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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 2022-23



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Contents

Summary	1
Introduction	2
Overview and analysis	3
Instruments referred to Lead Committees	6
Scottish Statutory Instruments - General	8
Annex A – Reporting grounds: 1 March to 12 May 2023	10
Annex B – Historic Commitments	11

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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Committee Membership



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Summary

1. This reporting period covers 1 March to 12 May 2023.
2. There was a decrease in instruments considered in Quarter 4 of 2023 compared to Quarter 3 (48 and 65 respectively). This is an overall decrease of 35%.
3. In terms of the number of instruments being reported, results for this quarter are the same as the last, that is 9% of instruments being reported by the Committee.
4. In relation to the seriousness of the reporting grounds, no instruments engaged serious grounds. There were also none in the previous quarter.
5. This quarter no instruments were reported under reporting ground (j) (breaching of laying requirements); compared with 2 in the previous quarter.
6. The Committee identified 4 Scottish Government instruments in which minor points were raised. There were 11 in the previous quarter.
7. During this period, as the lead committee on the Moveable Transactions (Scotland) Bill, the Committee considered this Bill at Stage 2. The Committee also considered the delegated powers provisions in one Bill at Stage 1, and one after Stage 2.
8. The Committee considered one Legislative Consent Memorandum (LCM).

Introduction

9. 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 2022-23 during the period 1 March to 12 May 2023.
10. 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.
11. 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

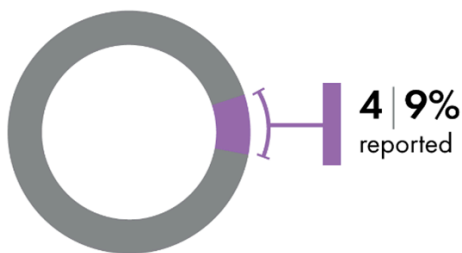
12. During the period 1 March to 12 May 2023, a total of 48 instruments were considered by the Committee. Four were laid by the LPPO.
13. The 44 instruments laid by the Scottish Government are broken down as follows—
 - 9 affirmative instruments.
 - 24 negative instruments.
 - 11 laid only instruments.
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



LPPO

Total SSIs



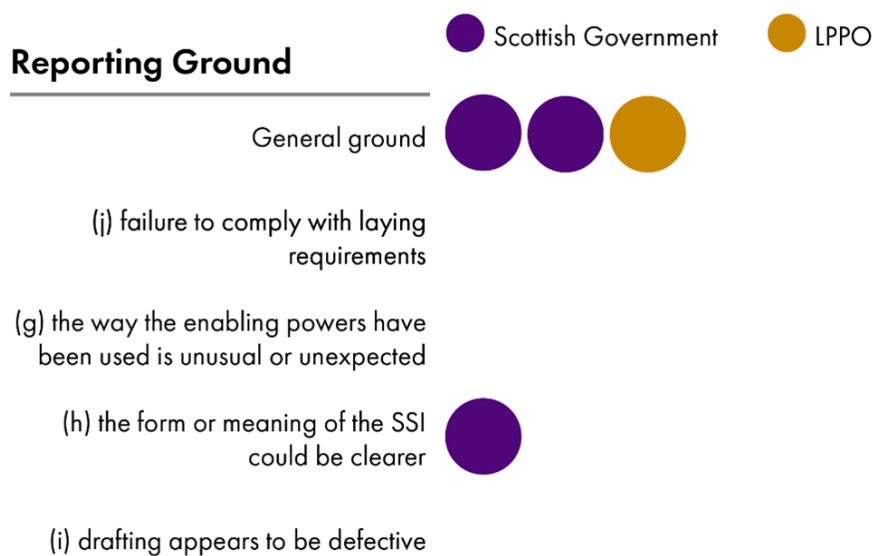
15. The infographic shows that the Committee considered 44 instruments laid by the Scottish Government and 4 by the LPPO. There were 4 instruments drawn to the Parliament’s attention, of which three were laid by the Scottish Government and one by LPPO, equating to 9% of the instruments considered. None of these were reported under reporting ground (j) for breaching the 28-day rule.
16. In the previous quarter, the Committee considered 65 instruments laid by the Scottish Government. The Parliament’s attention was drawn to 7 (11%) of these instruments, of which 2 were reported under reporting ground (j). The Committee was content with one of the explanations of the breaches. So, excluding the one from the overall figure, 6 were reported, which equates to 9% of the instruments considered.

Reporting grounds

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

Reporting grounds: significant

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



21. No instrument engaged in the more serious reporting grounds.

Withdrawal of instruments

22. One instrument was withdrawn and re-laid during this reporting period:
- Cost of Living (Tenant Protection) (Scotland) Act 2022 (Incidental Provision)

Regulations 2023 (SSI 2023/Draft)

23. No instruments were withdrawn and re-laid in the previous quarter.

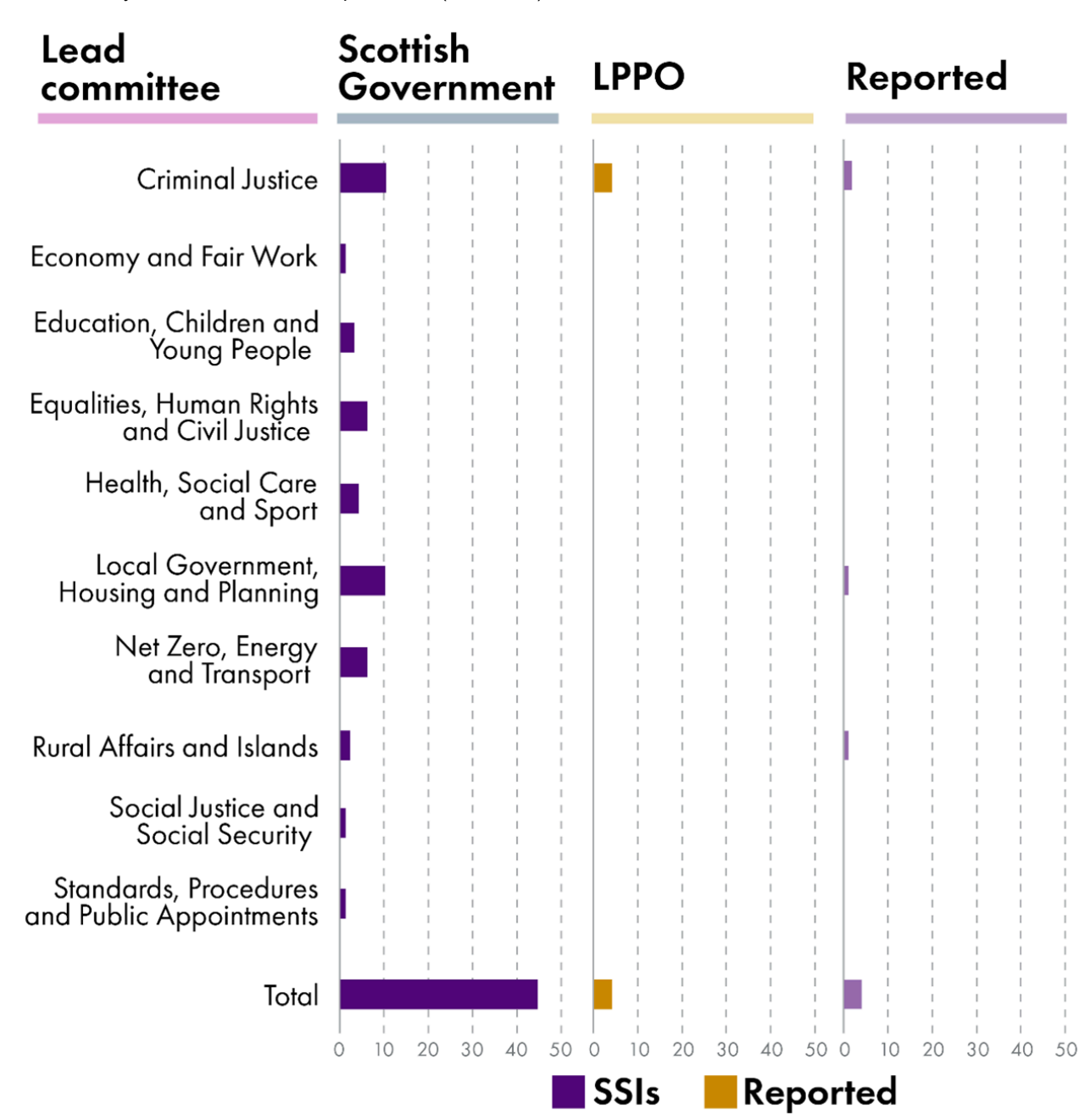
Instruments referred to Lead Committees

Summary

24. The Criminal Justice Committee received 14 instruments, two of which were drawn to the attention of the Parliament under the General reporting ground and ground (h) Meaning could be clearer.
25. The Economy and Fair Work Committee received 1 instrument, which was not drawn to the attention of the Parliament.
26. The Education, Children and Young People Committee received 3 instruments, none of which were drawn to the attention of the Parliament.
27. The Equalities, Human Rights and Civil Justice Committee received 6 instruments, none of which were drawn to the attention of the Parliament.
28. The Health, Social Care and Sport Committee received 4 instruments, none of which were drawn to the attention of the Parliament.
29. The Local Government, Housing and Planning Committee received 10 instruments, one of which was drawn to the attention of the Parliament under the General reporting ground.
30. The Net Zero, Energy and Transport Committee received 6 instruments, none of which were drawn to the attention of the Parliament.
31. The Rural Affairs and Islands Committee received 2 instruments, one of which was drawn to the attention of the Parliament under the General reporting ground.
32. The Social Justice and Social Security Committee received 1 instrument, which was not drawn to the attention of the Parliament.
33. The Standards, Procedures and Public Appointments Committee received 1 instrument, which was not drawn to the attention of the Parliament.
34. Information detailing specific instruments, and the grounds that they were reported on, is provided in Annex A.
35. The infographic below provides a breakdown of instruments referred to, and reported on, by lead committees—

Delegated Powers and Law Reform Committee

Instruments considered by the Delegated Powers and Law Reform Committee during the fourth quarter of the Parliamentary Year 2022-23, 49th Report, 2023 (Session 6)



Scottish Statutory Instruments - General

Commitments

Scottish Government instruments

36. No instruments were laid by the Scottish Government during this period in relation to its commitment to lay an amending instrument to correct errors identified and reported on by the Committee.
37. A list of all outstanding commitments can be found at Annex B.

LPPO instruments

38. There is one outstanding LPPO commitment from this quarter. There have been none from previous reporting periods.

Minor Points

39. The Committee identified a total of 4 instruments on which minor points were raised (generally relating to typographical or referencing errors) compared with 11 instruments identified in Quarter 3. Three instruments were laid by the Scottish Government, and one was laid by the LPPO.

Summary

40. Although the focus of this report is primarily on the Committee's activities in relation to its scrutiny of instruments, the following section briefly outlines the Committee's activity in respect to other matters.

Bills

41. The Committee published one report on the delegated powers provisions in the following Bill at Stage 1—
 - [Children \(Care and Justice\) \(Scotland\) Bill](#)
42. The Committee published one report on the delegated powers provisions in the following Bill after Stage 2—
 - [Moveable Transactions \(Scotland\) Bill](#)

Legislative Consent Memorandums (LCMs)

43. 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.
44. 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

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Committee have considered powers conferred on UK Ministers in devolved areas in various UK bills over the course of sessions 5 and 6.

45. One LCM was considered during this reporting period in relation to the following UK Parliament Bill —
 - [Powers of Attorney Bill](#)
46. The LCM was lodged on 16 March, the Committee considered it on 18 April and it published its [report](#) on relevant powers in the bill on 19 April 2023.

Annex A – Reporting grounds: 1 March to 12 May 2023

General

- Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Sexual Harm Prevention Orders and Sexual Risk Orders) (SSI 2023/62) **Criminal Justice Committee**
- Tuberculosis (Scotland) Order 2023 (SSI 2023/93) **Rural Affairs and Islands Committee**
- Town and Country Planning (Development Planning) (Scotland) Regulations 2023 (SSI 2023/101) **Local Government, Housing and Planning Committee**

(h) – meaning could be clearer

- International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2023 (SSI 2023/Draft) **Criminal Justice 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 opportunity^j*
- 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.*

LPPQ

- Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Sexual Harm Prevention Orders and Sexual Risk Orders) 2023 (SSI 2023/62) [22nd Report, 2023. Published 21/03/2023] *commitment by the Lord President to correct the error in a forthcoming amending instrument.*

ⁱ This will require a further SAO to be brought forward at Westminster. The Scottish Government do not consider that the problems identified are particularly problematic nor that they will impede proper functioning of the devolution arrangements for forestry.

