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Delegated Powers and Law Reform Committee

Instruments considered by the Delegated Powers and Law Reform Committee during the fourth quarter of the Parliamentary Year 2023-24



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Summary

1. This reporting period covers 1 March to 12 May 2024.
2. There was a decrease in instruments and documents subject to parliamentary control considered in quarter 4 compared to quarter 3 of 2023-24 (41 and 66 respectively). This is an overall decrease of 38%.
3. In terms of the number of instruments being reported, excluding those where the Committee was content with the explanation given for breaching the 28-day rule, the figures for this quarter are slightly lower at 5% compared with 6% in quarter 3.
4. In total, 2 instruments were drawn to the attention of the Parliament, of which 1 was reported under both the General reporting ground and the significant reporting ground (i) (defective drafting).
5. In the previous quarter, 2 instruments engaged the significant reporting ground (i) (defective drafting).
6. During this period, 1 instrument was reported under reporting ground (j) (breaching of laying requirements), which is the same as in the previous quarter.
7. The Committee identified 13 instruments on which minor points were raised (all laid by the Scottish Government). There were 11 in the previous quarter.
8. The Committee reported on the delegated powers provisions in 4 Bills at Stage 1 and 4 Bills, as amended after Stage 2.
9. The Committee considered the delegated powers aspects of 4 Legislative Consent Memorandums (LCMs) and reported on 3 of them.

Introduction

10. The purpose of this report is to provide a record of the Committee's scrutiny of instruments (e.g., Scottish statutory instruments (SSIs) and UK Statutory Instruments subject to joint procedure in the Scottish Parliament) during the fourth quarter of the parliamentary year 2023-24 during the period 1 March to 12 May 2024.
11. This 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;
 - 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; and
 - outlines the Committee's activity in respect of other matters within its remit.
12. As with previous quarterly reports, this report is intended to be more statistical than analytical to help inform the Committee's annual report which goes into more detail on the work carried out by the Committee during the parliamentary year. However, the statistics can still be used to highlight emerging themes in advance of the annual report.

Overview and analysis

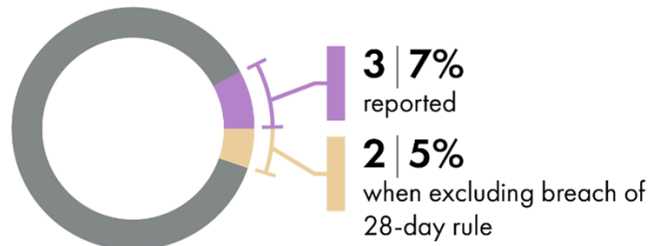
13. During this period, a total of 40 instruments and one document subject to parliamentary control were considered by the committee. Two of the instruments were laid by LPPO.
14. The 38 SSIs laid by the Scottish Government are broken down as follows—
 - 1 made affirmative.
 - 12 affirmative instruments.
 - 16 negative instruments.
 - 9 laid only instruments.
15. Of the 40 instruments and one document subject to parliamentary control, considered by the Committee, the Parliament's attention was drawn to 2 (5%) of them.
16. The document subject to parliamentary control was laid by Scottish Public Services Ombudsman (SPSO).
17. The infographic below provides a breakdown of instruments laid by the Scottish Government, LPPO, SPSO, and the total instruments drawn to the Parliament's attention—

Scottish Government

Total SSIs

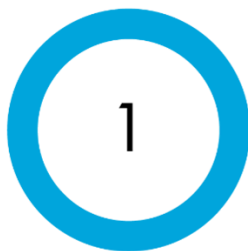


Total drawn to the Parliament's attention



Document subject to parliamentary control (SPSO)

Total



LPPO

Total SSIs



18. In the previous quarter, the Committee considered 64 instruments and 2 documents subject to parliamentary control. The Parliament's attention was drawn to 4 (6%) of them.

Reporting grounds

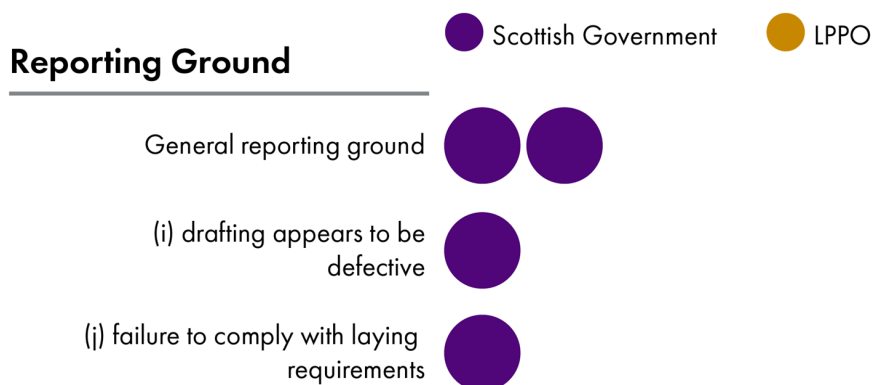
19. Under paragraph (a) of Rule 6.11 of Standing Orders, the Committee may determine that the attention of the Parliament should be drawn to an SSI on one or more of a range of technical and legal grounds. These grounds are set out in Rule 10.3.1 of the Standing Orders.

Reporting grounds: significant

20. The Committee considers some reporting grounds to be of more significance than others. The Committee has therefore determined that it has concerns where an instrument is drawn to the attention of the Parliament on one of the following grounds:
- **ground (e)** – there appears to be a doubt whether it is intra vires;
 - **ground (f)** – raises a devolution issue; and

- **ground (i)** – drafting appears to be defective.

21. These reporting grounds 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.
22. The infographic below provides a breakdown of the number of instruments reported on by the relevant reporting ground. A detailed list of the instruments reported on can be found at Annex A —



* one instrument was reported under both General reporting ground and Ground (i).

23. One instrument engaged the significant reporting ground (i), in that the instrument's drafting appears to be defective.

Withdrawal of instruments

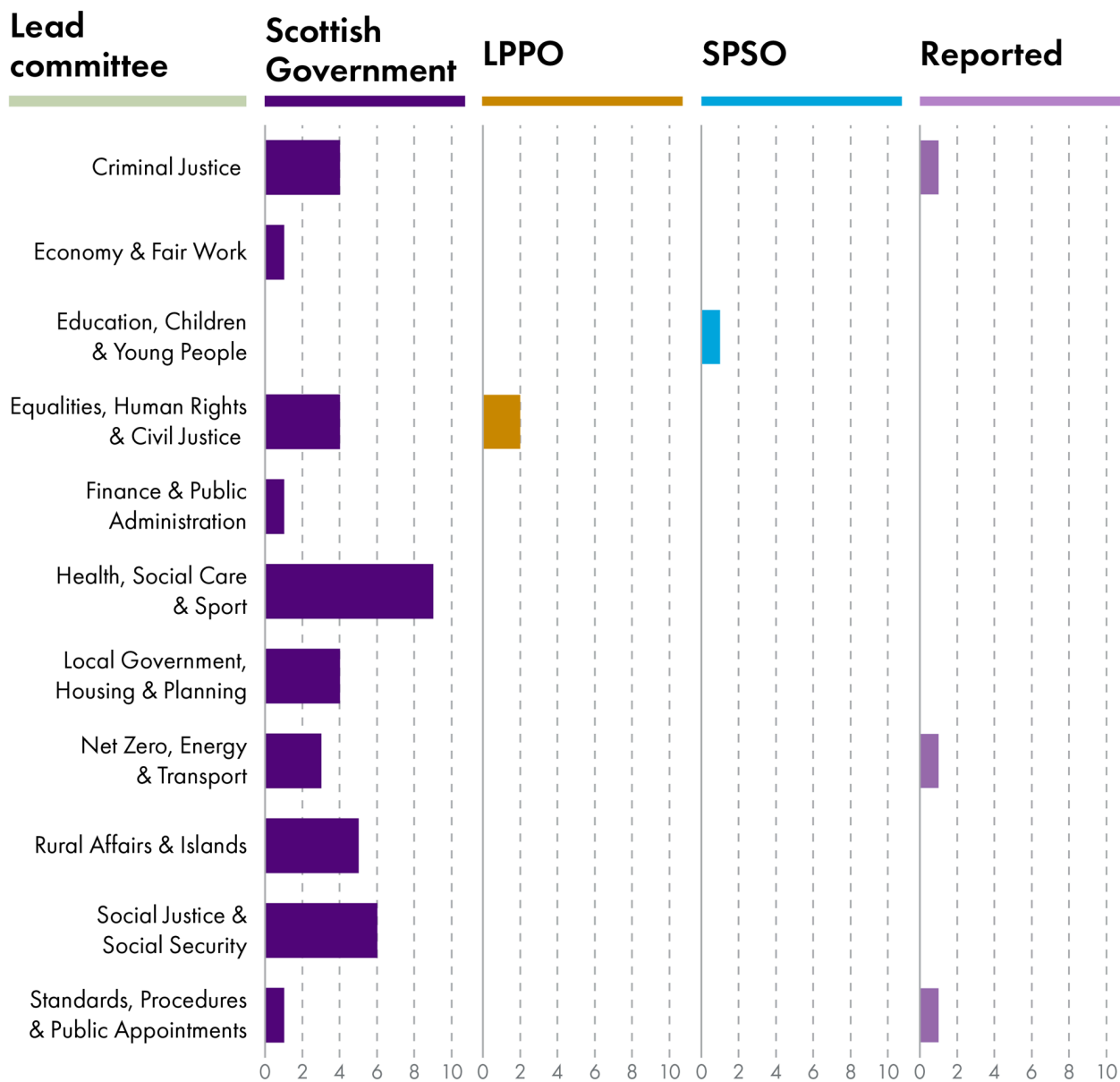
24. Instruments can be withdrawn and re-laid by the Scottish Government. Often this occurs after questions about an instrument are raised by the Committee, and, for example, the Scottish Government decides to withdraw and re-lay to correct an identified drafting error.
25. One instrument was withdrawn and re-laid during this reporting period (in this case to address a matter that came to light in response to another committee's call for views rather than in response to questions from the DPLR Committee):
- Sea Fisheries (Remote Electronic Monitoring and Regulation of Scallop Fishing) (Scotland) Regulations 2024 (SSI 2024/Draft)
26. There was 1 instrument withdrawn and re-laid in the previous quarter.

Instruments referred to Lead Committees

Summary

27. The Criminal Justice Committee received 4 instruments, one of which was reported under both the General reporting ground and the significant reporting ground (i) (defective drafting).
28. The Economy and Fair Work Committee received 1 instrument, which was not drawn to the attention of the Parliament.
29. The Education, Children and Young People Committee received 1 document subject to parliamentary control, which was not drawn to the attention of the Parliament.
30. The Equalities, Human Rights and Civil Justice Committee received 6 instruments, which were not drawn to the attention of the Parliament.
31. The Finance and Public Administration Committee received 1 instrument, which was not drawn to the attention of the Parliament.
32. The Health, Social Care and Sport Committee received 9 instruments, which were not drawn to the attention of the Parliament.
33. The Local Government, Housing and Planning Committee received 4 instruments, which were not drawn to the attention of the Parliament.
34. The Net Zero, Energy and Transport Committee received 3 instruments, one of which was reported under General ground.
35. The Rural Affairs and Islands Committee received 5 instruments, which were not drawn to the attention of the Parliament.
36. The Social Justice and Social Security Committee received 6 instruments, which were not drawn to the attention of the Parliament.
37. The Standards, Procedures and Public Appointments Committee received 1 instrument, which was reported under ground (j).
38. Information detailing specific instruments, and the grounds that they were reported on, is provided in Annex A.
39. The infographic below provides a breakdown of instruments referred to, and reported on, by lead committees—

SSIs



Instruments - General

Commitments

40. The Scottish Government corrected 1 instrument in the reporting period, as set out below:
- Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2024 (SSI 2024/42), which was corrected by way of correction slip.
41. A list of all outstanding commitments can be found at Annex B.

LPPO instruments

42. There are no outstanding LPPO commitments.

Minor Points

43. The Committee identified a total of 13 instruments on which minor points were raised (generally relating to typographical or referencing errors) compared with 11 instruments identified in quarter 3.

Summary

44. 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 to other matters.

Bills

45. The Committee published 4 reports on the delegated powers in the following [Bills](#) at Stage 1—
- Aggregates Tax and Devolved Taxes Administration (Scotland) Bill
 - Scottish Elections (Representation and Reform) Bill
 - Social Security (Amendment) (Scotland) Bill
 - Scottish Languages Bill
46. The Committee published 4 reports on the delegated powers in the following [Bills](#), as amended at Stage 2—
- Wildlife Management and Muirburn (Scotland) Bill
 - Children (Care and Justice) (Scotland) Bill
 - Visitor Levy (Scotland) Bill
 - Bankruptcy and Diligence (Scotland) Bill

Legislative Consent Memorandums (LCMs)

47. Paragraph 6 of Rule 9B.3 of Standing Orders provides that where a UK Bill that is the subject of a Legislative Consent Memorandum (LCM) contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
48. Rule 6.11.1(b) of Standing Orders provides that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills “or other proposed legislation”. The Committee and its predecessor Committee have considered powers conferred on UK Ministers in devolved areas in various UK bills over the course of sessions 5 and 6.
49. The Committee considered 4 [LCMs](#)—
 - Criminal Justice Bill
 - Automated Vehicles Bill
 - Data Protection and Digital Information Bill
 - Victims and Prisoners Bill (due to timescales, it was not possible for the Committee to report to Parliament on its consideration of this LCM).

Annex A – Reporting grounds: 1 March to 12 May 2024

As set out in the [Committee's remit](#), the Committee may determine that the attention of the Parliament should be drawn to an instrument. It may do so on a number of reporting grounds (and one instrument may engage one or more of those grounds). The reporting grounds engaged in this quarter are set out below:

General reporting ground

- Packaging Waste (Data Reporting) (Scotland) Amendment Regulations 2024 (SSI 2024/42) **Net Zero, Energy and Transport Committee**
- International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2024 (SSI 2024/Draft) **Criminal Justice Committee**

(i) - its drafting appears to be defective

- International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2024 (SSI 2024/Draft) **Criminal Justice Committee**

(j) – failure to comply with laying requirements

- Scottish Local Government Elections Amendment (Denmark) Regulations 2024 (SSI 2024/101) **Standards, Procedures and Public Appointments Committee**

Annex B – Historic Commitments

Scottish Government

- [Scotland Act 1998 \(Specification of Functions and Transfer of Property etc.\) Order 2019 \(SSI 2019/183\)](#) [11th Report, 2019. Published 06/03/2019] *commitment to bring forward an amendment at the earliest opportunityⁱ*
- [Road Works \(Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(SSI 2023/33\)](#) [19th report 2023, Published on 28 February 2023] *commitment to address this in the next amending instrument.*
- [Town and Country Planning \(Development Planning\) \(Scotland\) Regulations 2023 \(SSI 2023/101\)](#) [27th Report, 2023. Published 25/04/2023] *commitment to bring forward regulations to correct the reference at the next available opportunity.*
- [Police Pensions \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/239\)](#) [53rd Report, 2023. Published on 21 September 2023] *commitments to correct the error in the preamble by correction slip, and to address the other points raised by way of an amending instrument.*
- [Teachers' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/241\)](#) [53rd Report, 2023. Published on 21 September 2023] *commitment to correct these matters in the next amending instrument.*
- [Firefighters' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/242\)](#) [53rd Report, 2023. Published on 21 September 2023] *commitment to correct the error in the preamble by correction slip, and to address these other matters by way of an amending instrument.*
- [National Health Service Pension Schemes \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/246\)](#) [53rd Report, 2023. Published on 21 September 2023] *commitment to address these matters in the next amending instrument.*
- [Budget \(Scotland\) Act 2023 Amendment Regulations 2023 \(SSI 2023/Draft\)](#) [62nd Report, 2023. Published on 1 November 2023] *commitment to address this in the next amending instrument.*
- [Firefighters' Pension Schemes \(Scotland\) Amendment Order 2024 \(SSI 2024/26\)](#) [12th report 2024, Published on 20 February 2024] *commitment to amend the instrument to correct the error at the next opportunity.*
- [International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment Order](#)

ⁱ This will require a further Scotland Act Order to be brought forward at Westminster. The Scottish Government does not consider that the problems identified are particularly problematic nor that they will impede proper functioning of the devolution arrangements for forestry. See letters from the [Minister of Parliamentary Business, 2 March 2023](#) and [25 October 2023](#), and the [UK Government, 30 October 2023](#).

[2024 \[SSI 2024/Draft\]](#) (31st Report 2024, Published 1 May 2024] *commitment to rectify the error at the earliest opportunity, which is anticipated to be in autumn of 2024, and to correct the text of the Explanatory Note.*

