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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 2024-25



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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



**Daniel Johnson**  
Scottish Labour



**Roz McCall**  
Scottish Conservative  
and Unionist Party

# Summary

1. This reporting period covers 13 May to 15 September 2024.
2. The Committee considered 42 instruments and 1 Document subject to parliamentary control.
3. There were 6 instruments reported by the Committee.
4. One instrument engaged the more serious reporting grounds, which is the Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2024 (SSI 2024/186).
5. During this period, the Committee considered the delegated powers in 5 Bills at Stage 1 and 5 Bills after Stage 2.
6. The Committee considered 2 Legislative Consent Memorandums (LCMs). At the dissolution of the 2019-24 UK Parliament, the Bills these related to fell on 30 May 2024. As such, in line with other Scottish Parliament committees, the Committee agreed therefore to take no further action.

# Introduction

7. 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 (SIs) subject to joint procedure in the Scottish Parliament during the first quarter of the parliamentary year in 2024-25, covering the period 13 May to 15 September 2024.
8. 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.
9. 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

10. During the reporting period 13 May to 15 September 2024, a total of 42<sup>i</sup> instruments (including 6 laid by the LPPO) and 1 Document subject to parliamentary control were considered by the Committee.
11. The 36 SSIs laid by the Scottish Government are broken down as follows—
  - 14 affirmative instruments.
  - 15 negative instruments.
  - 7 laid only instruments.
12. There was also 1 Document subject to parliamentary control laid by the Scottish Government.
13. The LPPO laid 6 instruments, all laid only.
14. The infographic below provides a breakdown of instruments laid by the Scottish Government and the LPPO as well as the total instruments drawn to the Parliament's attention—

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<sup>i</sup> The Committee considered the Academic Awards and Distinctions (SRUC) Order of Council 2024 (SSI 2024/219) and a draft Order in Council, the Vehicle Emissions Trading Schemes (Amendment) Order 2024. Orders of Council are made by the Privy Council itself, acting through its members (Privy Counsellors) rather than by the monarch, and usually relate to the regulation of medical and veterinary professions or the higher education sector. Orders in Council are made by the King acting on the advice of the Privy Council, and a parent Act may specify the use of Orders in Council if the powers being delegated are particularly significant, including those with constitutional implications. These instruments required the same parliamentary scrutiny as other SSIs and the Committee was content with both of them.



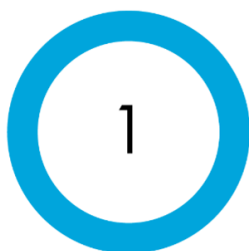
## Scottish Government

Total SSIs



## Document subject to parliamentary control

Total



## LPPO

Total SSIs



Total drawn to the Parliament's attention



15. There were 6 instruments reported by the Committee, which equates to 14% of the instruments drawn to the Parliament's attention.

## Reporting grounds

16. 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*

17. 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.

18. 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.
19. 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 —

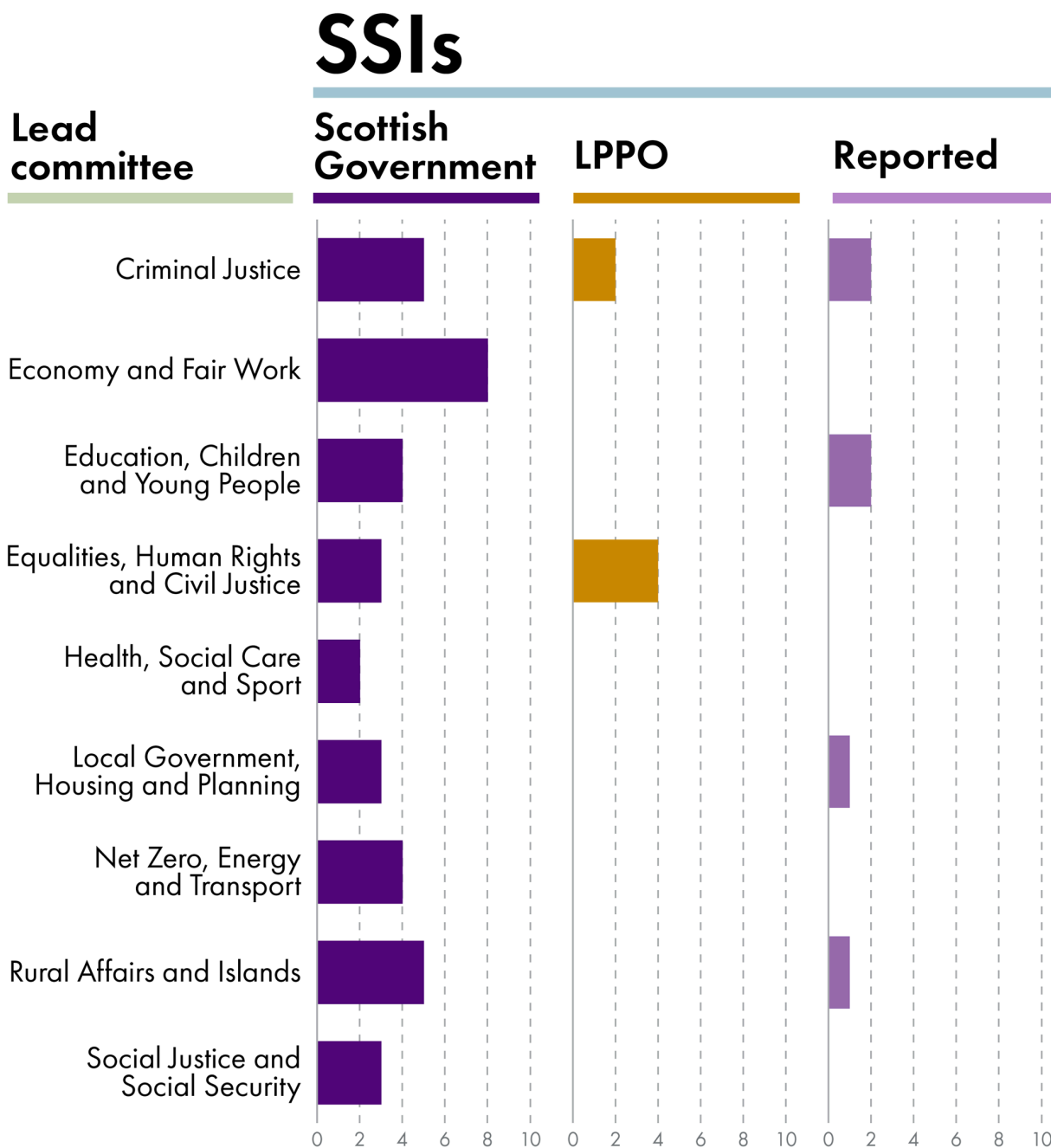


#### Withdrawal of instruments

20. 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.
21. One instrument was withdrawn and re-laid during this reporting period:
- The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Amendment Order 2024 (SSI 2024/Draft) was withdrawn on 30 May 2024 and re-laid on 31 May 2024.

# Instruments referred to Lead Committees

22. The infographic below provides a breakdown of instruments referred to, and reported on, by lead committees



# Commitments

## Scottish Government

23. The Scottish Government laid 1 amending instrument, the Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/Draft), to correct errors in two draft instruments:
- the Scottish Pubs Code Regulations 2024 (SSI 2024/Draft); and
  - the Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024 (SSI 2024/Draft).
24. A list of all outstanding commitments can be found at Annexe B.

## Minor Points

25. The Committee identified a total of 12 instruments on which minor points were raised (generally relating to minor typographical matters, and which do not affect the operation of the instrument). Of these, 10 were in Scottish Government instruments and 2 in LPPO instruments.

## Bills

26. During the reporting period, the Committee considered the delegated powers in 5 [Bills](#) at Stage 1—
- Housing (Scotland) Bill
  - Climate Change (Emissions Reduction Targets) (Scotland) Bill
  - Assisted Dying for Terminally Ill Adults (Scotland) Bill
  - Education (Scotland) Bill (the bill was considered on 10 September and the Committee published its [report](#) on 1 October 2024).
  - Land Reform (Scotland) Bill (the bill was considered on 18 June, 17 September, and 29 October 2024). It is scheduled to be considered again on 26 November.
27. As the lead committee, the Committee published its [Stage 1 Report on the Judicial Factors \(Scotland\) Bill](#).
28. The Committee published 5 reports on the delegated powers in the following [bills](#) after Stage 2—
- Housing (Cladding Remediation) (Scotland) Bill
  - Abortion Services (Safe Access Zones) (Scotland) Bill
  - Agriculture and Rural Communities (Scotland) Bill
  - Circular Economy (Scotland) Bill

- Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

#### Legislative Consent Memorandums (LCMs)

29. The Committee considered powers to make subordinate legislation within devolved competence in 2 LCMs—
  - Renters (Reform) Bill
  - Tobacco and Vapes Bill
30. At the dissolution of the 2019-24 UK Parliament, both Bills fell on 30 May 2024. The Committee, in line with other Scottish Parliament committees, therefore agreed to take no further action.

# Annex A – Reporting grounds: 13 May to 15 September 2024

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

## General

- [Scottish Pubs Code Regulations 2024 \(SSI 2024/Draft\)](#) Economy and Fair Work Committee
- [Act of Adjournal \(Criminal Procedure Rules 1996 Amendment\) \(United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024\) 2024 \(SSI 2024/174\)](#) Criminal Justice Committee

(h) – meaning could be clearer

- [Carer's Assistance \(Carer Support Payment\) \(Scotland\) Amendment Regulations \(SSI 2024/Draft\)](#) Social Justice and Social Security Committee
- [Tied Pubs \(Fees and Financial Penalties\) \(Scotland\) Regulations 2024 \(SSI 2024/Draft\)](#) Economy and Fair Work Committee

(i) – drafting appears to be defective

- [Valuation \(Proposals Procedure\) \(Scotland\) Amendment Regulations 2024 \(SSI 2024/186\)](#) Local Government, Housing and Planning Committee

(j) - failure to comply with laying requirements

- [Sheriff \(Removal from Office\) Order 2024 \(SSI 2024/148\)](#) Criminal Justice Committee

# Annex B – Historic Commitments

## Commitments made by the Scottish Government

### Commitment from 2019

- [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>

### Commitments from 2023

- [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.*

### Commitments from 2024

- [Firefighters' Pension Schemes \(Scotland\) Amendment Order 2024 \(SSI 2024/26\)](#) [12<sup>th</sup> report 2024, Published on 20 February 2024] *commitment to amend the instrument to correct the error at the next opportunity.*
- [International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment Order 2024 \[SSI 2024/Draft\)](#) (31<sup>st</sup> Report 2024, Published 1 May 2024] *commitment to rectify the error at the earliest opportunity, which is anticipated to be in autumn of 2024, and to correct the text of the Explanatory Note.*

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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](#).

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

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- [Valuation \(Proposals Procedure\) \(Scotland\) Amendment Regulations 2024 \(SSI 2024/186\)](#) ( [49<sup>th</sup> Report 2024, Published 4 September 2024](#) ) *commitment to address error by bringing forward amending regulations at the next suitable opportunity.*

## **Commitments made by the LPPO**

Commitment from 2024

- [Act of Adjournal \(Criminal Procedure Rules 1996 Amendment\) \(United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024\) 2024 \(SSI 2024/174\)](#) ( [47<sup>th</sup> Report 2024, Published 26 June 2024](#) ) *The LPPO has advised that the definition will be removed at the next available opportunity.*



