

DELEGATED POWERS AND LAW REFORM COMMITTEE

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

QUARTER 4 - INTRODUCTION

1. The purpose of this report is to provide a record of the Committee's scrutiny of Scottish statutory instruments (SSIs) during the fourth 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 23 February 2016 to 23 March 2016. The report also touches on the general work of the Committee during that period.

Overview and analysis

3. During the period 23 February 2016 to 23 March 2016, a total of 59 instruments were considered by the Committee. Of these, 54 instruments were laid by the Scottish Government and 5 instruments were laid by the Lord President's Private Office.

4. The 54 SSIs laid by the Scottish Government can be broken down as follows—

- 2 affirmative instruments;
- 46 negative instruments;
- 6 laid only instruments

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

- 2 negative instruments;
- 3 laid only instruments

Table 1: Instruments considered by the DPLR Committee during the period 23 February 2016 to 23 March 2016 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	54	8	<15%	5	3	60%

6. Table 1 shows that of the 54 Scottish Government instruments considered by the Committee, 8 were drawn to the Parliament's attention, which is just under 15% of instruments considered.

7. 111 instruments laid by the Scottish Government were considered by the Committee during the third quarter of the parliamentary year 2015-16. The Committee drew the Parliament's attention to 13 of these instruments, which was just under 12% of those considered.

8. Although there were far fewer instruments considered by the Committee this quarter compared to last, the results for this period point to an increase in the percentage of instruments reported on.

9. 4 instruments laid by the LPPO were considered by the Committee during the third quarter of the parliamentary year 2015-16 with the Parliament's attention drawn to just 1 of them. This quarter, 3 of the 5 LPPO instruments considered by the Committee were drawn to the attention of the Parliament.

10. Again, where the LPPO is concerned the results for this period point to an increase in the percentage of instruments reported on.

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

Withdrawal of instruments

12. No SSIs were withdrawn and re-laid during this period:

Reporting grounds

13. 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

14. 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.

15. 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.

16. 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 (54)	No	% of all SSIs laid (5)
(i) drafting appears to be defective	1	<2%	0	N/A
(i) <u>and</u> the General ground	1	<2%	0	N/A
General ground (e.g. failures to follow proper drafting practice or legislative process)	6	11%	3	60%

17. In terms of the significant grounds, none of the instruments laid by the Scottish Government during the first two quarters of the parliamentary year 2015-16 were reported under any of these grounds.

18. Like last quarter though, this reporting period saw 2 Scottish Government instruments reported under the significant grounds. Both instruments were drawn to the attention of the Parliament for being defectively drafted - significant ground **(i)**.

19. None of the instruments laid by the LPPO this quarter were reported on under any of the aforementioned significant grounds. The 3 instruments that were drawn to the attention of Parliament were done so under the general reporting ground.

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
Local Government and Regeneration	17	1	6%			
Justice	11	2	18%			
RACCE	10	1	10%	5	3	60%
Health and Sport	7	1	14%			
Infrastructure and Capital Investment	3	2	66%			
Equal Opportunities	2	0	N/A			
Finance	2	0	N/A			
Education and Culture	1	1	100%			
Welfare Reform	1	0	N/A			
TOTAL	54	8	15%	5	3	60%

Summary

21. During this reporting period, the Local Government and Regeneration Committee had referred to them the largest number of Scottish Government instruments, looking at seventeen in total. Only one of these was drawn to the attention of the Parliament by the Committee. The Justice Committee were referred sixteen instruments in total with the Parliament's attention drawn to five of them - three of which were laid by the LPPO.

Rural Affairs, Climate Change and Environment Committee (RACCE)

22. One instrument referred to the RACCE Committee was drawn to the Parliament's attention for being defectively drafted (reporting ground (i)). The Commitment given by the Scottish Government to correct the errors identified in the instrument remains outstanding.

Infrastructure and Capital Investment Committee

23. Two of the three instruments referred to the Infrastructure and Capital Investment Committee were drawn to the attention of the Parliament. A commitment was given by the Scottish Government to correct the error(s) identified in the instrument that was reported for being defectively drafted and that commitment was met. The commitment given to correct the instrument that was reported under the general ground remains outstanding.

Education and Culture Committee

24. One instrument referred to the Education and Culture Committee was drawn to the Parliament's attention under the general reporting ground. The Commitment given by the Scottish Government to correct the errors identified in the instrument remains outstanding.

Local Government and Regeneration Committee

25. One instrument referred to the Local Government and Regeneration Committee was drawn to the Parliament's attention under the general reporting ground. The Commitment given by the Scottish Government to correct the errors identified in the instrument remains outstanding.

Justice Committee

26. Two of the eleven instruments laid by the Scottish Government and referred to the Justice Committee this quarter were drawn to the attention of Parliament under the general reporting ground. The Commitments given by the Scottish Government to correct the errors identified in these instruments remain outstanding. The commitment given by the LPPO to correct the errors in an Act of Sederunt which was also reported under the general ground has likewise yet to be met.

Health and Sport Committee

27. One instrument referred to the Health and Sport Committee was drawn to the Parliament's attention under the general reporting ground. The Commitment given by the Scottish Government to correct the errors identified in the instrument remains outstanding.

Other Committees

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

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

SCOTTISH STATUTORY INSTRUMENTS - GENERAL

Commitments

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

- Concession Contracts (Scotland) Amendment Regulations 2016 (SSI 2016/125) **corrected errors identified in the Concession Contracts (Scotland) Regulations 2016 (SSI 2016/65)**

31. The following instruments were laid to meet commitments given by the Scottish Government to correct errors identified by the Committee in previous reporting periods:

- National Health Service Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/97) **corrected errors identified in the National Health Service Pension Scheme (Scotland) Regulations 2015 (SSI 2015/94) and the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 (SSI 2015/95)**
- National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/98) **corrected errors identified in the National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) Regulations 2014 (SSI 2014/154) and the National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/96)**
- Firefighters' Compensation and Pension Schemes (Scotland) Amendment Order 2016 (SSI 2016/77) **corrected errors identified in the Firefighters' Compensation Scheme and Pension Scheme (Amendment) (Scotland) Order 2015 (SSI 2015/143)**
- Firefighters' Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/78) **corrected errors identified in the Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141)**
- Firemen's Pension Scheme (Amendment) (Scotland) Order 2016 (SSI 2016/79) **corrected errors identified in the Firefighters' Pension Schemes (Amendment) (Scotland) Regulations 2015 (SSI 2015/141)**

32. There are 6 outstanding Scottish Government commitments in terms of the instruments that were laid this quarter:

- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) **to be corrected as soon as is reasonably practical**
- Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) **to be corrected at the earliest available opportunity**
- Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75) **to be corrected in a future amending instrument**
- Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82) **to be corrected at the next available opportunity**
- Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84) **to be corrected at the next convenient legislative opportunity**
- Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126) **to be corrected at the next available opportunity**

33. A full list of all outstanding Scottish Government commitments can be found at **ANNEX B**.

LPPO instruments

34. 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 (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/102) **to be corrected at the next available opportunity**

35. The following commitment, given during the previous reporting period, has also yet to be met:

- Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment) (Sheriff Appeal Court) 2015 (SSI 2015/419) **to be corrected in due course**

36. The LPPO also committed to correcting errors in the following two instruments by way of correction slip:

- Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100);
- Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101).

Minor Points

37. The Committee identified a total of 13 instruments on which minor points were raised (generally relating to typographical or referencing errors). 12 of these instruments were laid by the Scottish Government and 1 was laid by the LPPO.

OTHER BUSINESS

Introduction

38. 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

39. During the period 23 February 2016 to 23 March 2016, the Committee considered and reported on the following Bills after Stage 2:

- Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill;
- Lobbying (Scotland) Bill;
- Land and Buildings Transaction Tax (Amendment) (Scotland) Bill;
- Higher Education Governance (Scotland) Bill;
- Private Housing (Tenancies) (Scotland) Bill;
- Land Reform (Scotland) Bill;
- Burial and Cremation (Scotland) Bill;
- Abusive Behaviour and Sexual Harm (Scotland) Bill.

Bankruptcy (Scotland) Bill

40. Stage 2 proceedings took place on 23 February 2016 and the Bill was passed by Parliament after the Stage 3 debate on Tuesday 22 March 2016.

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

41. The Committee considered the following LCM:

- Scotland Bill (UK Parliament legislation).

Annual Report

42. Under rule 12.9 of Standing Orders, the Committee published its [annual report](#) for the parliamentary year 2015-16 on 17 March 2016.

Legacy Report

43. On 21 March 2016, the Committee published its [legacy report](#) which set out the Committee's reflections on its work during Session 4. The report also offered views on the remit and composition of its successor committee.

(i) **drafting appears to be defective**

- Concession Contracts (Scotland) Regulations 2016 (SSI 2016/65) ***Infrastructure and Capital Investment***
- Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) ***RACCE***

General reporting ground

- Utilities Contracts (Scotland) Regulations 2016 (SSI 2016/49) ***Infrastructure and Capital Investment***
- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) ***Justice***
- Concession Contracts (Scotland) Regulations 2016 (SSI 2016/65) ***Infrastructure and Capital Investment***
- Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75) ***Justice***
- Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82) ***Education and Culture***
- Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84) ***Health and Sport***
- Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126) ***Local Government and Regeneration***

LPPO instruments

- Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100) ***Justice***
- Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101) ***Justice***
- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/102) ***Justice***

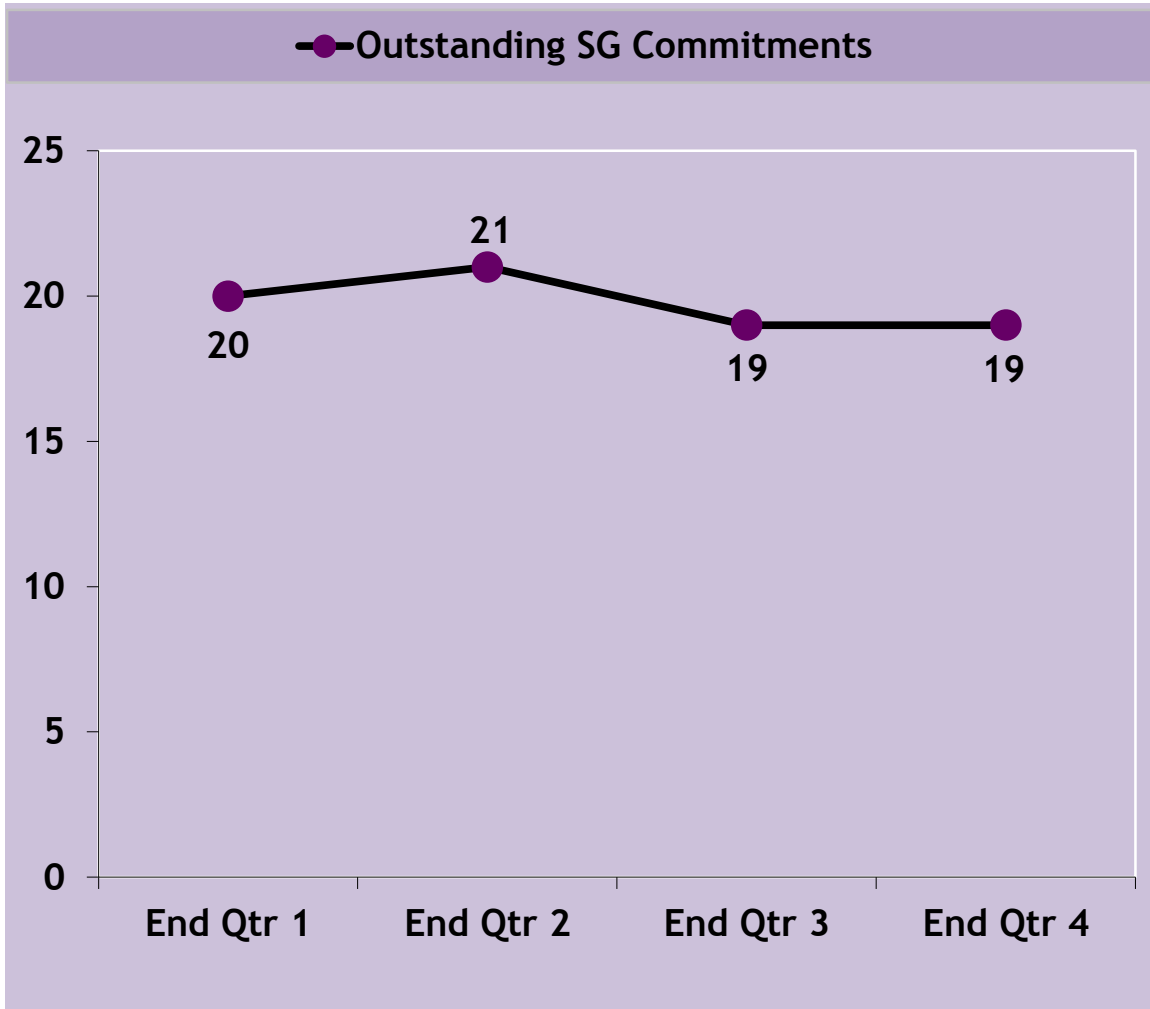
ANNEX B - OUTSTANDING SCOTTISH GOVERNMENT COMMITMENTS

- 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**
- Sulphur Content of Liquid Fuels (Scotland) Regulations 2014 (SSI 2014/258) **to be amended at the next 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**
- 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**
- Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015 (SSI 2015/105) **to be corrected when the principal scheme is next amended**
- 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**
- Seed Potatoes (Scotland) Regulations 2015 (SSI 2015/395) **to be corrected at the next available opportunity**
- National Health Service (General Dental Services) (Scotland) Amendment Regulations 2016 (SSI 2016/53) **to be corrected at the first opportunity**

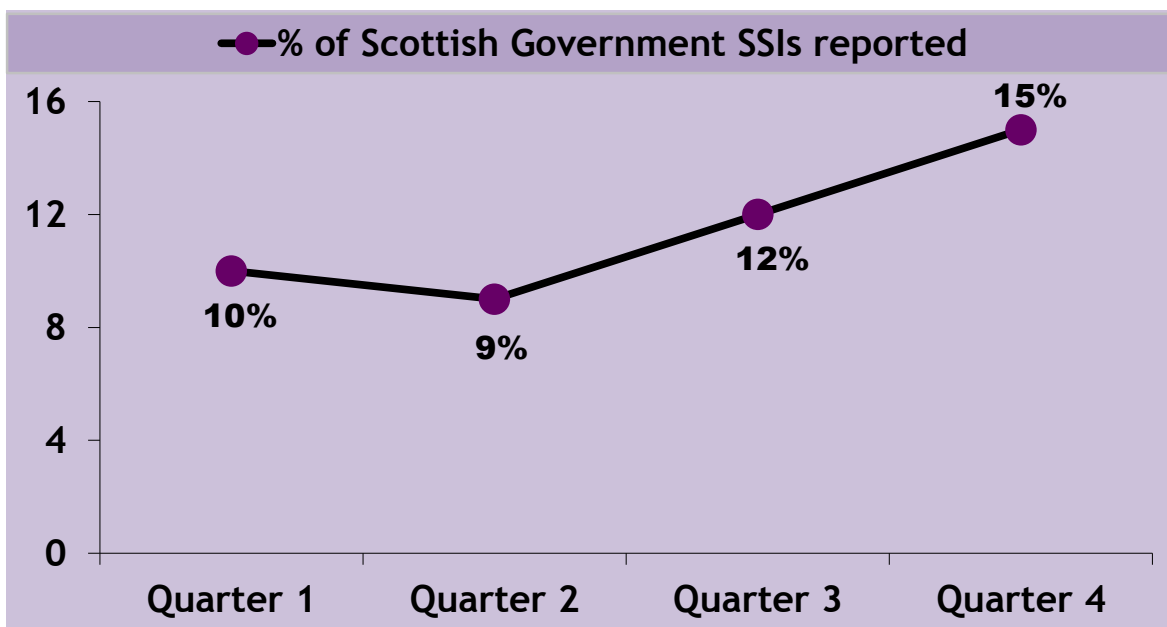
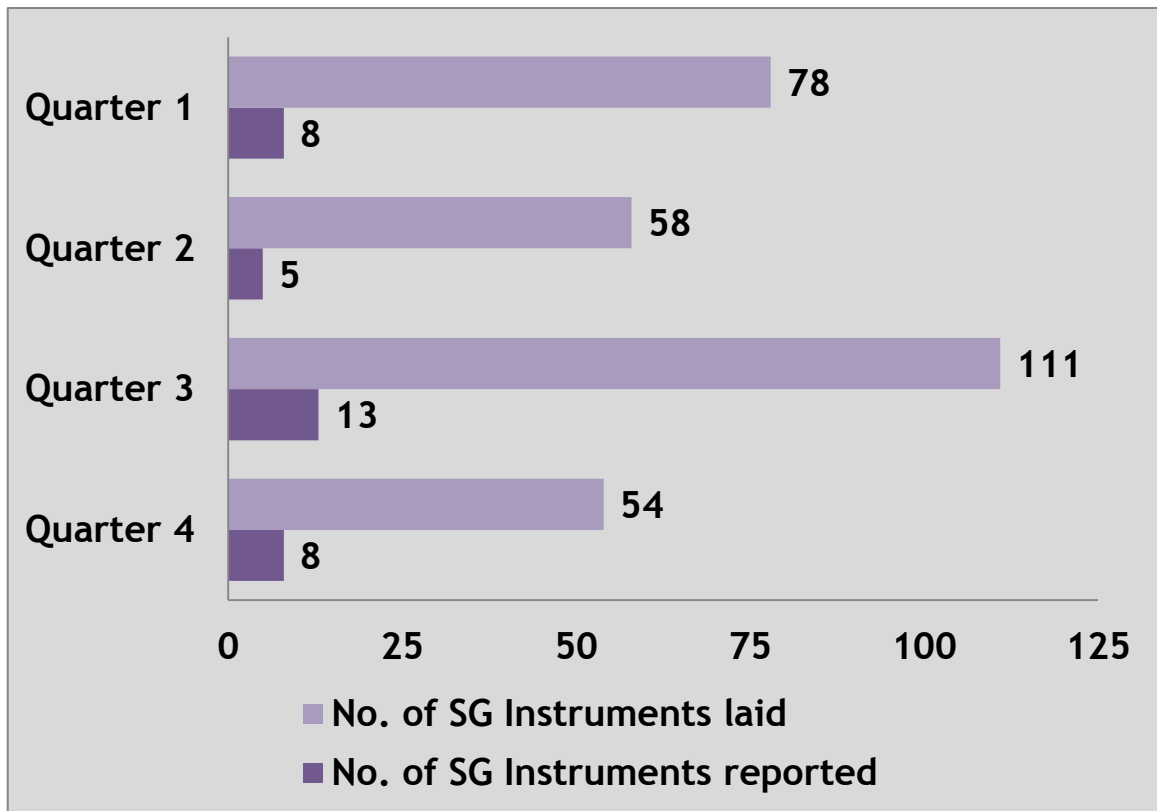
- Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) ***to be corrected as soon as is reasonably practical***
- Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) ***to be corrected at the earliest available opportunity***
- Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75) ***to be corrected in a future amending instrument***
- Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82) ***to be corrected at the next available opportunity***
- Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84) ***to be corrected at the next convenient legislative opportunity***
- Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126) ***to be corrected at the next available opportunity***

ANNEX C - GRAPHICS AND CHARTS

Line graph showing the number of outstanding Scottish Government commitments as at the end of each quarter of the parliamentary year 2015-16



Graphs showing the number and percentage of Scottish Government instruments laid that were drawn to the Parliament's attention during each quarter of the parliamentary year 2015-16



Graphs showing the number and percentage of LPPO instruments laid that were drawn to the Parliament's attention during each quarter of the parliamentary year 2015-16

