

## DELEGATED POWERS AND LAW REFORM COMMITTEE

### Instruments considered by the Committee during the first quarter of the Parliamentary Year 2015-16

#### QUARTER 1 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the first quarter of the parliamentary year 2015-16. 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 touches briefly on the commitments made by the Scottish Government and the Lord President's Private Office (LPPO) in response to the Committee's comments, and details any action that has been taken. In addition, the report briefly outlines the Committee's activity in respect of other matters within its remit.

2. This report deals with instruments considered by the Committee during the period 11 May 2015 to 14 September 2015. The report also touches on the general work of the Committee during that period.

#### Overview and analysis

3. During the period 11 May 2015 to 14 September 2015, a total of 86 instruments were considered by the Committee. Of these, 78 instruments were laid by the Scottish Government and 8 instruments were laid by the Lord President's Private Office.

4. The 78 SSIs laid by the Scottish Government can be broken down as follows—

- 13 affirmative instruments;
- 54 negative instruments;
- 11 laid only instruments.

5. The 8 SSIs laid by the Lord President's Private Office were all laid only instruments, not subject to parliamentary procedure.

**Table 1: Instruments considered by the DPLR Committee during the period 11 May 2015 to 14 September 2015 reported on by the Committee**

	Scottish Government			LPPO		
	Total SSIs	Total drawn to the Parliament's attention	%	Total SSIs	Total drawn to the Parliament's attention	%
Total	78	8 (11)	10.25% (14%)	8	4	50%

6. Table 1 shows that of the 78 Scottish Government instruments considered by the Committee, 8 were drawn to the Parliament's attention, which is just over 10% of instruments considered.

7. The higher figures in brackets incorporate those SSIs that were reported for failing to comply with laying requirements but where the explanation provided to the Committee by the Scottish Government for this failure was deemed acceptable. Including these SSIs raises the percentage of instruments reported on to just over 14%.

8. A list of the three instruments laid where the Committee was content with the reason given by the Scottish Government for non-compliance with laying requirements can be found in **ANNEX B**.

9. 95 instruments laid by the Scottish Government were considered by the Committee during the final quarter of the previous parliamentary year, 2014-15. The Committee drew the Parliament's attention to 21 of them, which was 22% of instruments considered. Notwithstanding the fact that far fewer instruments were considered this quarter compared to last, this represents a near 12% decrease in the percentage of instruments reported on.

10. 6 instruments laid by the LPPO were considered by the Committee during the final quarter of the previous parliamentary year, 2014-15, with the Parliament's attention drawn to just one of them. This quarter, 4 of the 8 instruments considered were drawn to the attention of the Parliament.

11. **ANNEX E** comprises graphics showing trends and comparisons between this reporting period and previous reports.

### **Withdrawal/revocation of instruments and motions to annul**

12. The following draft SSIs were all withdrawn and re-laid during this period:

- Education (School Lunches) (Scotland) Regulations 2015 [draft];
- Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2015 [draft];
- Scottish Parliament (Disqualification) Order 2015 [draft].

13. It is worth noting, like in previous quarters, that had these instruments not been withdrawn they would likely all have invoked one or more of the grounds under which the Committee can report in order to draw the instrument to the attention of the Parliament - thus raising noticeably the percentage of instruments reported on during the period.

14. The Committee also considered the draft Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015 during this period. The Regulations would later be withdrawn by the Scottish Government following the decision by the Justice Committee at its meeting on 15 September 2015 *not* to recommend their approval.

15. Details of instruments that were considered by the Committee and which were later subject to a motion to annul voted on by the lead/subject committee can be found at **ANNEX D**.

## Reporting grounds

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

### *Reporting grounds: significant*

17. The Committee considers some reporting grounds to be of more significance than others. The Committee has therefore determined that it has 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.

18. These are referred to as *the significant reporting grounds*. The Committee considers every report under one of these grounds to be a serious matter as these raise fundamental legal questions and so there is the potential for the validity of the instrument to be questioned.

19. The following table details the instruments reported on broken down by reporting ground:

**Table 2: Instruments reported on broken down by ground  
(No SSIs were reported on under grounds other than those listed below)**

Ground	Scottish Government		LPPO	
	No.	% of all SSIs laid (78)	No.	% of all SSIs laid (8)
<b>(g)</b> unusual or unexpected use of power conferred by parent statute	1	1.25%	0	0%
<b>(h)</b> form or meaning could be clearer	1	1.25%	0	0%
<b>(j)</b> failure to comply with laying requirements	3	4%	0	0%
<b>General</b> ground (e.g. failures to follow proper drafting practice or legislative process)	5	6.5%	4	50%
<b>(g)</b> and the <b>General</b> ground	1	1.25%	0	0%

20. In terms of the significant grounds, none of the instruments laid by the Scottish Government were reported under any of these grounds during the first quarter of this parliamentary year. In the final quarter of the previous parliamentary year, 8 Scottish Government instruments were reported for defective drafting under significant ground **(i)**. Again, notwithstanding the fewer number of instruments considered this quarter compared to last, this represents a significant improvement.

21. One LPPO instrument was reported on in the final quarter of the last reporting year. The instrument was reported for defective drafting, ground **(i)**, and under the general reporting ground. Although this quarter 4 of the 8 instruments laid were reported on, none were reported on under any of the significant grounds.

### Lead committees

22. The following table provides a breakdown of the instruments referred to, and reported on, by lead committee.

**Table 3: Instruments reported on by lead committee**

Lead Committee	Scottish Government			LPPO		
	Total SSIs	Total reported	% of SSIs considered that were reported on	Total SSIs	Total reported	% of SSIs considered that were reported on
RACCE	17	3	17.5%			
Health and Sport	7	0	0%			
Justice	14	0	0%	8	4	50%
Local Government and Regeneration	5	2	40%			
Education and Culture	22	3	13.5%			
Infrastructure and Capital Investment	3	0	0%			
Economy, Energy and Tourism	3	0	0%			
Delegated Powers and Law Reform	1	0	0%			
Devolution (Further Powers)	1	0	0%			
Finance	3	3	100%			
Parliament	2	0	0%			

## Summary

23. During this reporting period, the Education and Culture Committee had referred to them the largest number of Scottish Government instruments, looking at twenty two in total. Along with the Rural Affairs, Climate Change and Environment Committee (RACCE) and the Finance Committee they also looked at the largest number of Scottish Government instruments drawn to the Parliament's attention (three), whilst of the eight LPPO instruments referred to the Justice Committee four were reported on.

### *Education and Culture Committee*

24. Three instruments were reported on - two under the general reporting ground. The Scottish Government gave a commitment to correct the error(s) in one of those instruments and that commitment was met. The other instrument was reported for a breach of laying requirements with the Committee satisfied with the reason given for non-compliance.

### *Rural Affairs, Climate Change and Environment Committee (RACCE)*

25. Three instruments referred to the RACCE Committee were drawn to the Parliament's attention with two reported for breaching laying requirements. Again, in each case the Committee was satisfied with the reason given for non-compliance.

### *Finance Committee*

26. Again, three instruments were reported on - two under reporting ground (g) for an unusual or unexpected use of power conferred by parent statute. One instrument was drawn to the attention of Parliament under the general reporting ground.

### *Local Government and Regeneration Committee*

27. Two instruments referred to the Local Government and Regeneration Committee were drawn to the Parliament's attention - both under the general reporting ground. The Scottish Government gave a commitment to correct the error(s) in one of those instruments and that commitment was met.

### *Justice Committee*

28. None of the fourteen instruments laid by the Scottish Government and referred to the Justice Committee were reported on. However, four of the eight instruments laid by the LPPO were drawn to the attention of Parliament - all under the general reporting ground. Three of the four commitments given by the LPPO to correct the errors identified were promptly met with one commitment from this period still outstanding.

### *Other Committees*

29. No other subject committees were referred instruments that were drawn to the attention of the Parliament by the Committee.

30. Information detailing specific SSIs and the grounds that they were reported on is provided in **ANNEX A**.

## SCOTTISH STATUTORY INSTRUMENTS - GENERAL

### Commitments

31. In terms of laying amending instruments to correct errors identified and reported on by the Committee. The following commitments have been fulfilled by the Scottish Government during this period:

- Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules 2015 (SSI 2015/182) **errors rectified by the laying of the Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Amendment Rules 2015 (SSI 2015/250) on 8 June 2015**
- Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2013 (SSI 2013/176) **errors rectified by the laying of the Water Environment (River Basin Management Planning etc.) (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/211) on 28 May 2015**
- Scheduled Monuments (Appeals) (Scotland) Regulations 2015 (SSI 2013/231) **errors rectified by the laying of the Scheduled Monuments and Listed Buildings (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/328) on 11 September 2015 [out-with the reporting period]**

32. There are no outstanding Scottish Government commitments from this first quarter but a full list of all outstanding commitments can be found at **ANNEX C**.

### LPPO instruments

33. The following commitments have been fulfilled by the Lord President's Private Office during this period:

- Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (European Protection Orders) 2015 (SSI 2015/121) **errors rectified by the laying of the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Miscellaneous) 2015 (SSI 2015/201) on 26 May 2015**
- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No.2) (Personal Injury and Remits) 2015 (SSI 2015/227) **errors rectified by the laying of the Act of Sederunt (Ordinary Cause Rules 1993 Amendment and Miscellaneous Amendments) 2015 (SSI 2015/296) on 3 August 2015**
- Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No.3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228) **errors rectified by the laying of the Act of Sederunt (Ordinary Cause Rules 1993 Amendment and Miscellaneous Amendments) 2015 (SSI 2015/296) on 3 August 2015**
- Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 (SSI 2015/245) **errors rectified by the laying of the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 Amendment) (Miscellaneous) 2015 (SSI 2015/295) on 3 August 2015**

34. One commitment given by the Lord President's Private Office to correct errors in an instrument laid during this quarter remains outstanding:

- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2015 (SSI 2015/283) ***to be amended in due course***

### **Consolidation**

35. The following consolidating instrument was laid during this period:

- St Mary's Music School (Aided Places) (Scotland) Regulations 2015 (SSI 2015/248) ***laid on 5 June 2015 and consolidates the St Mary's Music School (Aided Places) (Scotland) Regulations 2001***

### **Minor Points**

36. The Committee identified a total of 29 instruments on which minor points were raised (generally relating to typographical or referencing errors). 24 of these instruments were laid by the Scottish Government and 5 were laid by the LPPO.

## OTHER BUSINESS

### Introduction

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

### Bills

38. During the period 11 May 2015 to 14 September 2015, the Committee considered and reported on the following Bills at Stage 1:

- Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill;
- Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill;
- Education (Scotland) Bill;
- Inquiries into Deaths (Scotland) Bill;
- Interests of Members of the Scottish Parliament (Amendment) Bill.

39. The Committee also considered the following Bill after Stage 2:

- Community Empowerment (Scotland) Bill;
- Air Weapons and Licensing (Scotland) Bill;
- Mental Health (Scotland) Bill;
- Prisoners (Control of Release) (Scotland) Bill;
- British Sign Language (Scotland) Bill.

### Succession (Scotland) Bill

40. On 24 June 2015 the Committee was formally designated lead committee for the Succession (Scotland) Bill.

41. The Bill is the second Scottish Law Commission (SLC) Bill to be referred to the Committee since the Committee's remit was changed in June 2013. Since then it has been possible to refer SLC Bills to the Committee where they are considered to comply with Standing Orders Rule 9.17A and the associated criteria determined by the Presiding Officer.

42. The Committee issued a call for written evidence on the Bill on 26 June 2015 and began taking oral evidence on 8 September 2015.

### Legislative Consent Memorandums (LCMs) and Public Bodies Act Consent Memorandums (PBCMs)

43. No LCMs or PBCMs were considered by the Committee during this period.



**(g) unusual or unexpected use of power conferred by parent statute**

- Scottish Tax Tribunals (Time Limits and Rules of Procedure) Regulations 2015 (SSI 2015/184) **Finance**
- Scottish Tax Tribunals (Conduct and Fitness Assessment Tribunal) Rules 2015 (SSI 2015/187) **Finance**

**(h) meaning could be clearer**

- Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/185) **RACCE**

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

- Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2015 (SSI 2015/215) **RACCE**
- St Mary's Music School (Aided Places) (Scotland) Regulations 2015 (SSI 2015/248) **Education and Culture**
- Wester Ross Marine Conservation Order 2015 (SSI 2015/302) **RACCE**

**General reporting ground**

- Public Services Reform (Scotland) Act 2010 (Part 2 Extension) Order 2015 [draft] **Finance**
- Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (SSI 2015/181) **Local Government and Regeneration**
- Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules 2015 (SSI 2015/182) **Local Government and Regeneration**
- Scottish Tax Tribunals (Conduct and Fitness Assessment Tribunal) Rules 2015 (SSI 2015/187) **Finance**
- Scheduled Monuments (Appeals) (Scotland) Regulations 2015 (SSI 2015/231) **Education and Culture**
- Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015 (SSI 2015/243) **Education and Culture**

**LPPO instruments**

- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No.2) (Personal Injury and Remits) 2015 (SSI 2015/227) **Justice**
- Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No.3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228) **Justice**
- Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 4) (Sheriff Appeal Court) 2015 (SSI 2015/245) **Justice**
- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2015 (SSI 2015/283) **Justice**

## ANNEX B - NON-COMPLIANCE WITH LAYING REQUIREMENTS

11 MAY 2015 TO 14 SEPTEMBER 2015

### Committee content with reason for non-compliance

- Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment Regulations 2015 (SSI 2015/215) **RACCE**
- St Mary's Music School (Aided Places) (Scotland) Regulations 2015 (SSI 2015/248) **Education and Culture**
- Wester Ross Marine Conservation Order 2015 (SSI 2015/302) **RACCE**

## ANNEX C - OUTSTANDING SCOTTISH GOVERNMENT COMMITMENTS

- Additional Support for Learning (Sources of Information) (Scotland) Amendment Order 2011 (SSI 2011/102) **to be amended at the next available opportunity**
- Marketing of Horticultural Produce (Scotland) Amendment Regulations 2011 (SSI 2011/324) **to be amended at the earliest available opportunity**
- Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2012 (SSI 2012/228) **to be amended at the next available opportunity**
- Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013 (SSI 2013/151) **to be amended at the next available opportunity**
- National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) Regulations 2014 (SSI 2014/154) **to be corrected in due course**
- Sulphur Content of Liquid Fuels (Scotland) Regulations 2014 (SSI 2014/258) **to be amended at the next available opportunity**
- Products Containing Meat etc. (Scotland) Regulations 2014 (SSI 2014/289) **to be amended at the earliest available opportunity**
- Marriage Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2014 (SSI 2014/304) **to be corrected when the Regulations are next amended**
- Food Information (Scotland) Regulations 2014 (SSI 2014/312) **to be amended at the first appropriate opportunity**
- Local Government Pension Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/87) **to be corrected after 1 April 2015 but having retrospective effect from that date**
- Reservoirs (Scotland) Regulations 2015 (SSI 2015/90) **to be addressed at the next opportunity**
- National Health Service Pension Scheme (Scotland) Regulations 2015 (SSI 2015/94) **to be corrected after 1 April 2015 but having retrospective effect from that date**
- National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 (SSI 2015/95) **to be corrected when the Regulations are next amended**
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/96) **to be corrected after 1 April 2015 but having retrospective effect from that date**

- Teachers' Pension Scheme (Scotland) Amendment Regulations 2015 (SSI 2015/97) ***to be corrected after 1 April 2015 but having retrospective effect from that date***
- Teachers' Superannuation (Scotland) Amendment Regulations 2015 (SSI 2015/98) ***to be corrected after 1 April 2015 but having retrospective effect from that date***
- Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015 (SSI 2015/105) ***to be corrected when the principal scheme is next amended***
- Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141) ***to be corrected after 1 April 2015 but having retrospective effect from that date***
- Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143) ***to be corrected by an amending instrument with appropriate retrospective effect***
- Registration of Births, Deaths and Marriages (Scotland) Act 1965 (Prohibition on Disposal of a Body without Authorisation) Regulations 2015 (SSI 2015/166) ***to be corrected at the next appropriate opportunity***

## ANNEX D - MOTIONS TO ANNUL

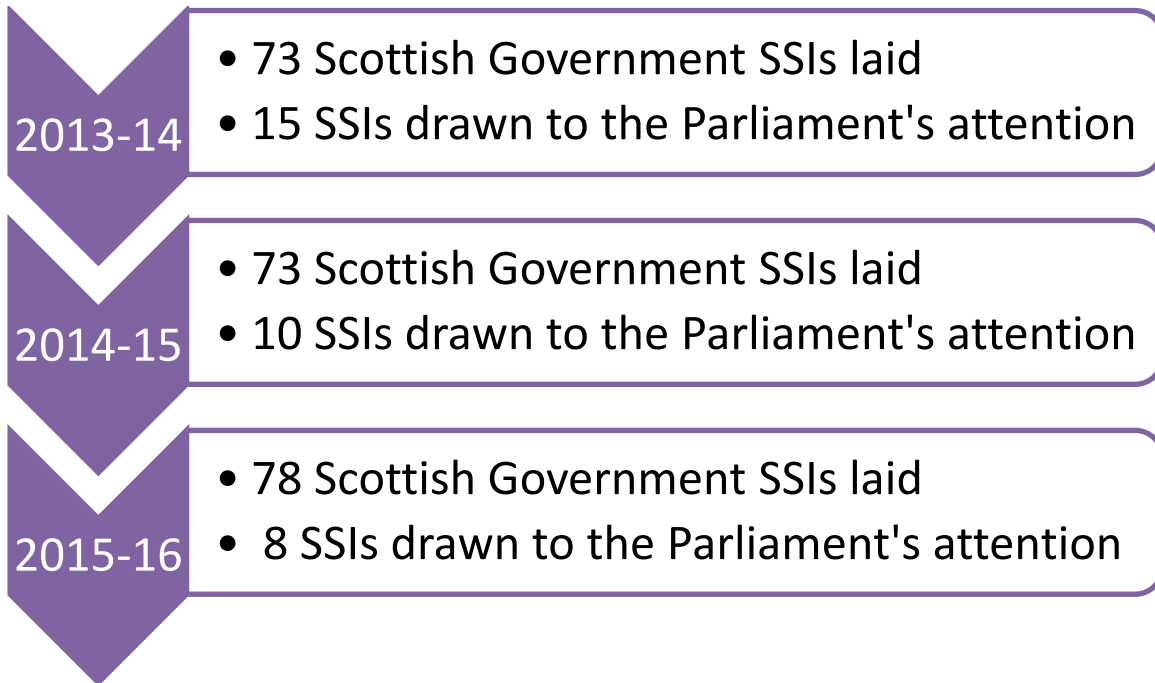
A motion to annul the following instrument considered by the Committee was lodged during this reporting period—

- Health and Care Professions Council (Registration and Fees) (Amendment) (No. 2) Rules Order of Council 2015 (SI 2015/1337)

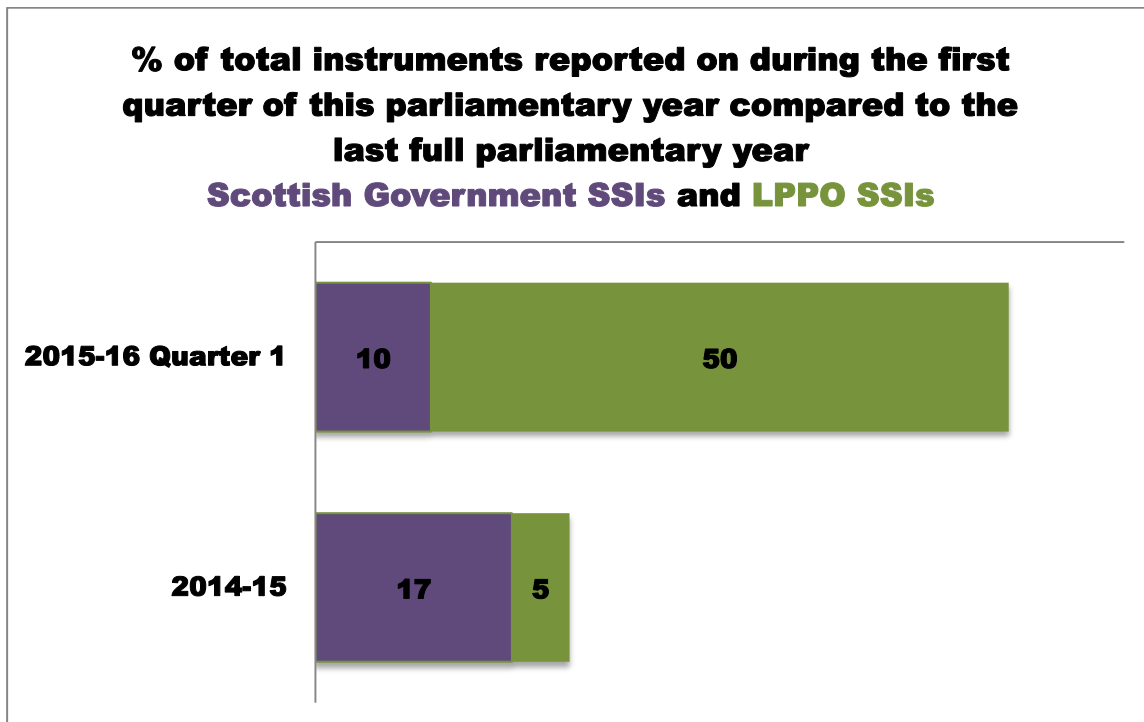
The motion to annul was *not* agreed to by the Health and Sport Committee at its meeting on 23 June 2015.

## ANNEX E - GRAPHICS AND CHARTS

Graphic illustrating the similar number of Scottish Government SSIs considered during the first quarter of each of the last 3 parliamentary years – and the decreasing number drawn to the attention of Parliament:



Graph below illustrating the figures for the first quarter of this parliamentary year compared to the last parliamentary year as a whole:



Graph below illustrating the number of Scottish Government commitments outstanding at the end of each of the last 5 quarterly periods reported on.

