

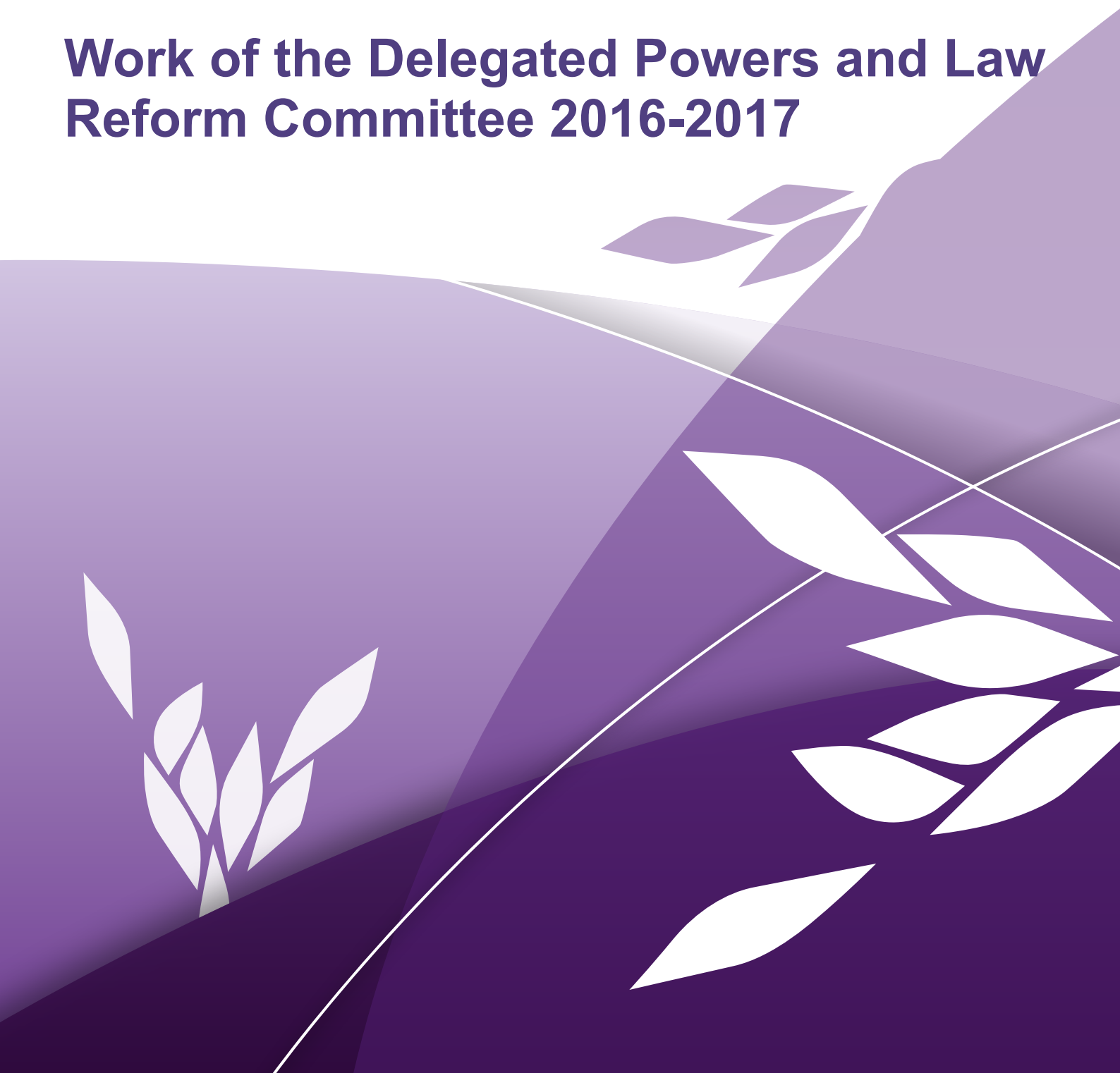


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Pàrlamaid na h-Alba

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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Work of the Delegated Powers and Law Reform Committee 2016-2017**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is 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; and

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

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



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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# Committee Membership



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Scottish National Party



**Alison Harris**  
Scottish Conservative  
and Unionist Party



**Monica Lennon**  
Scottish Labour



**David Torrance**  
Scottish National Party

# Introduction

1. This report reflects upon the work of the Delegated Powers and Law Reform Committee in 2016-17, the first year of the fifth session of the Scottish Parliament. It is the first such report to be published by this Committee, but reports of this nature have been produced by predecessor committees since 2012.
2. The Delegated Powers and Law Reform Committee's remit encompasses a number of different roles, but its primary focus is upon the scrutiny of delegated powers in bills and Scottish Statutory Instruments (SSIs) and this report focusses on those roles.
3. In performing these roles the Committee has two specific objectives:
  - to ensure that Scots law is clear, accessible, and operable; and
  - to hold the responsible authority (primarily the Scottish Government) to account.
4. This report and the quarterly reports the Committee produces over the course of the reporting year are integral to meeting these objectives.
5. Firstly, this report is a review of the quality of the instruments laid by the Scottish Government and in doing so it holds the Government to account while seeking to drive continuous improvement in the quality of SSIs laid.
6. Secondly, the report considers the Committee's scrutiny of delegated powers in primary legislation. The report reflects on issues that have arisen in relation to the scrutiny of delegated powers and the Committee's effectiveness in persuading the Scottish Government to bring forward amendments to the legislation to respond to these issues identified by the Committee.
7. Thirdly this report looks ahead to the coming year. The European Union (Withdrawal) Bill is currently progressing through the UK Parliament. This Bill proposes to confer powers on UK Ministers, and the Scottish Ministers. This report notes the potential for large numbers of instruments to be made under these powers and reflects on the possible implications for this Committee and the Scottish Parliament more generally.
8. This report is part of a process of holding the Scottish Government to account. In addition, the Committee will hear from the Minister for Parliamentary Business to respond to the issues raised in the report.
9. It should also be noted that the report considers the quality of the instruments laid by the Lord President's Private Office (LPPO). More on the role of the LPPO can be found at page 14 of this report.

# Instruments considered by the Committee in 2016-17

10. This section of the report examines the instruments laid in 2016-17 which were considered by the Committee.

## *What are Scottish Statutory Instruments?*

- SSIs are a form of law made by the Scottish Ministers (or other responsible authority such as the Lord President) exercising powers granted by the Scottish Parliament.
- SSIs are usually in the form of regulations, orders, rules or schemes. They generally set out technical details or administrative matters necessary for primary legislation to operate, but can cover any subject matter ranging from criminal penalties, licensing schemes, implementing EU obligations, prescribing application forms, to providing procedural rules.
- The content of SSIs is, however, limited by the terms of the primary legislation which authorises their use – referred to as the enabling power or parent Act – and by the general rules on the legislative competence of the Scottish Parliament set out in the Scotland Act 1998.

## *What does the Committee do with SSIs?*

The role of the DPLR Committee is to consider instruments from a technical perspective.

Specifically, the DPLR Committee:

- scrutinises SSIs on behalf of the Parliament to ensure that proposed laws are within the powers the Parliament has delegated to Ministers in the parent Act – a law which is not within the enabling powers is invalid and has no legal effect;
- checks the quality of each SSI to ensure that it is accurate, achieves the intended policy and the drafting is clear to the end user;
- through exchange of correspondence and its reports encourages and polices corrective action by the Scottish Government and other rule making authorities.

# 2016-17 Annual Report Statistics

## Overview

11. In the parliamentary year 2016-17, the Committee considered a total of 281 instruments laid before the Parliament. Of these, 252 instruments were laid by the Scottish Government and 29 instruments were laid by the LPPO.
12. The 252 SSIs laid by the Scottish Government can be broken down as follows—
  - 60 affirmative instruments;
  - 125 negative instruments;
  - 65 laid no-procedure instruments;
  - 2 others following bespoke procedures.
13. The 29 SSIs laid by the LPPO can be broken down as follows—
  - 3 negative instruments;
  - 26 laid no-procedure instruments.
14. This report looks at the quality of the instruments laid by the Scottish Government and the LPPO in turn, identifying trends and encouraging improvement where necessary.

### ***What are the different types of procedures attached to instruments?***

There are three main types of procedure:

- **Affirmative** – this procedure is attached to instruments relating to significant matters and provides for a greater level of scrutiny than the other two main procedures. Before an affirmative instrument can be made and brought into force it must be approved by the Parliament.
- **Negative** – this is the most common procedure attached to instruments laid before the Parliament. It is generally attached to instruments relating to matters of less significance than those subject to affirmative procedure. While the Parliament does not need to approve negative instruments before they can come into force, the Parliament can annul a negative instrument.
- **Laid no-procedure** – these are instruments subject to the lowest level of scrutiny. These instruments are laid before the Parliament for technical scrutiny and neither require approval nor can they be annulled.



# How does the Committee report instruments?

15. Before examining the quality of the instruments laid by the Scottish Government this year, it is useful to reflect on how the Committee reports instruments.
16. In considering each instrument the Committee is guided by a set of reporting grounds.
17. Rule 10.3 of Standing Orders provides the grounds under which the Committee reports. In order to make these grounds more understandable and reflective of the extent of the Committee's concerns, the Committee has developed the following hierarchy of reporting grounds:
  - Significant 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).
  - Other grounds—
    - ground (c) - (where the instrument has retrospective effect where the parent statute confers no express authority so to provide);
    - ground (d) - (unjustifiable delay in publication or laying);
    - ground (h) - (clarity of form or meaning); and
    - the general reporting ground (which includes minor drafting errors and failures to follow proper drafting practice).
  - Advisory grounds—
    - ground (a) – (charges on or payments to the Scottish Consolidated Fund);
    - ground (b) – (made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts);
    - ground (g) – (unusual or unexpected use of the powers conferred by the parent statute); and
    - ground (j) – (non-compliance with laying requirements), where the Committee is satisfied with the reasons given for non-compliance.
18. “Significant grounds” represent those areas which would cause the Committee most concern; “other grounds” consist of areas where that concern would not be so significant, but nonetheless the matters can affect the understanding of an instrument if not its validity; and “advisory grounds” relate to matters which the

Committee wishes to draw to the attention of the Parliament or lead committee, but do not concern the competence or clarity of the instrument.

19. The intention of this approach is to enable the Government, lead committees, stakeholders and the public more generally to understand the extent of the Committee's concerns and respond accordingly.

# Process of the consideration of an SSI

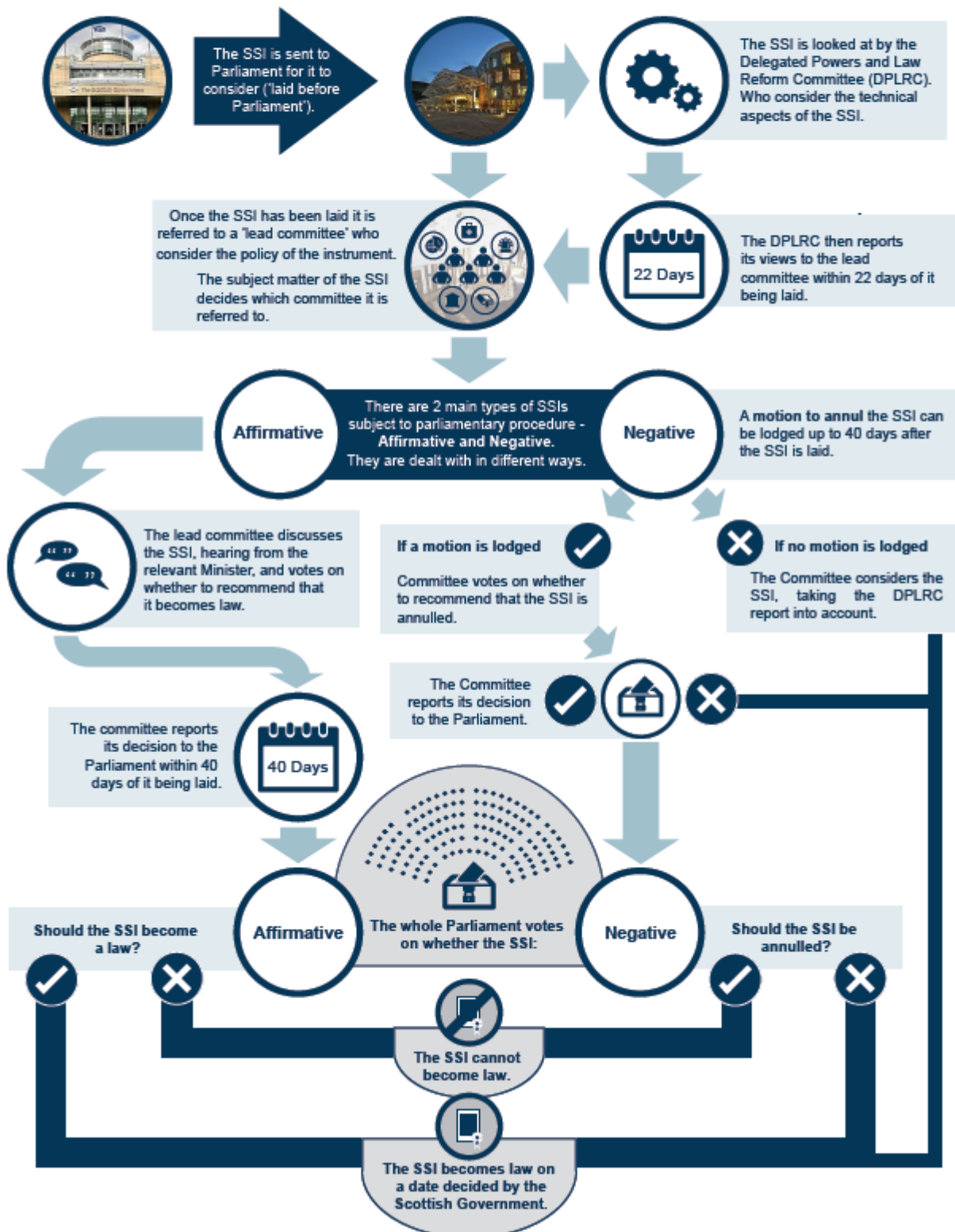
20. After the Delegated Powers and Law Reform Committee has considered an instrument from a technical perspective, the subject Committee within whose remit the instrument falls then has an opportunity to consider the instrument from a policy perspective.
21. The following infographic explains the process by which an instrument is taken through the Parliament.



## What are Scottish Statutory Instruments?

A Scottish Statutory Instrument (SSI) is a type of legislation which can be used to make changes to the law without a new Act of Scottish Parliament having to be passed.

When the Parliament passes a bill it gives the Scottish Ministers the power to make SSIs which relate to that bill.



# How many Scottish Government instruments did the Committee report this year?

22. The majority of the instruments laid before the Parliament are laid by the Scottish Government.
23. Table 1 below sets out the number of instruments laid by the Scottish Government in 2016-17 and the percentage of those that were reported by the Committee. The table also provides the equivalent figure for the last year of the last session by way of comparison.

## THE SCOTTISH GOVERNMENT

**Table 1: Instruments laid by the Scottish Government over the last two reporting years reported on by the Committee**

	2016-17			2015-16		
	Total SSIs	Total drawn to the Parliament's attention	%	Total SSIs	Total drawn to the Parliament's attention	%
<b>Total</b>	<b>252</b>	30 (37)	12% (15%)	<b>301</b>	34 (39) <sup>i</sup>	11% (13%)

24. It is notable how comparatively few instruments were laid for consideration by the Committee this year. Only 252 instruments were considered by the Committee this year. In 2015-16 for example 301 instruments were considered by the Committee. However, that too represented a relatively low number of instruments. In 2013-14 353 instruments were considered and this probably presents a more accurate reflection of the number of instruments the Committee would expect to see.
25. It is a particularly marked reduction when measured against the numbers in session three when the number of instruments considered by the Committee each year never dropped below 330 and rose to 422 in the final year of the session.
26. The Committee has not been able to identify why there has been such a reduction in the numbers of instruments being laid.
27. It is perhaps particularly surprising to the Committee that so few instruments have been laid in the Scottish Parliament when the Parliament passed a number of pieces of legislation at the end of last session, such as the Land Reform (Scotland) Act 2016, which left significant policy decisions to be provided for in secondary legislation.
28. If this reduction in the number of instrument reflects better management of the secondary legislation programme then this is to be welcomed and the Committee thanks the Scottish Government for its efforts.

<sup>i</sup> The figures in brackets here and in the tables throughout the report show the total number of instruments drawn to the Parliament's attention which includes instruments reported on the advisory grounds, (in all cases, with regard to ground (j)), where the Committee was satisfied with the reasons given for non-compliance with the laying requirements. To provide an overall picture of matters of concern to the Delegated Powers and Law Reform Committee, these have been removed from the overall figure.

29. However, if it simply means that instruments have been delayed and significantly more instruments will be laid in future years then this is a matter of concern to the Committee.
30. It is particularly concerning if the result is that large numbers of instruments are laid in parallel with the laying of instruments arising from the UK's withdrawal from the European Union.
31. Were this to occur then it could have a deleterious effect on the ability of this Committee and the Parliament more generally to undertake effective scrutiny of all instruments.
32. **The Committee invites the Scottish Government to reflect on these concerns and advise the Committee as to what it is doing to manage the SSI laying programme, particularly in the context of the estimated number of SSIs in relation to the UK's withdrawal from the European Union.**
33. However, the Committee is pleased to note, that the percentage of the instruments reported by the Committee has remained low this year.
34. Although the percentage of instruments reported is 1% higher than that reported in the last year of last session, this reflects an ongoing improvement in the quality of instruments laid by the Scottish Government. At the beginning of last session 21% of instruments were reported. By the end of the session that figure was just 11%.
35. The Committee is also pleased to note the improvement in the quality of instruments laid over the course of this year.
36. In the second quarter of the reporting year 23.5% of instruments considered by the Committee were reported. At that juncture the Committee wrote to the Scottish Government raising its concerns about the large number of instruments being reported.
37. Since that time there has been a marked improvement in the quality of the instruments laid by the Scottish Government and it would appear that quality assurance processes have been made more robust.
38. **The Committee welcomes the fact that the improvement in the quality of instruments that took place over the last session has been maintained and the Committee encourages the Scottish Government to build upon that improvement.**
39. **The Committee also welcomes the Scottish Government's response to the concerns about the quality of instruments laid by the Scottish Government earlier in the reporting year.**

**Table 2: Instruments reported on broken down by ground: Scottish Government instruments laid over the last two reporting years<sup>ii</sup>**

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<sup>ii</sup> See **Annex A** for a list of instruments drawn to the attention of Parliament by the Committee during 2016-17.

40. As discussed earlier in the report, instruments are reported by the Committee under one of eleven grounds as set out in rule 10.3 of Standing Orders.
41. Table 2 breaks down the instruments reported into the grounds under which they were reported and provides the equivalent information for the previous reporting period.

Ground	2016-17		2015-16	
	No.	% of all SSIs laid (252)	No.	% of all SSIs laid (301)
(e) doubt as to whether the instrument is intra vires	0	0	1	<1%
(f) raises a devolution issue	2	<1%	0	0
(i) drafting appears to be defective	7	3%	3	1%
(c) retrospective effect where the parent statute confers no express authority so to provide	0	0	0	0
(d) unjustifiable delay in the publication or the laying of it before parliament	0	0	0	0
(h) form or meaning could be clearer	15	6%	9	3%
General ground (e.g. failures to follow proper drafting practice or legislative process)	17	7%	24	8%
(a) charge on the Scottish Consolidated Fund	0	0	0	0
(b) made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts	0	0	0	0
(g) unusual or unexpected use of the powers conferred by the parent statute	0	0	3	1%
(j) failure to comply with laying requirements <sup>iii</sup>	0 (7)	0	0 (5)	0

42. Table 2 shows that 37 instruments were reported under the Committee's reporting grounds but there are 48 reports in the table.
43. This means that some instruments were reported under more than one reporting ground.
44. For example, the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115) was reported under three separate grounds.
45. In the final year of the last session instruments were also reported under multiple grounds but with 39 instruments reported under 45 reporting grounds it was perhaps less marked.
46. The Committee is disappointed when instruments are reported under multiple grounds. It highlights that, while the overall picture in terms of the quality of instruments is improving, there remain a small number of instruments which are not reflecting that overall improvement in quality.
47. This concern, however, should be put into context. In 2014-15, 19 instruments accounted for 52% of the reports, with one instrument reported under five separate grounds.
48. **The Committee would encourage the Scottish Government to ensure that all instruments reflect the general improvement in the quality of instruments laid by the Scottish Government.**
49. Also of some concern to the Committee is the increase in the number of instruments reported for defective drafting (ground (i)). This has risen from three to

<sup>iii</sup> A list of those instruments that were reported by the Committee for failing to comply with laying requirements can be found at **Annex C**.

seven in the period covered by this Annual Report. Defective drafting represents a serious concern about an instrument and the Committee is disappointed to see that the number of instruments reported under this ground has increased.

50. That said the increase in the number of instruments reported for defective drafting is an increase on an all-time low in the number of instruments reported under this ground. For example, 18 instruments were reported for defective drafting in 2014-15. Any concerns should therefore be tempered with the recognition that the situation has improved.
51. **Nonetheless, the Committee would encourage the Scottish Government to endeavour to avoid laying instruments that contain errors of such significance that they engage the defective drafting ground. The Committee would be concerned if the numbers of instruments reported under this ground continued to increase. The Committee will be paying close regard to any instruments engaging this ground.**
52. The Committee also notes that there has been an increase in the number of instruments reported for clarity (ground (h)).
53. A focus of this Committee and its predecessor committee has been to ensure that legislation is drafted in a way that is clear and understandable to the end user.
54. **It is therefore disappointing to see the number of instruments reported under this ground is increasing. Accordingly, the Committee calls on the Scottish Government to re-double its efforts to ensure that instruments are drafted in a clear and accessible manner.**



# Which Committees received the most instruments reported upon this year?

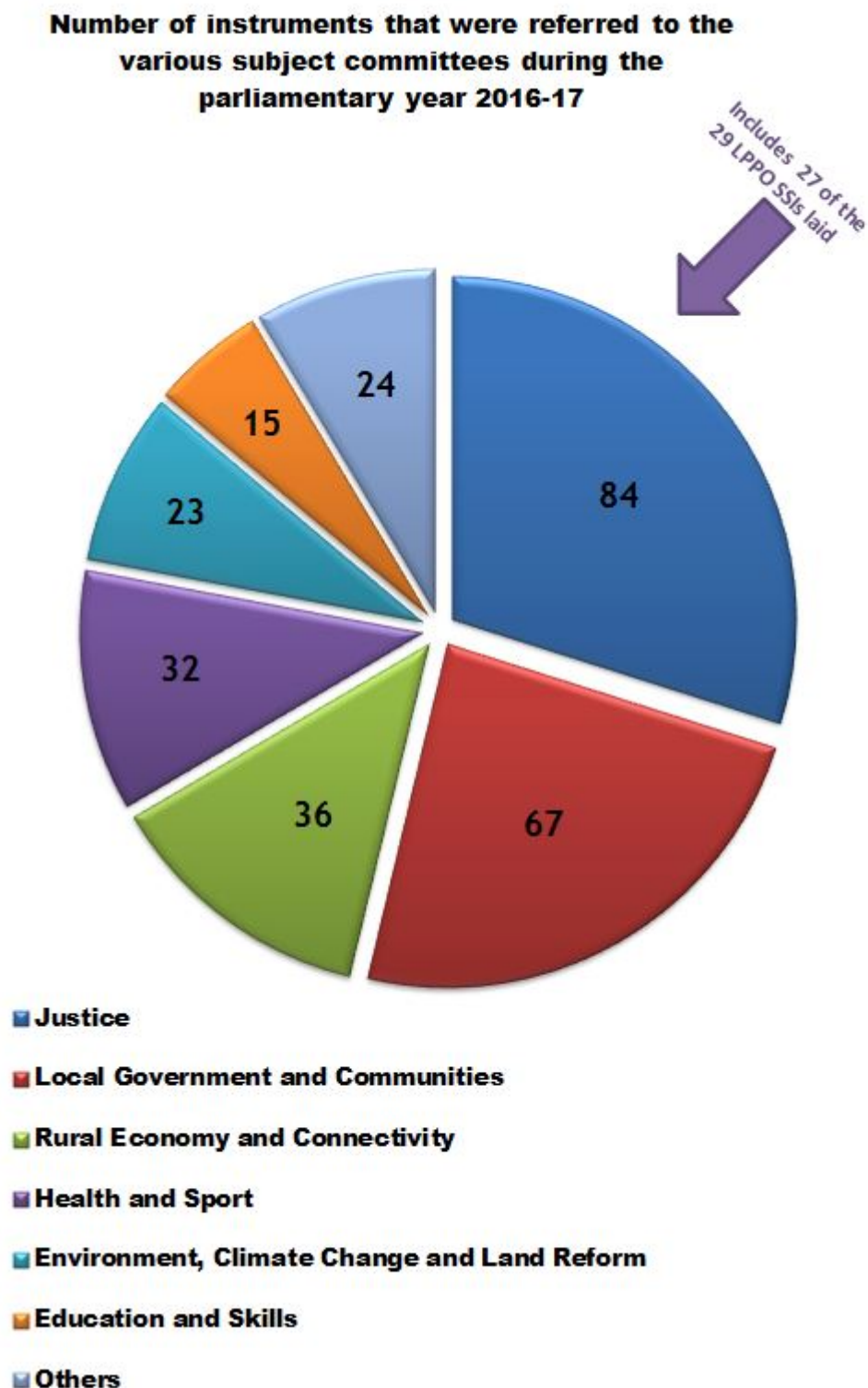
55. Table 3 sets out the number of instruments considered by each of the lead committees in the last two reporting years.<sup>iv</sup> It also details the number and percentage of those instruments that have been reported.

**Table 3: Instruments laid by the Scottish Government over the last two reporting years reported on by the DPLRC, broken down by lead committee**

Lead Committee	2016-17			Lead Committee	2015-16		
	Total SSIs	Total reported	% reported		Total SSIs	Total reported	% reported
Environment, Climate Change and Land Reform	23	5	22%	Rural Affairs, Climate Change and Environment	65	8 (10)	12.5%(15%)
Health and Sport	32	4 (5)	12.5% (15.5%)	Health and Sport	44	3	7
Justice	57	5 (6)	9% (10.5%)	Justice	54	3 (4)	5.5% (7.5%)
Local Government and Communities	67	9 (11)	13.5% (16.5%)	Local Government and Regeneration	36	5	14%
Education and Skills	15	1 (2)	6.5% (13.5%)	Education and Culture	45	6 (8)	13% (18%)
Rural Economy and Connectivity	36	2 (3)	5.5% (8.5%)	Infrastructure and Capital Investment	23	5	22%
Economy, Jobs and Fair Work	4	0 (1)	0% (25%)	Economy, Energy and Tourism	9	1	11%
Finance and Constitution	7	0	0	Finance	8	3	37.5%
Equalities and Human Rights	1	0	0	Equal Opportunities	5	0	0
Social Security	2	2	100%	Welfare Reform	3	0	0
DPLR	7	2	28.5%	DPLR	1	0	0
Parliament	1	0	0	Parliament	3	0	0
				Devolution (Further Powers)	5	0	0

<sup>iv</sup> This table covers session 4 and session 5 committees. The remits of some committees have changed over this period but this is not thought to impact significantly on the distribution of SSIs.

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



56. It is interesting to note the very large percentage of instruments referred to the Justice Committee and the Local Government and Communities Committee.
57. Historically, the Justice Committee has always been the recipient of a large number of instruments, but it is more unusual for the local government committee to

received so many. Much of this increase is down to a large package of instruments relating to boundary changes of local government wards.

58. However, with relatively few instruments laid this year and only a small number of instruments reported, it is difficult to draw out anything more statistically significant.
59. There does not appear to be any one committee which received a notably poorer standard of instrument than another and accordingly there does not appear to be any area of the Scottish Government laying a notably poorer standard of instrument.
60. That said, a large number of concerns arose on a package of instruments relating to environmental impact assessments, however, because instruments within this package were referred to more than one committee table 3 does not reflect that problem. The issues surrounding this package of instruments are explored at paragraphs 103 to 109 below.
61. Table 3 also does not draw out the problems that arose around the package of instruments implementing the Tribunals (Scotland) Act 2014 as many of these instruments were withdrawn before they could be reported. This issue is also explored at paragraphs 103 to 109 below.
62. **The Committee therefore notes that there are areas within the Scottish Government laying instruments that are being reported disproportionately to instruments being laid by other areas within the Scottish Government. The Committee will be playing close attention to instruments emerging out of these areas.**

#### LORD PRESIDENT'S PRIVATE OFFICE

63. Before reflecting on the instruments laid by the LPPO this year, it may be helpful to explain the role of the LPPO and why these instruments are considered separately in this report.
64. Acts of sederunt and acts of adjournal are instruments laid by the LPPO on behalf of the Court of Session and High Court of Justiciary as the responsible authority and are subject to the same level of scrutiny by the Committee as any other SSI.
65. Acts of sederunt are used primarily to regulate civil procedure in the Court of Session and Sheriff Courts in Scotland while acts of adjournal are concerned with regulating criminal procedure.
66. The Lord President is the head of the judiciary in Scotland and accordingly it is the Lord President's private office that lays instruments concerning courts rules.
67. These instruments are laid separately from those laid by the Scottish Government, thus a separate analysis of the quality of these instruments is provided below.

**Table 4: Instruments laid by the Lord President's Private Office over the last two reporting years reported on by the DPLRC**

	2016-17			2015-16		
	Total SSIs	Total drawn to the Parliament's attention	%	Total SSIs	Total drawn to the Parliament's attention	%
Total	29	6	20.5%	22	10	45%

68. This table shows there has been a small increase in the number of instruments laid by the LPPO and a reduction in the number reported.
69. **The Committee welcomes that the increase in the number of instruments laid has been accompanied by an improvement in the quality of instruments.**
70. **This is particularly pleasing to the Committee in a year in which the LPPO has endeavoured to draft instruments in a new and more accessible way as part of the rules re-write project.**
71. **The Committee encourages the LPPO to maintain these standards whilst continuing to draft in modern accessible ways that makes the court rules more user friendly.**
72. The following table breaks down the grounds under which LPPO instruments were reported. It also reflects the continuing improvement in the quality of instruments laid by the LPPO.

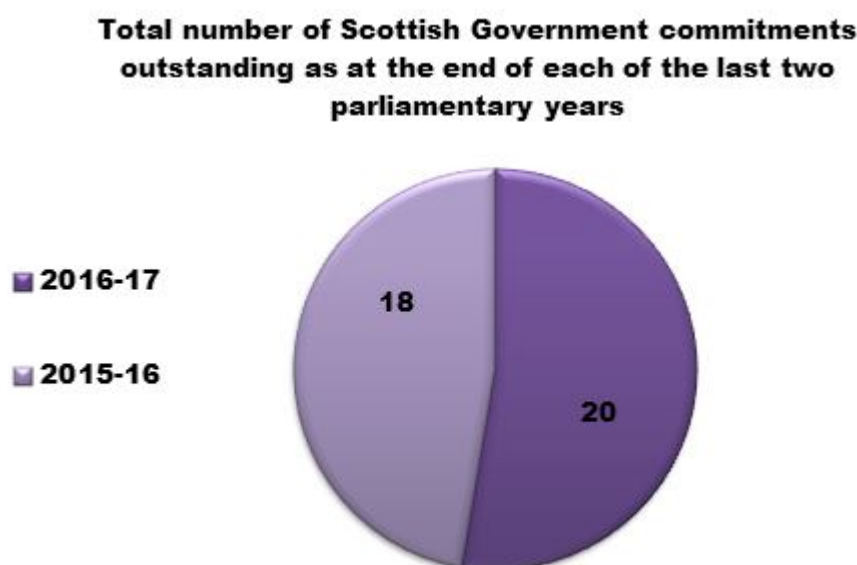
**Table 5: Instruments reported on broken down by ground: Lord President's Private Office instruments laid over the last two reporting years**

Ground	2016-17		2015-16	
	No.	% of all SSIs laid (29)	No.	% of all SSIs laid (22)
<b>(e)</b> doubt as to whether the instrument is intra vires	0	0	0	0
<b>(f)</b> raises a devolution issue	0	0	0	0
<b>(i)</b> drafting appears to be defective	2	7%	1	4.5%
<b>(c)</b> retrospective effect where the parent statute confers no express authority so to provide	0	0	0	0
<b>(d)</b> unjustifiable delay in the publication or the laying of it before parliament	0	0	0	0
<b>(h)</b> form or meaning could be clearer	2	7%	1	4.5%
<b>General</b> ground (e.g. failures to follow proper drafting practice or legislative process)	5	17%	8	36%
<b>(a)</b> charge on the Scottish Consolidated Fund	0	0	0	0
<b>(b)</b> made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts	0	0	0	0
<b>(g)</b> unusual or unexpected use of the powers conferred by the parent statute	0	0	0	0
<b>(j)</b> failure to comply with laying requirements	0	0	0	0

# Scottish Statutory Instruments - General

## Commitments

73. The Scottish Government and the LPPO often respond to concerns raised by the Committee by making commitments to remedy errors at a later date.
74. A list of all amending instruments laid by the Scottish Government and the Lord President's Private Office can be found at **ANNEX B**.
75. A list of all commitments that have yet to be met can also be found in **ANNEX B**.
76. The Committee recognises that it is important that these commitments are met to ensure that the legislation is correct and clear for those who use the legislation.
77. The Committee keeps account of these commitments and seeks to ensure that they are met.



78. The Committee is pleased to see that the Scottish Government has met commitments made this year promptly.
79. Only four commitments made during this reporting period remain outstanding. This compares favourably with 2014-15 when 17 commitments made that year remained outstanding at the end of the year.
80. The Committee also notes progress made in meeting outstanding historic commitments.
81. There are, however, 20 commitments still outstanding and while the Committee recognises the progress made by the Scottish Government in meeting these commitments, the Committee would welcome greater effort to meet these historic commitments.

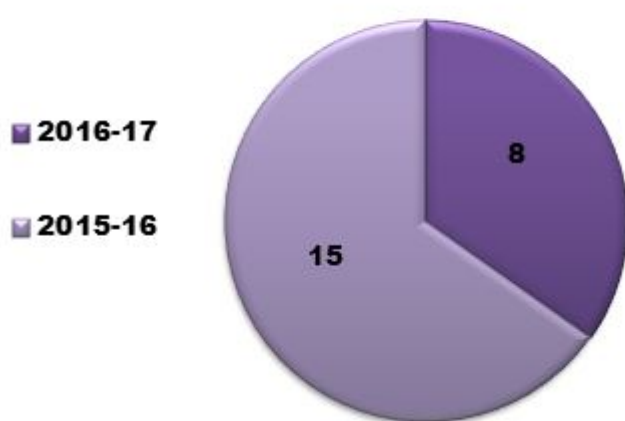
82. It should be noted that as recently as 2012-13 there were only six outstanding commitments and therefore the progress the Scottish Government is now making should be seen in the context of a failure to do so over the preceding four years.
83. The Lord President's Private Office laid five instruments which corrected errors in instruments identified by the Committee during the course of the year.
84. All commitments to correct errors identified by the Committee in LPPO instruments during this reporting period were met.
85. **The Committee welcomes the LPPO's diligence in meeting its commitments.**
86. **The Committee also welcomes the Scottish Government's efforts to meet commitments promptly so far this session and to seek to meet commitments from the previous session.**
87. **However, there are still a significant number of commitments from the Scottish Government outstanding.**
88. **The Committee recognises that there are likely to be large numbers of instruments relating to the UK's withdrawal from the EU to be laid in the coming years and meeting commitments is likely to be highly challenging at that time.**
89. **Accordingly, the Committee encourages the Scottish Government to endeavour to meet all of the historic commitments made to the Committee and to do so as soon as possible.**
90. **The Committee would welcome an indication from the Scottish Government as to the progress it is making on each of the historic commitments. However, the Committee recognises that there may be some commitments that the Scottish Government no longer consider necessary or cannot be undertaken at this time. The Committee will consider each commitment and any arguments as to why it is not possible or necessary to meet it.**

## Withdrawal and revocation of instruments

91. As with previous recent years one feature of the reporting year was the number of instruments either withdrawn or revoked by the Scottish Government.
92. The Committee notes that the following draft affirmative instruments were withdrawn and subsequently re-laid during the reporting 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];
  - Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 [draft];

- Upper Tribunal for Scotland (Transfer of Functions of the Upper Tax Tribunal for Scotland) Regulations 2017 [draft];
- First-tier Tribunal for Scotland (Transfer of Functions of the First-tier Tax Tribunal for Scotland) Regulations 2017 [draft];
- Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017 [draft];
- Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017 [draft].

**Number of draft SSIs withdrawn by the Scottish Government during the last two parliamentary years**



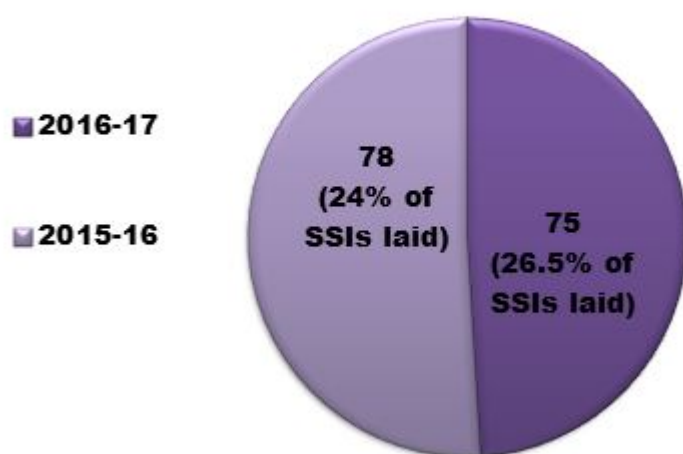
93. Instruments were also laid to revoke the following Scottish Statutory Instruments during the reporting period—
- Caseins and Caseinates (Scotland) Regulations 2016 (SSI 2016/383) **revoked by the Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 (SSI 2016/422) following concerns raised by the DPLR Committee**;
  - Bankruptcy Fees (Scotland) Regulations 2017 (SSI 2017/37) **revoked by the Bankruptcy Fees (Scotland) Revocation Regulations 2017 (SSI 2017/97) following concerns raised by the Economy, Jobs and fair Work Committee**.
94. On one hand the Committee welcomes that instruments have been withdrawn or revoked to respond to parliamentary concerns.
95. At the same time, it is disappointing that so many instruments laid before the Parliament contained errors of such significance that they had to be withdrawn or revoked.
96. **The Committee welcomes that the Scottish Government has been willing to listen to the Parliament's concerns about instruments, but at the same time encourages the Scottish Government to endeavour to lay instruments of such a standard that they do not require to be withdrawn or revoked.**

97. **The Committee is particularly disappointed to see so many instruments relating to the package of instruments implementing the Tribunals (Scotland) Act having to be withdrawn. The Committee explores this issue later in the report.**

## Minor Points

98. During its scrutiny of instruments in 2016-17, the Committee identified a total of 75 instruments on which minor points were raised (generally typographical or referencing errors). This can be broken down into 62 instruments laid by the Scottish Government and 13 instruments laid by the LPPO.

**Number of SSIs containing Minor Points laid during the last two parliamentary years**



99. More than a quarter of instruments laid before the Parliament contained minor points.
100. **While the Committee accepts that minor points such as these do not affect the validity of instruments, it urges both the Scottish Government and the LPPO to take steps to ensure that the numbers of these types of errors decreases.**

## Motions to Annul

101. Motions to annul the following instruments were lodged during the parliamentary year 2016-17—
- Shellfish (Restrictions on Taking by Unlicensed Fishing Boats) (Scotland) Order 2017 (SSI 2017/57) (***Rural Economy and Connectivity***)
  - Non-Domestic Rate (Scotland) Order 2017 (SSI 2017/8) (***Local Government and Communities***)
102. Neither motion was successful.



## Packages of instruments

103. There have been a number of packages of instruments laid this session for the Committee to consider. Packages of instruments are a group of related instruments laid around the same time usually in relation to the implementation of primary legislation. Three packages of instruments prompted particular concern.
104. Two of these packages related to the implementation of primary legislation, specifically the implementation of the Community Empowerment (Scotland) Act 2015 and the Tribunals (Scotland) Act 2014. In the case of the former a substantial number of the instruments within the package were drafted in a way that was insufficiently clear. In the case of the latter, the instruments contained a substantial number of errors, which as noted earlier, required the instruments to have to be withdrawn. In both cases the quality of drafting was unsatisfactory.
105. The Committee also considered a package of instruments making provision for the implementation of an EU directive on the assessment of the effects of certain public and private projects on the environment. This package of instruments contained significant errors and also concern was raised about the clarity of the drafting. This was compounded in this case by the fact that the instruments were not laid together nor were they laid far enough apart for the errors identified in the original instruments to be taken on board meaning that the Committee was considering the same errors over a number of weeks.
106. These three packages of instruments make up a disproportionately high number of the instruments reported this year.
107. **The Committee is very disappointed by the quality of these three packages of instruments.**
108. **The Committee invites the Scottish Government to give careful consideration to any future packages of instruments it brings forward both in terms of the programming of the laying of the instruments and also the quality control processes applied to those instruments.**
109. **The Committee would find it highly unsatisfactory if it continued to see packages of instruments of such a disappointing standard.**

# Consolidation

110. As noted at the beginning of this report one of the Committee's objectives is to ensure that law is clear and accessible to those who use the legislation.
111. One of the obstacles to that objective is where instruments are amended on a number of occasions meaning that the user of the legislation has to refer to multiple instruments to understand what the principal instrument is now doing.
112. One such example of this is the Council Tax Reduction (Scotland) Regulations 2012. It has now been amended on nine occasions.
113. The Committee finds it unsatisfactory that an instrument can be amended on so many occasions without it being consolidated.
114. The Committee has already written to the Scottish Government asking it to consolidate the Regulations. As of yet no such consolidation has been forthcoming.
115. **The Committee invites the Scottish Government to bring forward a consolidating instrument and would welcome an indication as to when a consolidating instrument might be forthcoming.**

# Instruments relating to the UK's withdrawal from the EU

116. This report focusses on the previous year, but it would be remiss not to consider the potential impact of the European Union (Withdrawal) Bill on the volume of SSIs to be considered by the Scottish Parliament in the coming year.
117. The Bill is currently being considered in the UK Parliament. The Bill confers new powers to make secondary legislation on the Scottish Ministers, which the Committee is currently considering.
118. There is the potential for large numbers of SSIs to be made under these powers.
119. The Committee will consider these powers in the context of its consideration of the Legislative Consent Memorandum for the European Union (Withdrawal) Bill.
120. The Committee simply notes at this point the potential for large numbers of instruments to be laid relating to devolved areas in both the UK Parliament and Scottish Parliament and intimates its willingness to work with both the UK Government and Scottish Government to ensure such instruments can be laid and considered in a managed way that is conducive to effective scrutiny.

# Primary legislation

## Delegated powers in bills

121. A primary function of the Committee is to consider the delegated powers provisions in any public or private bills introduced in the Parliament.
122. In considering primary legislation the Committee's focus is on delegated powers. In considering delegated powers there are three main things for the Committee to consider.
123. Firstly, and most fundamentally, it is for the Committee to consider whether it is appropriate for the power to be delegated. For example, the Committee may take the view that what is being delegated is of such significance that it should be set out on the face of the bill.
124. Secondly it is for the Committee to consider whether the power is drawn sufficiently tightly and whether the power matches with the policy intention stated in the delegated powers memorandum.
125. Thirdly, it is for the Committee to consider whether the powers are subject to an appropriate level of parliamentary scrutiny. The primary legislation granting the power provides for the level of parliamentary scrutiny that secondary legislation made under that power should be subject to. This ranges from, at one end, merely requiring the legislation to be laid before the Parliament to, at the other end, requiring consultation to be undertaken and drafts of legislation laid in the Parliament for approval.
126. The Committee scrutinises the delegated powers within a bill with these fundamental questions in mind.
127. Over the reporting period, the Committee has considered and reported on the following seven bills at Stage 1:
  - Budget (Scotland) Bill;
  - Limitation (Childhood Abuse) (Scotland) Bill;
  - Railway Policing (Scotland) Bill;
  - Air Departure Tax (Scotland) Bill;
  - Child Poverty (Scotland) Bill;
  - Domestic Abuse (Scotland) Bill;
  - Seat Belts on School Transport (Scotland) Bill.

## Recommendations

128. In its scrutiny of bills the Committee often makes recommendations for bills to be amended.

129. One way to look at the impact of the Committee is to explore these recommendations and see whether they were accepted by the member in charge of the bill.
130. Last session the Committee found it was able to have a significant influence on delegated powers in primary legislation. In 2014-15, 83% of the recommendations made by the Committee at Stage 1 were accepted by the Scottish Government.
131. It is notable that the Committee has made relatively few recommendations on bills so far this session, but the Committee is very pleased to note that where it has done so the Scottish Government has been willing to listen and act.
132. Amendments recommended to the Railway Policing (Scotland) Bill and Child Poverty (Scotland) Bill were all accepted, while the majority of recommendations on the Air Departure (Scotland) Bill were accepted.

## Framework bills

133. One feature of particular concern to the Committee in relation to primary legislation has been so-called “framework bills”.
134. These are bills where the Parliament is asked to confer certain wide-ranging powers on the Scottish Ministers in circumstances where the Scottish Government has not informed the Parliament in sufficient detail of its plans for using those powers or of the reasons for taking a particular approach to the framing of certain powers. In most instances they are also bills where it appears that the policy is still to be fully developed.
135. As last session progressed, the frequency with which such bills were introduced increased.
136. This Committee's predecessor Committee encouraged its successor committee through its legacy report<sup>v</sup> to be particularly watchful for such bills and to discourage the Parliament from agreeing to delegate powers in circumstances where it did not seem appropriate.
137. One such Bill to emerge this session was the Air Departure Tax (Scotland) Bill. It conferred wide powers on the Scottish Ministers to provide for exemptions from the tax in secondary legislation. It appeared to the Committee that these exemptions had been taken as substitute for policy development.
138. The Committee welcomed the fact that the Scottish Government brought forward amendments to include these exemptions on the face of the Bill, but was nonetheless disappointed by the original approach taken by the Scottish Government.
139. **The Committee asks the Scottish Government to indicate whether it intends to make greater use of framework bills.**

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<sup>v</sup> [http://www.parliament.scot/S4\\_SubordinateLegislationCommittee/Reports/DPLRS042016R29.pdf](http://www.parliament.scot/S4_SubordinateLegislationCommittee/Reports/DPLRS042016R29.pdf)

140. **The Committee understands that there are occasions where the use of framework legislation is appropriate.**
141. **However, the Committee is of the view that delegated powers should not be taken simply to allow the Scottish Ministers flexibility where the policy has not been fully developed in time for them to put specific provisions on the face of the Bill.**
142. **The Committee considers that there is a clear need for delegated powers to be fully explained, their terms appropriately framed, and their scope clearly delineated.**
143. **The Committee will pay close attention to the Scottish Government's approach to legislating as the session progresses.**

## **Scottish Law Commission bills**

144. SLC bills are bills that originate from SLC reports and meet the criteria determined by the Presiding Officer. The criteria for an SLC bill (which is a bill appropriate for referral to this Committee) is that it is a bill within the legislative competence of the Scottish Parliament—
  - (a) where there is a wide degree of consensus amongst key stakeholders about the need for reform and the approach recommended;
  - (b) which does not relate directly to criminal law reform;
  - (c) which does not have significant financial implications;
  - (d) which does not have significant European Convention on Human Rights (ECHR) implications; and
  - (e) where the Scottish Government is not planning wider work in that particular subject area.
145. So far this session the Committee has considered one SLC bill, the Contract (Third Party Rights) (Scotland) Bill.
146. This was a technical piece of legislation, but one where the evidence taken by the Committee and the Committee's subsequent recommendations resulted in the Scottish Government bringing forward amendments to the Bill and improving the legislation.
147. The Committee did, however, raise questions about the time it had taken to bring this Bill forward and asked the Scottish Government to consider whether there would be merit in bringing forward bills that make provision for more than one area of law reform at the same time.
148. **The Committee would welcome further reflection from the Scottish Government on this issue.**

## Legislative Consent Memoranda

149. The Committee also considered three Legislative Consent Memoranda (LCMs). LCMs are prepared in relation to UK Parliament Bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The three LCMs considered by the Committee concerned the:
- Policing and Crime Bill;
  - Criminal Finances Bill;
  - Digital Economy Bill.
150. The Committee also considered a Supplementary Legislative Consent Memorandum on the Criminal Finances Bill.

# Conclusions

151. The standard of instruments laid this year by both the Scottish Government and the LPPO has been high. The Committee is pleased to see that the improvements seen over the course of last session have been maintained this session.
152. Nonetheless there are a few exceptions to that improvement. In particular the packages of instruments relating to the Community Empowerment (Scotland) Act 2015, the Tribunals (Scotland) Act 2014 and the instruments implementing the EU directive concerning environmental impact assessments.
153. The Committee encourages the Scottish Government to ensure that the standard of instruments is universally high.
154. The Committee also welcomes the Scottish Government and LPPO's progress in meeting commitments given to the Committee. However, it encourages the Scottish Government to undertake to meet all of the historic commitments as soon as possible.
155. The Committee also encourages the Scottish Government to work closely with the Committee and the Parliament to plan for the instruments likely to be made under the European Union (Withdrawal) Bill, to ensure processes are established for effective scrutiny of a potentially large number of instruments.
156. Finally the Committee notes its ongoing concerns about framework legislation, particularly where powers are taken as a substitute for policy development. The Committee would be concerned if the frequency of such bills increase and invites the Scottish Government to indicate whether it intends to use such an approach more frequently.



# Annex A

## ANNEX A - REPORTING GROUNDS: 12 MAY 2016 TO 11 MAY 2017

### *(a) charge on the Scottish Consolidated Fund*

- None

### *(b) made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts*

- None

### *(c) retrospective effect where the parent statute confers no express authority so to provide*

- None

### *(d) unjustifiable delay in the publication or the laying of it before Parliament*

- None

### *(e) doubt as to whether it is intra vires*

- None

### *(f) raises a devolution issue*

- Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2016 (SSI 2016/253) **Social Security**
- Council Tax Reduction (Scotland) Amendment Regulations 2017 (SSI 2017/41) **Social Security**

### *(g) unusual or unexpected use of the powers conferred by the parent statute*

- None

### *(h) meaning could be clearer*

- Bankruptcy (Scotland) Regulations 2016 [draft] **Delegated Powers and Law Reform**
- Crown Estate Scotland (Interim Management) Order 2017 [draft] **Environment, Climate Change and Land Reform**
- Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357) **Local Government and Communities**
- Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) **Local Government and Communities**
- Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (SSI 2016/359) **Local Government and Communities**

- Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360) **Local Government and Communities**
- Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362) **Local Government and Communities**
- Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366) **Rural Economy and Connectivity**
- National Health Service (Dietitian Supplementary Prescribers and Therapeutic Radiographer Independent Prescribers) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/393) **Health and Sport**
- Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434) **Rural Economy and Connectivity**
- 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**

## 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**

### *(i) drafting appears to be defective*

- Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 [draft] **Justice**
- Caseins and Caseinates (Scotland) Regulations 2016 (SSI 2016/383) **Health and Sport**
- Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C.42)) **Local Government and Communities**
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27) **Health and Sport**

- 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 INSTRUMENTS**

- Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200) **Justice**
- Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (SSI 2017/103) **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**
- Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 (SSI 2016/422) **Health and Sport**
- 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**

### **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**
- Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] **Delegated Powers and Law Reform**

- Bankruptcy (Scotland) Regulations 2016 [draft] **Delegated Powers and Law Reform**
- First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 (SSI 2016/339) **Justice**
- Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358) **Local Government and Communities**
- Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360) **Local Government and Communities**
- Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362) **Local Government and Communities**
- Caseins and Caseinates (Scotland) Regulations 2016 (SSI 2016/383) **Health and Sport**
- Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016 (SSI 2016/421) **Local Government and Communities**
- Schools (Consultation) (Scotland) Act 2010 (Modification) Regulations 2017 [draft] **Education and Skills**
- 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 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 Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300) **Justice**
- Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 (SSI 2016/313) **Delegated Powers and Law Reform**
- Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (SSI 2017/103) **Justice**

# Annex B

## ANNEX B - COMMITMENTS: 12 MAY 2016 TO 11 MAY 2017

Amending instruments laid to correct errors identified by the Committee in instruments considered and reported on during the reporting year

- 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)***
- Upper Tribunal for Scotland (Rules of Procedure) Amendment Regulations 2016 (SSI 2016/333) ***corrected errors identified in the Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231)***
- Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Amendment Regulations 2016 (SSI 2016/389) ***corrected errors identified in the Land Reform (Scotland) Act 2016 (Consequential and Saving Provisions) Regulations 2016 (SSI 2016/366)***
- Community Empowerment (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/411) ***corrected errors identified in the:***
  - **Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358)**
  - **Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) regulations 2016 (SSI 2016/360)**
  - **Community Empowerment (Registers of Land) (Scotland) Regulations 2016 (SSI 2016/362)**
- Civil Partnership, Marriage Between Persons of Different Sexes and Same Sex Marriage (Prescribed Bodies) (Scotland) Amendment Regulations 2016 (SSI 2016/427) ***corrected errors identified in the Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/304)***
- Bankruptcy and Protected Trust Deeds (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft] ***corrected errors identified in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 [draft] and Bankruptcy (Scotland) Regulations 2016 [draft]***
- Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/168)<sup>vi</sup> ***corrected errors identified in the :***
  - **Electricity Works (Environmental Impact Assessment (Scotland) Regulations 2017 (SSI 2017/101)**
  - **Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/102)**

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<sup>vi</sup> Instrument laid out-with the reporting period but correcting instruments considered by the Committee during the reporting year.

- **Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/113)**
- **Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/114)**
- **Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017/115)**
- Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/149)<sup>vii</sup> ***corrected errors identified in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120)***
- Seed (Fees etc.) (Scotland) Regulations 2017 (SSI 2017/179)<sup>viii</sup> ***corrected errors identified in the Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434)***

#### COMMITMENTS OUTSTANDING (FROM 2016-17)

- 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 first 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***
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/27) ***to be corrected when the Regulations are next amended***

#### COMMITMENTS OUTSTANDING (FROM PREVIOUS YEARS)

- 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***

<sup>vii</sup> Instrument laid out-with the reporting period but it corrected an instrument considered by the Committee during the reporting year.

<sup>viii</sup> Instrument laid out-with the reporting period but it corrected an instrument considered by the Committee during the reporting year.

- 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 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**

**Amending instruments laid to correct errors identified by the Committee in instruments considered and reported on during the reporting year**

**LORD PRESIDENT'S PRIVATE OFFICE INSTRUMENTS**

- 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)**
- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 4) (Simple Procedure) 2016 (SSI 2016/315) **corrected errors identified in the Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200)**
- Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/367) **corrected errors identified in the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 (SSI 2016/313)**

- Act of Sederunt (Sheriff Court Rules Amendment) (Miscellaneous) 2017 (SSI 2017/154)<sup>ix</sup> ***corrected errors identified in the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (SSI 2017/103)***
- Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Miscellaneous) 2017 (SSI 2017/144)<sup>x</sup> ***corrected errors identified in the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300)***

LPPO COMMITMENTS OUTSTANDING (FROM 2016-17)

None

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<sup>ix</sup> Instrument laid out-with the reporting period but it corrected an instrument considered by the Committee during the reporting year.

<sup>x</sup> Instrument laid out-with the reporting period but it corrected an instrument considered by the Committee during the reporting year.



# Annex C

## ANNEX C - NON-COMPLIANCE WITH LAYING REQUIREMENTS: 12 MAY 2016 TO 11 MAY 2017

### Committee content with reason for non-compliance:

- 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***
- Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 (SSI 2016/422) ***Health and Sport***
- 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***

### Committee not content with reason for non-compliance:

None

