liquid Fuels \(Scotland\) Regulations 2014 \(SSI 2014/258\)](#) [59th Report, 2015. Published 29/10/2014] *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](#) [42nd Report, 2019. Published 02/10] *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*
- [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*

### Outstanding Scottish Government commitments from this quarter

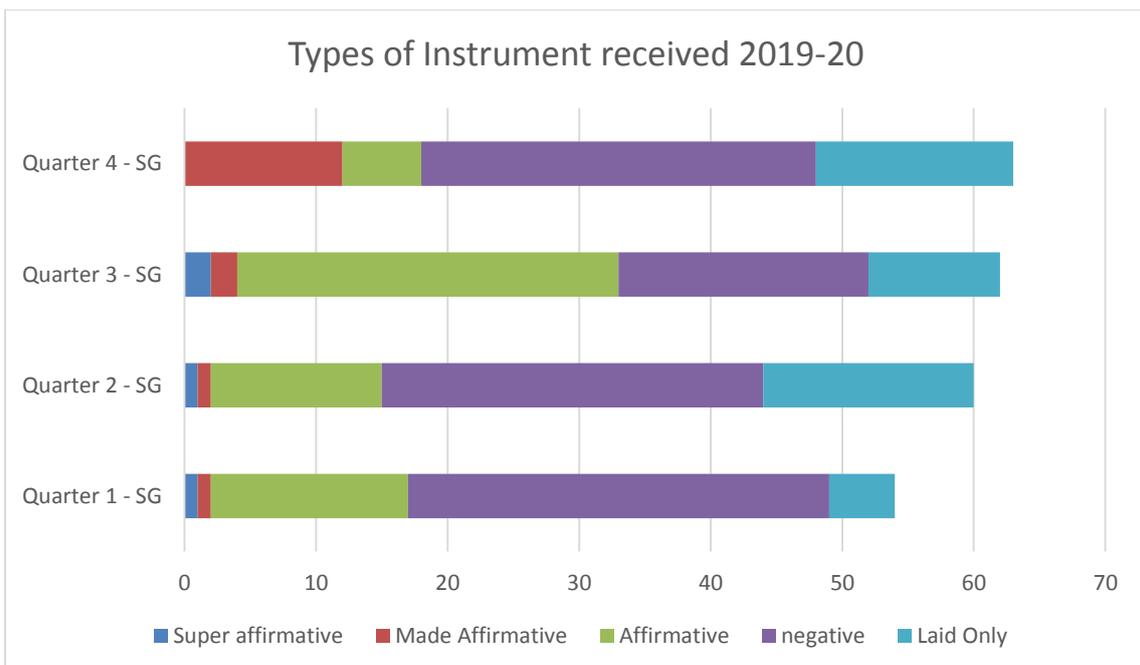
There are no outstanding commitments from this quarter.

## 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 during 2019-20**



### Reporting grounds on SG instruments in 2019-20

