

DUAL/MULTIPLE MANDATES

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Dual/Multiple Mandates

1.0 Introduction

This paper elucidates the operation of dual mandates in other legislatures and outlines the position taken in the Review of Public Administration.

It is generally not the practice that members of other devolved legislatures hold dual mandates, largely as a result of agreement amongst the parties themselves. An EU Directive prevents Members of the European Parliament from holding an elected position in a national parliament.

In the Republic of Ireland legislation was introduced in 2003 prohibiting Members of the Oireachtas (the Dail or the Senate) from holding elected positions at local government level. The paper provides some background to the introduction of this legislation and outlines the main arguments for and against the legislation.

2.0 National Assembly for Wales

The Third Welsh Assembly currently has 9 Assembly Members who are also sitting councillors (2 Labour; 3 Conservative; 1 Liberal Democrat; 3 Plaid Cymru). Seven of these members are newly elected to the Welsh Assembly. There are no Members who hold posts as Members of Parliament or Members of the European Parliament.

There is no bar on dual mandates in the National Assembly for Wales. Indeed, Section 21 of the *Government of Wales Act 2006*¹ makes provision for a reduction in salary where an Assembly Member is also a MP or a MEP.

There does not appear to be any convention between political parties about the dual mandate. Members who have held dual mandates have tended to do so on a transitional basis. For example, in the First Assembly 1999-2003, there were seven sitting MPs who were elected in 1999. One of these, Cynog Dafis, stood down as an MP in 2000, prompting a by-election. Alun Michael gave up his seat in the Assembly as a Regional List Member when he ceased to be First Minister in February 2000 and was replaced by his successor on the list. The others all stood down as MPs in 2001. Between May 2003 and May 2005 there were no AMs with dual mandates. In the 2005 General Election David Davies was elected MP for Monmouth (the seat for which he was the sitting AM). He stood down as an AM at the recent election.

Under Standing Order 4, Assembly Members' are required to register any post they hold as a local Councillor or MP in the Register of Members Interests.²

¹ Government of Wales Act 2006 <http://www.opsi.gov.uk/acts/acts2006/60032--b.htm#21>

² Register of Members' Interest, 2007 <http://www.assemblywales.org/memhome/mem-register.htm>

3.0 Scottish Parliament

In the current session of the Scottish Parliament there are five councillors who hold dual mandates. Four Councillors are from the Scottish National Party and one is from the Scottish Liberal Democrats. Of these, four have indicated that they will not be accepting payment for their work as councillors. The number of councillors holding dual mandates in the third session has increased from three in the second session. This is believed to be, in part, because of unexpected success of the Scottish National Party at the last parliamentary elections. Of the three councillors in session two, one subsequently resigned as a councillor, one was appointed as a MSP part way through the session and the third was successful in a by-election and subsequently resigned as a council leader.

There is a single MSP, who is also an MP, namely Alex Salmond and one Lord who is also a MSP in the current session of the Parliament. In the second session there were no MPs and two Lords, one of whom, a Labour peer, resigned in 2005.

In the first session it was the practice, following an agreement made amongst the parties themselves that those MPs who were elected to the new Scottish Parliament made a choice between Westminster and Edinburgh at the following Westminster election in 2001. Thirteen MSPs³ did not stand for the Westminster elections in 2001 (6 Labour, 2 Liberal Democrat, 5 Scottish National Party). One MP, Alex Samond, resigned as a MSP.

4.0 Republic of Ireland

The Local Government Act 2003 abolishes the dual mandate under which TDs and Senators could be members of local authorities, while also serving in the Oireachtas. The debate around the removal of the dual mandate developed from the 1990 Barrington Report. Subsequently the Commission on the Status of Women, the General Council of County Councils, the Chambers of Commerce of Ireland and the National Youth Council also came out in favour of the abolition. Further information on the background is presented in appendix A.

Fine Gael TD Michael Ring lost a High Court action against the legislation. He argued that to single out the Oireachtas was discriminatory and unfair. It was found by the Court that while an individual had a constitutional right to stand for election to the Dail, there was no similar protection for those wishing to stand for a local authority.

4.1 Government View

A range of people were already disqualified from election to, or membership of, a local authority in the Republic of Ireland prior to the introduction of this legislation. The legislation, it is argued therefore simply makes the same arrangements for Oireachtas Members. Disqualification already applied to Members who are Ministers, Ministers of State, the Ceann Comharile

³ This figure includes the late Donald Dewar and Sam Galbraith who resigned from both parliaments

(Speaker), Cathaoirleach (Chair) of the Seanad and MEPs. The same legislation applied to Oireachtas Members who were councillors in that they are disqualified from election as cathaoirleach (chair) or leas-cathaoirleach (deputy chair).

In the debate in the Seanad, during the second stage of the Local Government Bill, the Minister for the Environment and Local Government⁴ outlined several reasons to support the abolition of dual mandates.

- Demands on local government have increased over the past ten years. The range and complexity of local government functions have altered dramatically. The Minister stated that this involvement was vital to provide for a more co-ordinated approach to local development and proper democratic input to meeting the wide range of local community needs.
- At a national level the government also cited significant and parallel change. Members now have a much fuller role in the consideration of legislation and overview of Government policy generally.
- The Government view therefore was that there would be significant difficulty for any individual to properly and simultaneously fulfil both national and local roles.

“As elected representatives of the people, it is our duty to ensure they are efficiently served within all the tiers of our democratic system”.

- The legislation was introduced in the context of a major change agenda planned for local government. The Minister advised the Seanad that this change would ultimately see local government at the helm of local initiative and as the key focus in supporting economic and social development at local level.

Logistical reasons were also cited to support the ban. For example, in supporting the Government some TDs gave anecdotal evidence of difficulties in scheduling meetings because of a clash in timetables.

Improving the representation by women and young people was also considered to be a potential outcome of the removal of the dual mandate. In 2003 only 16% of county councillors were women. It was felt therefore that the legislation would lead to opportunities for new people, women and young people, to become involved in politics.

4.2 Opposing views

At the time the legislation was introduced nearly two thirds of TDs were also members of local authorities. There was, not surprisingly therefore, considerable opposition to the legislation.

⁴ Seanad Eireann – Volume 171 – 26 February, 2003 Local Government Bill 2003: Second Stage.

It was felt that no provision was made within the legislation for the way Members represent their constituents in respect of local matters. Some TDs saw the dual role as the perfect marriage of local and national representation. It was argued that the dual role provided a national platform for the most marginalized community groups.

The Government was also criticised for denying the electorate the democratic right to decide their local representation. The Constitution prohibits simultaneous membership of the Seanad and the Dail. It does not however address the issue of representation at local government and the Oireachtas. The ban on the dual mandate was therefore considered unconstitutional.

Subsidiarity⁵, the principle which states that matters ought to be handled by the smallest (or, the lowest) competent authority, was also raised as an issue. Concern was expressed that, if representatives cannot move between the Oireachtas and local authorities, then how would subsidiarity work? Government had previously made attempts to devolve more functions to local authorities, that were not always successful with some members of local authorities refusing to accept more responsibilities. The case of legislation on waste disposal was cited as an example when some local authority members would not take on the extra responsibilities associated with it.

The legislation was also criticised for its limited nature and failure to reform the local authority system or the way services are provided or delivered. In 2000 the government had attempted to introduce a more ambitious piece of legislation, including elected mayors but this failed, (see appendix B).

5.0 House of Commons

There are no statutory provisions preventing MPs from becoming Members of the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly. However, the Labour Party has a general policy of having no dual mandate MPs, although party rules are not quite as inflexible⁶.

There are eleven English based MPs who include membership of a local council in their register of interests. Of these MPs, 6 are Liberal Democrats, 3 are Labour and 2 Conservative.

6.0 Election of Representatives of the European Parliament

Since the European Parliamentary elections of June 2004 members of national parliaments (including the House of Lords), but not devolved legislatures, are no longer permitted to hold a dual mandate in the European Parliament⁷.

⁵ The Oxford English Dictionary defines subsidiarity as the idea that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level.

⁶ HC Debate 21 October 1999 c658; Labour Party, *Rule Book 2004*, January 2004, rule 5C.2

⁷ Council Decision 2002/772/EC amends the European Act 1976

Membership of the European Parliament is incompatible with membership of a national parliament, although the decision contains a temporary derogation for the United Kingdom (Members of the House of Commons and House of Lords who are also MEPs during the five-year term preceding election to the European Parliament in 2004 may have a dual mandate until the 2009 European Parliament elections). Following the election of 2004, there are no dual mandate MPs in the European Parliament (although two peers, Baronesses Ludford and Nicholson, still sit in the European Parliament).

At the 2005 General Election, Chris Huhne and Theresa Villiers, both MEPs at the time were elected to the House of Commons. They resigned from the European Parliament in May 2005.

The Decision makes changes to the list of other offices which are incompatible with membership of the European Parliament. For example, a MEP cannot be a Member of the Board of Directors of the European Central Bank.

7.0 Review of Public Administration

The Review of Public Administration further consultation paper, March 2005, specifically addresses the issue of the dual mandate⁸. The consultation states:

'The two-tier model provides a much clearer separation between policy-making, strategic planning, resource allocation and the setting and monitoring of standards at the regional tier, and the planning, co-ordination and delivering local services by councils. This separation is desirable in that it makes a clear distinction between the services that are regional and those that are local. It also clarifies who is accountable for which services. This clarity can, however, become confused when the same people are taking decisions at both regional and local level.'

In a speech on the Review of Public Administration in November 2005 the Secretary of State expressed the view that:

"At present 69 of the 108 MLAs are sitting Councillors. In the future, the Assembly will have a role in overseeing the performance and financing of local government. I believe in these circumstances, there is an unacceptable conflict of interest if the same people are sitting in both the Assembly and Councils.

Jeff Rooker has discussed this with the major political parties and they are agreed that, following the resumption of Devolution the issue of the dual mandate should be quickly addressed in legislation".

⁸ Review of Public Administration, Further Consultation, March 2005; paragraphs 4.55 to 4.57, page 49.

7.1 Statutory Governance

Discussions between the RPA Team and political parties suggests a firm proposal 'to implement statutory governance arrangements as part of the restructuring of local government',⁹ which may also have an impact on the dual mandate debate.

Queen's University Institute of Governance was appointed to assist the RPA with this aspect of its work by examining and reporting on checks, balances and safeguards for local government.

On the basis of extensive research¹⁰ the Institute of Governance recommended that:

'... legislation for new local government provides for the removal of dual mandates. At a minimum Northern Ireland could follow the practice in some other jurisdictions where those with a dual mandate are excluded from key positions such as Ministers, Mayor, Council Executive, Assembly or Council committee chairs and vice-chairs.¹¹ Well remunerated councillor positions with good terms and conditions and the possibility of holding a senior political office locally may encourage politicians to serve in local government over the Assembly; this would reduce the incentive for holding a dual mandate'.

Further, the Northern Ireland Assembly would have an accountability role under new statutory governance arrangements that may raise questions of conflict of interest with respect to holding a dual mandate:

'The requirement that Councils that account annually to the Local Government Auditor could be reinforced by requiring them to make an annual report¹² in person, through their Mayor and Chief Executive, in public hearing format to the Northern Ireland Public Accounts Committee, or another key committee in the Assembly. This would have the added value of increasing transparency as it is likely to attract media coverage; it would be seen to be a very direct and public form of accountability'.

⁹ RPA Further Consultation in Northern Ireland, March 2005, p 47

¹⁰ The Review of Public Administration In Northern Ireland, *Checks, Balances and Safeguards*, Bronagh Hinds and John Loughlin, November 2005

¹¹ Professor J Loughlin, QUB Institute of Governance Roundtable on Checks, Balances and Safeguards, 12 September 2005.

¹² Councils could report on their leadership for a shared future including equality and good relations, cross-community partnership, the community planning duty, key policies, programmes and their outcomes as well as accountability for planning and finance and monitoring of the composition of committees and forums. Reports could also be required to cover governance arrangements and performance, including how decisions have been taken, and their arrangements and success in engaging citizens in Council affairs.

7.2 Subsidiarity and multi-layer governance

The discussion on the introduction of legislation in the Republic of Ireland, above, raises the issue of subsidiarity and the possibility of tensions arising between local and devolved government. The issue of subsidiarity¹³ and multi-layer governance¹⁴ have been addressed in papers prepared for the RPA. The paper on multi-layer governance refers to creative tension between the various levels of government and introduces the possibility of a body similar to the Welsh Partnership Council¹⁵ that could resolve tensions and help advance common interests. An extract from the paper is provided in appendix C.

¹³ <http://www.archive.rpani.gov.uk/subsidiarity/index.htm>

¹⁴ <http://www.archive.rpani.gov.uk/multilevel/ni.htm>

¹⁵ The Partnership Council is a statutory body where the National Assembly and Welsh local government jointly consider matters of concern, sharing objectives and complementary programmes of action.

APPENDIX A

Background to abolition in the Republic of Ireland

The drivers for change underpinning the abolition of the dual mandate are of long-standing origin. The Minister behind the proposal to end the dual mandate was Noel Dempsey, who was Minister for the Environment, Heritage and Local Government 1997-2002 and Minister for Education & Science 2002-2004. In introducing the legislation in Dail Eireann, the then Minister for the Environment and Local Government Mr. Cullen pointed to what he called the 'broader canvas' of the developing role of both the national parliament and local government and remarked that: "The Local Government Bill 2003 should be viewed as another step in the process of local government renewal which has been moving progressively forward over recent years."¹⁶ He also drew attention to the developing role of the national parliament.

Focusing on the question of local government reform only, it should be noted that the issue has a long history, dating back to at least 1971 and the publication of a government white paper on Local Government Reorganisation.¹⁷ Over the succeeding decades there were a variety of white papers, reports and government and political party policy documents. Two documents in particular might be noted:

- The Barrington Report (1990).¹⁸
- The 1996 White Paper: *Better Local Government*.¹⁹

A critical overview of recent reforms is contained in Forde (2004).²⁰ She points to the four aims of the reform process which was kick-started by *Better Local Government*:

- Enhancement of local democracy
- Serving the customer better
- Developing efficiency
- Providing proper resources for local government

The ending of the dual mandate is thus part of a wider and long running process of reform of local government generally, which has included for example, a referendum to provide constitutional recognition of the role of local government, and to provide that local elections are held at least every five years.²¹

¹⁶ Dail Debates, 03 April 2003, vol. 564, col. 646: <http://www.irlgov.ie/debates-03/3Apr/Sect5.htm>

¹⁷ Quinlivan, Aodh (2000) 'Local Government Bill, 2000 – Implications for Municipal Authorities. Another False pregnancy?' in *Administration*, vol. 48, no. 3 (Autumn) 10-20

¹⁸ Barrington T. (chairman) (1991) *Report of the Expert Advisory Committee on Local Government Reorganisation and Reform* Dublin: The Stationery Office

¹⁹ Department of the Environment (1996) *Better Local Government: A Programme for Change* Dublin: The Stationery Office

²⁰ Forde, C (2004) 'Local Government Reform in Ireland 1996-2004: A Critical Analysis' *Administration*, vol. 52, no. 3 (Autumn) 57-72

²¹ <http://www.taoiseach.gov.ie/index.asp?docID=262>

The Barrington Report (see above) had advocated ending simultaneous membership of local government and the Oireachtas²², but the implementation of this recommendation was gradual:

- The Local Government Act 1991 took the first step by disqualifying Ministers and Ministers of State from local authority membership.²³
- The Local Government Act 1994 disqualified the Ceann Comhairle, the Cathaoirleach of the Seanad and MEPs from local authority membership.²⁴

The 2001 Local Government Bill had proposed completing the process, but opposition from benchback members of Fianna Fail and the independent TDs who supported the government doomed the proposals. Thus the abolition of the dual mandate in the 2003 Act was the culmination of some 12 years of legislative activity in relation to the issue.

There is a very large academic literature on the topic of local government reform, and on the associated issue of Oireachtas reform. In terms of local government, the wider context (behind the various white papers and reform proposals) has perhaps been the perception held by many observers that: 'In comparison with other EU states, Ireland has a weak system of local government due to strict central control, a lack of financial independence and a narrow functional range'.²⁵ Likewise, many academic observers have suggested over many decades that wide-ranging reforms were needed to enhance the ability of members of the Oireachtas to better fulfil their legislative and oversight functions. The centrality of localism and constituency politics in Irish political life has been a constant thread in the debate on Oireachtas reform, and the debate on the dual mandate should be located in this context also.²⁶

²² http://www.irlgov.ie/debates-03/3_Apr/Sect5.htm

²³ <http://www.irishstatutebook.ie/1991/en/act/pub/0011/index.html>

²⁴ <http://www.irishstatutebook.ie/1994/en/act/pub/0008/index.html>

²⁵ Collins, N and Quinlavin, A (2005) in Coakley and Gallagher (2005): *Politics in the Republic of Ireland*, (eds.), 4Lh ed. (2005) Routledge, pp. 225.6

²⁶ See Gallagher, M. (2005) 'Parliament' in Coakley and Gallagher (2005) *op cit* for a wide-ranging discussion of parliamentary reform, and a useful bibliography. A critical overview of the literature on Oireachtas reform is provided in O'Halloran, A (2005) 'Transformations in Contemporary Ireland's Society, Economy and Polity: An era of Post-Parliamentary Governance?' *Administration*, vol. 53, no. 1. A recent account can also be found at: <http://pa.oxfordjournals.org/cgi/content/abstract/59/3/437>

APPENDIX B

The Irish Times February 28, 2003²⁷

Dual Mandate Madness

The Local Government Bill, now before the Seanad, is a poor thing, a shadow of what was originally intended. Eight years ago, Fianna Fail pledged to introduce comprehensive reform of local government and to make it more responsive and accountable to the community at large.

In May 2000, it finally published a Bill containing proposals for directly-elected mayors and council cathaoirleach and the ending of the dual mandate, requiring TDs and senators to resign their local authority seats. A year later, following threats from Independent TDs and Fianna Fail backbenchers, the legislation was withdrawn. Now it is back, but still under attack from worried TDs and senators.

The Bill no longer provides for the direct election of mayors and council chairmen, because of party political fears that charismatic "outsiders" might benefit from the change. And its reintroduction owes a great deal to the determination of single-mandate Fianna Fail councillors to get rid of their double-jobbing Oireachtas colleagues.

In the intervening years, the power of unelected city and county managers has been enhanced by the Coalition Government in a number of contentious areas, including waste-disposal and the imposition of charges. Such policy U-turns have meant little to the TDs and senators who oppose the legislation. Their concern has been to retain their council seats so that their local authority activities would continue to generate votes in national elections. Failing that, they wish to nominate their successors - normally a wife, son or daughter - to councils as protection against political rivals. And, finally, they demand that local authority managers and officials should be obliged to keep them informed on current business and to answer their queries in the event of the dual mandate being abolished.

The backbench revolt has not been confined to Fianna Fail. Mr Michael Ring has openly rejected Fine Gael party policy and is threatening to lead a Supreme Court challenge to the legislation, if it is passed. There are also opponents within Labour.

Under pressure, the Minister for the Environment and Local Government, Mr Cullen, has agreed to introduce regulations that would grant Oireachtas members access to information on local authority business. But the question of nominating a successor will be a matter between sitting councillors and their parties.

The dual mandate should be ended. But it must mark the beginning of broad political reform. Because council, health board and other local authority

²⁷ Editorial comment, page 19

meetings are on Mondays and Fridays, the Dail and Seanad do not sit on those days. Passage of this Bill should usher in a formal, five-day week for Oireachtas members. And the Government must show greater regard for parliament by making important announcements there and by having shorter holiday periods.

APPENDIX C

Briefing paper - Multi-level Governance

Dr Paul Carmichael, School of Policy Studies, University of Ulster

A case for local government and a greater role for local authorities can be made. As the only democratically elected bodies to have operated continuously throughout Direct Rule and indeed since before the Troubles, local authorities arguably remain the essential building blocks of any reformed system of sub-regional governance in Northern Ireland. Even though denuded of large spending functions, local authorities are still multi-purpose while retaining their crucial representative role, witness the relatively high turnouts for local elections. Inevitably, therefore, there is a direct relationship with the Stormont level - indeed, many MLAs are former or serving councillors. Local authorities share with the Assembly an elective mandate and it seems desirable that both institutions should strive to work in partnership rather than as rivals. While a degree of creative tension between the various levels of government is both inevitable, and even desirable, ensuring reasonably harmonious working relations would go far towards building effective 'joined up' solutions to pressing policy matters that in turn translates into building public confidence in the system of government. This might involve creation of a body similar to the Welsh Partnership Council that could resolve tensions and help advance common interests.