

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

QUARTER 4 - INTRODUCTION

1. 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 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 particular report deals with SSIs considered by the Committee during the period 14 March 2017 to 9 May 2017.
3. The report also touches briefly on the general work of the Committee during this quarter.

Overview and analysis

4. During the period 14 March 2017 to 9 May 2017, a total of 56 instruments were considered by the Committee. Of these, 50 instruments were laid by the Scottish Government and 6 instruments were laid by the LPPO.
5. The 50 SSIs laid by the Scottish Government can be broken down as follows—
 - 6 affirmative instruments;
 - 39 negative instruments;
 - 5 laid only instruments.
6. The 6 SSIs laid by the LPPO can be broken down as follows—
 - 1 negative instrument;
 - 5 laid only instruments

Table 1: Instruments considered by the DPLR Committee during the period 14 March 2017 to 9 May 2017 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	50	9	18%	6	1	16%

Scottish Government SSIs

7. Table 1 shows that of the 50 Scottish Government instruments considered by the Committee, 9 were drawn to the Parliament's attention, which is 18% of instruments considered.

8. 52 Scottish Government instruments were considered by the Committee during the previous quarter of the current parliamentary year. The attention of the Parliament was drawn to 6 of those instruments which was just over 11% of Scottish Government instruments considered by the Committee.

9. Although there were slightly fewer Scottish Government instruments considered by the Committee this quarter compared to last, more of them were drawn to the attention of the Parliament. The figures for this period therefore represent an increase in both the number and percentage of Scottish Government instruments reported on.

Lord President's Private Office SSIs

10. Table 1 shows that 6 LPPO instruments were considered by the Committee this quarter and that 1 was drawn to the Parliament's attention.

11. Just 2 instruments laid by the LPPO were considered by the Committee during the third quarter of the current parliamentary year with neither drawn to the attention of the Parliament.

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

Withdrawal of instruments

13. The following Scottish Government instruments were withdrawn and subsequently re-laid during this period—

- Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017 [draft];
- Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017 [draft].

Reporting grounds

14. 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

15. 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.

16. 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.

17. 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.	No.
(i)	1	0
(i), (h) and General	1	0
(i) and (h)	1	0
(i) and General	0	1
(h) and General	3	0
(j)	3	0

Reporting Grounds

Significant	e, f, i
Advisory	a, b, g
Procedural	d, j
Other	gen, c, h

18. Of the 10 instruments reported by the Committee this quarter, 4 were reported under one of the significant grounds - significant ground (i) - for being defectively drafted. Last quarter, of the 6 instruments drawn to the attention of the Parliament by the Committee, half of them were done so under one of the **significant** reporting grounds.

19. Notwithstanding the fact that one of the instruments reported for being defectively drafted was laid by the Lord President's Private Office, this marks the second quarter in a row where 3 Scottish Government instruments have been reported under significant ground (i).

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	% of SSIs considered that were reported on	Total SSIs	Total reported	% of SSIs considered that were reported on
Local Government and Communities	10	3	30%	0	0	N/A
Justice	6	1	16%	6	1	16%
Rural Economy and Connectivity	16	0	N/A	0	0	N/A
Health and Sport	9	0	N/A	0	0	N/A
Environment, Climate Change and Land Reform	6	4	66%	0	0	N/A
Finance and Constitution	1	0	N/A	0	0	N/A
Economy, Jobs and Fair Work	2	1	50%	0	0	N/A
TOTAL	50	9	18%	6	1	16%

Summary: subject committees

21. The Rural Economy and Connectivity Committee were referred the largest number of instruments - sixteen in total - with none drawn to the attention of the Parliament. As was the case last quarter, the Local Government and Communities Committee had referred to them the next largest number of instruments, looking at ten all told.

Environment, Climate Change and Land Reform Committee

22. Four of the six instruments referred to the Environment, Climate Change and Land Reform Committee were drawn to the attention of the Parliament, with two done so under the significant ground **(i)** on account of being defectively drafted. The Scottish Government gave a commitment to correct the errors identified in those instruments and that commitment has been met by the laying of an amending instrument which the Committee considered out-with this reporting period. That instrument also meets a commitment to correct the remaining two instruments that were reported by the Committee under less serious grounds.

Local Government and Communities Committee

23. The Local Government and Communities Committee had ten instruments referred to them with one drawn to the Parliament's attention under the significant reporting ground **(i)** for being defectively drafted. Again, the Scottish Government gave a commitment to correct the errors identified by the Committee and that commitment has been met by the laying of an amending instrument which the Committee considered out-with this reporting period. One instrument was reported under reporting ground **(j)** with the Committee content with the reason given for not complying with laying requirements.

Economy, Jobs and Fair Work Committee

24. One instrument referred to the Economy, Jobs and Fair Work Committee was drawn to the Parliament's attention under reporting ground **(j)**. The Committee was content with the reason given for not complying with laying requirements.

Justice Committee

25. One of the six instruments laid by the Scottish Government and referred to the Justice Committee this quarter was drawn to the attention of Parliament under reporting ground **(j)**. Again, the Committee was content with the reason given for not complying with laying requirements. One instrument laid by the Lord President's Private Office was reported by the Committee under the significant ground **(i)** for being defectively drafted. The commitment given to correct the errors identified by bringing forward an amending instrument remains outstanding.

Other Committees

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

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

Commitments

28. In terms of committing to the laying of amending instruments to correct errors identified and reported on by the Committee this quarter, the Scottish Government have laid instruments to correct all six instruments where a commitment to correct was given. A link to the relevant Committee report which documents the commitment is footnoted below:

- Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/101)¹ **corrected by the laying of SSI 2017/168, considered by the Committee on 13 June;**
- Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102)² **corrected by the laying of SSI 2017/168, considered by the Committee on 13 June;**
- Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/113)³ **corrected by the laying of SSI 2017/168, considered by the Committee on 13 June;**
- Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/114)⁴ **corrected by the laying of SSI 2017/168, considered by the Committee on 13 June;**
- Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115)⁵ **corrected by the laying of SSI 2017/168, considered by the Committee on 13 June;**
- Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120)⁶ **corrected by the laying of SSI 2017/149, considered by the Committee on 16 May.**

29. Accordingly, there are no outstanding Scottish Government commitments in terms of the instruments that were laid this quarter but a full list of all outstanding commitments from previous quarters/years can be found at **ANNEX B**.

¹ 21st Report, 2017

² 21st Report, 2017

³ 23rd Report, 2017

⁴ 23rd Report, 2017

⁵ 23rd Report, 2017

⁶ 24th Report, 2017

LPPO instruments

Commitments

30. The LPPO also laid an amending instrument to correct the one instrument reported by the Committee this quarter and where a commitment to correct was given:

- Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (SSI 2017/103) **corrected by the laying of SSI 2017/154, considered by the Committee on 23 May.**

31. The LPPO also met its only remaining outstanding commitment - that from Quarter 1:

- Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300) **corrected by the laying of SSI 2017/144, considered by the Committee on 23 May.**

32. Accordingly, there are no outstanding LPPO commitments in terms of the instruments that were laid this quarter, or indeed, this reporting year.

Minor Points (all instruments)

33. The Committee identified a total of 17 instruments on which minor points were raised (generally relating to typographical or referencing errors). 15 of these instruments were laid by the Scottish Government, 2 were laid by the LPPO.

OTHER BUSINESS

Introduction

34. 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

35. The Committee published Stage 1 reports on the following Bills after considering the delegated powers provisions therein:

- Child Poverty (Scotland) Bill;
- Domestic Abuse (Scotland) Bill;
- Seat Belts on School Transport (Scotland) Bill.

Contract (Third Party Rights) (Scotland) Bill

36. The Committee received written and oral evidence from stakeholders as the lead committee for the Contract (Third Party) Rights (Scotland) Bill. The Committee also heard from the Minister for Community Safety and Legal Affairs and agreed its [Stage 1 report on the Bill](#) at its meeting on 9 May.

Legislative Consent Memorandums (LCMs)

37. The Committee considered one Supplementary Legislative Consent Memorandum during this reporting period. These relate to Westminster Bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The Supplementary Legislative Consent Memorandum considered by the Committee was on the:

- Criminal Finances Bill (UK Parliament Legislation).

Bankruptcy (Scotland) Act 2016

38. On account of the role the Committee has in the scrutiny of consolidation bills, the Minister for Business, Innovation and Energy was invited to attend the Committee meeting on 21 March to debate and move a motion to approve subordinate legislation relating to the Bankruptcy (Scotland) Bill for which this Committee's predecessor was the lead committee in Session 4.

(i) drafting appears to be defective

- Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/114) **Environment, Climate Change and Land Reform**
- Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115) **Environment, Climate Change and Land Reform**
- Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120) **Local Government and Communities**

LPPO instrument

- Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (SSI 2017/103) **Justice**

(h) meaning could be clearer

- Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/101) **Environment, Climate Change and Land Reform**
- Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102) **Local Government and Communities**
- Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/113) **Environment, Climate Change and Land Reform**
- Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/114) **Environment, Climate Change and Land Reform**
- Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115) **Environment, Climate Change and Land Reform**

General reporting ground

- Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/101) **Environment, Climate Change and Land Reform**
- Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102) **Local Government and Communities**
- Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/113) **Environment, Climate Change and Land Reform**
- Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115) **Environment, Climate Change and Land Reform**

LPPO instrument

- Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (SSI 2017/103) **Justice**

(j) failure to comply with laying requirements

- Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 (SSI 2017/85) **Local Government and Communities**
- Damages (Personal Injury) (Scotland) Order 2017 (SSI 2017/96) **Justice**
- Bankruptcy Fees (Scotland) Revocation Regulations 2017 (SSI 2017/97) **Economy, Jobs and Fair Work**

ANNEX B - OUTSTANDING COMMITMENTS TO CORRECT ERRORS IN INSTRUMENTS

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 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**
- [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 early in the next parliamentary session**
- [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**
- [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*
 - 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*
 - Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C.42)) *provisions to be corrected before they have effect*
- Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) *to be corrected at the earliest available opportunity*
 - ★ Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434) *to be corrected at the next available opportunity*⁷
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27) *to be corrected when the Regulations are next amended*

Outstanding Scottish Government commitments from this quarter

None

OUTSTANDING LPPO COMMITMENTS

None

Outstanding LPPO commitments from this quarter

None

⁷ ★ Both SSI 2016/68 and SSI 2016/434 have since been corrected by an instrument [SSI 2017/179] considered by the Committee on 20 June.

ANNEX C - GRAPHICS AND CHARTS

Chart showing the % of SSIs reported on during each quarter of the parliamentary year

Scottish Government SSIs and LPPO SSIs

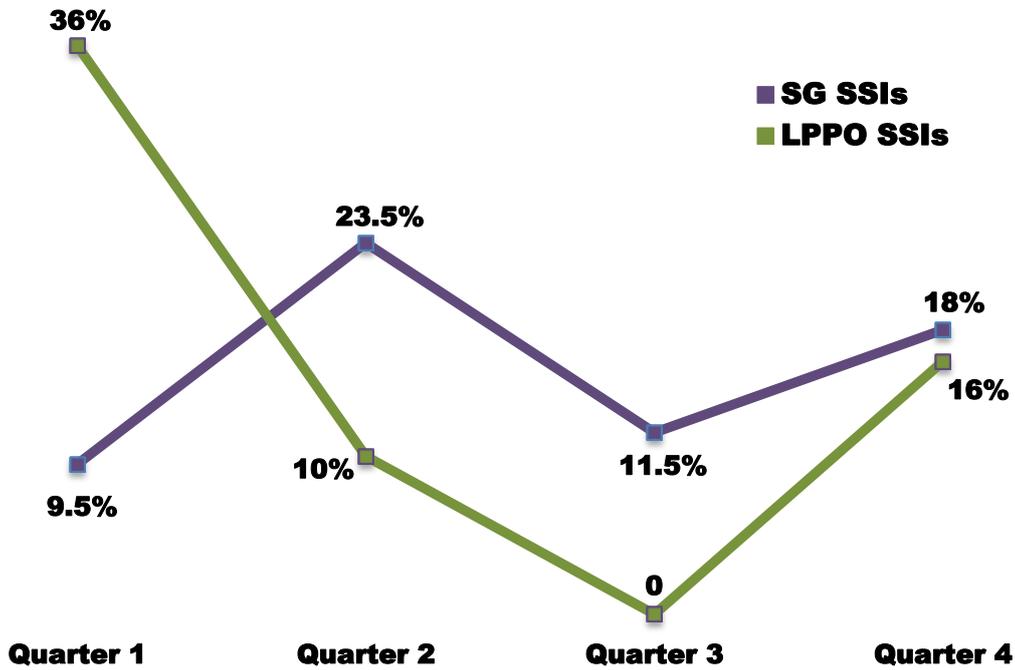
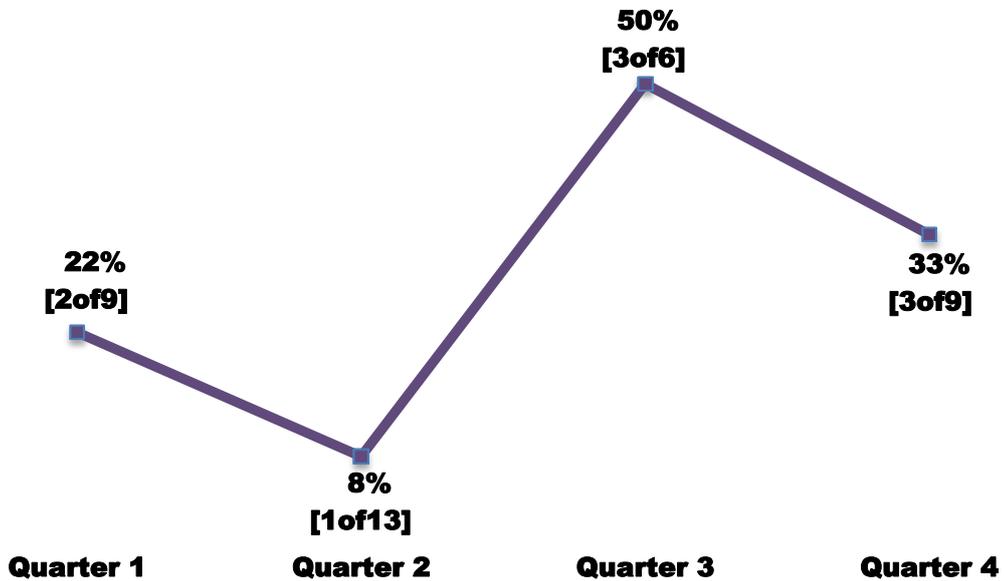
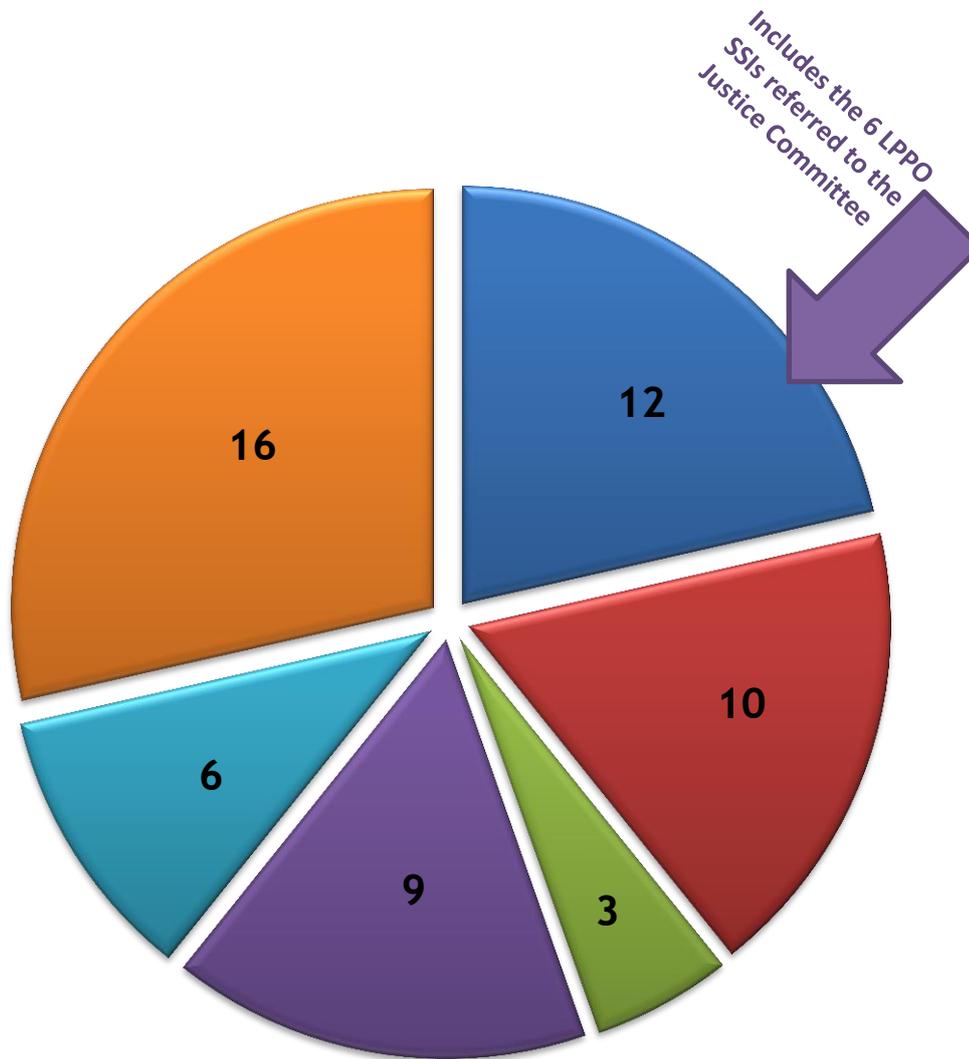


Chart showing the % of Scottish Government SSIs reported under one or more of the significant reporting grounds during each quarter of the parliamentary year



Number of instruments that were referred to the various subject committees during the fourth quarter of the parliamentary year



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