

DELEGATED POWERS AND LAW REFORM COMMITTEE

Instruments considered by the Committee during the first quarter of the parliamentary year 2016-17

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 2016-17. 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 session following on from the Committee agreeing to continue to produce both quarterly and annual reports throughout this session.
3. The report is intended to be more statistical than analytical and along with the subsequent quarterly reports will help inform the Committee's annual report which the Committee can expect to consider in autumn 2017.
4. This particular report deals with SSIs considered by the Committee during the period 14 June 2016 to 25 October 2016. Information on SSIs and how they are scrutinised by the Committee and Parliament more generally is contained within this [infographic](#).
5. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

6. During the period 14 June 2016 to 25 October 2016, a total of 106 instruments were considered by the Committee. Of these, 95 instruments were laid by the Scottish Government and 11 instruments were laid by the LPPO.
7. The 95 SSIs laid by the Scottish Government can be broken down as follows—
 - 26 affirmative instruments;
 - 30 negative instruments;
 - 39 laid only instruments.
8. The 11 SSIs laid by the LPPO were all laid only instruments.

Table 1: Instruments considered by the DPLR Committee during the period 14 June 2016 to 25 October 2016 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	95	9	9.5%	11	4	36%

9. Table 1 shows that of the 95 Scottish Government instruments considered by the Committee, 9 were drawn to the Parliament's attention, which is just under 10% of instruments considered.

10. 54 instruments laid by the Scottish Government were considered by the session 4 Delegated Powers and Law Reform Committee during the last quarter of the parliamentary year 2015-16. That Committee drew the Parliament's attention to 8 of these instruments, which was just under 15% of those considered.

11. Although there were far more instruments considered by the Committee this quarter compared to that considered in the last quarter of session 4, the results for this period point to a marked decrease in the percentage of instruments reported on.

12. 5 instruments laid by the LPPO were considered by the session 4 Committee during the last quarter of the parliamentary year 2015-16 with the Parliament's attention drawn to 3 of them. This quarter, 4 of the 11 LPPO instruments considered by the Committee were drawn to the attention of the Parliament.

13. Again, where the LPPO is concerned the results for this period point to a decrease in the percentage of instruments reported on.

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

Withdrawal of instruments

15. The following draft affirmative instruments were all withdrawn and re-laid by the Scottish Government during this period:

- First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 [draft];
- First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016 [draft];
- First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 [draft].

16. The following instrument was withdrawn and re-laid by the Scottish Government on the recommendation of the Committee *after* it had been reported for being defectively drafted:

- Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 [draft].

Reporting grounds

17. 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

18. 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.

19. 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.

20. 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 (95)	No.	% of all SSIs laid (11)
(i) drafting appears to be defective	1	>1%	0	N/A
(f) raises a devolution issue	1	>1%	0	N/A
(h) meaning could be clearer	0	N/A	1	9%
(i), (h) <u>and</u> the General ground	0	N/A	1	9%
General ground (e.g. failures to follow proper drafting practice or legislative process)	4	>4%	2	18%
(j) failure to comply with laying requirements	3	>3%	0	N/A

21. Like the last quarter of the parliamentary year 2015-16, this reporting period saw 2 Scottish Government instruments reported under the significant grounds. One instrument was drawn to the attention of the Parliament for being defectively drafted - significant ground (i), whilst the other was reported under significant ground (f) in that it raised a devolution issue.

22. One instrument laid by the LPPO this quarter was reported for being defectively drafted - significant ground (i), whereas during the last quarter of the parliamentary year 2015-16 no LPPO instruments were reported on under any of the significant grounds.

Subject committees

23. 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	% of SSIs considered that were reported on	Total SSIs	Total reported	% of SSIs considered that were reported on
Local Government and Communities	34	1	3%			
Justice	27	4	15%	11	4	36%
Rural Economy and Connectivity	5	1	20%			
Health and Sport	8	1	12.5%			
Environment, Climate Change and Land Reform	8	0	N/A			
Delegated Powers and Law Reform	1	0	N/A			
Finance and Constitution	2	0	N/A			
Education and Skills	9	1	11%			
Social Security	1	1	100%			
TOTAL	95	9	9.5%	11	4	36%

Summary: subject committees

24. During this reporting period, the Local Government and Communities Committee had referred to them the largest number of Scottish Government instruments, looking at thirty-four in total. Only one was drawn to the attention of the Parliament by the Committee. Including those laid by the LPPO, the Justice Committee were referred thirty-eight instruments with the Parliament's attention drawn to eight of them - four laid by the Scottish Government and four laid by the LPPO.

Justice Committee

25. One Scottish Government instrument referred to the Justice Committee was drawn to the Parliament's attention for being defectively drafted (reporting ground **(i)**). The Scottish Government would later withdraw and re-lay the instrument on the recommendation of the Committee. The Scottish Government gave a commitment to correct two of the other three instruments reported on. These commitments are outstanding. One LPPO instrument was also reported for being defectively drafted with the LPPO currently in the process of amending the errors identified by the Committee.

Local Government and Communities Committee

26. Only one of the thirty four instruments referred to the Local Government and Communities Committee was drawn to the attention of the Parliament and that was for breaching laying requirements (reporting ground **(j)**). The Committee were minded to accept the reason given by the Scottish Government for the non-compliance.

Education and Skills Committee

27. One instrument referred to the Education and Skills Committee was drawn to the attention of the Parliament under reporting ground **(j)**. The Committee accepted the reason given by the Scottish Government for breaching laying requirements.

Rural Economy and Connectivity Committee

28. One instrument referred to the Rural Economy and Connectivity Committee was drawn to the Parliament's attention under reporting ground **(j)**. Again, the Committee accepted the reason given by the Scottish Government for breaching laying requirements.

Health and Sport Committee

29. One of the eight instruments laid by the Scottish Government and referred to the Health and Sport Committee this quarter was drawn to the attention of Parliament under the general reporting ground. The Commitment given to correct the errors identified in the instrument remains outstanding.

Social Security Committee

30. The one instrument referred to the Social Security Committee was drawn to the Parliament's attention under the significant ground **(f)** as raising a devolution issue.

Other Committees

31. No other subject committees were referred instruments that were drawn to the attention of the Parliament by the Committee.

32. Information detailing specific SSIs and the grounds that they were reported on is provided in **ANNEX A**.

SCOTTISH STATUTORY INSTRUMENTS - GENERAL

Commitments

33. 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:

- Civil Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2016 (SSI 2016/317) **corrected errors identified in the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2016 (SSI 2016/290)**

34. There are three outstanding Scottish Government commitments in terms of the instruments that were laid this quarter:

- Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2016 (SSI 2016/187) **to be corrected at the first opportunity**
- Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190) **to be corrected at the earliest available opportunity**
- Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231) **to be corrected before the Regulations come in to force on 1 December 2016**

35. A full list of all outstanding Scottish Government commitments can be found at **ANNEX B**.

LPPO instruments

36. In terms of the LPPO 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:

- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 2) (Miscellaneous) 2016 (SSI 2016/229) **corrected errors identified in the Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016 (SSI 2016/215)**

37. There is one outstanding LPPO commitment in terms of the instruments that were laid this quarter:

- Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300) **to be corrected at the next available legislative opportunity**

38. The LPPO also gave a commitment to correct a number of errors in the **Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200)**. Some of those errors have been corrected with the LPPO encouraged to correct the remainder of the errors in time for commencement of the new procedure on 28 November 2016.

Minor Points

39. The Committee identified a total of 20 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 6 were laid by the LPPO.

OTHER BUSINESS

Introduction

40. 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.

Business Planning Day

41. At its first meeting on 14 June, the Committee agreed to hold a Business Planning Day which consequently took place on 30 August. At the event, the Committee considered, amongst other things:

- whether to retain a hierarchy of reporting grounds;
- whether to continue to produce annual and quarterly reports; and
- whether to invite the Minister for Parliamentary Business to give evidence on the annual report each parliamentary year.

42. Formal agreement to continue with these practices was accorded at the Committee meeting on 6 September.

Social Media [DPLR Committee](#)

43. The Committee established a Twitter account in early October with the aim of promoting the work of the Committee and improving understanding and awareness of secondary legislation.

Bills

44. Thus far, no bills have been introduced this session.

(f) raises a devolution issue

- Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2016 (SSI 2016/253) **Social Security**

(i) drafting appears to be defective

- Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 [draft] **Justice**

LPPO instruments

- Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200) **Justice**

(h) meaning could be clearer

LPPO instruments

- Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200) **Justice**
- Act of Sederunt (Lay Representation for Non-Natural Persons) 2016 (SSI 2016/243) **Justice**

(j) failure to comply with laying requirements

- Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment (No. 2) Regulations 2016 (SSI 2016/178) **Rural Economy and Connectivity**
- Named Persons (Training, Qualifications, Experience and Position) and the Child's Plan (Scotland) Revocation Order 2016 (SSI 2016/234) **Education and Skills**
- Acquisition of Land (Rate of Interest after Entry) (Scotland) Amendment Regulations 2016 (SSI 2016/258) **Local Government and Communities**

General reporting ground

- Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2016 (SSI 2016/187) **Justice**
- Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190) **Health and Sport**
- Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231) **Justice**
- Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2016 (SSI 2016/290) **Justice**

LPPO instruments

- Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200) **Justice**
- Act of Sederunt (Sheriff Court Rules Amendment) (Personal Injury Pre-Action Protocol) 2016 (SSI 2016/215) **Justice**
- Act of Adjournment (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300) **Justice**

ANNEX B - OUTSTANDING SCOTTISH GOVERNMENT COMMITMENTS

- Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102) **to be amended at the next available opportunity**
- 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 at the next available opportunity**
- 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 at the next available opportunity**
- Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/304) **to be corrected when the Regulations are next amended**
- 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 at the next available legislative opportunity**
- Private and Public Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/346) **to be corrected at the next suitable opportunity**
- Seed Potatoes (Scotland) Regulations 2015 (SSI 2015/395) **to be corrected at the next available opportunity**
- National Health Service (General Dental Services) (Scotland) Amendment Regulations 2016 (SSI 2016/53) **to be corrected at the first opportunity**
- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) **to be corrected as soon as is reasonably practical**
- Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) **to be corrected at the earliest available opportunity**
- Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75) **to be corrected in a future amending instrument**

- Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82) ***to be corrected at the next available opportunity***
- 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***

Outstanding Scottish Government commitments from this quarter
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- Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2016 (SSI 2016/187) ***to be corrected at the first opportunity***
- Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190) ***to be corrected at the earliest available opportunity***
- Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231) ***to be corrected before the Regulations come in to force on 1 December 2016***

ANNEX C - GRAPHICS AND CHARTS

Line graph showing the number of outstanding Scottish Government commitments as at the end of each of the last four reporting periods (quarterly reports)

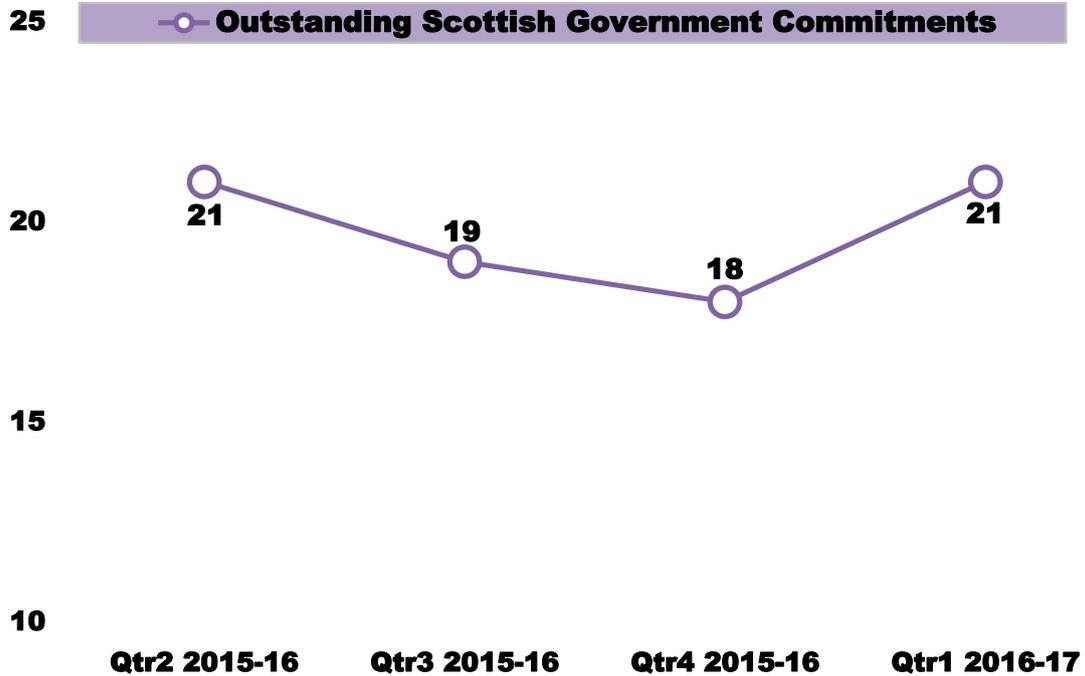
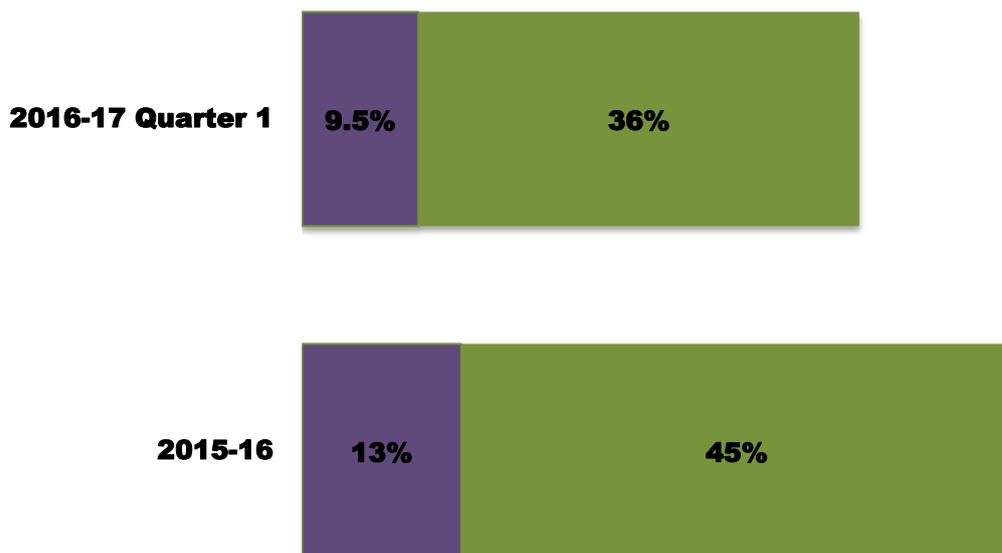
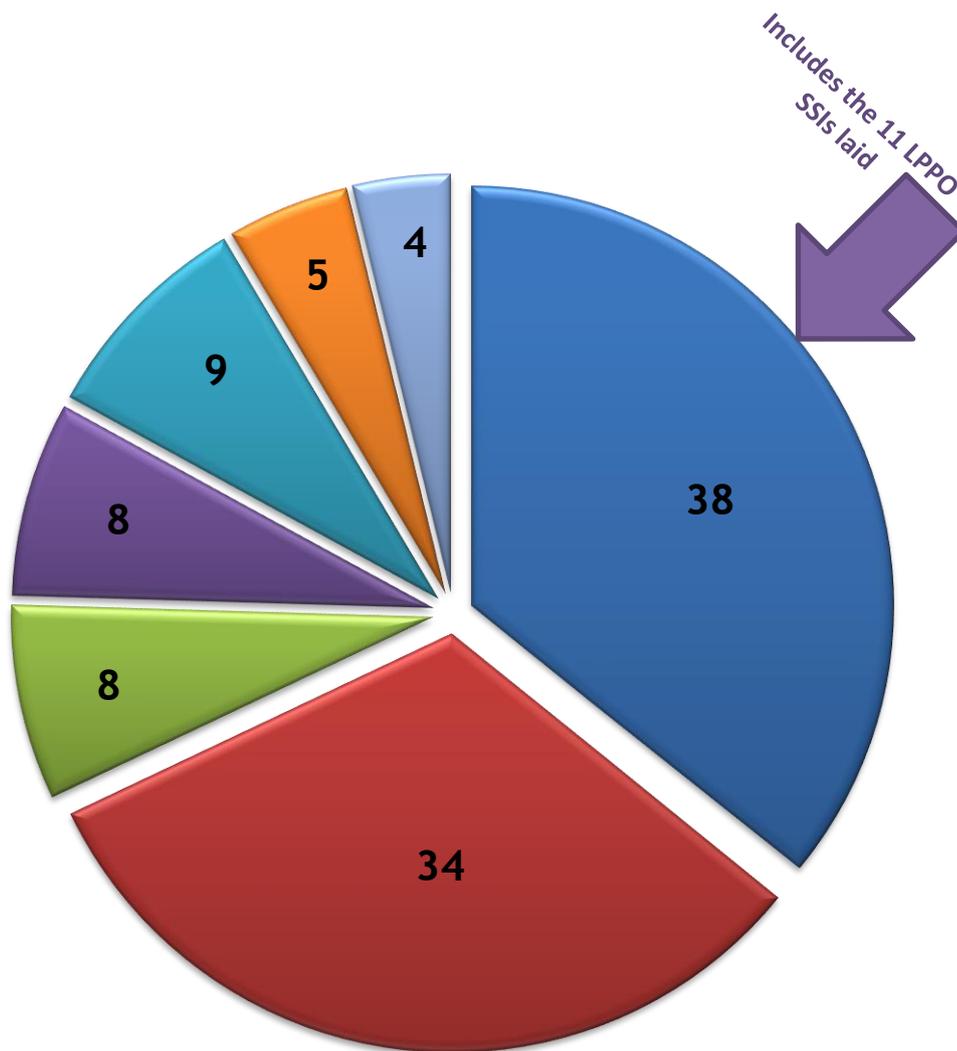


Chart showing the % of SSIs reported on during the first quarter of this parliamentary year compared to the last parliamentary year as a whole

Scottish Government SSIs and LPPO SSIs



Number of instruments that were referred to the various subject committees during the first quarter of the parliamentary year 2016-17



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