

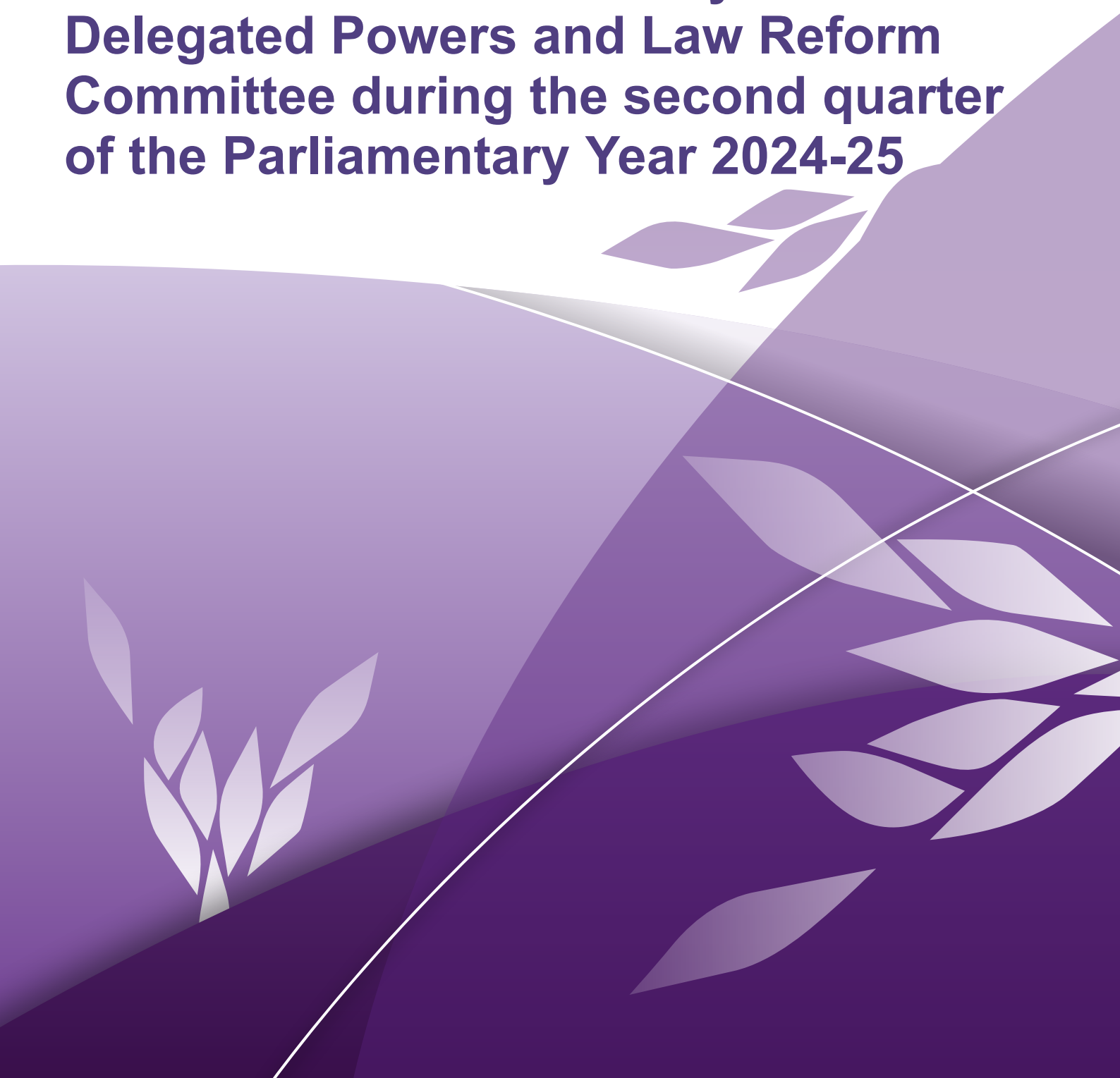


The Scottish Parliament
Pàrlamaid na h-Alba

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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 2024-25



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For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

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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.

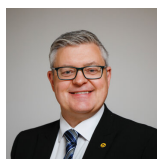


DPLR.Committee@parliament.scot



0131 348 5974

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



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party

Summary

1. This reporting period covers 16 September to 1 December 2024.
2. The Committee considered a total of 68 instruments (67 laid by Scottish Government and 1 instrument laid by the Lord President's Private Office (LPPO)).
3. There were 4 instruments reported by the Committee (all laid by the Scottish Government, and excluding an instrument reported where the Committee was content with the reason provided for the breach of the 28-day rule which led to the report).
4. During this period, the Committee considered the delegated powers in 6 Bills at Stage 1 and 2 Bills after Stage 2.
5. The Committee considered 2 Legislative Consent Memorandums (LCMs).

Introduction

6. 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 second quarter of the parliamentary year in 2024-25, covering the period 16 September to 1 December 2024.
7. 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.
8. 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

- 9. During the reporting period 16 September to 1 December 2024, a total of 68 instruments (including 1 laid by the LPPO) were considered by the Committee.
- 10. The 67 SSIs laid by the Scottish Government are broken down as follows—
 - 20 affirmative instruments.
 - 40 negative instruments.
 - 7 laid only instruments.
- 11. The LPPO laid 1 instrument, which was not subject to any parliamentary procedure.
- 12. 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—

Scottish Government

Total SSIs

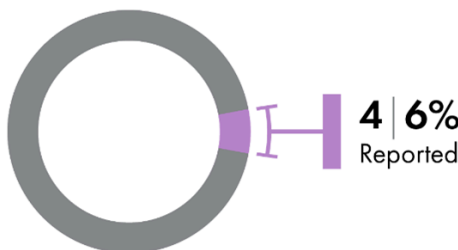


LPPO

Total SSIs



Total drawn to the Parliament’s attention



Excluding an instrument reported where the Committee was content with the reason provided for the breach of the 28-day rule

- 13. There were 5 instruments reported by the Committee. One of the instruments was reported under reporting ground (j) for breaching the 28-day rule, for which the Committee was content with the explanation of the breach. Excluding this instrument from the overall figure, 4 were reported, which equates to 6% of the instruments considered.

Reporting grounds

- 14. 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

15. 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.
16. 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.
17. No instruments in this quarter were reported under the significant reporting grounds.
18. 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 Annexe A —

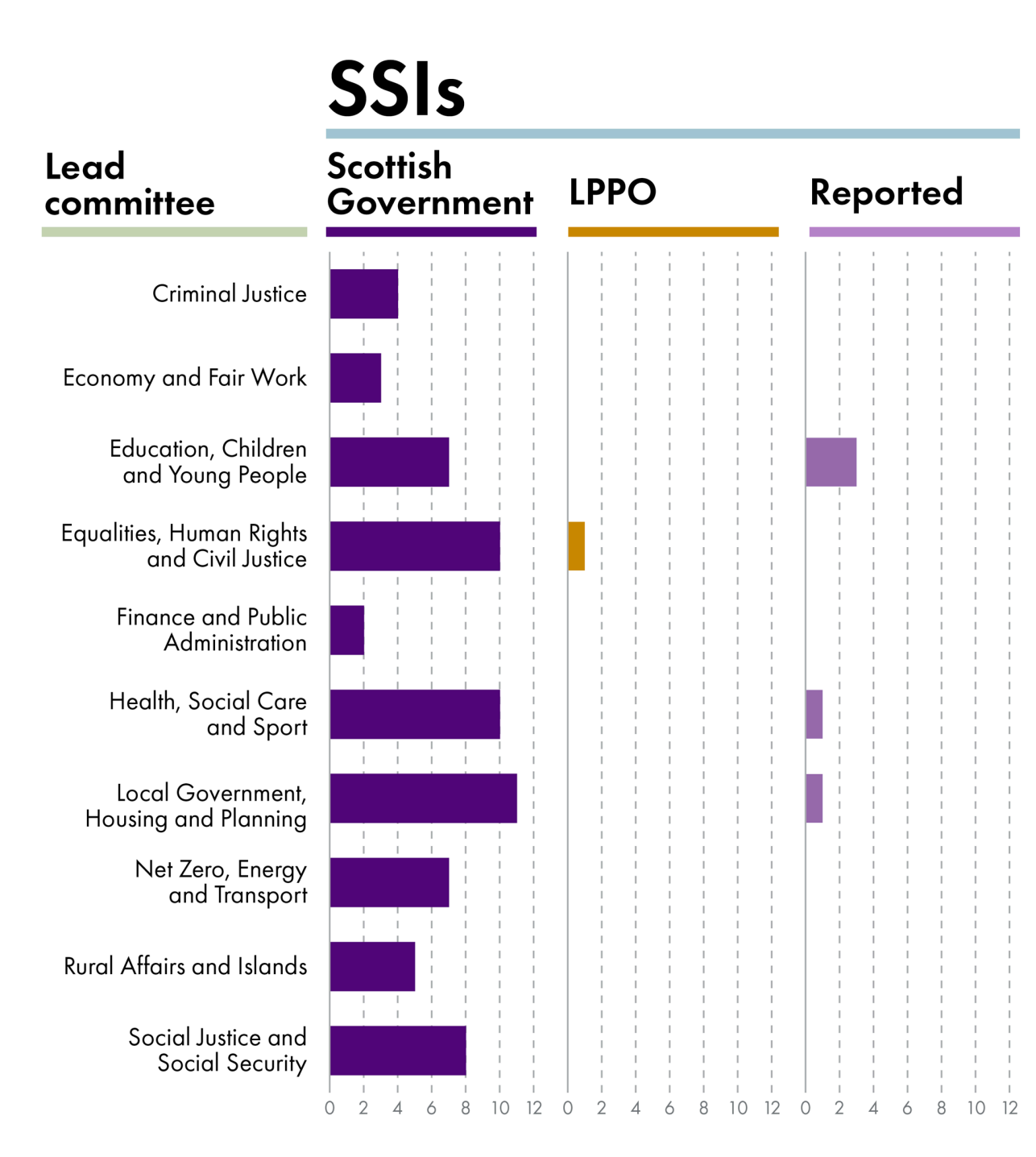


Withdrawal of instruments

19. 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.
20. Two instruments were withdrawn and re-laid during this reporting period:
 - The Funeral Expense Assistance (Scotland) Amendment Regulations 2024 (SSI 2024/Draft); and
 - The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024 (SI 2024/Draft).

Instruments referred to Lead Committees

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



Commitments

Scottish Government

22. During the quarter, the Scottish Government laid **2** instruments which included provision correcting errors in previous instruments:
 - the Town and Country Planning (Amendment of Local Development Plan) (Scotland) Regulations 2024 (SSI 2024/250); and
 - the Firefighters' Pension Schemes (Scotland) Amendment (No. 2) Order 2024 (SSI 2024/295).
23. The Scottish Government also corrected an error in the Policy Note of the National Health Service Superannuation and Pension Schemes (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/272), thereby meeting a commitment it had made to the Committee.
24. A list of all outstanding commitments can be found at Annexe B.

Minor Points

25. The Committee identified a total of 10 instruments, all laid by the Scottish Government, on which minor points were raised (generally relating to minor typographical matters, and which do not affect the operation of the instrument).

Bills

26. During the reporting period, the Committee considered the delegated powers in 6 [bills](#) at Stage 1—
 - Land Reform Bill (the bill was considered on 17 September, 29 October, and 26 November in the quarter, as well as on 18 June 2024. The report was published on 17 January 2025)
 - Right to Addiction Recovery (Scotland) Bill
 - Education (Scotland) Bill
 - Schools (Residential Outdoor Education) (Scotland) Bill
 - Right to Addiction Recovery (Scotland) Bill
 - Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill (the bill was considered on 26 November in the quarter, and 17 December).
27. The Committee published 2 reports on the delegated powers in the following [bills](#) after Stage 2—
 - Social Security (Amendment) (Scotland) Bill
 - Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

Legislative Consent Memorandums (LCMs)

28. The Committee considered powers to make subordinate legislation within devolved competence in 2 LCMs—
- Renters' Rights Bill (UK Parliament legislation); and
 - Product Regulation and Metrology Bill (UK Parliament legislation) (the LCM was considered on 29 October in the quarter and 3 December).

Annex A – Reporting grounds: 16 September to 1 December 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

- [Property Factors \(Registration\) \(Scotland\) Regulations 2024 \(SSI 2024/274\)](#) **Local Government, Housing and Planning Committee**
- [Protection of Vulnerable Groups \(Information for Listing and Vetting\) \(Scotland\) Regulations 2024 \(SSI 2024/314\)](#) **Education, Children and Young People Committee**
- [Level 1 and Level 2 Disclosure Information \(Scotland\) Regulations 2024 \(SSI 2024/315\)](#) **Education, Children and Young People Committee**

(h) – meaning could be clearer

- [Protection of Vulnerable Groups \(Referrals by Chief Constable\) \(Prescribed Information\) \(Scotland\) Regulations 2024 \(SSI 2024/313\)](#) **Education, Children and Young People Committee**

(j) - failure to comply with laying requirements

- [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965 \(Prohibition on Disposal of a Body without Authorisation\) Amendment Regulations 2024 \(SSI 2024/281\)](#) **Health, Social Care and Sport 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 \(SSI 2019/183\)](#) [11th Report, 2019. Published 06/03/2019] *commitment to bring forward an amendment at the earliest opportunity*^j

Commitments from 2023

- [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.*
- [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.*

Commitments from 2024

- [International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment Order 2024 \[SSI 2024/Draft\]](#) (31st Report 2024, Published 1 May 2024) *commitment to rectify the error at the earliest opportunity, which is anticipated to be in autumn of 2024*ⁱⁱ.
- [Valuation \(Proposals Procedure\) \(Scotland\) Amendment Regulations 2024 \(SSI 2024/186\)](#) (49th Report 2024, Published 4 September 2024) *commitment to address error by bringing forward amending regulations at the next suitable opportunity.*

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

ⁱⁱ At its meeting on [7 January 2025](#), the Committee welcomed that this error was corrected by the [International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment Order 2025](#). As such, this 'historic commitment' will be removed in future reports.

- [Property Factors \(Registration\) \(Scotland\) Regulations 2024 \(SSI 2024/274\) \(64th Report 2024, Published 5 November 2024\)](#) *commitment to correct the error by way of a correction slip*ⁱⁱⁱ

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 \(SSI 2024/174\) \(47th Report 2024, Published 26 June 2024.\)](#) *The LPPO has advised that the definition will be removed at the next available opportunity.*

ⁱⁱⁱ *The Scottish Government corrected the error by way of a [correction slip](#) on 6 December 2024. As such, this 'historic commitment' will be removed in future reports.*

