

Delegated Powers and Law Reform Committee

52nd Report, 2013 (Session 4)

**Report on Instruments laid in
2012-13**

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The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

52nd Report, 2013 (Session 4)

**Report on Instruments laid in 2012-
13**

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The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
 - (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; and
 - (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; and
 - (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Christian Allard
Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee

Euan Donald

Assistant Clerk

Elizabeth White

Support Manager

Daren Pratt



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

52nd Report, 2013 (Session 4)

Report on Instruments laid in 2012-13

The Committee reports to the Parliament as follows—

INTRODUCTION

1. As part of its scrutiny role, the Delegated Powers and Law Reform Committee produces an annual report containing details of the Scottish statutory instruments (SSIs) laid before the Scottish Parliament in the previous year. The purpose of the annual report is to provide an analysis of the Committee's activities in respect of its scrutiny of instruments. In particular, the 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. It also itemises 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.

2. The annual reporting process was introduced following a recommendation of the Committee in its 14th report of 2007, *Inquiry into the Regulatory Framework in Scotland* (SP Paper 751)¹, published in Session 2 of the Parliament. In that report the Committee concluded that producing an examination of points raised in its reports on instruments and the steps being taken to address these points would help improve the scrutiny process.

3. The Committee's role in scrutinising instruments is of primary importance in improving the quality of legislation, particularly in increasing the accessibility to the law for the user. One means by which it does this is by ensuring that legislation is as accurate and up to date as possible. The Committee considers the annual report to be a key part of this process.

4. The Committee regards its scrutiny role on a number of levels. As a primary objective it would like to see all subordinate legislation presented to be as accurate and well-drafted as possible. In addition, legislative competence is vested in the Parliament. It is therefore also incumbent on the Committee to conduct its supervisory role effectively in ensuring that subordinate legislation under

¹ Scottish Parliament Subordinate Legislation Committee 14th Report, 2007 (Session 2) [Report on the Inquiry into the Regulatory Framework in Scotland \(SP Paper 751\)](#).

consideration falls within the powers delegated to the responsible authority by the Parliament and that these powers are exercised appropriately.

5. In doing this, the Committee considers a measure of effectiveness includes circumstances where its conclusions are accepted and either amending legislation is brought forward or the instrument in question is withdrawn. However, it also accepts that the Scottish Government or the LPPO may not always be in agreement with the conclusions that it draws. In particular, in relation to the more complex legislative questions that can be raised in relation to devolution or vires issues, it accepts that these can be, by their nature, subject to a range of legal interpretations. In such cases, where satisfied that there is a doubt over the matter, it is not for the Committee to offer a definitive view on the matter, but to draw alternative views to the attention of the Parliament. Ultimately it will be for the courts to determine the legal position.

6. Therefore, as well as ensuring the accuracy of legislation, the Committee considers that the scrutiny process provides a forum for an exchange of views which should ensure more robust legislation is produced having been subject to rigorous scrutiny. As such, it considers the scrutiny process to be an important tool in assisting the Parliament to ensure that legislation is fit for purpose, clear and accessible to the public.

7. By setting out this information, the report provides the opportunity to monitor the action that has been taken on the commitments made by the Scottish Government and the LPPO which the Committee considers to be an important aspect of improving the quality of legislation. The report also helps to identify the range of issues that have arisen during the course of the year regarding its activities in relation to its scrutiny.

8. In pursuing the objective of the accessibility of legislation to the end user, the Committee also has a number of projects ongoing, including examining the feasibility of consolidating SSIs as well as examining ways of enabling improved scrutiny of transitional provisions. These points are discussed later in the report.

9. Finally, in order to provide an overview of the Committee's activities in the previous year, details of the number of Bills, Legislative Consent Memorandums and Public Body Consent Memorandums considered by the Committee during the reporting period are also set out.

10. The Committee makes a number of recommendations throughout the report which are drawn together at the end of this introductory section.

Reporting period

11. Prior to last year, annual reports of this kind have covered the Committee's activity in the preceding calendar year. Like last year's report, this report deals with instruments laid in the previous *parliamentary* year. The report therefore covers the second parliamentary year of Session 4 (11 May 2012 to 10 May 2013).

12. The Committee considers this to be the most appropriate timescale in which to report on this activity as it is in line with the management of other parliamentary business.

13. It should be noted that on 5 June 2013 the Committee changed its name and remit. As such, although this report is produced as a report by the Delegated Powers and Law Reform Committee, the activities in the report were undertaken when the Committee was known as the Subordinate Legislation Committee, and where appropriate, it is referred to as such.

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 Orders² and are as follows—

Ground (a) (charges on or payments to the Scottish Consolidated Fund, and payments to local and public authorities) – draws to the Parliament’s attention instruments imposing payments to local or public authorities in return for any licence, consent or services, or requiring payment to or a charge on the Scottish Consolidated Fund.

Ground (b) (made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts) – draws to the Parliament’s attention where the Scottish Ministers have exercised the power in such a way that it is excluded from challenge in the courts.

Ground (c) (where the instrument has retrospective effect where the parent statute confers no express authority so to provide) – this may raise questions on the validity of an instrument, but does not necessarily do so. This ground may raise serious issues which ought to be drawn to the Parliament’s attention before it takes a view on the disposal of the instrument.

Ground (d) (unjustifiable delay in publication or laying) – raises an issue of parliamentary process that may affect public awareness of the effect of the instrument and hinder that awareness where there is an unjustifiable delay in the instrument being available in the public domain.

Ground (e) (doubt as to whether the instrument is *intra vires*) – raises questions on the validity of an instrument, or provisions in it, because it appears to exceed the power conferred.

Ground (f) (raises a devolution issue) – raises questions on the validity of an instrument, or provisions in it, because the instrument appears to conflict with the devolution settlement.

Ground (g) (unusual or unexpected use of powers) – raises issues on the proper exercise or use of the powers conferred that may on occasion affect the operation of the instrument, or may raise questions of propriety and transparency.

² [Scottish Parliament Standing Orders, Rule 10.3.1.](#)

Ground (h) (clarity of form or meaning) – raises issues on the clarity of the instrument, which may on occasion affect the operation of the instrument, or delivery of the intended policy.

Ground (i) (defective drafting) – raises serious issues of the efficacy of the drafting that may on occasion impede or prevent the delivery of the intended policy.

Ground (j) (non-compliance with laying requirements) – draws attention to any non-compliance with the laying requirements set out in section 28(2), 30(2) or 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”) and evaluates the reasons given for doing so from the Committee’s perspective.

The **general** reporting ground is a residual ground for reporting any other issues not impinging on the substance or policy of the instrument, including minor drafting errors which do not affect the proper operation of the instrument, failures to follow proper drafting practice or legislative process.

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 particular 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.

16. These are referred to throughout this report 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 or effectiveness of the instrument to be questioned.

17. The Committee recognises that points raised on these grounds will often be subject to a difference of opinion. However, raising questions on these grounds offers the opportunity for public debate on these points which, in line with its earlier assertion, is an important part of the scrutiny process. This in turn allows for more robust legislation.

Reporting grounds: advisory

18. The Committee also notes that some of the reporting grounds need not indicate issues with regard to validity or clarity but provide a means of drawing matters to the attention of the lead committee and the Parliament for consideration as part of their related scrutiny of the overall policy and effect of the instrument. For the purposes of this report the Committee refers to these grounds as *advisory* in nature.

19. The matters the Committee raises under these grounds do not concern questions of competency, validity or accuracy. Rather they are matters that the Committee considers the Parliament should be aware of in exercising its general

supervisory role and considering whether to allow the legislation to proceed. Often they relate to policy matters (such as the imposition of significant charges) and so are matters which the lead committees should have regard to when considering the instruments. As such, instruments which engage these grounds are drawn to the lead committee's attention to inform its consideration of instruments.

20. The Committee considers the following grounds to be advisory in nature—

- ground (a) (charges on or payments to the Scottish Consolidated Fund);
- ground (b) (made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts);
- ground (g) (unusual or unexpected use of the powers conferred by the parent statute); and
- ground (j) (non-compliance with laying requirements), where it is satisfied with the reasons given for non-compliance.

21. The Delegated Powers and Law Reform Committee's primary role is to consider the technical drafting of instruments, as well as their accuracy and its legal competence. In its scrutiny of instruments, the Committee will highlight to the lead committee where other circumstances exist which are of greater concern to the lead committee. To reflect this, the numbers of times instruments have been drawn to the Parliament's attention on these advisory grounds have been removed from the overall figures (although the overall figures are recorded for the purpose of completeness). The only exception to this is where an instrument has been drawn to the Parliament's attention on ground (j) (non-compliance with laying requirements) and the Committee has not been satisfied with the reasons given as this does have an impact on the accessibility of legislation.

Reporting grounds: standard

22. Finally, while emphasising the importance of the significant reporting grounds, the Committee cannot lose sight of the grounds which are regarded as being of less significance and notes that even minor drafting errors can have an adverse impact on the efficacy of the instrument. This, amongst other things, can make it difficult to determine what the intention of the instrument is. Also, although not as significant in terms of the fundamental legal issues that the significant grounds raise, in terms of the overarching objective of ensuring the accessibility of legislation to the end user, the Committee regards the scrutiny of these grounds to be just as relevant.

23. These standard grounds are as follows—

- ground (c) (where the instrument has retrospective effect where the parent statute confers no express authority so to provide);
- ground (d) (unjustifiable delay in publication or laying);
- ground (h) (clarity of form or meaning); and
- the general reporting ground (which includes minor drafting errors and failures to follow proper drafting practice).

24. The Committee may have serious concerns where an instrument is drawn to the attention of the Parliament on any of these standard grounds. For example,

concerns which are raised on ground (h) (clarity of form or meaning) could attract a varying level of concern. Such concerns may be seen as relatively minor if the defects do not affect the operation of the instrument, however, where an instrument is reported more than once on this ground it may be difficult to determine what the SSI originally set out to do.

25. In addition, where an instrument is reported on a combination of these standard grounds or more than once on the same ground, this may cause the Committee to question whether overall the instrument is fit for purpose or whether it should be amended or replaced. Any concerns that the Committee has in relation to particular SSIs are therefore highlighted on a case-by-case basis. This report provides an analysis of instruments reported on these grounds and the Committee will continue to pursue these points robustly.

Minor points

26. Minor points are inaccuracies within the instrument or its supporting documentation which do not merit a report under the formal reporting grounds. They are of less importance and are therefore dealt with informally rather than in the Committee's published reports. However, they are still of interest to the Committee when assessing the quality of legislation and so this report also contains a brief examination of them.

Analysis of information in this report

27. Primary responsibility for complying with the laying requirements which apply to SSIs is placed on the responsible authority. The Scottish Ministers are given this responsibility for instruments made by them, the First Minister or the Lord Advocate and for instruments which are Orders in Council or Orders of Council³. However, in practice, the Scottish Ministers are also the authority with whom the Committee corresponds in relation to instruments made by other responsible authorities within the Scottish Administration; for example the Registrar General and the Keeper of the Registers. The Committee also corresponds with the Scottish Ministers in relation to UK statutory instruments which are subject to procedure in the Scottish Parliament. Accordingly this report considers all of these instruments in one section.

28. Acts of Sederunt and Acts of Adjournal made by the Court of Session and the High Court of Justiciary are treated separately for the purposes of this report. The 2010 Act now requires all such instruments to comply with the laying requirements set out in the Act. In practice the LPPO now assumes responsibility for these matters.

Summary of recommendations

29. The Committee welcomes the reduction in the percentage of instruments reported upon from the last reporting period to this period. Furthermore, the Committee notes that these figures compare favourably

³ Orders in Council are made by Her Majesty with the advice of the Privy Council and Orders of Council are made by the Privy Council in exercise of powers conferred upon the Privy Council alone

with the percentage of instruments reported upon during the last parliamentary session. The Committee hopes that this improvement can be maintained and the numbers of instruments reported upon reduced still further. (paragraph 66)

30. The Committee recognises from past experience, as it gets closer to the end of a session, the number of instruments being laid increases. The Committee hopes that an increase in the number of instruments being laid is not matched by an increase in the number of instruments being reported upon. (paragraph 67)

31. The Committee calls on the Scottish Government to give consideration to the scheduling of the laying of SSIs to ensure that peaks in the volume of SSIs brought forward is avoided as far as possible. (paragraph 62)

32. The Committee notes the increase in the number of instruments reported for defective drafting with some concern. The Committee found it of particular concern that in the package of instruments laid to implement the provisions of the Police and Fire Reform (Scotland) Act 2012 three instruments were reported for defective drafting. (paragraph 75)

33. As regards the other two significant grounds, the Committee notes that there is no difference in the figures between 2011-12 and this year. The Committee welcomes that there has been no increase in the number of instruments reported under these grounds, but at the same time invites the Scottish Government to endeavour to effect a reduction in the number of instruments reported under what are very significant grounds. (paragraph 76)

34. While accepting that points raised under the general reporting ground are of a less serious nature, relative to the significant reporting grounds, the Committee would welcome a greater reduction in drafting errors reported on these grounds more generally. In particular, given the emphasis the Committee places on instruments being clear and accessible to the end user of the instrument, it is disappointing to the Committee that there has been an increase in the number of instruments reported under ground (h). (paragraph 81)

35. While recognising that the Committee was content with each of the individual circumstances in which the breach occurred, the Committee invites the Scottish Government to consider how it works with the UK Government on these matters to ensure, so far as possible, that the timetable for implementation of UK wide policy properly respects the laying requirements for each of the UK legislatures. (paragraph 87)

36. The figures show improvement in some areas, but also areas where further work is required. (paragraph 111)

37. It is disappointing to the Committee that there was not a universal reduction in the number of instruments reported upon and that significantly lower levels of reporting for some committees lead to the reduction in the overall average figure. There is a clear need for improvement in a number of areas. (paragraph 112)

38. This increase in the number of instruments reported upon is of concern to the Committee. The Committee hopes that this increase is an aberration, but will be maintaining very close scrutiny of instruments laid by the LPPO and the figures contained within its quarterly reports over the coming year. (paragraph 118)

39. The Committee is concerned by the number of instruments laid by the LPPO which have been drawn to the Parliament's attention. The number of instruments laid by the LPPO drawn to the Parliament's attention has doubled since last year; the percentage of instruments laid by the LPPO drawn to the Parliament's attention has doubled since last year; and that percentage is double the overall percentage of instruments laid by the Scottish Government drawn to the Parliament's attention. (paragraph 126)

40. The Committee notes that prior to this year there has been gradual improvement in the standard of instruments being laid by the LPPO, with fewer instruments being drawn to the Parliament's attention. With that in mind, the Committee hopes that this year's figures are an aberration, but nonetheless will continue to pay close attention to the quality of instruments being laid by the LPPO. (paragraph 127)

41. The Committee considers that the quarterly reports have been a successful innovation and it is its intention to continue to produce quarterly reports with a view to them contributing to an overall improvement in the quality of instruments laid. (paragraph 132)

42. The Committee welcomes the continued effort made by the Scottish Government and the LPPO in meeting the commitments it made to correcting or amending instruments on which the Committee had reported and urges the Government and the LPPO to complete this process in early course. (paragraph 138)

43. The Committee considers that this demonstrates the effectiveness of robust scrutiny and partnership working which seek to ensure that concerns raised are addressed before the instruments become law. (paragraph 141)

44. While the Committee accepts that minor points such as these do not affect the validity of instruments, it urges the Scottish Government and the LPPO to take steps to ensure that the number of these types of errors decreases. (paragraph 144)

45. The Committee recognises that the number of motions to annul does not necessarily have any bearing on the quality of instruments laid, but notes the information. (paragraph 149)

46. The Committee wishes to support the Government where it consolidates subordinate legislation. But the Committee also considers that when expending scarce resources on consolidating regulations the Scottish Government should take particular care to ensure that the end product is accurate and does not undermine the purpose of consolidation. (paragraph 154)

47. **The Committee will continue to liaise with the Scottish Government in respect of these points and will continue to pursue the issue of consolidation more generally. (paragraph 155)**

48. **The Committee recognises the response from the Scottish Government, but nonetheless encourages the Scottish Government to be mindful of these matters when planning for future packages of instruments. (paragraph 164)**

49. **The Committee welcomes this commitment and the approach being taken by the Scottish Government. The Committee will, however, continue to apply close scrutiny to commencement orders with complex transitional provisions attached and will revisit the issue more generally if it considers that the processes in place do not allow for sufficient scrutiny. (paragraph 173)**

50. **The Committee has on occasion been unable to determine from the delegated powers memorandum the extent and intent of powers. The Committee invites the Scottish Government to consider its approach to delegated powers memorandums and in particular to consider whether it would be beneficial to provide more information in the memoranda so as to avoid the need for the Committee to regularly seek further information. (paragraph 183)**

51. **Having considered different aspects of the Committee's year in isolation, it is worth reflecting on the year in its entirety. (paragraph 190)**

52. **In general terms the Committee welcomes the improvements it has seen in the quality of instruments laid by the Scottish Government. The overall reduction in the proportion of instruments reported upon is very welcome. However, the Committee notes that this improvement is not seen across all committee areas and the Committee encourages the Scottish Government to endeavour to achieve a more consistent improvement in the coming year. (paragraph 191)**

53. **As regards the instruments reported upon, the Committee is disappointed at the increase in instruments reported for defective drafting and encourages the Scottish Government to make efforts to reduce the number of instruments reported on this significant ground. (paragraph 192)**

54. **Finally, while welcoming the overall reduction in the number of instruments laid by the Scottish Government drawn to the Parliament's attention, the Committee simultaneously expresses its disappointment at the increase in the number of instruments laid by the LPPO that have been drawn to the Parliament's attention. The Committee encourages the LPPO to effect an improvement in these figures and a return to the improving trend that was seen in the preceding years. (paragraph 193)**

Overview

55. In the 2012-13 parliamentary year, a total of 284 instruments laid before the Parliament were considered by the Committee. Of these, 262 instruments were laid by the Scottish Government and 22 instruments were laid by the LPPO.

56. The 262 SSIs laid by the Scottish Government can be broken down as follows—

- 2 super-affirmative instruments;
- 46 affirmative instruments;
- 173 negative instruments;
- 39 laid no-procedure instruments;
- 2 draft instruments not subject to any parliamentary procedure.

57. The 22 SSIs laid by the LPPO can be broken down as follows—

- 2 negative instruments;
- 20 laid no-procedure instruments.

THE SCOTTISH GOVERNMENT

Overview

Table 1: Instruments laid by the Scottish Government in 2011-12 and 2012-13 reported on by the Subordinate Legislation Committee

	2012-13 (current reporting period)			2011-12 (previous reporting period)		
	Total SSIs	Total drawn to the Parliament's attention	%	Total SSIs	Total drawn to the Parliament's attention	%
Total	262	46 (62) ⁴	18% (24%)	212	44 (56)	20% (26%)

58. Table 1 provides the overall figure for the number of instruments laid in 2012-13 and the number of those that have been reported upon. The table also includes that same information for the previous year and therefore provides an opportunity for comparison.

59. In 2012-13 262 instruments were laid as against 212 in the preceding year. 2011-12 represented the first year of the new session and it was perhaps therefore not surprising that there should be fewer instruments laid during that period. It

⁴ The figures in brackets here and in the tables throughout the report show the total number of instruments drawn to the Parliament's attention. This bracketed figure includes instruments reported on the advisory grounds, (in all cases, ground (g)), and, with regard to ground (j), where the Committee was satisfied with the reasons given for non-compliance with the laying requirements. To provide an overall picture of matters of concern to the Subordinate Legislation Committee, these have been removed from the overall figure.

should be noted, however, that the number of instruments laid during this period is still significantly lower than that laid in the final year of the last session.

60. It should be noted that as with previous years a significant proportion of instruments were laid in the periods prior to recesses. Accounting for laying requirements, this has usually meant that a high number of instruments are laid 28 days prior to recess. On 31 May 2012 for example, 14 instruments were laid in order to ensure that there were 28 days between laying and summer recess.

61. The Committee accepts that there are circumstances where there will be an increase in the volume of the Scottish Government's business at different points in the year and session. However, the volume of instruments has an inevitable impact on the scrutiny that can realistically be carried out by the Committee.

62. The Committee would welcome whatever steps could be taken to avoid such peaks in business at other points in the year, such as towards the end of the financial year, for the same reasons.

63. The Committee calls on the Scottish Government to give consideration to the scheduling of the laying of SSIs to ensure that peaks in the volume of SSIs brought forward is avoided as far as possible.

64. 2012-13 reflected a decline in the percentage of instruments reported upon from 2011-12. In total, 62 instruments were reported in 2012-13, representing 24% of the total number of instruments laid. This compares favourably with 2011-12, when 56 instruments were reported upon, representing 26% of the total number of instruments laid.

65. The total number of instruments reported on includes those drawn to the Parliament's attention on two of the advisory grounds – (g) and (j). As regards ground (j), this is engaged when, in relation to negative instruments, there are fewer than 28 days between laying the instrument and it coming into force and, for laid only instruments, when the instrument comes into force before it is laid. Where there is such a breach of the laying requirements, the instrument must be accompanied by a letter to the Presiding Officer explaining why this breach has occurred. In each of the cases where an instrument was reported under ground (j), the Committee was content with the explanation provided in the letter to the Presiding Officer. Indeed, in a number of cases the reason for the breach was to respond to a concern raised by the Committee in its preliminary scrutiny.

66. Therefore, in assessing the number of instruments reported upon, it is perhaps more helpful to discount those instruments reported under the advisory grounds. In doing so for 2012-13, this reduces the number of instruments reported on to 46, which represents 18% of the total number of instruments laid. This represents a decrease of 2% on the number of instruments reported in 2011-12 where removing from the count instruments reported under ground (j) and where the Committee was content with the explanation for the breach, took the number of instruments reported upon to 44, 20% of the total number of instruments laid.

67. The Committee welcomes this reduction in the percentage of instruments reported upon from the last reporting period to this period. Furthermore, the Committee notes that these figures compare favourably with the percentage of instruments reported upon during the last parliamentary session. The Committee hopes that this improvement can be

maintained and the numbers of instruments reported upon reduced still further.

68. The Committee recognises from past experience, as it gets closer to the end of a session, the number of instruments being laid increases. The Committee hopes that an increase in the number of instruments being laid is not matched by an increase in the number of instruments being reported upon.

Table 2: Instruments reported on broken down by ground: Scottish Government

Ground	2012-13		2011-12	
	No.	% of all SSIs laid (262)	No.	% of all SSIs laid (212)
Significant				
(e) doubt as to whether the instrument is intra vires	3	1%	3	1%
(f) raises a devolution issue	2	1%	2	1%
(i) drafting appears to be defective	20	8%	10	5%
Standard				
(c) retrospective effect where the parent statute confers no express authority so to provide	0	0	0	0
(d) unjustifiable delay in the publication or the laying of it before parliament	0	0	1	1%
(h) form or meaning could be clearer	17	6.5%	9	4%
General ground (e.g. drafting errors which are unlikely to affect the operation of the instrument significantly)	23	9%	25	12%
Advisory				
(a) charge on the Scottish Consolidated Fund	0	0	0	0
(b) made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts	0	0	0	0
(g) unusual or unexpected use of	3	1%	0	0

the powers conferred by the parent statute				
(j) failure to comply with laying requirements	2 (13)	1% (5%)	3 (15)	1% (7%)

69. Table 2 breaks down the grounds on which the instruments were reported. It should be noted, that although 62 instruments were reported upon, some were reported on more than one ground. A total of 81 matters were separately reported.

70. As previously explained, the grounds are divided up into three groups – significant, standard and advisory. Over the following paragraphs the figures for each of these groups are considered in greater detail.

Significant grounds

71. Where the Committee has reported an instrument under a significant ground, it is in these instances where the Committee has most concern about the potential operation of the instrument.

72. With that in mind, it is of some concern to the Committee that there has been an increase in both the number and percentage of instruments reported under a significant ground. This increase can be entirely attributed to a rise in the number of instruments reported for defective drafting. In 2011-12 10 instruments were reported for defective drafting, representing 5% of the total number of instruments laid. In 2012-13, however, 20 instruments were reported for defective drafting, double the number in 2011-12. In addition, to being a higher figure than in 2011-12, it is also significantly higher than the figure for 2010-11, both in numerical and percentage terms.

73. This increase cannot be attributed to just one department with reports for defective drafting spread across a variety of departments.

74. The figures for ground (e), doubt as to whether the instrument is intra vires, and ground (f), raises a devolution issue, are exactly the same as in 2011-12 and are also very similar to those figures for 2010-11

75. As noted above therefore, the increase in the number of reports under significant grounds can be entirely attributed to ground (i).

76. The Committee notes the increase in the number of instruments reported for defective drafting with some concern. The Committee found it of particular concern that in the package of instruments laid to implement the provisions of the Police and Fire Reform (Scotland) Act 2012 three instruments were reported for defective drafting.

77. As regards the other two significant grounds, the Committee notes that there is no difference in the figures between 2011-12 and this year. The Committee welcomes that there has been no increase in the number of instruments reported under these grounds, but at the same time invites the Scottish Government to endeavour to effect a reduction in the number of instruments reported under what are very significant grounds.

Standard grounds

78. Forty instruments were reported under one of the grounds under this category. Seventeen instruments were reported under ground (h), that the form or meaning of the instrument could have been clearer and 23 were reported under the general reporting ground. No instruments were reported under ground (c), retrospective effect where the parent statute confers no express authority so to provide, or ground (d), unjustifiable delay in the publication or the laying of it before parliament. As regards ground (d), this is an improvement on last year when one instrument was reported under this ground and on 2010-11 when three instruments were reported under this ground.

79. In terms of ground (h), there has been an increase from last year in the number of instruments reported under this ground. Over the course of the reporting year the Committee has placed considerable emphasis upon the importance of ensuring that the end user of the instrument is able to understand and give practical effect to it. As such, the Committee is particularly disappointed that this has not resulted in an improvement in the clarity of instruments laid. It is even more disappointing given that the number of times ground (h) form and meaning could be clearer was reported had reduced substantially between 2010-11 and 2011-12.

80. The number of instruments reported under the general reporting ground remained relatively static from the last year.

81. The general reporting ground covers a range of issues including less serious drafting errors.

82. While accepting that points raised under the general reporting ground are of a less serious nature, relative to the significant reporting grounds, the Committee would welcome a greater reduction in drafting errors reported on these grounds more generally. In particular, given the emphasis the Committee places on instruments being clear and accessible to the end user of the instrument, it is disappointing to the Committee that there has been an increase in the number of instruments reported under ground (h).

Advisory grounds

83. As previously noted, the matters the Committee raises under these grounds do not concern questions of competency, validity or accuracy. Rather they are matters that the Committee considers the Parliament should be aware of in exercising its general supervisory role and considering whether to allow the legislation to proceed. Often they relate to policy matters (such as the imposition of significant charges) and so are matters which the lead committees should have regard to when considering the instruments. As such, instruments which engage these grounds are drawn to a lead committee's attention to inform its consideration of instruments.

84. The Committee welcomes that, as last year, the Committee did not consider it necessary to draw to the Parliament's attention any instruments under ground (a), charge on the Scottish Consolidated Fund or ground (b), made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts.

85. In terms of ground (g), unusual or unexpected use of the powers conferred by the parent statute, the Committee notes that there has been an increase in the number of instruments reported under this ground. Although not of significant concern to the Committee and recognising that reports under this ground concern matters on which the Committee and Scottish Government may hold differing views, the Committee would welcome a reduction in the number of instruments reported under this ground in future years.

86. There has again this year been a significant number of instruments reported under ground (j), reflecting a failure to comply with laying requirements. Where there is a breach of the laying requirements a letter to the Presiding Officer explaining why the breach has occurred is required. Where such a letter is submitted, it is incumbent on the Committee to consider whether it accepts the explanation provided. This year in all but two cases the Committee was satisfied with the explanations provided. Indeed, in a number of cases the breach resulted from the Scottish Government correcting an error identified by the Committee and as such was welcomed by the Committee.

87. In considering the reasons given for breaches of the laying requirements, the Committee has, however, noted the frequency with which a breach occurs when a co-ordinated approach is required across the UK legislatures. Often the reason given refers to the Scottish Government requiring to wait until the UK Government has laid an instrument in similar terms in the UK Parliament.

88. While recognising that the Committee was content with each of the individual circumstances in which the breach occurred, the Committee invites the Scottish Government to consider how it works with the UK Government on these matters to ensure, so far as possible, that the timetable for implementation of UK wide policy properly respects the laying requirements for each of the UK legislatures.

Table 3: Instruments laid by the Scottish Government in 2011-12 and 2012-13 reported on by the Subordinate Legislation Committee, broken down by lead committee

Lead Committee	2012-13			2011-12		
	Total SSIs	Total reported	%	Total SSIs	Total reported	%
Rural Affairs, Climate Change and Environment	52	11 (16)	21% (31%)	52	8 (13)	15% (25%)
Health and Sport	27	3 (5)	11% (19%)	30	5 (8)	17% (27%)
Justice	64	15 (21)	23% (33%)	23	8 (10)	35% (44%)
Local Government and Regeneration	28	7	25%	30	6 (8)	20% (27%)

Delegated Powers and Law Reform Committee, 52nd Report, 2013 (Session 4)

Education and Culture	24	2 (3)	8% (12%)	28	5	18%
Infrastructure and Capital Investment	43	3 (4)	7% (9%)	38	10 (11)	26% (29%)
Economy, Energy and Tourism	8	2 (3)	25% (37.5%)	3	1	33%
Finance	3	0	0	3	0	0
Equal Opportunities	0	0	0	2	0	0
Subordinate Legislation	0	0	0	1	0	0
Welfare Reform	9	2	22%	N/A	N/A	N/A
SPPA	1	1	100%	0	0	0
Referendum (S)	1	0	0	N/A	N/A	N/A
Parliament	2	0	0	2	0	0

Introduction

89. Table 3 provides a breakdown of the instruments reported on by lead committee in 2012-13 in comparison with the equivalent figures for instruments laid in 2011-12.

90. As discussed earlier, in order to focus on the issues of concern to the Committee, the instruments reported on grounds which it considers to be advisory are not included in the analysis of the overall figures although they are included in the bracketed figure in the table above. Therefore figures relating to the number of reports raised on ground (j) are not included in the analysis where the Committee was satisfied with the reasons given for non-compliance with the laying requirements.

Overview

91. In 2012-13 the Justice Committee considered the largest number of instruments of any committee, having considered 64 instruments in total during the reporting period. The Justice Committee also considered the largest number of instruments drawn to the Parliament's attention by the Subordinate Legislation Committee.

92. As regards the highest percentage of instruments reported upon, the Standards, Procedures and Public Appointments Committee considered just one instrument and as it was drawn to the Parliament's attention, 100% of instruments referred to that Committee were reported upon. This obviously represents the

highest percentage of instruments drawn to the Parliament's attention of any Committee, but it is perhaps more useful to consider the figures for the Local Government and Regeneration Committee and the Economy, Energy and Tourism Committee which, with 25% of the instruments referred to them drawn to the Parliament's attention, considered the next highest number of reported instruments in percentage terms and considered enough instruments to make the percentage figure of relevance.

Justice Committee

93. As mentioned above, during the course of the reporting period, the Justice Committee considered the greatest number of instruments. In total it considered 64 instruments of which 15 were reported upon by the Subordinate Legislation Committee. Including those reported under ground (j), the number of instruments reported increases to 21, however, in each instance the Subordinate Legislation Committee expressed that it was satisfied with the reasons given for the breach. Taking account of this satisfaction, 23% of the instruments referred to the Justice Committee were reported. This compares favourably with the preceding year when although fewer instruments were referred to the Justice Committee, 35% of those were reported upon.

94. Although this represents a reduction in the percentage of instruments reported upon as compared with the previous year, the proportion of instruments referred to the Justice Committee that were drawn to the Parliament's attention was greater than the overall average of 18%.

95. As noted earlier, a significant proportion of those instruments referred to the to the Justice Committee and drawn to the Parliament's attention pertained to the implementation of the Police and Fire Reform Act 2012. This is something which is considered in more detail later in this report.

Rural Affairs, Climate Change and Environment (RACCE) Committee

96. The RACCE Committee considered the next highest number of instruments. It considered 52 instruments, exactly the same number as it considered in the previous reporting year. However, the number of instruments referred to it which were drawn to the Parliament's attention has increased. Discounting those instruments reported for breaching the terms of the laying requirements and with which the Subordinate Legislation Committee was satisfied, 21% of the instruments referred to the RACCE Committee were drawn to the Parliament's attention. This represents a 5% increase on the figure for 2011-12. Furthermore, of the 11 instruments reported, seven were reported under one of the significant grounds.

97. As with the Justice Committee, the proportion of instruments referred to the RACCE Committee that were drawn to the Parliament's attention was greater than the overall average of 18%.

Infrastructure and Capital Investment (ICI) Committee

98. Like the Justice Committee, the ICI Committee considered more instruments than it did last year while at the same time witnessing a reduction in the number of instruments referred to it which were drawn to the Parliament's attention. In 2012-13 43 instruments were referred to the ICI Committee, five more than in the

preceding year. However, the number of instruments referred to the Committee and drawn to the Parliament's attention decreased from ten in 2011-12 to three in 2012-13. Indeed, of those three instruments drawn to the Parliament's attention by the Subordinate Legislation Committee, one, the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (SSI 2012/258), was subsequently revoked on the basis of concerns about defective drafting raised by the Subordinate Legislation Committee and subsequently re-emphasised by the ICI Committee.

99. Given the high number of instruments referred to the ICI Committee it is pleasing to this Committee to see so few of them being drawn to the Parliament's attention. With just three of the 43 instruments referred to the Committee being drawn to the Parliament's attention, it meant that only 7% of instruments referred to the ICI Committee were reported upon, 11% less than the overall average.

Local Government and Regeneration Committee

100. In contrast to the experience of the Justice Committee and ICI Committee, fewer instruments were referred to the Local Government and Regeneration Committee yet, of those referred to them, there was an increase in the number drawn to the Parliament's attention. At the same time, the change in numbers is minimal. In 2012-13, 28 instruments were referred to the Committee as opposed to 30 in 2011-12. The number of instruments drawn to the Parliament's attention which were referred to the Local Government and Regeneration Committee increased by only one from six in 2011-12 to seven in 2012-13.

101. That said, this resulted in a 5% increase in the percentage of instruments referred to the Committee that were drawn to the Parliament's attention to 25%, 7% higher than the overall average.

Health and Sport Committee

102. In terms of the Health and Sport Committee there was very little variance between the numbers referred to it and the number of instruments within that total drawn to the Parliament's attention between 2011-12 and 2012-13. In 2011-12 of the 30 instruments referred to the Health and Sport Committee six were drawn to the Parliament's attention while in 2012-13, of the 27 instruments referred to the Committee, only three were drawn to the Parliament's attention. In 2012/13 therefore 11% of instruments referred to the Committee were drawn to the Parliament's attention, 7% less than the overall average.

Education and Culture Committee

103. The next greatest share of the instruments was referred to the Education and Culture Committee. Twenty-four instruments were referred to the Committee in 2012-13 of which only two were drawn to the Parliament's attention. This compares favourably with 2011-12 when 28 instruments were referred to it and five were drawn to the Parliament's attention. This means that there was a 10% reduction in the percentage of instruments referred to the Committee that were drawn to the Parliament's attention to 8%, 10% lower than the overall average.

Welfare Reform Committee

104. Nine instruments were referred to the Welfare Reform Committee of which two were reported upon, representing 22% of the instruments referred to the

Committee. Of those reported one was reported under one of the significant reporting grounds, specifically that there was a doubt that the instrument was *intra vires*. The Welfare Reform Committee was established on 25 January 2012 during the reporting period for 2011-12, however, no instruments were referred to the Committee during this period. As such, it will be the next reporting year before an opportunity will be afforded for comparison.

105. It is possible, however, to compare these figures with the overall average and with the figures for other committees. To that extent, it should be noted that as 22% of the instruments referred to the Committee were reported upon, this is 4% higher than the overall average. At the same time, it should be noted that this 22% corresponds to only two instruments reported upon and as such it is not something which in itself is of particular concern to the Committee.

Economy, Energy and Tourism Committee

106. As regards the instruments referred to the Economy, Energy and Tourism (EET) Committee although the percentages of instruments drawn to its attention would appear to be relatively high for both 2011-12 and 2012-13, they are both based on relatively few instruments being referred to the EET Committee. In 2012-13 eight instruments were referred to the EET Committee of which only two were reported upon, but which represented 25% of the instruments referred to the EET Committee. The previous year three instruments were referred to the EET Committee of which only one was reported upon yet this represented 33% of the instruments considered by the EET Committee.

107. Although it would appear in percentage terms that the number of instruments referred to the EET Committee being reported upon is something which should be of concern to the Committee, the relatively few instruments being referred to the EET Committee alleviate that concern.

Finance Committee

108. In both 2011-12 and 2012-13 three instruments were referred to the Committee and in both years no instruments reported. The Committee welcomes this consistency and hopes it can be maintained.

Parliament

109. Like the Finance Committee, the same number of instruments, two, were referred directly to the Parliament and also like the Finance Committee no instruments were reported upon.

Standards Procedures and Public Appointments Committee

110. As previously indicated only one instrument was referred to the Standards, Procedures and Public Appointments Committee. However, it was reported meaning that 100% of instruments referred to that Committee were reported. It was not reported, however, under one of the significant grounds and there is perhaps little that can be drawn from what is contained here.

Referendum (Scotland) Bill Committee

111. The Referendum (Scotland) Bill Committee was established in October 2012 and as such has only been in existence for this period of reporting. In that time

only one instrument was referred to the Referendum (Scotland) Bill Committee and this was not drawn to the Parliament's attention.

Conclusion

112. The figures show improvement in some areas, but also areas where further work is required.

113. It is disappointing to the Committee that there was not a universal reduction in the number of instruments reported upon and that significantly lower levels of reporting for some committees lead to the reduction in the overall average figure. There is a clear need for improvement in a number of areas.

LORD PRESIDENT'S PRIVATE OFFICE

Introduction

114. As noted earlier, Acts of Sederunt⁵ and Acts of Adjournal⁶ are laid by the Lord President's Private Office (LPPO) on behalf of the Court of Session and High Court of Justiciary as the responsible authority and are subject to the same scrutiny by the Committee as any other SSI.

115. As these instruments are laid separately from those laid by the Scottish Government, this part of the report provides a separate analysis of these figures.

Overview

Table 4: Instruments laid by the Lord President's Private Office in 2011-12 and 2012-13 reported on by the Subordinate Legislation Committee

	2012-13			2011-12		
	Total SSIs	Total reported	%	Total SSIs	Total reported	%
Total	22	8	36%	30	5 (7)	17% (23%)

116. Table 4 provides an overview of the total number of instruments brought forward by the LPPO in 2012-13 as compared with the number laid in 2011-12. The figures show that there has been a reduction in the number of instruments laid, but an increase in the number and percentage of instruments reported upon. In 2012-13 22 instruments were laid of which eight were reported upon, representing 36% of the instruments laid.

117. Although the numbers of instruments laid has reduced from 2011-12, there has been an increase in the number of instruments reported from 2011-12 and 2010-11. Four instruments were reported in 2010-11 and five in 2011-12 which is 20% and 17% respectively of all instruments laid during the respective reporting periods. This compares with 36% of instruments reported upon in 2012-13.

118. There has therefore been a 19% increase in the proportion of instruments laid by the LPPO being reported between 2011-12 and 2012-13. Significantly, this figure of 36% is double the percentage of instruments laid by the Scottish Government which were reported upon.

⁵ The legal name given to the procedural rules of court regulating various civil legal procedures in Scotland. Despite the word "Act" in the title, this is a type of subordinate legislation rather than primary legislation.

⁶ The legal name given to rules of court regulating criminal procedure in Scotland. Despite the word "Act" in the title, this is a type of subordinate legislation rather than primary legislation.

119. This increase in the number of instruments reported upon is of concern to the Committee. The Committee hopes that this increase is an aberration, but will be maintaining very close scrutiny of instruments laid by the LPPO and the figures contained within its quarterly reports over the coming year.

Table 5: Instruments reported on broken down by ground: Lord President's Private Office

Ground	2012-13		2011-12	
	No.	% of SSIs laid (22)	No.	% of all SSIs laid (30)
(a) charge on the Scottish Consolidated Fund	0	0	0	0
(b) made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts	0	0	0	0
(c) retrospective effect where the parent statute confers no express authority so to provide	0	0	0	0
(d) unjustifiable delay in the publication or the laying of it before parliament	0	0	0	0
(e) doubt as to whether the instrument is intra vires	1	4.5%	0	0
(f) raises a devolution issue	0	0	0	0
(g) unusual or unexpected use of the powers conferred by the parent statute	0	0	0 (1)	0 (3%)
(h) form or meaning could be clearer	2	9%	4	13%
(i) drafting appears to be defective	3	13.5%	0	0
(j) failure to comply with laying requirements	0	0	0 (1)	0 (3%)
General ground (e.g. drafting errors which do not affect the operation of the instrument significantly)	4	18%	2	7%

120. Table 5 provides a breakdown of the grounds under which the instruments laid by the LPPO were reported. In considering the table it should be noted that although eight instruments were reported there were ten reports on four separate grounds.

121. Of immediate concern to the Committee is the number of these instruments reported under one of the significant grounds. Half of the instruments reported were under one of the significant grounds: one under ground (e), there is a doubt as to whether the instrument is *intra vires* and three under ground (i), the drafting appears to be defective. In these instances the Committee had very real concerns about the operability of these instruments. It is of concern to the Committee to see 18% of the instruments laid by the LPPO being reported under a significant ground. Furthermore, no instruments were reported under these or any of the significant grounds in 2011-12, making these figures even more notable.

122. In addition, two instruments were reported under ground (h), that their meaning could have been clearer. This is a reduction of two on the figures for the previous year. As previously discussed, it is of considerable importance to the Committee that instruments are accessible to the general public. One of the instruments reported under this ground was the Act of Sederunt (Sheriff Court Rules) (Lay representation) 2013 (SSI 2013/91). Given that this instrument was concerned with lay representation it was of critical importance that its content and meaning was clear and accessible. It was therefore disappointing to the Committee that such clarity and accessibility was absent. The Committee welcomes the reduction in the number of instruments reported under this ground but at the same time encourages the LPPO to place greater emphasis on accessibility and clarity when drafting instruments of this nature in the future.

123. Finally, four instruments were reported under the general reporting ground as containing less serious drafting errors. This represents a doubling of the number of instruments reported under the general reporting ground from 2011-12.

Table 6: Instruments laid by the Lord President’s Private Office in 2011-12 and 2012-13 reported on by the Subordinate Legislation Committee, broken down by lead committee

Lead Committee	2012-13			2011-12		
	Total SSIs	Total reported	%	Total SSIs	Total reported	%
Justice	22	8	36%	24	4 (5)	17% (21%)
Not laid	N/A	N/A	N/A	6 ⁷	2	33%

124. The designation of lead subject committee for instruments laid by the LPPO has only applied since the implementation of the 2010 Act which requires all instruments to be laid before the Parliament. The remit of the Justice Committee is therefore engaged in these cases.

125. The LPPO also brought forward some instruments at the end of session three which, under the previous regime, did not require to be laid before the Parliament. These account for the six “not laid” instruments considered in 2011-12.

126. Given that all of the instruments laid by the LPPO were referred to the Justice Committee it is difficult to draw any separate conclusions, other than to reiterate the Committee’s concerns as regards the doubling in the number of instruments drawn to the Parliament’s attention between 2011-12 and 2012-13.

Conclusion

127. **The Committee is concerned by the number of instruments laid by the LPPO which have been drawn to the Parliament’s attention. The number of instruments laid by the LPPO drawn to the Parliament’s attention has doubled since last year; the percentage of instruments laid by the LPPO drawn to the Parliament’s attention has doubled since last year; and that percentage is double the overall percentage of instruments laid by the Scottish Government drawn to the Parliament’s attention.**

128. **The Committee notes that prior to this year there has been gradual improvement in the standard of instruments being laid by the LPPO, with fewer instruments being drawn to the Parliament’s attention. With that in mind, the Committee hopes that this year’s figures are an aberration, but nonetheless will continue to pay close attention to the quality of instruments being laid by the LPPO.**

⁷ The LPPO brought forward six instruments at the end of session 3 which, under the previous regime, did not require to be laid before the Parliament. These account for the six “not laid” instruments considered in 2011-12. Such instruments no longer exist hence the absence of any figures for 2012-13.

SCOTTISH STATUTORY INSTRUMENTS – GENERAL

Quarterly reports

129. This reporting year has seen the introduction of quarterly reports by the Committee. These reports provide a statistical account of the instruments considered by the Committee during the previous quarter, setting out those instruments reported upon and the grounds under which they have been reported.

130. These [quarterly reports](#) are published on the Committee's website.

131. These reports have enabled the Committee as well as the Scottish Government and LPPO to identify trends in the reporting of instruments at an early juncture and respond appropriately.

132. In addition they have enabled the Committee to maintain a watching brief on the quality of instruments laid by the Scottish Government and the LPPO rather than having to wait until the production of an annual report before assessing the overall quality of instruments laid.

133. The Committee considers that the quarterly reports have been a successful innovation and it is its intention to continue to produce quarterly reports with a view to them contributing to an overall improvement in the quality of instruments laid.

Commitments: Scottish Government and Lord President's Private Office

134. Throughout periods of reporting, the Scottish Government and the LPPO often make commitments in response to points raised on instruments by the Committee relating to defective drafting or other errors. Such commitments generally involve amending provisions being brought forward to address the Committee's concerns.

135. During this reporting period, the Scottish Government made a commitment to address some of the concerns raised by the Committee in respect of 29 instruments which the Committee drew to the attention of the Parliament.

136. The Scottish Government has confirmed that of the 29 instruments identified for correction/amendment, 26 of these corrections/amendments have been met (either by means of a corrective instrument or a correction slip), which is 90% of the commitments made, with just the following three currently outstanding:

- Renewables Obligation (Scotland) Amendment Order 2013 [draft];
- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228);
- National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/109).

137. The Lord President's Private Office gave a commitment to address the issues raised by the Committee on the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2012 (SSI 2012/188) and the Act of Sederunt

(Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2012 (SSI 2012/275) which it did by bringing forward the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2012 (SSI 2012/221) and Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2013 (SSI 2013/120) respectively. This latter instrument also met a commitment to correct a drafting error in the Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013 (SSI 2013/81). At the end of May, the LPPO laid the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 3) 2013 (SSI 2013/171) to correct an error identified by the Committee in the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2013 (SSI 2013/135).

One LPPO commitment remains outstanding:

- Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2013 (SSI 2013/72);

138. Further information on all commitments is provided in Annex B.

139. The Committee welcomes the continued effort made by the Scottish Government and the LPPO in meeting the commitments it made to correcting or amending instruments on which the Committee had reported and urges the Government and the LPPO to complete this process in early course.

Withdrawal of instruments

140. The Committee notes that the following instruments were withdrawn and subsequently re-laid during the reporting period—

- Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2012 [draft]
- Pollution Prevention and Control (Scotland) Regulations 2012 [draft]
- Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 [draft];
- Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 [draft];
- Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 [draft].

141. All five of these draft affirmative instruments were initially withdrawn by the Scottish Government to address points which had been raised either in light of comments made by the Committee or following initial queries raised by the legal advisers prior to the instruments being considered by the Committee. It should be noted that in the case of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2012 [draft] it was withdrawn on two separate occasions before being approved by the Parliament.

142. The Committee considers that this demonstrates the effectiveness of robust scrutiny and partnership working which seek to ensure that concerns raised are addressed before the instruments become law.

Minor Points

143. During its scrutiny of instruments in 2012-13, the Committee identified a total of 85 instruments (almost a third of those laid) on which minor points were raised (generally typographical or referencing errors). This can be broken down into 77 instruments laid by the Scottish Government and eight instruments laid by the LPPO.

144. While not affecting the validity of the instrument, these points are areas that the Committee considers the Scottish Government or the LPPO as appropriate should correct at the earliest opportunity.

145. While the Committee accepts that minor points such as these do not affect the validity of instruments, it urges the Scottish Government and the LPPO to take steps to ensure that the number of these types of errors decreases.

Motions to Annul

146. Motions to annul the following four instruments were lodged by members during the reporting period—

- Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338);
- Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339);
- Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 (SSI 2013/37);
- Teachers' Superannuation (Scotland) Amendment Regulations 2013 (SSI 2013/71).

147. Motions to annul the Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338) and the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339) were disagreed to by the Local Government and Regeneration Committee by division at its meeting on [23 January 2013](#).

148. The motion to annul the Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 (SSI 2013/37) was disagreed to by the Local Government and Regeneration Committee by division at its meeting on [13 March 2013](#).

149. The motion to annul the Teachers' Superannuation (Scotland) Amendment Regulations 2013 (SSI 2013/71) was disagreed to by the Education and Culture Committee by division at its meeting on [26 March 2013](#).

150. The Committee recognises that the number of motions to annul does not necessarily have any bearing on the quality of instruments laid, but notes the information.

Consolidation

151. The Committee's overarching objective is to ensure the accessibility of legislation to the general public. As part of this objective, the Committee continued to pursue the issue of consolidation of instruments which have been amended a number of times or to the extent that it is difficult to understand or access for the end user of the legislation.

152. While in principle the Committee would like to see as many instruments as possible be consolidated, it recognises that consolidation can be very resource intensive both from the perspective of the Parliament as well as the Government. Therefore the Committee has agreed to target its efforts to encourage the Government to consolidate subordinate legislation. In particular, the Committee has only sought an explanation from the Government where there appears to be merit in consolidation being brought forward for the purposes of accessibility.

153. The Committee also welcomes the consolidating instruments brought forward by the Government set out in Annex D.

154. One of these instruments was the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 which consolidated the Rehabilitation of Offenders Act 1974 (Exclusion and Exceptions) (Scotland) Order 2003. The Order was first laid and then withdrawn following the identification of errors. Subsequently a revised order was laid, but it still contained errors which were identified during the Committee's scrutiny of the replacement draft instrument. The Scottish Government, however, was initially minded to proceed with the order containing errors, committing to bring forward a correcting instrument in early course. The Committee reported that it did not find this acceptable. The Committee took the view that the process of consolidation and simplification is undermined if what is produced is inherently flawed and requires an immediate correction to be made. In such circumstances the Committee expects the Government to produce a correct instrument for approval unless there are compelling reasons for proceeding immediately with a flawed instrument. There were no such reasons in this case. Following receipt of the Committee's report on this revised order the Scottish Government withdrew the revised order and laid a corrected order.

155. The Committee wishes to support the Government where it consolidates subordinate legislation. But the Committee also considers that when expending scarce resources on consolidating regulations the Scottish Government should take particular care to ensure that the end product is accurate and does not undermine the purpose of consolidation.

156. The Committee will continue to liaise with the Scottish Government in respect of these points and will continue to pursue the issue of consolidation more generally.

Packages of instruments

157. Over the course of the reporting period, the Committee considered a number of packages of instruments. Perhaps the most significant in terms of volume related to the Police and Fire Reform (Scotland) Act 2012. The Committee was given good notice of the instruments to be laid to implement the Act and the timescale in which they were to be laid.

158. However, the Committee encountered a number of issues in relation to the process of considering the instruments which the Committee invited the Scottish Government to reflect upon.

159. Firstly, the Committee expressed concern about the number of instruments reported upon and the grounds under which they were reported, noting that, of the 22 instruments laid, eight were reported upon, representing 36% of the instruments considered. Furthermore, three instruments were reported under ground (i) (defective drafting) which is considered a significant reporting ground by the Committee and three of the instruments were reported on more than one ground. The Committee also noted that a large number of instruments reported upon carried over errors from the previous regime.

160. Given that the majority of instruments were laid in the two month period prior to the introduction of the single police force and single fire service, the Committee was concerned that the Parliament's ability to scrutinise thoroughly the instruments may have been negatively impacted upon. The Committee also considered that the time pressures may have had an impact on the drafting of the instruments.

161. A further issue which was raised by the Committee concerns references to, and reliance upon, instruments which were yet to be laid. The Committee noted its concern that it was required to consider these instruments without a complete understanding of what it was being invited to scrutinise.

162. Finally, the Committee reflected on the quality of the policy notes accompanying the instruments. In a number of cases the Committee's legal advisers were unable to establish from the policy notes whether consultation requirements has been discharged and had therefore to write to the Scottish Government in order to obtain the information necessary to advise the Committee.

163. The Committee wrote to the Scottish Government and highlighted these matters.

164. In its response, the Scottish Government welcomed the feedback provided by the Committee. At the same time, however, the Government suggested that a number of the reports can be attributed to a difference of opinion between the Committee and the Government as opposed to necessarily being evidence of errors. As far as the programme of laying was concerned, the Government recognised the challenge the implementation programme represented to the Committee, but at the same time noted that it had provided the Committee with a plan for the laying of the instruments and had met the minimum laying times. The

Government did, however, recognise the concerns about the policy notes and agreed that it would be mindful of ensuring greater clarity in the future.

165. The Committee recognises the response from the Scottish Government, but nonetheless encourages the Scottish Government to be mindful of these matters when planning for future packages of instruments.

Transitional provisions

166. The Committee has reflected again this year on its scrutiny of commencement orders where they contain complex transitional provisions.

167. This consideration was prompted by the judgement in *Davies v the Scottish Commission for the Regulation of Care*. The judgement identified a gap in the transitional provisions that provided for the transfer of regulation of care services from the Scottish Commission for the Regulation of Care to Social Care and Social Work Improvement Scotland.

168. The Committee reflected on the scrutiny applied to the order making those transitional provisions, the Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions Order 2011 (SSI 2011/121). In so doing, the Committee noted that arrangements for the scrutiny of such transitional provisions have changed since its predecessor Committee looked at that order at the end of last session.

169. The approach to scrutiny of complex transitional arrangements was changed in light of the judgement in *IO and LO v Aberdeen City Council*. At that time, the Scottish Government committed to providing policy notes to accompany such orders and to enable greater time for scrutiny by endeavouring to provide for a full 40 days between the made date and the appointed day.

170. The Committee believes that these commitments have enabled it to undertake more effective scrutiny of instruments containing complex transitional provisions.

171. While recognising that the Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions Order 2011 (SSI 2011/121) was drafted, laid and scrutinised prior to the above changes being made, the Committee invited the Scottish Government to reflect on the judgement in *Davies v the Scottish Commission for the Regulation of Care* and to consider whether there are any other changes it would consider making in order to improve the opportunity for scrutiny still further.

172. In response, the Scottish Government noted that in addition to the changes referred to above, the Scottish Government Legal Directorate had also:

- prepared very detailed guidance for SSI drafters on the pitfalls of drafting commencement orders and transitional provisions;
- delivered bespoke training sessions on commencement provisions and transitional provisions for drafters in the Legal Directorate; and

- involved the legal adviser to the Subordinate Legislation Committee in both the preparation of the Guidance and also in the training sessions.

173. Furthermore, the Scottish Government committed to keeping its guidance and processes under review.

174. The Committee welcomes this commitment and the approach being taken by the Scottish Government. The Committee will, however, continue to apply close scrutiny to commencement orders with complex transitional provisions attached and will revisit the issue more generally if it considers that the processes in place do not allow for sufficient scrutiny.

OTHER BUSINESS

Introduction

175. Although the focus of this report is on the Committee's activities in relation to its scrutiny of instruments, in order to give a full picture of the Committee's activities throughout the reporting period, the following section sets the Committee's activity in respect of other matters within its remit.

Bills

176. A primary function of the Committee is to consider the delegated powers provisions in any public or private Bills introduced in the Parliament. Over the reporting period, the Committee has considered and reported on the following 13 Bills at Stage 1:

- Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill
- Social Care (Self-directed Support) (Scotland) Bill
- Scottish Civil Justice Council and Criminal Legal Assistance Bill
- Freedom of Information (Amendment) (Scotland) Bill
- Water Resources (Scotland) Bill
- High Hedges (Scotland) Bill
- Aquaculture and Fisheries (Scotland) Bill
- Post-16 Education (Scotland) Bill
- Forth Road Bridge Bill
- Budget (Scotland) (No.2) Bill
- Land and Buildings Transaction Tax (Scotland) Bill
- Scottish Independence Referendum (Franchise) Bill
- Victims and Witnesses (Scotland) Bill

177. The Committee also considered and reported on the following nine Bills as amended at Stage 2:

- Alcohol (Minimum Pricing) (Scotland) Bill
- Land Registration etc. (Scotland) Bill
- Police and Fire Reform (Scotland) Bill
- Social Care (Self-directed Support) (Scotland) Bill
- Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill
- Freedom of Information (Amendment) (Scotland) Bill
- Water Resources (Scotland) Bill
- High Hedges (Scotland) Bill
- Aquaculture and Fisheries (Scotland) Bill

178. All of the Bills (with the exception of the High Hedges (Scotland) Bill) were Government Bills and the Committee's recommendations led to a number of changes being made by the Government to the delegated powers provisions in Bills. Through its scrutiny process, the Committee also aims to ensure that the correct balance between primary and secondary legislation is maintained.

179. The Committee's consideration of Bills is usually carried out through written correspondence with Scottish Government officials. However, sometimes the extent of the delegated powers in bills means that the scrutiny is better conducted through oral evidence.

180. This was the case in relation to the delegated powers provisions in the Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill, in particular the breadth of powers being afforded to Ministers allowing them to increase tax amounts in respect of unoccupied properties. The Committee therefore took [oral evidence](#) from Scottish Government officials which enabled it to explore the issues in detail and give thorough scrutiny of these provisions.

181. Similarly, the breadth of powers given to Ministers in the Social Care (Self-directed Support) (Scotland) Bill as introduced was an issue that the Committee felt worthy of exploring in greater detail. So called "bolt-on" ancillary powers within the Bill were also deemed to be sufficient in scope to merit particular scrutiny. With this in mind, the Committee took oral evidence from Scottish Government officials in order to also give thorough consideration to these provisions.

182. Both of these sessions allowed the Committee to scrutinise the delegated powers in detail which enabled it to provide a comprehensive report of its views to the Parliament.

Delegated Powers Memoranda

183. As noted above, the Committee has sought oral evidence in relation to bills with extensive delegated powers. However, more often the Committee seeks further information on the delegated powers by way of written correspondence. In both instances, however, such further information may not be necessary if the delegated powers memorandum is sufficiently detailed.

184. The Committee has on occasion been unable to determine from the delegated powers memorandum the extent and intent of powers. The Committee invites the Scottish Government to consider its approach to delegated powers memorandums and in particular to consider whether it would be beneficial to provide more information in the memoranda so as to avoid the need for the Committee to regularly seek further information.

Scottish Law Commission Bills

185. It should be noted that subsequent to the end of the period covered by this report the Committee's remit was expanded. The Committee's new remit enables the Committee to be the lead committee on bills emanating from Scottish Law Commission reports provided they meet certain criteria as determined by the Presiding Officer.

186. It is anticipated that the Committee will consider such a bill over the course of the next reporting period. Should the Committee consider such a bill in that period then the Committee will reflect on the experience in its next report.

Legislative Consent Memorandums

187. The Committee has also considered eight Legislative Consent Memorandums (LCMs). LCMs are prepared in relation to Westminster Bills which seek to change the law or alter Scottish Ministers' or the Scottish Parliament's powers in relation to devolved matters. The eight LCMs considered by the Committee were on:

- Electoral Registration and Administration Bill (UK Parliament legislation)
- Local Government Finance Bill (UK Parliament legislation)
- Crime and Courts Bill (UK Parliament legislation)
- Prisons (Interference with Wireless Telegraphy) Bill (UK Parliament legislation)
- Growth and Infrastructure Bill (UK Parliament legislation)
- Marine Navigation (No 2) Bill (UK Parliament legislation)
- Energy Bill 2012-13 (UK Parliament legislation)
- Public Service Pensions Bill (UK Parliament legislation)

Public Body Consent Memorandums (PBCMs)

188. PBCMs relate to draft orders made under sections 1 to 5 of the Public Bodies Act 2011 which would fall within the Scottish Parliament's legislative competence. This mechanism was created to make provision for orders being brought forward under the Act which related to cross-border matters and so which would require the consent of the Scottish Parliament before proceeding further.

189. Three PBCMs were considered by the Committee in 2012-13. The Committee considers the orders under the same grounds as instruments laid before the Parliament. In doing so, it determined that it did not need to draw the attention of the Parliament to the following orders on any of those grounds:

- Public Bodies (Abolition of British Shipbuilders) Order [2013] [draft]
- Public Bodies (Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order [2013] [draft]
- Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order [2013] [draft]

190. The Committee did however agree to draw the attention of the lead committee to the explanatory document which accompanied the Abolition of Administrative Justice and Tribunals Council Order.

CONCLUSION

191. Having considered different aspects of the Committee's year in isolation, it is worth reflecting on the year in its entirety.

192. In general terms the Committee welcomes the improvements it has seen in the quality of instruments laid by the Scottish Government. The overall reduction in the proportion of instruments reported upon is very welcome. However, the Committee notes that this improvement is not seen

across all committee areas and the Committee encourages the Scottish Government to endeavour to achieve a more consistent improvement in the coming year.

193. As regards the instruments reported upon, the Committee is disappointed at the increase in instruments reported for defective drafting and encourages the Scottish Government to make efforts to reduce the number of instruments reported on this significant ground.

194. Finally, while welcoming the overall reduction in the number of instruments laid by the Scottish Government drawn to the Parliament's attention, the Committee simultaneously expresses its disappointment at the increase in the number of instruments laid by the LPPO that have been drawn to the Parliament's attention. The Committee encourages the LPPO to effect an improvement in these figures and a return to the improving trend that was seen in the preceding years.

ANNEX A – REPORTING GROUNDS: 11 MAY 2012 TO 10 MAY 2013

(a) Charge on the Scottish Consolidated Fund

- None

(b) Made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts

- None

(c) retrospective effect where the parent statute confers no express authority so to provide

- None

(d) unjustifiable delay in the publication or the laying of it before Parliament

- None

(e) doubt as to whether it is intra vires

- African Horse Sickness (Scotland) Order 2012 (SSI 2012/178) **RACCE**
- Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) **Welfare Reform**
- Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2013 (SSI 2013/7) **Infrastructure and Capital Investment**

LPPO instrument

- Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2012 (SSI 2012/189) **Justice**

(f) raises a devolution issue

- Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (SSI 2012/321) **RACCE**
- Late Payment of Commercial Debts (Scotland) Regulations 2013 (SSI 2013/77) **Economy, Energy and Tourism**

(g) unusual or unexpected use of the powers conferred by the parent statute

- National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 (SSI 2013/52) **Health and Sport**
- Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63) **Justice**
- Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 [draft] **Education and Culture**

(h) meaning could be clearer

- Education (School and Placing Information) (Scotland) Regulations 2012 (SSI 2012/130) **Education and Culture**

- Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 10 and Saving Provisions) Order 2012 (SSI 2012/160 (C. 15)) **Justice**
- Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177) **RACCE**
- Bluetongue (Scotland) Order 2012 (SSI 2012/199) **RACCE**
- Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (SSI 2012/258)
Infrastructure and Capital Investment
- Crofting Register (Scotland) Rules 2012 (SSI 2012/294) **RACCE**
- Crofting Register (Fees) (Scotland) Order 2012 (SSI 2012/295) **RACCE**
- Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) **Welfare Reform**
- Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012 (SSI 2012/315) **Local Government and Regeneration**
- Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319) **Welfare Reform**
- Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (SSI 2012/321) **RACCE**
- Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338) **Local Government and Regeneration**
- Banchory and Crathes Light Railway Order 2012 (SSI 2012/345)
Infrastructure and Capital Investment
- Police Service of Scotland Regulations 2013 (SSI 2013/35) **Justice**
- Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 (SSI 2013/37) **Local Government and Regeneration**
- National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 (SSI 2013/52) **Health and Sport**
- Scottish Police Authority (Provision of Goods and Services) Order 2013 (SSI 2013/73) **Justice**

<i>LPPO instruments</i>

- Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) 2012 (SSI 2012/188) **Justice**
- Act of Sederunt (Sheriff Court Rules) (Lay representation) 2013 (SSI 2013/91) **Justice**

(i) drafting appears to be defective

- Fire and Rescue Services (Framework) (Scotland) Order 2012 (SSI 2012/146) **Justice**
- National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/163) **Health and Sport**
- Parole Board (Scotland) Amendment Rules 2012 (SSI 2012/167) **Justice**
- Wildlife and Countryside Act 1981 (Exceptions to section 14) (Scotland) Order 2012 (SSI 2012/173) **RACCE**
- Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Order 2012 (SSI 2012/174) **RACCE**
- Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177) **RACCE**

- Children's Hearings (Scotland) Act 2011 (Commencement No. 5) Order 2012 (SSI 2012/246 (C.20) **Education and Culture**
- Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (SSI 2012/258) **Infrastructure and Capital Investment**
- Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290) **Justice**
- High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291) **Justice**
- Sheriff Court Fees Amendment Order 2012 (SSI 2012/293) **Justice**
- Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) **Welfare Reform**
- Materials and Articles in Contact with Food (Scotland) Regulations 2012 (SSI 2012/318 **Health and Sport**
- Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (SSI 2012/321) **RACCE**
- Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 [draft] **Justice**
- Non-Domestic Rates (Levying) (Scotland) (No. 3) Regulations 2012 (SSI 2012/353) **Local Government and Regeneration**
- Bovine Viral Diarrhoea (Scotland) Order 2013 (SSI 2013/3) **RACCE**
- Police Service of Scotland Regulations 2013 (SSI 2013/35) **Justice**
- Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42) **Justice**
- Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61) **Justice**

<i>LPPO instruments</i>

- Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2013 (SSI 2013/72) **Justice**
- Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013 (SSI 2013/81) **Justice**
- Act of Sederunt (Sheriff Court Rules) (Lay representation) 2013 (SSI 2013/91) **Justice**

(j) failure to comply with laying requirements

- Bluetongue (Scotland) Amendment Order 2012 (SSI 2012/184) **RACCE**
- Parole Board (Scotland) Amendment (No. 2) Rules 2012 (SSI 2012/197) **Justice**
- Trade in Animals and Related Products (Scotland) Amendment Order 2012 (SSI 2012/198) **RACCE**
- Wildlife and Countryside Act 1981 (Exceptions to section 14) (Scotland) Amendment Order 2012 (SSI 2012/205) **RACCE**
- Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Amendment Order 2012 (SSI 2012/206) **RACCE**

- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228) *⁸ **RACCE**
- Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Revocation Regulations 2012 (SSI 2012/306) **Infrastructure and Capital Investment**
- Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322) **Justice**
- Welfare of Animals at the Time of Killing (Scotland) Amendment Regulations 2012 (SSI 2012/355) **RACCE**
- Energy Performance of Buildings (Scotland) Amendment Regulations 2013 (SSI 2013/12) * **Local Government and Regeneration**
- Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89) **Justice**
- National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2013 (SSI 2013/96) **Health and Sport**
- Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128) **Justice**
- Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129) **Justice**
- Late Payment of Commercial Debts (Scotland) (No. 2) Regulations 2013 (SSI 2013/131) **Economy, Energy and Tourism**

General reporting ground

- Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 10 and Saving Provisions) Order 2012 (SSI 2012/160 (C. 15)) **Justice**
- National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/163) **Health and Sport**
- Bluetongue (Scotland) Order 2012 (SSI 2012/199) **RACCE**
- Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012 (SSI 2012/208) **Local Government and Regeneration**
- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228) **RACCE**
- Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2012 (SSI 2012/276) **Justice**
- Adults with Incapacity (Public Guardian's Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289) **Justice**
- Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290) **Justice**
- Crofting Register (Scotland) Rules 2012 (SSI 2012/294) **RACCE**
- Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) **Welfare Reform**
- Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319) **Welfare Reform**
- Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 [draft] (SG 2013/4) **Standards, Procedures and Public Appointments**

⁸ The asterisks indicate where the Committee was not satisfied with the reasons given for non-compliance with the laying requirements

- Renewables Obligation (Scotland) Amendment Order 2013 [draft] **Economy, Energy and Tourism**
- Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 [draft] **Local Government and Regeneration**
- Banchory and Crathes Light Railway Order 2012 (SSI 2012/345) **Infrastructure and Capital Investment**
- Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 (SSI 2013/37) **Local Government and Regeneration**
- Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42) **Justice**
- Police Service of Scotland (Special Constables) Regulations 2013 (SSI 2013/43) **Justice**
- National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 (SSI 2013/52) **Health and Sport**
- Late Payment of Commercial Debts (Scotland) Regulations 2013 (SSI 2013/77) **Economy, Energy and Tourism**
- National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/109) **Health and Sport**
- CRC Energy Efficiency Scheme Order 2013 [draft] **Rural Affairs, Climate Change and Environment**
- Police Service of Scotland (Amendment) (No. 2) Regulations 2013 (SSI 2013/125) **Justice**

<i>LPPO instruments</i>

- Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 3) 2012 (SSI 2012/271) **Justice**
- Act of Sederunt (Actions for removing from heritable property) (Amendment) 2012 (SSI 2012/273) **Justice**
- Act of Sederunt (Rules of the Court of Session Amendment No 5) (Miscellaneous) 2012 (SSI 2012/275) **Justice**
- Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2013 (SSI 2013/72) **Justice**

ANNEX B – COMMITMENTS: 11 MAY 2012 TO 10 MAY 2013

Commitments met by the laying of amending instruments

Scottish Government instruments

- **Parole Board (Scotland) Amendment Rules 2012 (SSI 2012/167)**
Commitment met by Parole Board (Scotland) Amendment (No. 2) Rules 2012 (SSI 2012/197)
- **Wildlife and Countryside Act 1981 (Exceptions to section 14) (Scotland) Order 2012 (SSI 2012/173)**
Commitment met by Wildlife and Countryside Act 1981 (Exceptions to Section 14) (Scotland) Amendment Order 2012 (SSI 2012/205)
- **Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Order 2012 (SSI 2012/174)**
Commitment met by Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Amendment Order 2012 (SSI 2012/206)
- **Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177)**
Commitment met by Trade in Animals and Related Products (Scotland) Amendment Order 2012 (SSI 2012/198)
- **Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012 (SSI 2012/208)**
Commitment met by Energy Performance of Buildings (Scotland) Amendment (No. 3) Regulations 2012 (SSI 2012/315)
- **Children's Hearings (Scotland) Act 2011 (Commencement No.5) Order 2012 (SSI 2012/246 (C.20))**
Commitment met by Children's Hearings (Scotland) Act 2011 (Commencement No. 6) Order 2012
- **Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 (SSI 2012/258)**
Commitment met by Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Revocation Regulations 2012 (SSI 2012/306)
- **Court of Session etc. Fees Amendment Order 2012 (SSI 2012/290)**
Commitment met by Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322)
- **High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291)**
Commitment met by Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322)
- **Sheriff Court Fees Amendment Order 2012 (SSI 2012/293)**
Commitment met by Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322)
- **Crofting Register (Scotland) Rules 2012 (SSI 2012/294)**
Commitment met by Crofting Register (Scotland) Amendment Rules 2012 (SSI 2012/327)

- **Materials and Articles in Contact with Food (Scotland) Regulations 2012 (SSI 2012/318)**
Commitment met by Food (Miscellaneous Amendment and Revocation) (Scotland) Regulations 2013 (SSI 2013/83)
- **Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (SSI 2012/321)**
Commitment met Welfare of Animals at the Time of Killing (Scotland) Amendment Regulations 2012 (SSI 2012/355)
- **Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2012 (SSI 2012/276)**
Commitment met by Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2012 (SSI 2012/305)
- **Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303)**
Commitment met by Council Tax Reduction (Scotland) Amendment Regulations 2013 (SSI 2013/48)
- **Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 [draft]**
Commitment met by the second laying of Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 [draft]
- **Non-Domestic Rates (Levying) (Scotland) (No. 3) Regulations 2012 (SSI 2012/353)**
Commitment met by Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2013 (SSI 2013/34)
- **Bovine Viral Diarrhoea (Scotland) Order 2013 (SSI 2013/3)**
Commitment met by Bovine Viral Diarrhoea (Scotland) Amendment Order 2013 (SSI 2013/21)
- **Police Service of Scotland Regulations 2013 (SSI 2013/35)**
Commitment met by Police Service of Scotland (Amendment) Regulations 2013 (SSI 2013/122) and by correction slip
- **Police Service of Scotland (Special Constables) Regulations 2013 (SSI 2013/43)**
Commitment met by Police Service of Scotland (Amendment) Regulations 2013 (SSI 2013/122) and by correction slip
- **National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 (SSI 2013/52)**
Commitment met by National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/109)

In addition to the above, the **Police Service of Scotland (Amendment) (No. 2) Regulations 2013 (SSI 2013/125)** were laid to meet a commitment given to amend various Regulations relating to the Police Service of Scotland, namely:

- Police Service of Scotland Regulations 2013 (SSI 2013/35);
- Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42);
- Police Service of Scotland (Special Constables) Regulations 2013 (SSI 2013/43);
- Police Service of Scotland (Conduct) Regulations 2013 (SSI 2013/60);
- Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61).

Commitments met by correction slip

- National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2012 (SSI 2012/163)

Commitments outstanding

- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228)
Government to correct by means of an amending instrument
- Renewables Obligation (Scotland) Amendment Order 2013 [draft]
Government to amend the error at the next available opportunity
- National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/109)
Government to amend the error at the next available opportunity

LPPO instruments

- **Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2012 (SSI 2012/275)**
Commitment met by Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2013 (SSI 2013/120)
- **Act of Adjournal (Criminal Procedure Rules Amendment) (Miscellaneous) 2013 (SSI 2013/72)**
Commitment met by Act of Adjournal (Criminal Procedure Rules Amendment No. 3) (Miscellaneous) 2013 (SSI 2013/198)⁹
- **Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013 (SSI 2013/81)**
Commitment met by Act of Sederunt (Rules of the Court of Session Amendment No. 3) (Miscellaneous) 2013 (SSI 2013/120)

Commitments outstanding

- Act of Sederunt (Actions for removing from heritable property) (Amendment) 2012 (SSI 2012/273)
LPPO to correct the issue in a forthcoming instrument

⁹ Amending instrument laid on 14 June 2013 which was after the period covered by this report.

ANNEX C – INSTRUMENTS WHICH THE COMMITTEE IDENTIFIED AS BEING SUITABLE FOR CONSOLIDATION: 11 MAY 2012 TO 10 MAY 2013

- Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Amendment Regulations 2012 (SSI 2012/170)
- National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Amendment Regulations 2012 (SSI 2012/171)
- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228)
- Rural Development Contracts (Rural Priorities) (Scotland) Amendment Regulations 2012 (SSI 2012/307)
- National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2013 (SSI 2013/41)
- Police Service of Scotland (Police Cadets) Regulations 2013 (SSI 2013/42)
- Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2013 (SSI 2013/53)
- Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)

ANNEX D – CONSOLIDATING INSTRUMENTS LAID IN THE REPORTING PERIOD: 11 MAY 2012 TO 10 MAY 2013

- **Education (School and Placing Information) (Scotland) Regulations 2012 (SSI 2012/130)** (consolidates the Education (School and Placing Information) (Scotland) Regulations 1982)
- **Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177)** (consolidates the Animals and Animal Products (Import and Export) (Scotland) Regulations 2007, the Products of Animal Origin (Import and Export) Regulations 1996, the Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2007)
- **Bluetongue (Scotland) Order 2012 (SSI 2012/199)** (consolidates the Bluetongue (Scotland) Order 2008)
- **Pollution Prevention and Control (Scotland) Regulations 2012 [draft]** (consolidates the Pollution, Prevention and Control (Scotland) Regulations 2000)
- **Materials and Articles in Contact with Food (Scotland) Regulations 2012 (SSI 2012/318)** (consolidates nearly all existing national legislation on materials and articles intended to come into contact with food)
- **Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 [draft]** (consolidates Rehabilitation of Offenders Act 1974 (Exclusion and Exceptions) (Scotland) Order 2003)
- **Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 (SSI 2013/84)** (consolidates the Food Safety (Sampling and Qualifications) Regulations 1990)

ANNEX E – NON-COMPLIANCE WITH LAYING REQUIREMENTS: 11 MAY 2012 TO 10 MAY 2013

Committee content with reason for non-compliance

- Bluetongue (Scotland) Amendment Order 2012 (SSI 2012/184)
- Parole Board (Scotland) Amendment (No. 2) Rules 2012 (SSI 2012/197)
- Trade in Animals and Related Products (Scotland) Amendment Order 2012 (SSI 2012/198)
- Wildlife and Countryside Act 1981 (Exceptions to section 14) (Scotland) Amendment Order 2012 (SSI 2012/205)
- Wildlife and Countryside Act 1981 (Keeping and Release and Notification Requirements) (Scotland) Amendment Order 2012 (SSI 2012/206)
- Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Revocation Regulations 2012 (SSI 2012/306)
- Court Fees (Miscellaneous Amendments) Scotland Order 2012 (SSI 2012/322)
- Welfare of Animals at the Time of Killing (Scotland) Amendment Regulations 2012 (SSI 2012/355)
- Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89) **Justice**
- National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2013 (SSI 2013/96) **Health and Sport**
- Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128) **Justice**
- Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129) **Justice**
- Late Payment of Commercial Debts (Scotland) (No. 2) Regulations 2013 (SSI 2013/131) **Economy, Energy and Tourism**

Committee not content with reason for non-compliance

- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228)
- Energy Performance of Buildings (Scotland) Amendment Regulations 2013 (SSI 2013/12)

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