Briefing for the Public Petitions Committee

**Petition Number:** PE1670

**Main Petitioner:** James Cassidy

**Subject:** Reform the Scottish electoral system to make it democratic and accountable

Calls on the Parliament to urge the Scottish Government to review the current Scottish electoral system so that, when the relevant powers under the Scotland Act 2016 are devolved, candidates standing for a constituency seat are not also able to stand on the regional list.

**Background**

**Scotland Act 1998**

There are no statutory restrictions on candidates standing for both constituency seats and regional seats in Scottish Parliament elections.

Section 5 of the Scotland Act 1998 relates to candidates for Scottish Parliament general elections. It states that:

1. At a general election, the candidates may stand for return as constituency members or regional members.

It also says, in subsection 7, that the regional list must not include a person:

1. who is included in any other list submitted under subsection (4) for the region or any list submitted under that subsection for another region
2. who is an individual candidate to be a regional member for the region or another region
3. who is a candidate to be a constituency member for a constituency not included in the region, or
4. who is a candidate to be a constituency member for a constituency included in the region but is not a candidate of that party.

When the Scotland Bill was being scrutinised there does not appear to have been any discussion on restricting dual candidacy. However, during its report
stage in the House of Commons (12 May 1998 columns 226-230) the Liberal Democrats did propose an amendment on the kind of list which could be used by parties for the regional votes:

“Mr. Gorrie: We have tabled a number of amendments, covering two particular points. First, we propose to make the closed-list system an open-list system. Under the Bill, after putting an "X" for their first-past-the-post constituency Member, the voters would put an "X" against the name of the party they support.

We propose that they should put the name of a candidate of the party that they support on the list. Candidates on that list would be elected in order of the number of votes they received from the electorate. The electorate would choose who got in from the party's list, rather than the party managers. We feel that that would be much more democratic, as a closed list gives too much appearance of manipulation by the party and leads to the sort of thing that the hon. Member for Linlithgow (Mr. Dalyell) mentioned.”

Arbuthnott Commission

In July 2004, the Commission on Boundary Differences and Voting Systems was set up by the Secretary of State for Scotland, Alistair Darling, under the chairmanship of Professor Sir John Arbuthnott.


Although in 2006 the issue of banning dual candidates was progressing for the National Assembly for Wales, see below, the Arbuthnott Commission found that in Scotland:

“There is no survey evidence to suggest that dual candidacy is an issue for voters, or a disincentive to their participation in the political process. Few of our consultation responses raised dual candidacy as an issue, nor was it raised spontaneously in our focus groups.

[…] Barring dual candidacy could also create tensions between constituency and regional candidates within the same party, since the chances of a regional candidate being elected would be enhanced when candidates from his or her party perform poorly in the constituency election. It might therefore be in the interests of a regional candidate of any party to see colleagues lose constituency elections.

Dual candidacy is a common and accepted feature of mixed member proportional systems across the world – indeed, in some cases candidates are expressly required to stand in both contests. We suggest that dual candidacy only seems problematic to some people
here because of the legacy of constituency representation within British political culture and the hegemony which this has secured for some parties. Candidates coming in second or third place who are then elected through the regional list are only “losers” in the context of a first past the post, “winner takes all”, electoral system. This logic does not sit well within a proportional system and introducing it devalues and undermines the concept of proportionality. The criticism, and the pejorative terms in which it is sometimes put, does little to enhance the legitimacy of regional MSPs.

The Commission believes that preventing dual candidacy would be undemocratic and agrees that it would place “an unnecessary restriction on the democratic rights of potential candidates, parties and local electors to have as unrestricted a choice as possible in an election.”

The Commission has put the interests of the constituent at the centre of our concerns and we would not favour any action which might have a negative impact on these. While we acknowledge that there might be an issue regarding the accountability and legitimacy of regional members elected via closed party lists, we do not believe that barring dual candidacy would be an appropriate or democratic means of addressing it. Open lists present a better way forward for dealing with this concern.”

So, although the banning of dual candidates was introduced in Wales, it did not happen in Scotland.

**National Assembly for Wales**

In the first two elections to the National Assembly for Wales there was no restriction on candidates standing for both a constituency and regional seat.

However this changed with the Government of Wales Act 2006, Section 7 of which included a restriction on standing as both a constituency and a regional candidate in an Assembly election. This restriction affected the 2007 and 2011 elections to the National Assembly.

This restriction was removed with the passing of the Wales Act 2014. In its report on its scrutiny of the draft Wales Bill the Welsh Affairs Committee noted that:

“Several witnesses, such as the Electoral Commission and Professors Wyn Jones and Scully, supported the removal of the ban. Professor Scully argued that banning dual candidacy "represents a fundamental misunderstanding of the AMS [Additional Member System] electoral system". He also argued that the ban might inhibit the quality of representatives returned to the National Assembly for Wales. The Electoral Reform Society Wales said that independent evidence "overwhelmingly supports the position that a ban on dual candidacy is
anomalous”. It was concerned, however, that the political debate on this issue may appear partisan to voters: “the danger, in terms of public perception, is that parties that support the ban could arguably benefit from it; whilst parties that oppose the ban would benefit the greatest from its reversal”. The Electoral Commission said its views had not changed on this issue since its opposition to the initial proposals to prohibit dual candidacy as part of the GOWA 2006. The Commission also pointed out that there was no similar prohibition in Scottish Parliament elections."

However, the Welsh Government did not support the lifting of the restriction. The First Minister for Wales told the Committee:

“We do not support the removal of the ban on dual candidacy. We take the view that the public did not understand the system where somebody could stand in a constituency and then reappear elected from a list. That situation has not changed.”

The 2014 Act also introduced an amendment to say that a person could not stand as a candidate in a constituency outside of the region in which they are standing, which echoes the restriction in the Scotland Act 1998.

Scottish Government Action

Following the devolution of powers over Scottish Parliament elections the Scottish Government plans to consult on electoral legislation later in 2017.

Francesca McGrath
Senior Researcher
7 August 2017

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