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Delegated Powers and Law Reform Committee

Instruments considered by the Delegated Powers and Law Reform Committee during the first 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. There was an increase in instruments considered in Quarter 1 of 2023-24 compared to Quarter 4 of 2022-23 (56 and 48 respectively). This is an overall increase of 17%.
2. In terms of the number of instruments being reported, results for this quarter are higher than the previous quarter, that is 12% of instruments being reported by the Committee.
3. One instrument engaged on the more serious reporting grounds, which is the Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242). There were none in the previous quarter.
4. This quarter 7 instruments were reported under reporting ground (j) (breaching of laying requirements). There were none in the previous quarter.
5. The Committee identified 14 Scottish Government instruments and 1 Document subject to parliamentary control in which minor points were raised. There were 4 in the previous quarter.
6. During this period, the Committee considered the delegated powers in 4 Bills at Stage 1 and 2 Bills after Stage 2.
7. The Committee considered 5 Legislative Consent Memorandums (LCMs) and supplementary LCMs.

Introduction

8. 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 first quarter of the parliamentary year 2023-24 during the period 13 May to 22 September 2023.
9. 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.
10. 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

11. During the period 13 May to 22 September 2023, a total of 56 instruments, including 1 Document subject to parliamentary control were considered by the Committee. Five were laid by the LPPO.
12. The 50 SSIs laid by the Scottish Government are broken down as follows—
 - 11 affirmative instruments.
 - 30 negative instruments.
 - 9 laid only instruments.
13. There was 1 Document subject to parliamentary control laid by the Scottish Government.
14. The infographic below provides a breakdown of instruments laid by the Scottish Government and the LPPO, and the total drawn to the Parliament's attention—

Scottish Government

Total SSIs

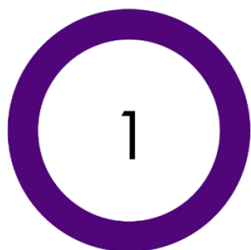


Total drawn to the Parliament's attention



Document subject to parliamentary control

Total



LPPO

Total SSIs



15. The infographic shows that the Committee considered 50 SSIs and 1 Document subject to parliamentary control, laid by the Scottish Government and 5 SSIs laid by the LPPO. There were 9 instruments drawn to the Parliament's attention which equates to 16% of instruments considered.
16. There were 7 instruments reported under reporting ground (j) for breaching the 28-day rule, of which the Committee was content with all the explanations of the breaches, however, 5 of these instruments were also reported under other reporting grounds. If the 2 'content breach only' instruments are excluded from the total figure, the Committee reported 7 instruments, equating to 12% of the instruments considered.
17. In the previous quarter, the Committee considered 44 instruments laid by the Scottish Government. The Parliament's attention was drawn to 4 (9%) of these instruments, of which none were reported under reporting ground (j).

Reporting grounds

18. 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.
19. 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) – doubt as to whether it is intra vires;
 - ground (f) – raises a devolution issue; and
 - ground (i) – drafting appears to be defective.
20. 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.
21. 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 —



22. One instrument engaged one of the more serious reporting grounds.

Withdrawal of instruments

23. Two instruments were withdrawn and re-laid during this reporting period:

- Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (SSI 2023/Draft); and
- Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 4) Regulations (SSI 2023/Draft).

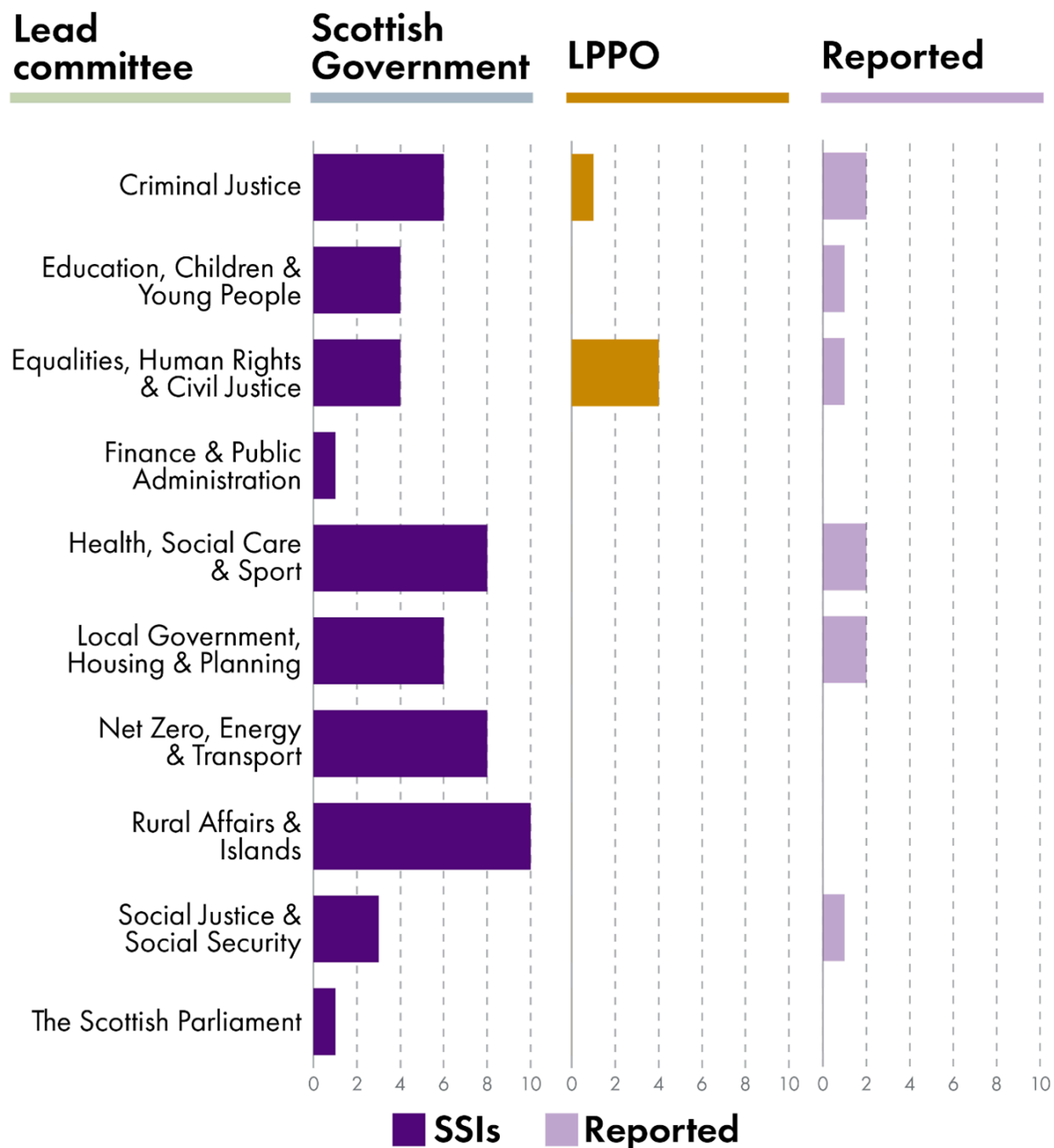
24. One instrument was withdrawn and re-laid in the previous quarter.

25. Instruments can be withdrawn and re-laid after questions about an instrument are raised by the Committee with the Scottish Government, to, for example, correct an identified drafting error.

Instruments referred to Lead Committees

Summary

26. The Criminal Justice Committee received 7 instruments, two of which were drawn to the attention of the Parliament under the General reporting ground, ground (h) Meaning could be clearer and ground (j) failure to comply with laying requirements. One of the instruments was also reported on ground (i) drafting appears to be defective.
27. The Education, Children and Young People Committee received 4 instruments, one of which was drawn to the attention of the Parliament under the General reporting ground, ground (h) Meaning could be clearer and also ground (j) failure to comply with laying requirements.
28. The Equalities, Human Rights and Civil Justice Committee received 8 instruments, one of which was drawn to the attention of the Parliament under the General reporting ground and also ground (h) Meaning could be clearer.
29. The Finance and Public Administration Committee received 1 instrument, which was not drawn to the attention of the Parliament.
30. The Health, Social Care and Sport Committee received 8 instruments, two of which were drawn to the attention of the Parliament under the General reporting ground. One of the instruments was also reported on ground (j) failure to comply with laying requirements.
31. The Local Government, Housing and Planning Committee received 6 instruments, two of which were drawn to the attention of the Parliament on ground (j) failure to comply with laying requirements. One of the instruments was also reported under the General reporting ground.
32. The Net Zero, Energy and Transport Committee received 8 instruments, none of which were drawn to the attention of the Parliament.
33. The Rural Affairs and Islands Committee received 10 instruments, none of which were drawn to the attention of the Parliament.
34. The Social Justice and Social Security Committee received 3 instruments, one of which was drawn to the attention of the Parliament on ground (j) failure to comply with laying requirements.
35. The Scottish Parliament received 1 instrument (in lieu of a lead committee). This was not drawn to its attention.
36. Information detailing specific instruments, and the grounds that they were reported on, is provided in Annex A.
37. The infographic below provides a breakdown of instruments referred to, and reported on, by lead committees—



Scottish Statutory Instruments - General

Sudan

38. During the reporting period there was one instrument considered under an expedited timetable. The purpose of this instrument was to amend social security legislation relating to certain benefits, to remove the habitual residence test and “past presence” test for those benefits for refugees arriving in Scotland from Sudan.

Commitments

Scottish Government and LPPO instruments

39. There were 2 instruments corrected by the Scottish Government by way of correction slip and the LPPO laid 1 amending instrument.
- Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023;
 - Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 3) Regulations 2023 (SSI 2023/178); and
 - Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Miscellaneous) 2023 (2023/196).
40. A list of all outstanding Scottish Government commitments can be found at Annex B.

LPPO instruments

41. There are no outstanding LPPO commitments from this quarter. There was 1 in the previous reporting period which has now been met.

Minor Points

42. The Committee identified a total of 15 instruments on which minor points were raised (generally relating to typographical or referencing errors) compared with 4 instruments identified in Quarter 4.

Summary

43. 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

44. The Committee published 2 reports on the delegated powers in the following Bills at Stage 1—
- [Wildlife Management and Muirburn \(Scotland\) Bill](#)
 - [Bankruptcy and Diligence \(Scotland\) Bill](#)

45. The Committee published two reports on the delegated powers in the following Bills after Stage 2—
- [Bail and Release from Custody \(Scotland\) Bill](#)
 - [Charities \(Regulation and Administration\) \(Scotland\)](#)
46. As the lead committee, the Committee published its Stage 1 Report on the Trusts and Succession (Scotland) Bill —
- [Trusts and Succession \(Scotland\) 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. There are **5** LCMs, including supplementary LCMs, that were considered during this reporting period in relation to the UK Parliament Bills noted below.

[Economic Crime and Corporate Transparency Bill](#)

- The LCM was lodged on 4 March 2022, the Committee considered it on 16 and 23 May 2023 and it published its [report](#) on relevant powers in the bill on 23 May 2023.

[Retained EU Law \(Revocation and Reform\) Bill](#)

- The supplementary LCM was lodged on 11 May 2023, the Committee considered it on 23 and 30 May 2023 and published its [report](#) on the amendments in the bill on 30 May 2023.

[Data Protection and Digital Information \(No.2\) Bill](#)

1. The LCM was lodged on 15 May 2023, the Committee considered it on 6 and 27 June 2023 and published its [report](#) on the relevant powers in the bill on 30 May 2023.

[Electronic Trade Documents Bill](#)

- The supplementary LCM was lodged on 16 May 2023, the Committee considered it on 30 May and 20 June 2023 and published its [report](#) on the relevant powers in the bill on 21 June 2023.

[Economic Crime and Corporate Transparency Bill](#)

- The supplementary LCM was lodged on 19 June 2023, the Committee considered it on 27 June 2023 and published its [report](#) on the relevant powers in the bill on 28 June 2023.

Annex A – Reporting grounds: 13 May to 22 September 2023

As set out in the Committee's remit, it 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

- Food (Scotland) Act 2015 (Compliance Notices) Regulations 2023 (SSI 2023/161) **Health, Social Care and Sport Committee**
- Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 3) Regulations 2023 (SSI 2023/178) **Equalities, Human Rights and Civil Justice Committee**
- Police Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/239) **Criminal Justice Committee**
- Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/240) **Local Government, Housing and Planning Committee**
- Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/241) **Education, Children and Young People Committee**
- Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242) **Criminal Justice Committee**
- National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/246) **Health, Social Care and Sport Committee**

(h) – meaning could be clearer

- Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 3) Regulations 2023 (SSI 2023/178) **Equalities, Human Rights and Civil Justice Committee**
- Police Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/239) **Criminal Justice Committee**
- Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/241) **Education, Children and Young People Committee**
- Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242) **Criminal Justice Committee**

(i) – drafting appears to be defective

- Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242) **Criminal Justice Committee**

(j) - failure to comply with laying requirements

- Police Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/239)
Criminal Justice Committee
- Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/240) **Local Government, Housing and Planning Committee**
- Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/241) **Education, Children and Young People Committee**
- Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242) **Criminal Justice Committee**
- National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/246) **Health, Social Care and Sport Committee**
- Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2023 (SSI 2023/207) **Local Government, Housing and Planning Committee**
- Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2023 (SSI 2023/197) **Social Justice and Social Security Committee**

Annex B – Historic Commitments Scottish Government

Commitments made the by Scottish Government for this, as well as previous reporting periods are set out below:

- [Scotland Act 1998 \(Specification of Functions and Transfer of Property etc.\) Order 2019 \(SI 2019/183\)](#) [11th Report, 2019. Published 06/03/2019] commitment to bring forward an amendment at the earliest opportunity. ⁱ
- [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.
- [Food \(Scotland\) Act 2015 \(Compliance Notices\) Regulations 2023 \(SSI 2023/161\)](#) [38th Report, 2023. Published 13 June 2023] commitment to bring forward an amendment at the earliest 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.
- [Local Government Pension Scheme \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/240\)](#)[53rd Report, 2023. Published on 21 September 2023] commitment to correct the errors by correction slip
- [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.

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](#), and the [UK Government, 30 October 2023](#).

