

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

QUARTER 3 - INTRODUCTION

1. 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 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 third 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 5 December 2017 to 26 February 2018.
5. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

6. During the period 5 December 2017 to 26 February 2018, a total of 77 instruments were considered by the Committee. Of these, 72 instruments were laid by the Scottish Government and 5 instruments were laid by the LPPO.
7. The 72 SSIs laid by the Scottish Government can be broken down as follows—
 - 18 affirmative instruments;
 - 39 negative instruments;
 - 15 laid only instruments.
8. The 5 SSIs laid by the LPPO were all laid only instruments.

Table 1: Instruments considered by the DPLR Committee during the period 5 December 2017 to 26 February 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	72	5(7) ¹	<7% (<10%)	5	0	N/A

9. Table 1 shows that of the 72 Scottish Government instruments considered by the Committee, notwithstanding the 2 that were reported by the Committee under reporting ground (j), only 5 were drawn to the Parliament's attention which is just under 7% of instruments considered.

10. 83 instruments laid by the Scottish Government were considered by the Committee during the second quarter of the parliamentary year with the Parliament's attention drawn to 13 of these instruments (disregarding 2 instruments which were reported under reporting ground (j)) which was 16% of those considered.

11. **The results for this reporting period compared to last show a slight decrease in the number of Scottish Government instruments considered by the Committee. They also illustrate a marked decrease in both the percentage, and number, of those instruments drawn to the attention of the Parliament.**

12. **The first quarter of the parliamentary year saw 2 of the 13 LPPO instruments considered by the Committee drawn to the attention of the Parliament. Since the last one was reported on 27 June 2017, 13 LPPO instruments have been considered by the Committee with none engaging any of the reporting grounds as set out in Standing Orders.**

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

Withdrawal of instruments

14. The following draft affirmative instrument was withdrawn and re-laid by the Scottish Government during this period:

- Police Investigations and Review Commissioner (Application and Modification of the Criminal Justice (Scotland) Act 2016) (Scotland) Order 2017 [draft]

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

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)**

Ground	Scottish Government		LPPO	
	No.	% of all SSIs laid (83)	No.	% of all SSIs laid (5)
(i) drafting appears to be defective	1	<2%	0	N/A
(g) unusual or unexpected use of powers	1	<2%	0	N/A
General ground (e.g. failures to follow proper drafting practice or legislative process)	3	>6%	0	N/A
(j) failure to comply with laying requirements	2	>2%	0	N/A

19. **This quarter, just one instrument was drawn to the attention of the Parliament for being defectively drafted - significant ground **(i)** - whilst the previous reporting period saw 5 Scottish Government instruments reported under the more serious 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 by subject committee

Committee	Scottish Government		LPPO	
	Total SSIs	Total reported	Total SSIs	Total reported
Local Government and Communities	11	0		
Justice	17	0	5	0
Rural Economy and Connectivity	8	(0)1		
Health and Sport	20	3		
Environment, Climate Change and Land Reform	3	(0)1		
Economy, Jobs and Fair Work	1	0		
Finance and Constitution	1	0		
Education and Skills	8	1		
Equalities and Human Rights	1	1		
Social Security	1	0		
Delegated Powers and Law Reform	1	0		
TOTAL	72	5(7)	5	0

21. During this reporting period, the Health and Sport Committee had referred to them the largest number of Scottish Government instruments, looking at twenty in total. Three of those instruments were drawn to the attention of the Parliament by the Committee. Including those laid by the LPPO, the Justice Committee were referred twenty-two instruments and none were drawn to the Parliament's attention.

Summary: subject committees

Health and Sport Committee

22. Three 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 commitments given to correct the two instruments reported under the **general** ground were met, however, the commitment given to correct an instrument reported under significant ground **(i)** remains outstanding.

Education and Skills Committee

23. One Scottish Government instrument referred to the Education and Skills Committee was drawn to the Parliament's attention under the **general** reporting ground. The commitment given to correct the errors identified has yet to be met.

Equalities and Human Rights Committee

24. The one instrument referred to the Equalities and Human Rights Committee that was drawn to the attention of the Parliament was done so under the rarely engaged ground **(g)** for an unexpected use of powers.

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 reporting ground **(j)** for breaching laying requirements. The Committee was content with the reason given for non-compliance.

Environment, Climate Change and Land Reform Committee

26. One instrument referred to the Rural Economy and Connectivity Committee was drawn to the attention of the Parliament under reporting ground **(j)** for breaching laying requirements. The Committee was content with the reason given for non-compliance.

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**.

SCOTTISH STATUTORY INSTRUMENTS - GENERAL

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:

- Letting Agent (Registration and Code of Practice) (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/428) **corrected errors identified in the Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017 [draft]**
- Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment (No. 2) Regulations 2018 (SSI 2018/42) **corrected errors identified in the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment Regulations 2018 (SSI 2018/16)**

29. The commitment given to correct the Carers (Scotland) Act 2016 (Review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018 (SSI 2018/33) 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:

- National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) (No. 2) Regulations 2017 (SSI 2017/434) **to be corrected in the next set of regulations to include amendments of this instrument**
- Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7) **to be corrected in the next amending instrument**

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 19 instruments on which minor points were raised (generally relating to typographical or referencing errors). 17 of these instruments were laid by the Scottish Government and 2 were laid by the LPPO.

34. **Typically, around a third of instruments laid each quarter by the Scottish Government contain Minor Points. This reporting period, less than a quarter of instruments laid contained Minor Points.**

OTHER BUSINESS

Introduction

35. 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

36. The Committee published reports on the following bills at Stage 1:
- Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill;
 - Budget (Scotland) (No.2) Bill.
37. The Committee also reported on the following bills after Stage 2:
- Wild Animals in Travelling Circuses (Scotland) Bill;
 - Forestry and Land Management (Scotland) Bill;
 - Gender Representation on Public Boards (Scotland) Bill.

Planning (Scotland) Bill

38. The Committee took oral evidence on the delegated powers provisions in the Bill from the Minister for Local Government and Housing, Kevin Stewart MSP, at its meeting on 20 February 2018.

Evidence session with the Minister for Parliamentary Business

39. The Minister for Parliamentary Business, Joe FitzPatrick MSP, attended the Committee meeting on 5 December 2017 to discuss the conclusions and recommendations in the Committee's Annual Report which detailed the work of the Committee during the parliamentary year 2016-17.

European Union (Withdrawal) Bill [UK Parliament legislation]

40. The Committee were briefed throughout the reporting period on developments of relevance to its ongoing consideration of the European Union (Withdrawal) Bill.

(g) unusual or unexpected use of powers

- Equality Act 2010 (Authorities subject to the Socio-economic Inequality Duty) (Scotland) Regulations 2018 [draft] **Equalities and Human Rights**

(i) drafting appears to be defective

- National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) (No. 2) Regulations 2017 (SSI 2017/434) **Health and Sport**

(j) failure to comply with laying requirements

- Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017 (SSI 2017/451) **Environment, Climate Change and Land Reform**
- Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 (SSI 2018/15) **Rural Economy and Connectivity**

General reporting ground

- Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7) **Education and Skills**
- Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment Regulations 2018 (SSI 2018/16) **Health and Sport**
- Carers (Scotland) Act 2016 (Review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018 (SSI 2018/33) **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) *to be corrected in due course*
- 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) *to be corrected when regulations are next made in the area of student support*
- 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*

Outstanding Scottish Government commitments from this quarter

- [National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(SSI 2017/434\)](#) *to be corrected in the next set of regulations to include amendments of this instrument*
- [Education \(Listed Bodies\) \(Scotland\) Order 2018 \(SSI 2018/7\)](#) *to be corrected in the next amending instrument*

ANNEX C – GRAPHS AND CHARTS

Chart illustrating the similarity in both the number of Scottish Government instruments considered, and reported, at the end of quarter 3 of the last two parliamentary years

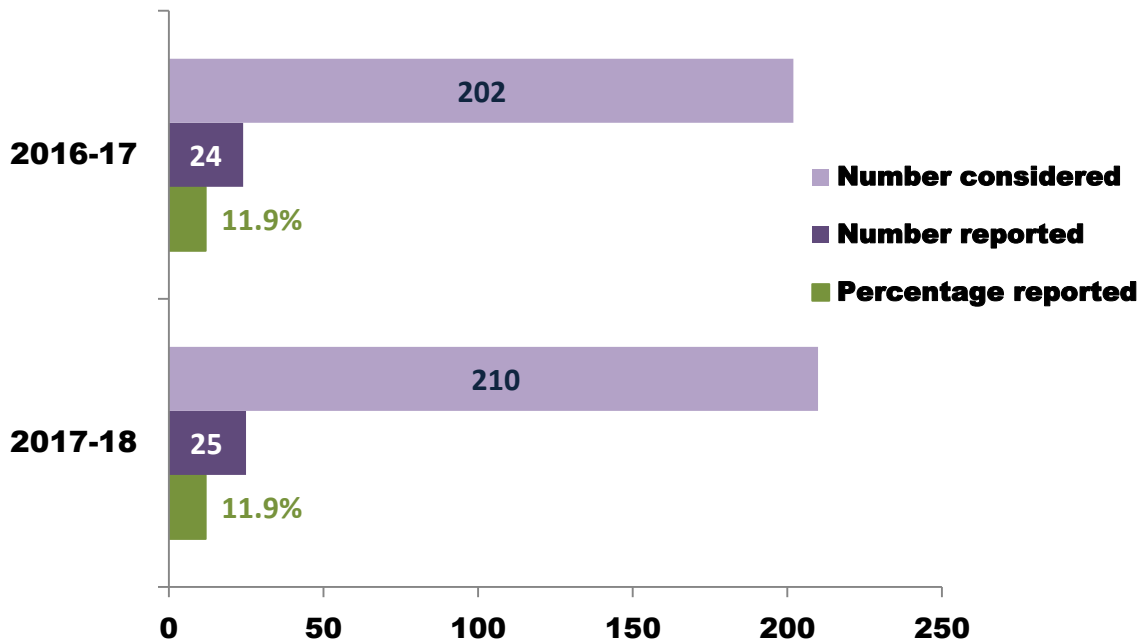
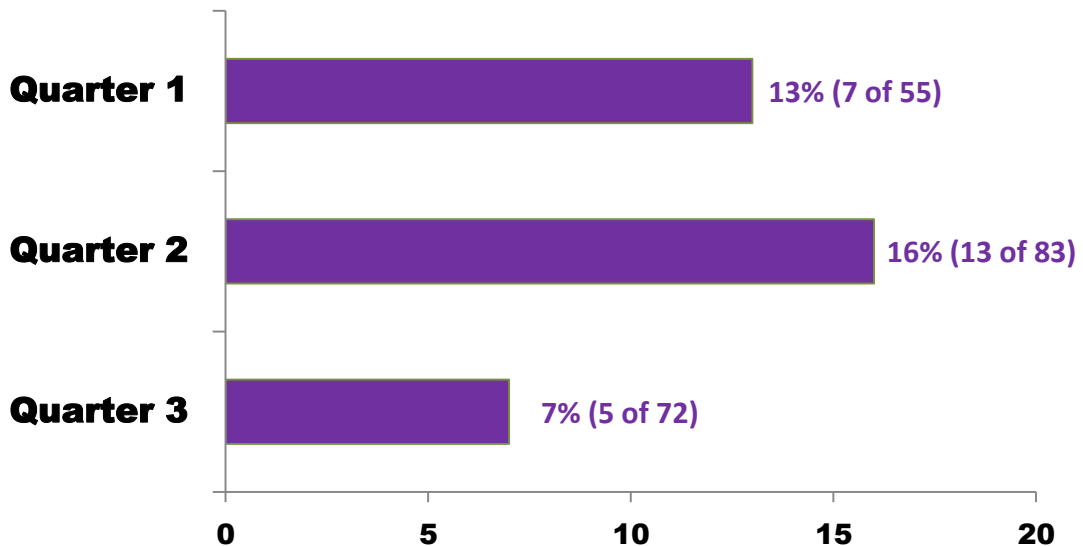
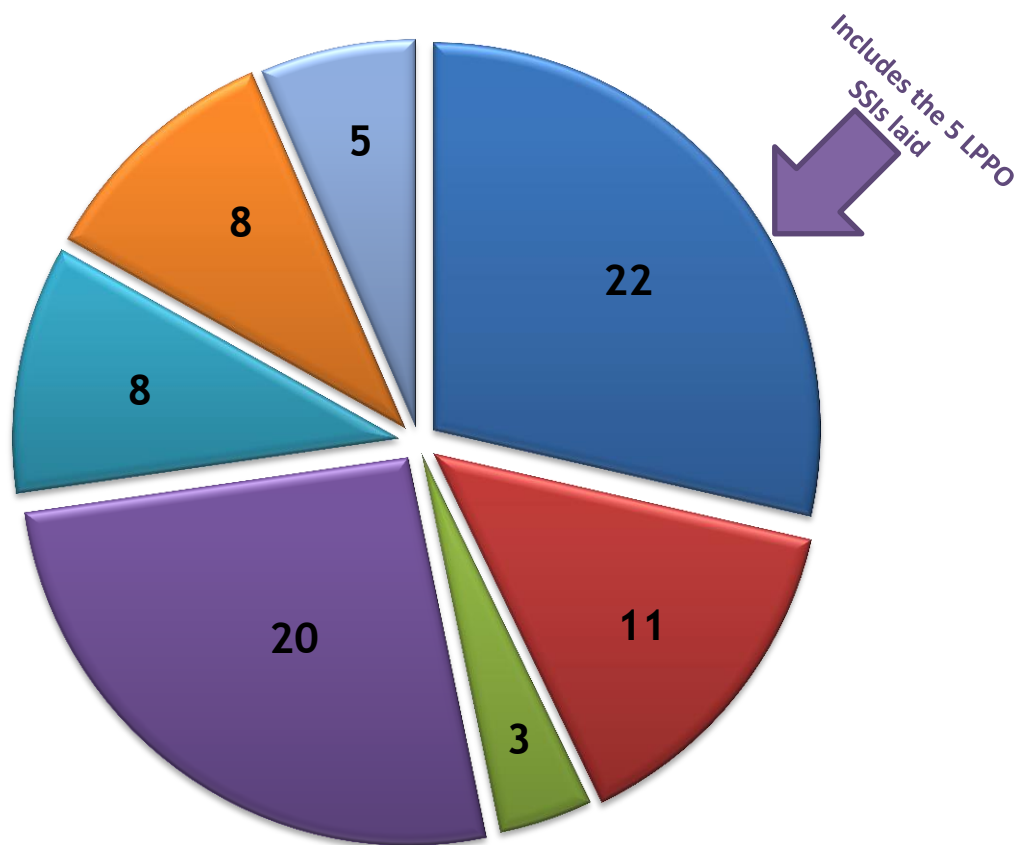


Chart showing the % of Scottish Government instruments reported by the Committee over the course of the first three quarters of the current parliamentary year

Scottish Government SSIs



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



- **Justice**
- **Local Government and Communities**
- **Environment, Climate Change and Land Reform**
- **Health and Sport**
- **Education and Skills**
- **Rural Economy and Connectivity**
- **Others**