

DELEGATED POWERS AND LAW REFORM COMMITTEE

Instruments considered by the Committee during the second quarter of the parliamentary year 2015-16

QUARTER 2 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the second 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 15 September 2015 to 30 November 2015. The report also touches on the general work of the Committee during that period.

Overview and analysis

3. During the period 15 September 2015 to 30 November 2015, a total of 63 instruments were considered by the Committee. Of these, 58 instruments were laid by the Scottish Government and 5 instruments were laid by the Lord President's Private Office.

4. The 58 SSIs laid by the Scottish Government can be broken down as follows—

- 16 affirmative instruments;
- 27 negative instruments;
- 13 laid only instruments;
- 2 instruments laid for consultation.

5. The 5 SSIs laid by the LPPO can be broken down as follows—

- 1 negative instrument;
- 4 laid only instruments.

Table 1: Instruments considered by the DPLR Committee during the period 15 September 2015 to 30 November 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	58	5 (7)	9% (12%)	5	2	40%

6. Table 1 shows that of the 58 Scottish Government instruments considered by the Committee, just 5 were drawn to the Parliament's attention, which is under 9% 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 12%.

8. A list of the two 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. 78 instruments laid by the Scottish Government were considered by the Committee during the first quarter of the current parliamentary year. The Committee drew the Parliament's attention to 8 of them, which was just over 10% of instruments considered. Notwithstanding the fact that far fewer instruments were considered this quarter compared to last, this represents a decrease in the percentage of instruments reported on – and a decrease for the second quarter in succession.

10. 8 instruments laid by the LPPO were considered by the Committee during the first quarter of this parliamentary year with the Parliament's attention drawn to exactly half of those laid. This quarter, less than half (2 of the 5 instruments considered) were drawn to the attention of the Parliament.

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

Withdrawal of instruments

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

- Qualifying Civil Partnership Modification (Scotland) Order 2015 [draft];
- International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2015 [draft];
- Justice of the Peace Courts (Special Measures) (Scotland) Order 2015 [draft];
- Adoption and Children (Scotland) Act 2007 (Amendment of the Children (Scotland) Act 1995) Order 2016 [draft];
- Victims' Rights (Scotland) Regulations 2015 [draft];
- Budget (Scotland) Act 2015 Amendment Regulations 2015 [draft];
- Scottish Parliament (Elections etc.) Order 2015 [draft].

13. The following draft SSI was withdrawn:

- Microchipping of Dogs (Scotland) Regulations 2016 [draft].

Reporting grounds

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

Reporting grounds: significant

15. The Committee considers some reporting grounds to be of more significance than others. The Committee has therefore determined that it has 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 as *the significant reporting grounds*. The Committee considers every report under one of these grounds to be a serious matter as these raise fundamental legal questions and so there is the potential for the validity of the instrument to be questioned.

17. 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 (58)	No.	% of all SSIs laid (5)
(h) form or meaning could be clearer	1	1.5%	1	20%
(h) <u>and</u> the General ground	2	3%	0	N/A
(i) drafting appears to be defective	0	N/A	1	20%
(j) failure to comply with laying requirements	2	3%	0	N/A
General ground (e.g. failures to follow proper drafting practice or legislative process)	2	3%	0	N/A

18. In terms of the significant grounds, none of the instruments laid by the Scottish Government during the first two quarters of the current parliamentary year have been reported under any of these grounds.

19. None of the instruments laid by the LPPO last quarter were reported on under any of the aforementioned significant grounds. One instrument laid by the LPPO during this quarter was reported for defective drafting, ground (i).

Lead committees

20. 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	9	3	33%			
Health and Sport	9	1	11%			
Justice	15	1	6.5%	5	2	40%
Local Government and Regeneration	4	0	N/A			
Education and Culture	6	1	16.5%			
Infrastructure and Capital Investment	6	0	N/A			
Economy, Energy and Tourism	3	1	33%			
Equal Opportunities	2	0	N/A			
Devolution (Further Powers)	2	0	N/A			
Finance	2	0	N/A			
TOTAL	58	7(5)¹	12% (9%)	5	2	40%

¹ The figures in brackets excludes 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.

Summary

21. During this reporting period, the Justice Committee had referred to them the largest number of Scottish Government instruments, looking at fifteen in total (as well as the five laid by the LPPO). The Rural Affairs, Climate Change and Environment Committee (RACCE) considered nine instruments, three of which were drawn to the attention of Parliament by the Committee. No other subject committee considered more than one instrument that was reported on.

Justice Committee

22. Only one of the fifteen Scottish Government instruments laid by the Scottish Government and referred to the Justice Committee this quarter was reported on - for a breach of laying requirements - and in that case the Committee was satisfied with the reason given for non-compliance. In this context, it is perhaps also worth noting that none of the fourteen Scottish Government instruments considered by the Justice Committee last quarter were reported on. However, two of the five instruments laid by the LPPO were drawn to the attention of Parliament - one under the significant ground (i). The commitment given by the LPPO to correct the errors identified in the instrument has yet to be met.²

Rural Affairs, Climate Change and Environment Committee (RACCE)

23. Three instruments referred to the RACCE Committee were drawn to the Parliament's attention. A commitment was given by the Scottish Government to correct the errors identified in one of the instruments. That commitment remains outstanding.

Education and Culture Committee

24. One instrument was reported for a breach of laying requirements with the Committee satisfied with the reason given for non-compliance.

Health and Sport Committee

25. The Health and Sport Committee were referred an instrument that was laid for consultation. The Order was drawn to the attention of Parliament under the general reporting ground and the Scottish Government gave a commitment to correct the Order when it is to be laid following the consultation stage.

Economy, Energy and Tourism Committee

26. One instrument referred to the Economy, Energy and Tourism Committee was drawn to the Parliament's attention under the general reporting ground. The Scottish Government gave a commitment to correct the error(s) in one of the draft instruments on it being 'made' and that commitment was met.

Other Committees

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

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

² The commitment has since been met by the laying of SSI 2015/419 on 10 December which is out-with this reporting period.

SCOTTISH STATUTORY INSTRUMENTS - GENERAL

Commitments

29. In terms of the Scottish Government committing to the laying of amending instruments to correct errors identified and reported on by the Committee, one amending instrument was laid during this period:

- Reservoirs (Scotland) Regulations 2015 (SSI 2015/90) **errors corrected by the laying of the Reservoirs (Scotland) Amendment Regulations 2015 (SSI 2015/315)**

30. There are two outstanding Scottish Government commitments from this second quarter:

- Tuberculosis in Specified Animals (Scotland) Order 2015 (SSI 2015/327) **to be corrected at the next available legislative opportunity**
- Private and Public Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/346) **to be corrected at the next suitable opportunity**

31. In addition, the Scottish Government also agreed to correct errors identified in the draft Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016 which was laid for consultation only.

32. A full list of all outstanding commitments can be found at **ANNEX C**.

LPPO instruments

33. One commitment given by the Lord President's Private Office to correct errors in an instrument laid during this quarter was outstanding at the end of the reporting period:

- Act of Sederunt (Sheriff Appeal Court Rules) 2015 (SSI 2015/356) **to be corrected before the rules come in to force on 1 January 2016**

34. It should however be noted that an amending instrument to correct the errors identified by the Committee was laid on 10 December 2015.

Consolidation

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

- Sea Fishing (EU Control Measures) (Scotland) Order 2015 (SSI 2015/320) **laid on 4 September 2015 and consolidates a number of previous instruments**

Minor Points

36. The Committee identified a total of 15 instruments on which minor points were raised (generally relating to typographical or referencing errors). 13 of these instruments were laid by the Scottish Government and 2 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 15 September 2015 to 30 November 2015, the Committee considered and reported on the following Bills at Stage 1:

- Pentland Hills Regional Park Boundary Bill;
- Succession (Scotland) Bill (*delegated powers*);
- Community Justice (Scotland) Bill;
- Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill;
- Land Reform (Scotland) Bill;
- Higher Education Governance (Scotland) Bill;
- Footway Parking and Double Parking (Scotland) Bill;
- Scottish Fiscal Commission Bill;
- Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill;
- Abusive Behaviour and Sexual Harm (Scotland) Bill;
- Criminal Verdicts (Scotland) Bill.

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

- Human Trafficking and Exploitation (Scotland) Bill.

Succession (Scotland) Bill

40. On 2 November 2015 the Committee published its Stage 1 report on the Succession (Scotland) Bill.

Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 (SSI 2015/330)

41. The Committee also published a separate report on the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 after taking oral evidence on the Order at its meeting on 3 November 2015.

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

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

ANNEX A - REPORTING GROUNDS: 15 SEPTEMBER 2015 TO 30 NOVEMBER 2015

(h) meaning could be clearer

- Private and Public Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/346) **RACCE**
- Sea Fishing (EU Control Measures) (Scotland) Order 2015 (SSI 2015/320) **RACCE**
- Renewables Obligation (Scotland) Amendment Order 2015 [draft] **Economy, Energy and Tourism**

LPO instrument

- Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) (SSI 2015/312) **Justice**

(i) drafting appears to be defective

LPO instrument

- Act of Sederunt (Sheriff Appeal Court Rules) 2015 (SSI 2015/356) **Justice**

(j) failure to comply with laying requirements

- Legal Aid (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/337) **Justice**
- Glasgow Clyde College (Removal and Appointment of Board Members) (Scotland) Order 2015 (SSI 2015/348) **Education and Culture**

General reporting ground

- Sea Fishing (EU Control Measures) (Scotland) Order 2015 (SSI 2015/320) **RACCE**
- Tuberculosis in Specified Animals (Scotland) Order 2015 (SSI 2015/327) **RACCE**
- Renewables Obligation (Scotland) Amendment Order 2015 [draft] **Economy, Energy and Tourism**
- Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016 [draft] (SG/2015/149) **Health and Sport**

ANNEX B - NON-COMPLIANCE WITH LAYING REQUIREMENTS

15 SEPTEMBER 2015 TO 30 NOVEMBER 2015

Committee content with reason for non-compliance

- Legal Aid (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/337) **Justice**
- Glasgow Clyde College (Removal and Appointment of Board Members) (Scotland) Order 2015 (SSI 2015/348) **Education and Culture**

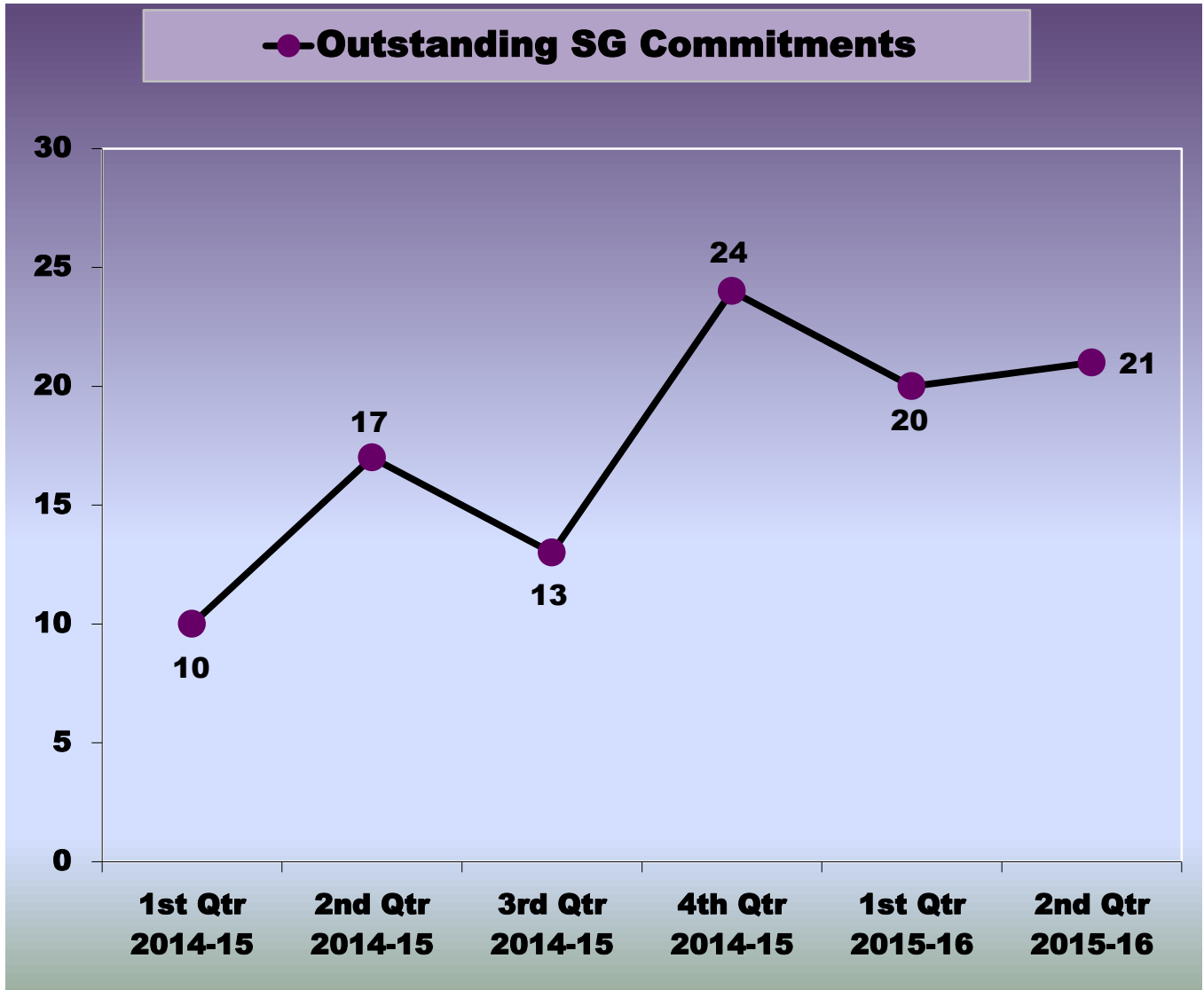
ANNEX C - OUTSTANDING SCOTTISH GOVERNMENT COMMITMENTS

- 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**
- 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**

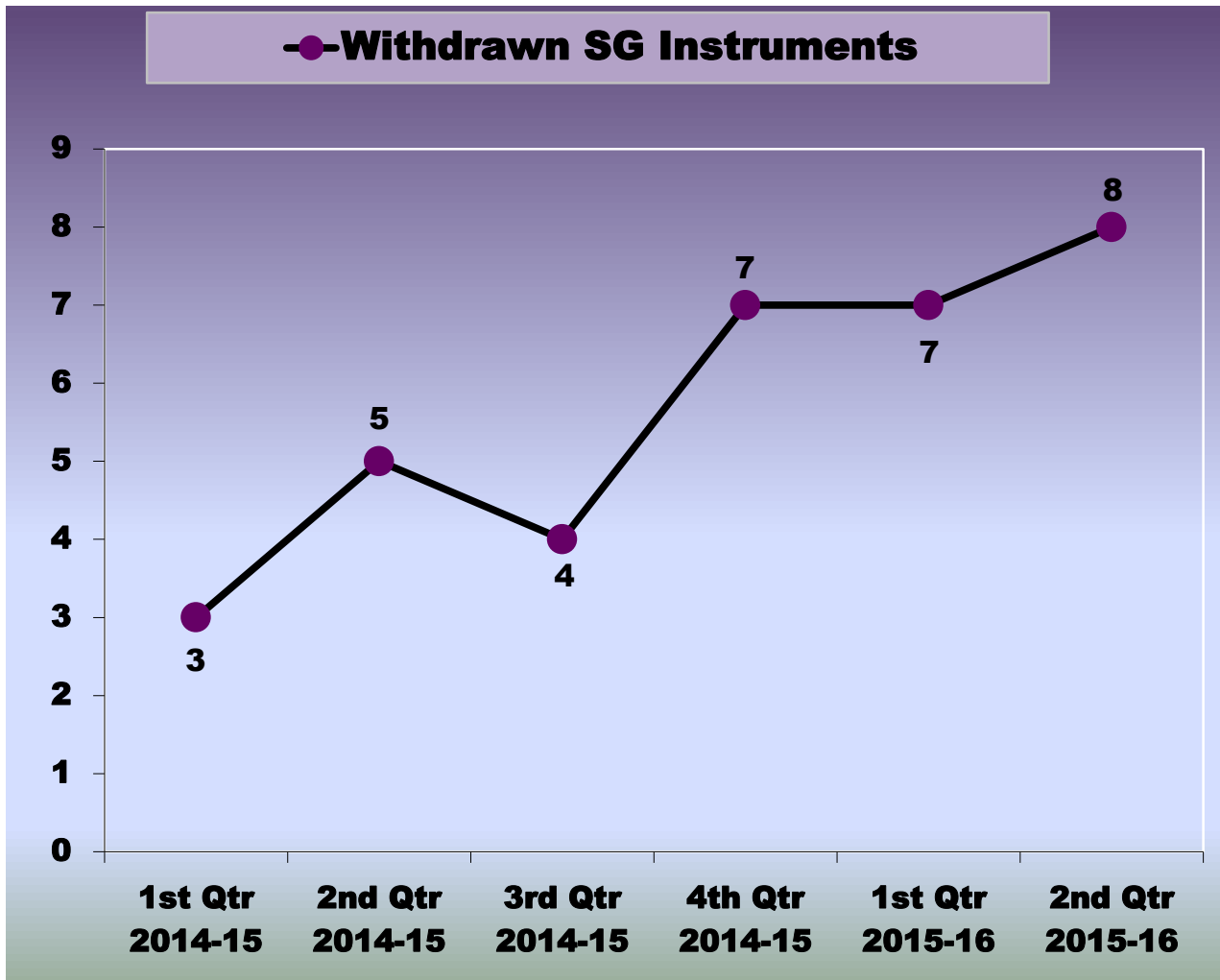
- Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015 (SSI 2015/105) **to be corrected when the principal scheme is next amended**
- Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141) **to be corrected after 1 April 2015 but having retrospective effect 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**
- Tuberculosis in Specified Animals (Scotland) Order 2015 (SSI 2015/327) **to be corrected at the next available legislative opportunity**
- Private and Public Water Supplies (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/346) **to be corrected at the next suitable opportunity**

ANNEX D - GRAPHICS AND CHARTS

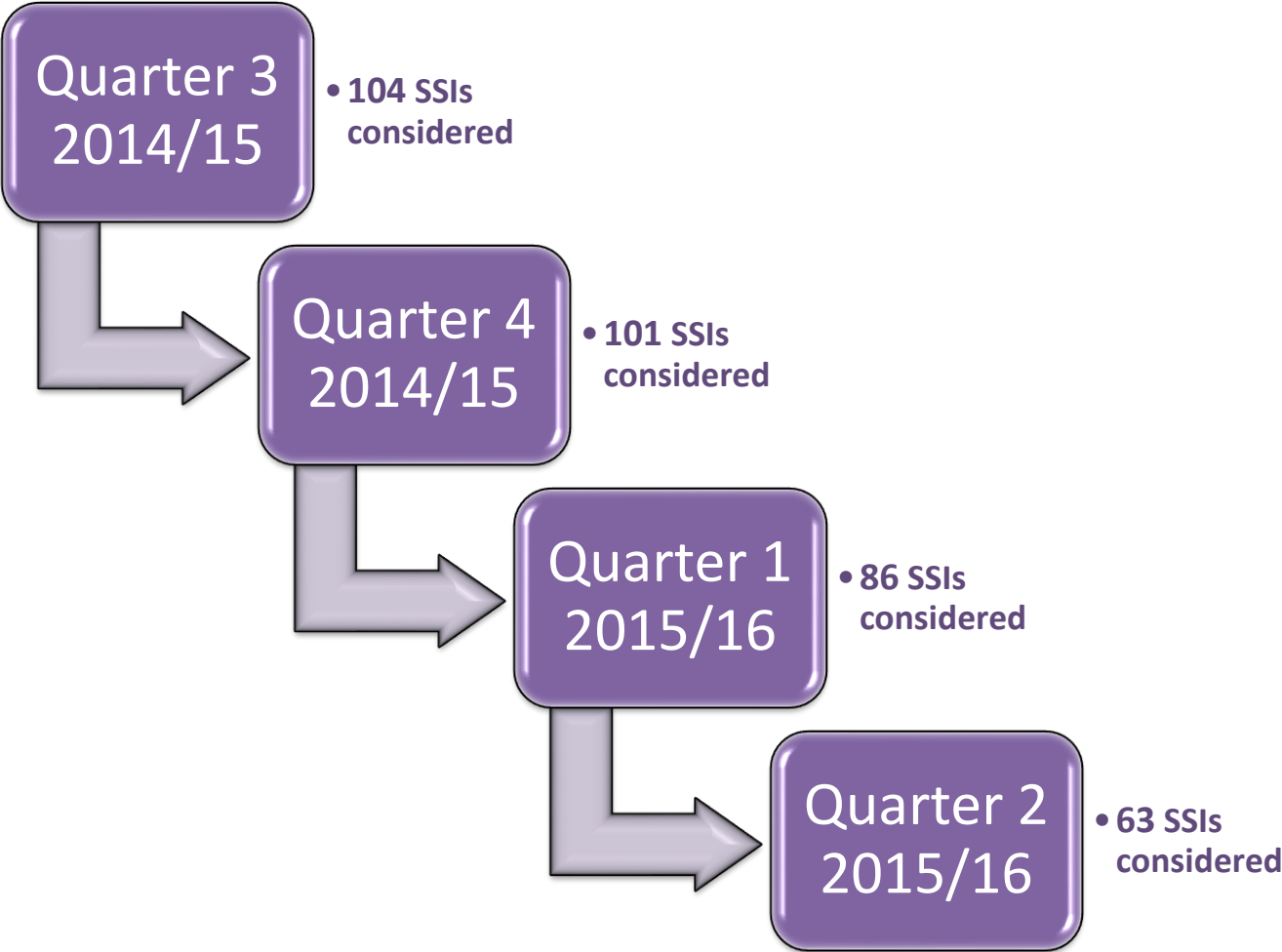
Graph below illustrating the number of Scottish Government commitments outstanding at the end of each of the last 6 quarterly periods reported on



Graph below illustrating the number of Scottish Government SSIs that were withdrawn during each of the last 6 quarterly periods reported on



Graphic below illustrating the decreasing number of SSIs considered by the Committee during each of the last 4 quarterly reporting periods



League table showing the subject committees that have had referred to them the largest number of SSIs during this parliamentary year to date



1st
Justice Committee



2nd
RACCE Committee



3rd
Education and Culture
Committee



4th
Health and Sport Committee