

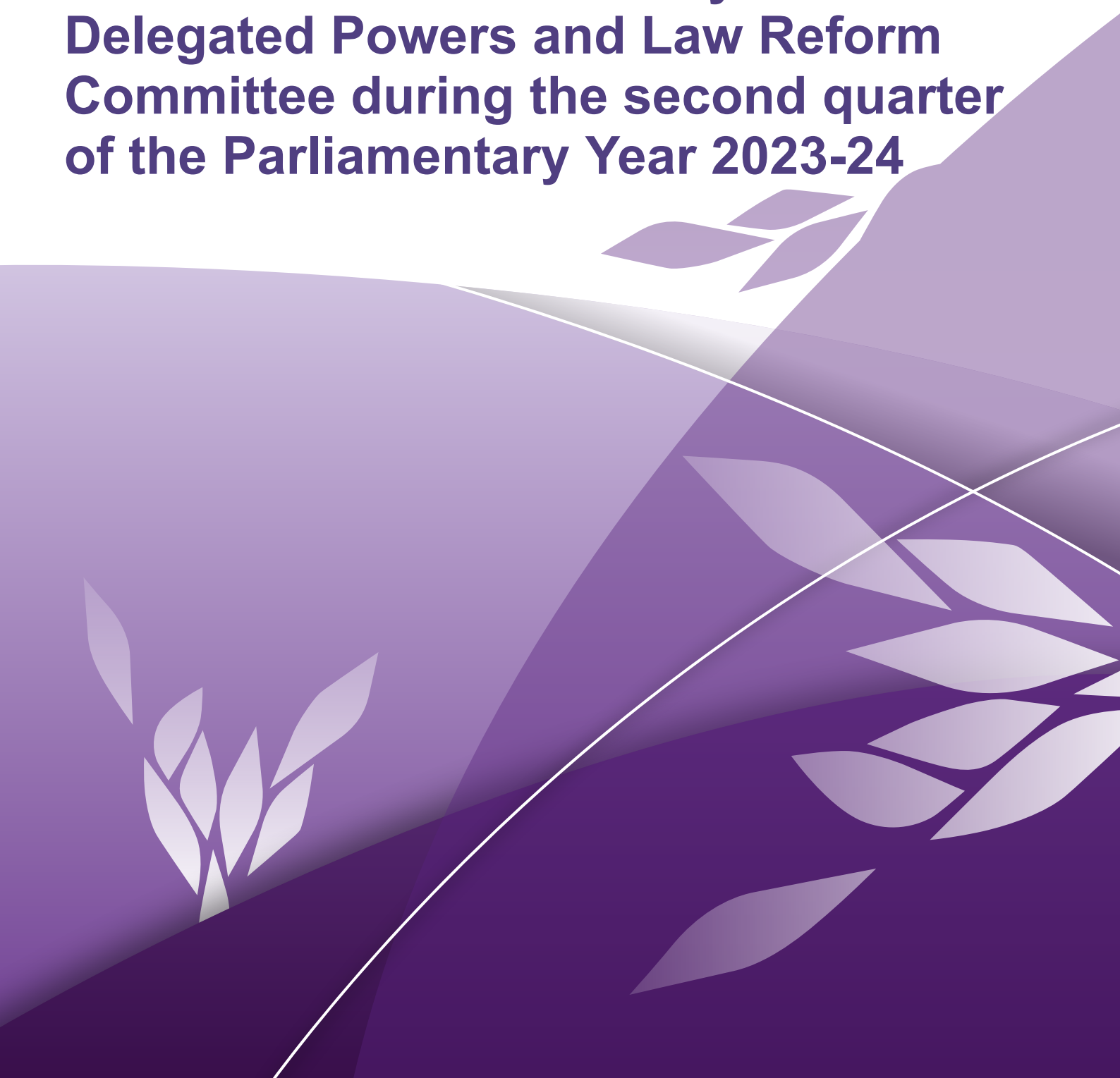


The Scottish Parliament  
Pàrlamaid na h-Alba

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## **Delegated Powers and Law Reform Committee**

# **Instruments considered by the Delegated Powers and Law Reform Committee during the second 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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# Committee Membership



**Convener**  
**Stuart McMillan**  
Scottish National Party



**Deputy Convener**  
**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party



**Colin Smyth**  
Scottish Labour

# Summary

1. This reporting period covers 23 September to 7 December 2023.
2. There was a decrease in instruments considered in Quarter 2 compared to Quarter 1 of 2023-24 (44 and 56 respectively). This is an overall decrease of 21%.
3. In terms of the number of instruments being reported, results for this quarter are lower than the previous quarter, that is 9% of instruments compared with 12% in quarter one.
4. One instrument engaged the significant reporting grounds. There was also one in the previous quarter.
5. During this period, 1 instrument was reported under reporting ground (j) (breaching of laying requirements). There were 7 in the previous quarter.
6. The Committee identified 12 instruments on which minor points were raised. This can be broken down to 11 laid by the Scottish Government and 1 laid by the Lord President's Private Office. There were 15 in the previous quarter.
7. In addition to its work considering subordinate legislation, as the lead committee, the Committee considered the Trusts and Succession (Scotland) Bill at Stage 2. The Committee also reported on the delegated powers provisions in 5 Bills at Stage 1.
8. The Committee considered the delegated powers aspects of 4 Legislative Consent Memorandums (LCMs), including supplementary LCMs.

# 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 second of the parliamentary year 2023-24 during the period 23 September to 7 December 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

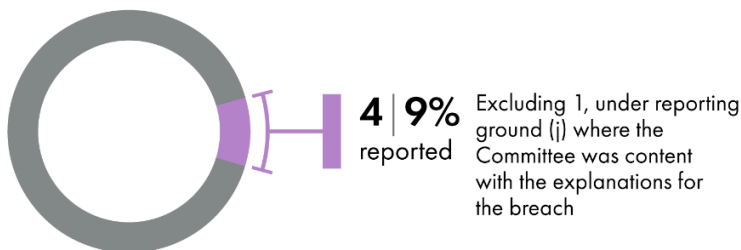
12. During this period, a total of 44 instruments were considered by the Committee, 2 of which were laid by the LPPO.
13. The 42 SSIs laid by the Scottish Government are broken down as follows—
  - 19 affirmative instruments.
  - 18 negative instruments.
  - 5 laid only instruments.
14. Of the 44 instruments considered by the Committee, the Parliament's attention was drawn to 5 (11%) of them; with 1 reported under reporting ground (j), with the Committee content with the explanation for this breach. Excluding this instrument from the overall figure, 4 were reported, which equates to 9% of the instruments considered.
15. The infographic below provides a breakdown of instruments laid by the Scottish Government and the LPPO, and the total instruments drawn to the Parliament's attention—

### Scottish Government

Total SSIs



Total drawn to the Parliament's attention



### LPPO

Total SSIs



16. In the previous quarter, the Committee considered 56 instruments, including 1 Document subject to parliamentary control, laid by the Scottish Government. The Parliament's attention was drawn to 7 (12%) of these instruments.

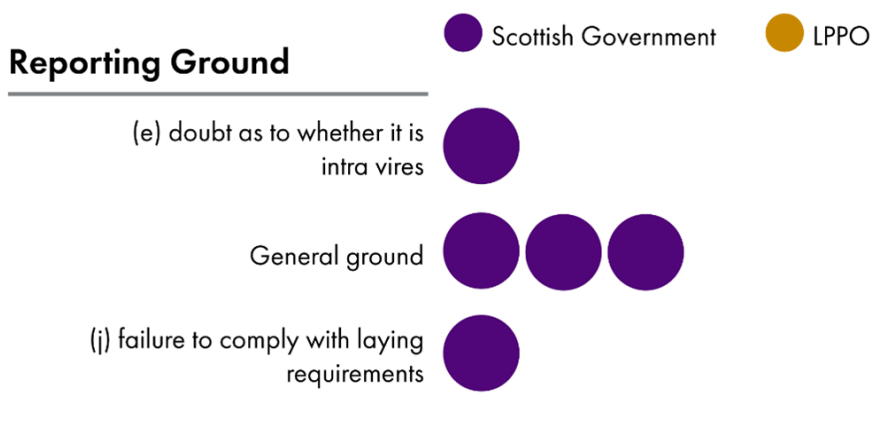
### Reporting grounds



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)** – there appears to be a doubt whether it is *intra vires*;
  - **ground (f)** – raises a devolution issue; and
  - **ground (i)** – drafting appears to be defective.
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. One instrument engaged the significant reporting ground (e) doubt as to whether it [*the instrument*] is *intra vires*.

#### Withdrawal of instruments

22. Instruments can be withdrawn and re-laid by the Scottish Government. Often this occurs after questions about an instrument are raised by the Committee, and, for example, the Scottish Government decides to withdraw and re-lay to correct an identified drafting error.
23. One instrument was withdrawn and re-laid during this reporting period:

- Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon)

(Scotland) Regulations 2023 (SSI 2023/Draft)<sup>i</sup>

24. There were 2 instruments withdrawn and re-laid in the previous quarter.

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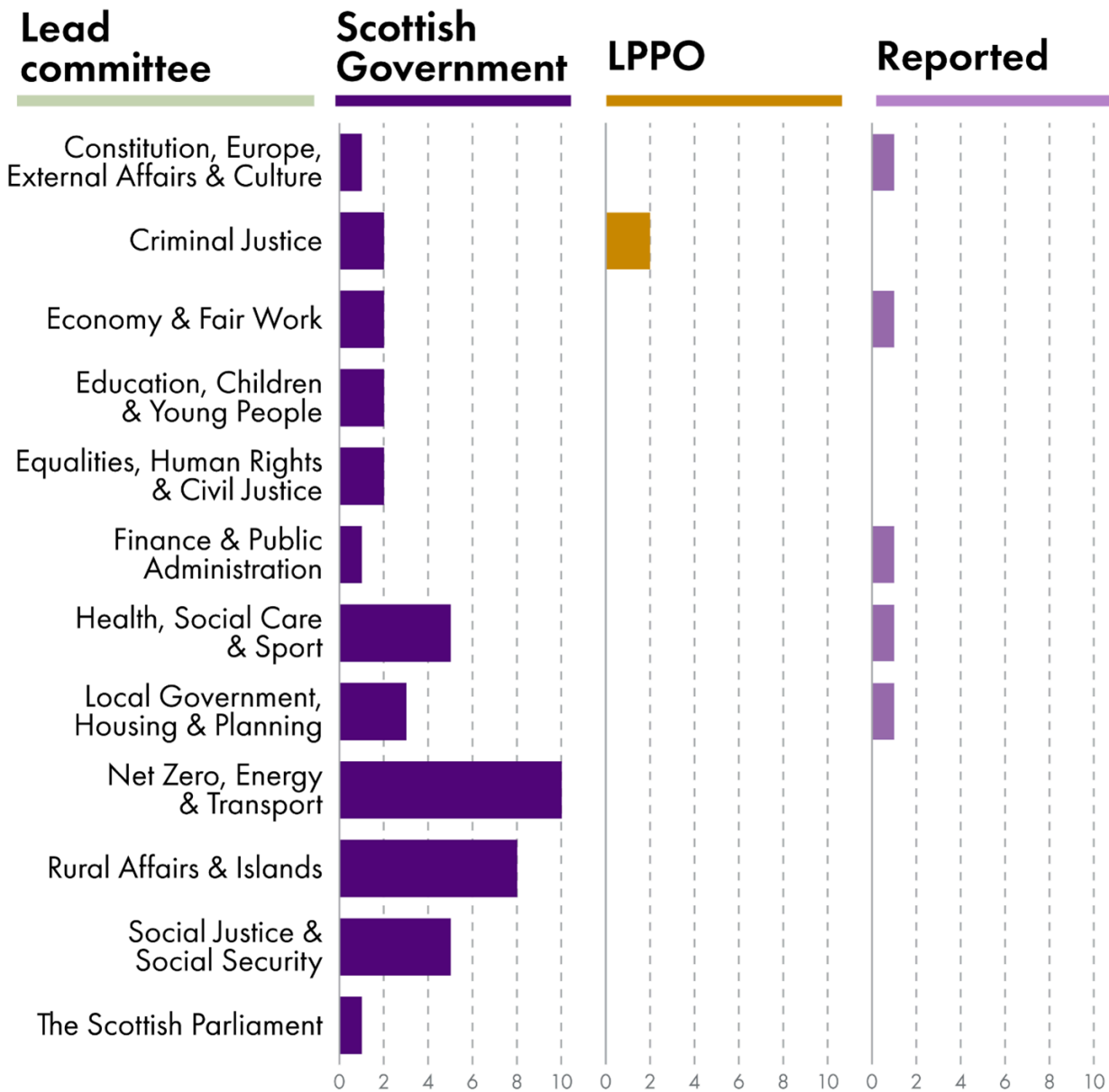
<sup>i</sup> On this occasion, this instrument was withdrawn and re-laid to include Lebanon, and not following any questions from the Committee.

# Instruments referred to Lead Committees

## Summary

25. The Constitution, Europe, External Affairs and Culture Committee received 1 instrument, which was drawn to the attention of the Parliament under reporting ground (e) that there appears to be a doubt whether it is intra vires.
26. The Criminal Justice Committee received 4 instruments, which were not drawn to the attention of the Parliament.
27. The Economy and Fair Work Committee received 2 instruments, one of which was drawn to the attention of the Parliament on ground (j) failure to comply with laying requirements.
28. The Education, Children and Young People Committee received 2 instruments, which were not drawn to the attention of the Parliament.
29. The Equalities, Human Rights and Civil Justice Committee received 2 instruments, which were not drawn to the attention of the Parliament.
30. The Finance and Public Administration Committee received 1 instrument, which was drawn to the attention of the Parliament under the General reporting ground.
31. The Health, Social Care and Sport Committee received 5 instruments, one of which was drawn to the attention of the Parliament under the General reporting ground.
32. The Local Government, Housing and Planning Committee received 3 instruments, one of which was drawn to the attention of the Parliament under the General reporting ground.
33. The Net Zero, Energy and Transport Committee received 10 instruments, none of which were drawn to the attention of the Parliament.
34. The Rural Affairs and Islands Committee received 8 instruments, none of which were drawn to the attention of the Parliament.
35. The Social Justice and Social Security Committee received 5 instruments, none of which were drawn to the attention of the Parliament.
36. The Scottish Parliament received 1 instrument (in lieu of a lead committee). This was not drawn to its attention.
37. Information detailing specific instruments, and the grounds that they were reported on, is provided in Annex A.
38. The infographic below provides a breakdown of instruments referred to, and reported on, by lead committees—

# SSIs



# Scottish Statutory Instruments - General

*Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon*

39. During the reporting period there was 1 instrument considered under an expedited timetable which went directly to the Chamber: the Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon) (Scotland) Regulations 2023 (SSI 2023/Draft).
40. The purpose of this instrument is to amend secondary legislation in respect of the entitlement to devolved social security benefits in Scotland for people arriving from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon. The amendments removed the habitual residence test and the past presence test where they apply to a benefit, meaning that a person arriving in Scotland will be eligible for a benefit if they meet all other entitlement conditions.

## Commitments

### *Scottish Government instruments*

41. The Scottish Government corrected **2** instruments in the reporting period, as set out below:
  - Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/240) - corrected by way of correction slip on 27 September 2023.
  - Food (Scotland) Act 2015 (Compliance Notices) Regulations 2023 (SSI 2023/161) – on 9 November 2023, the Scottish Government laid the Food (Scotland) Act 2015 (Compliance Notices) Amendment Regulations 2023 (SSI 2023/337), which corrected a cross-referencing error in the original instrument.
42. A list of all outstanding commitments can be found at Annex B.

### *LPPO instruments*

43. There are no outstanding LPPO commitments.

### *Minor Points*

44. The Committee identified a total of 12 instruments on which minor points were raised (generally relating to typographical or referencing errors) compared with 15 instruments identified in Quarter 1.

### *Summary*

45. 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*

46. As the lead committee, the Committee considered the Trusts and Succession

(Scotland) Bill, at Stage 2.

47. The Committee published 5 reports on the delegated powers in the following Bills at Stage 1—
- [Visitor Levy \(Scotland\) Bill](#)
  - [Welfare of Dogs \(Scotland\) Bill](#)
  - [Circular Economy \(Scotland\) Bill](#)
  - [Regulation of Legal Services \(Scotland\) Bill](#)
  - [Scottish Employment Injuries Advisory Council Bill](#)

*Legislative Consent Memorandums (LCMs)*

48. 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.
49. 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.
50. There were 4 LCM reports, including supplementary LCM reports, published during this reporting period in relation to the UK Parliament Bills noted below.
- [Economic Activities of Public Bodies \(Overseas Matters\) Bill](#)
  - [Energy Bill supplementary](#)
  - [Data Protection and Digital Information \(No2\) Bill supplementary](#)
  - [Levelling-up and Regeneration Bill supplementary](#)

# Annex A – Reporting grounds: 23 September to 7 December 2023

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

## **(e) – appears to be a doubt whether it is intra vires**

- Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (SSI 2023/Draft) **Constitution, Europe, External Affairs and Culture Committee**

## **General reporting ground**

- Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/Draft) **Health, Social Care and Sport Committee**
- Budget (Scotland) Act 2023 Amendment Regulations 2023 (SSI 2023/Draft) **Finance and Public Administration Committee**
- Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2023 (SSI 2023/268) **Local Government, Housing and Planning Committee**

## **(j) - failure to comply with laying requirements**

- Public Procurement (Agreement on Government Procurement) (Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/287) **Economy and Fair Work Committee**

# Annex B – Historic Commitments

## Scottish Government

- [Scotland Act 1998 \(Specification of Functions and Transfer of Property etc.\) Order 2019 \(SSI 2019/183\)](#) [11<sup>th</sup> Report, 2019. Published 06/03/2019] *commitment to bring forward an amendment at the earliest opportunity*<sup>ii</sup>
- [Town and Country Planning \(Development Planning\) \(Scotland\) Regulations 2023 \(SSI 2023/101\)](#) [27<sup>th</sup> Report, 2023. Published 25/04/2023] *commitment to bring forward regulations to correct the reference at the next available opportunity.*
- [Police Pensions \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/239\)](#) [53<sup>rd</sup> Report, 2023. Published on 21 September 2023] *commitments to correct the error in the preamble by correction slip, and to address the other points raised by way of an amending instrument.*
- [Teachers' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/241\)](#) [53<sup>rd</sup> Report, 2023. Published on 21 September 2023] *commitment to correct these matters in the next amending instrument.*
- [Firefighters' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023 \(SSI 2023/242\)](#) [53<sup>rd</sup> 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 \(SSI 2023/246\)](#) [53<sup>rd</sup> Report, 2023. Published on 21 September 2023] *commitment to address these matters in the next amending instrument.*
- [Council Tax Reduction \(Scotland\) Amendment \(No. 3\) Regulations 2023 \(SSI 2023/268\)](#) [60<sup>th</sup> Report, 2023. Published on 25 October 2023] *Commitment to insert a new Part number and heading at the next available opportunity*
- [Budget \(Scotland\) Act 2023 Amendment Regulations 2023 \(SSI 2023/Draft\)](#) [62<sup>nd</sup> Report, 2023. Published on 1 November 2023] *commitment to address this in the next amending instrument.*

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



