

Upgrade Holyrood

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Ending dual mandates in Scotland

Improving Scotland's democracy



Richard Wood
Upgrade Holyrood

Executive Summary

The term “dual mandates” refers to the situation where one individual simultaneously holds two (usually elected) political roles.

Since the advent of devolution in 1999 (and before that with local authority representatives), dual mandates have been a consequence of Scotland’s multi-layered government. A dual mandate holder in Scotland is anyone who simultaneously holds mandates for the Scottish Parliament, the House of Commons, the House of Lords or local councils.

While the number of dual mandate holders has been limited since the 2016 Scottish Parliament election, the commitment by Scottish Conservative leader Douglas Ross to hold a dual MSP-MP mandate if elected at the 2021 election puts the issue into the spotlight. Similarly, the intentions of Alba MPs Kenny MacAskill and Neale Hanvey to do the same have further brought the issue into mainstream political discourse.

Many countries and pan-national organisations around the world have in recent years have addressed dual mandates with restrictions in various reforms.

Restrictions in Wales and Northern Ireland make Scotland the only devolved nation where MPs can also hold a second mandate in a devolved administration. The European Parliament banned dual mandates in 2002 and even France, which has a widespread culture of dual mandates, has introduced recent restrictions to address the issue.

The central problem with dual mandates is one of two connected parts. Firstly, an individual elected in one role to one legislative body with a specific set of responsibilities should give all their time and energy to that position. To do otherwise is unfair on constituents and may create conflicts of interest, and even opportunities for

corruption. Secondly, there are related practical considerations. In the case of MSPs, MPs and often Lords, these are full-time (not to mention well-paid) positions. Constituents deserve full-time representatives. It is impossible to expect an MSP-MP to commit the same amount of time and energy to each role that they would do for just one of the positions. Not to mention the challenges of being in Holyrood, Westminster, and one's constituency. Dual mandates present an insurmountable logistical challenge.

To ensure fair and efficient representation, dual mandates should be restricted in Scotland. Scotland could follow Wales and Northern Ireland (by banning dual mandates with some practical exceptions) or else introduce a ban on candidacy for existing representatives (like in Canada). A simple ban on representatives taking their seats in a different legislative body while holding another mandate (like in the European Parliament) offers another approach.

A model based on the approach taken in Northern Ireland would likely be the best approach for Scotland, but the decision will ultimately be up to legislators after hearing from stakeholders at all levels of governance in Scotland as well as empirical evidence and analyses from experts.

Whatever form they take, restrictions on dual mandates are necessary to build a fairer, efficient, and ultimately more representative Scottish democracy.

Key points:

1. In Scotland, dual mandate holders are representatives elected (or appointed in the case of peers) to more than one political role. This means one individual can simultaneously hold MP, MSP, Lords and councillor positions.
2. Although less common now, dual mandates are still permitted in Scotland, but the likely election of Douglas Ross MP to the Scottish Parliament (who promises to hold both positions simultaneously) puts the issue into the spotlight.
3. Holding multiple mandates is disrespectful to constituents who deserve dedicated full-time representatives. Scotland should implement restrictions to end dual mandates.
4. Restrictions on dual mandates are common in the democratic world. This includes the European Union, which has banned MEPs from holding mandates in the parliaments of member states, as well as Australia and Canada. Even France, which has a culture of dual mandates, has tightened restrictions.
5. Legislation passed in the House of Commons restricts individuals from holding dual mandates in Wales and Northern Ireland (for MPs and devolved parliament/assembly positions).
6. Scotland can learn from and could follow various models from around the world. Elected MEPs are not allowed to take their seats in the European Parliament if they hold dual mandates while members of provincial legislatures in Canada are unable to be candidates in federal elections. Closer to home Wales and Northern Ireland have clear restrictions outlining quick or immediate resignations from one legislative body if elected to another. Wales also has an additional grace period for Welsh Parliament Members if elected to the House of Commons to hold both positions if an expected Senedd election is 372 days away.
7. Upgrade Holyrood recommends a Northern Ireland-style ban for MSPs and MPs, as well as the consideration of a 372-day grace period for councillors elected to either parliament and a deferral of taking a peerage until one has seen out their parliamentary term.
8. Dual mandate restrictions should be discussed and implemented following the 2021 Scottish general election.

Table of contents

1. Introduction.....	5
2. Comparative politics: dual mandates around the world.....	6
3. Dual mandates in the rest of the United Kingdom.....	10
4. Dual mandates in Scotland.....	12
5. Arguments for and against dual mandates in Scotland.....	25
6. Ways to restrict dual mandates in Scotland.....	29
7. Conclusion.....	36
8. Bibliography.....	38
9. About Upgrade Holyrood.....	40
10. Appendix.....	41

I. Introduction

The term dual mandate refers to the scenario where an individual holds two elected positions at once. This situation is often referred to as “double jobbing”, which should not be confused with “second jobbing” which is when a full-time representative has additional employment outside parliament.

In the Scottish context, a “dual mandate holder” can refer to an individual simultaneously elected as an MSP and an MP, as well as an MSP-councillor or an MP-councillor. The exception to the “elected” part of the definition is the situation where an MSP or a councillor is also a member of the House of Lords. Peers do not have an elected mandate but those in this position are still referred to as dual mandate holders. In the wider UK context, the term also refers to representatives that hold additional elected mayoral positions or mandates in the London Assembly or Police and Crime Commissioners.

House of Commons members are generally not allowed to hold positions in the Welsh Parliament or the Northern Ireland Assembly (due to Acts passed in Westminster). This makes Scotland the only devolved nation not to have a ban on dual mandates.

This paper examines the situation of dual mandates around the world and in the rest of the UK. It then outlines the pattern of dual mandates since devolution followed by the strong case for restricting them in Scotland. It concludes with six recommendations for tackling the problem.

2. Comparative politics: dual mandates around the world

Dual mandates occur in countries where there are multiple levels of governance. Legislatures and even constitutions have addressed the issue of dual mandate differently around the world.

Academic literature on the topic is notably Eurocentric and largely “understudied” (Van de Voorde and de Vet 2020). Unsurprisingly, much research has been done in France (due to the widespread nature of the practice). The literature is largely focused on with identifying how widespread the phenomenon is (Navarro 2013), in-depth analysis of the practice in specific counties (Navarro 2009), the impact of dual mandates on electoral outcomes (Foucault 2006) and the analysis of attitudes of dual mandate holders (Van de Voorde and de Vet 2020).

Much of the research is focused on France (where dual mandates have been part of the political culture), as well as the European Union (due to its structure with multiple layers of government). This is shown below.

2.1 European Parliament and European Union member states

As already mentioned, Members of the European Parliament are not allowed to also hold positions in the national legislature of any member state. This took effect in 2004 but not until the 2009 European Parliament election in the UK. Although there was some pushback, the most high-profile being Geert Wilders’ election as an MEP in 2014 while being a Dutch MP (Kroet 2014), this has been widely accepted.

Before the practice was banned, dual mandate MEPs were common in some countries but less so in others. Navarro’s (2009) analysis of the European Parliament in 2003 shows some intriguing results. At the time there were no Danish or Spanish MEPs with

mandates in their respective national parliaments. After that, the Netherlands and the United Kingdom had the fewest dual mandate MEPs with 6.5% and 8% of MEPs respectively. At the other end of the spectrum, a third of Belgian and Luxembourg MEPs held dual mandates, but both were dwarfed by France. A total of 44.80% of the country's MEPs at the time held dual mandates.

This contrast in the European Parliament before the practice was banned tells an intriguing story about members' views towards dual mandates across the continent. In some countries dual mandates are very much a part of the political culture whereas in others they are a rarity. While Navarro's analysis is insightful, the situation in the European Parliament alone does not tell the whole story.

Both France and Germany have historically had no restrictions on multiple mandates, a phenomenon known as "*cumul des mandats*" in France and "*Ämterkumulation*" in Germany (Navarro 2009: 8) yet the practice has been significantly more common in France than Germany. There is a significant body of research into *cumul des mandats* in France with the practice being widely noted as a key feature of the country's political landscape. Navarro's extensive paper offers a significant insight into the phenomenon in both countries at a national level (2009: 49), noting that:

"...one quarter of the members of the Bundestag [German parliament] have an additional mandate, as compared to the 90% of the French deputies [MPs] already mentioned."

Despite Germany being a federal country, France has had a much more significant culture of dual mandates than Germany. However, this is coming to an end with recent laws implementing significant restrictions on French MPs with additional mandates ([Rush 2017](#)).

Having addressed the patterns of dual mandates in France and Germany, it is worth digging deeper into the nature of these dual mandates. Novarro's analysis shows that the phenomenon is a long-term feature of French political culture with many politicians accumulating multiple mandates and retaining them term after term. It is not simply a case of climbing the political ladder and leaving behind previously collected mandates.

Navarro (2009) offers possible explanations for this including that they help politicians build their careers and the argument from politicians that it helps strengthen the link between representatives and constituents.

In contrast, the data in Germany indicates that dual mandates are fairly common, however, compared to France the situation is more "transitory" (Navarro 2009) Politicians with dual mandates in Germany tend to give up their mandates lower on the political career ladder after getting elected to higher positions.

Navarro's (2009) analysis is one of the more detailed studies into the topic in France and Germany, but more recent academic work has explored the situation in other European countries. Van der Voorde and de Vet (2020) conducted research into the attitudes of dual mandate holders in Austria, Belgium, France, Germany, Hungary, Italy, Portugal, Spain and Switzerland, showing that dual mandates are more widespread than just in France.

2.2 Canada and the United States of America

Both Canada and the USA have federal structures, but each has taken a different approach to dual mandates within their respective borders.

While Canada's political system is based on the Westminster model, the country has evolved separately from its "mother parliament". The country has a federal structure

meaning that the country has multiple layers of governance with the federal government in Ottawa, ten provinces and three territories as well as local government. Its legislation explicitly forbids members of the provincial assemblies from standing for election to the federal parliament (Canada Elections Act 2000: 65c). The exact wording is shown in Appendix A. For example, a member of the Newfoundland and Labrador House of Assembly would have to resign from their position to stand in a Canadian House of Commons riding (constituency).

The picture is much more mixed in the United States of America which has ample opportunity for dual mandates to exist due to its 50 states and many layers of elected government.

The separation of powers is a central feature of the USA's government system. This forbids members of the legislature (either the House of Representatives or the Senate) from being members of the executive (president) or the judiciary and vice versa. The exception to this is the vice president who holds the casting vote in the Senate in the event of a tie effectively makes them a member of both the executive and the legislature. However, when it comes to state legislatures and national legislatures dual mandate bans are common, as outlined in numerous state constitutions (NCSL 2020).

The ban in Canada is at a federal level whereas the US has a state-led approach.

3. Dual mandates in the rest of the United Kingdom

Dual mandates are banned to differing extents in Wales and Northern Ireland making Scotland the only devolved nation without any restrictions in place.

3.1 Wales

The Wales Act (2014), passed at a UK level in the House of Commons, prevents Members of the Senedd (then the Welsh Assembly) from also being MPs and vice versa (Goldberg 2017: 1). The Act now means that an MP elected to the Senedd must resign from the Commons within eight days of election. But if an existing Senedd member is elected to the House of Commons, their resignation from the Welsh Parliament must be immediate.

The Act does, however, provide some flexibility to limit the cost of by-elections and general disruption caused by chamber swapping (*ibid*: 2). If a Welsh Parliament member is elected to the House of Commons 372 days ahead of a scheduled Senedd election, then that individual is allowed to hold both posts until that election. It is worth noting that while this was the case for the 2015 UK General Election (and the following 2016 Welsh Election), this was not the case for the 2019 UK General Election and the 2021 Welsh election.

Compared to the outright ban on candidacies for provincial legislative holder in Canada and the ban on national parliament MPs taking up seats in the European Parliaments, the rules for Wales take a different approach.

3.2 Northern Ireland

Northern Ireland has a long history of multiple mandates, which has been attributed to the Troubles (UK Government 2014). Ian Paisley and John Hume famously held mandates for Stormont, the House of Commons and the European Parliament at the

same time (Goldberg 2017: 1). And before restrictions on multiple mandates were implemented, a significant number of Northern Ireland MPs were also MLAs

Like in Wales dual mandates were banned, also via UK legislation, as part of the Northern Ireland (Miscellaneous Provisions) Act 2014 which brought in the ban following the 2016 assembly election.

The nature of the ban in Northern Ireland is similar to the ban in Wales. The Northern Ireland (Miscellaneous Provisions) Act 2014 legislated for an eight-day grace period for MPs elected to Stormont as MLAs during which they must resign from the Commons. In parallel to legislation for Wales, MLAs elected to the Commons must immediately resign from the Northern Ireland Assembly. Unlike Wales, there is no provision of a longer grace period for MLAs elected to the House of Commons a year ahead of an expected Assembly Election (Goldberg 2017).

3.3 London

The Scottish Parliament is the only body representing a nation within the United Kingdom where dual mandates are permitted as shown by the bans in Wales and Northern Ireland. However, there is no legislation preventing MPs from holding mandates as London Assembly Members. As of April 2021 there are three London AM-MPs: Gareth Bacon (Conservative), Florence Eshalomi (Labour) and Leonie Cooper (Labour). It is worth highlighting that both Boris Johnson (Conservative) and Sadiq Khan (Labour) held seats in the House of Commons during their respective mayorships of the city.

4 Dual mandates in Scotland

4.1 Patterns of dual mandates in the Scottish Parliament

The total number of dual mandates held by MSPs in each parliamentary session tells a story that largely reflects the changing political winds of the time. In raw numerical terms, dual mandates are not a dominating feature of Scottish politics but just because they aren't on the political radar doesn't mean they should not be addressed. MSPs with dual mandates have fluctuated since 1999 as illustrated in the below figures.

All data in this section is based on [information compiled by the Scottish Parliament \(2021\)](#) and covers MSPs with dual mandates.

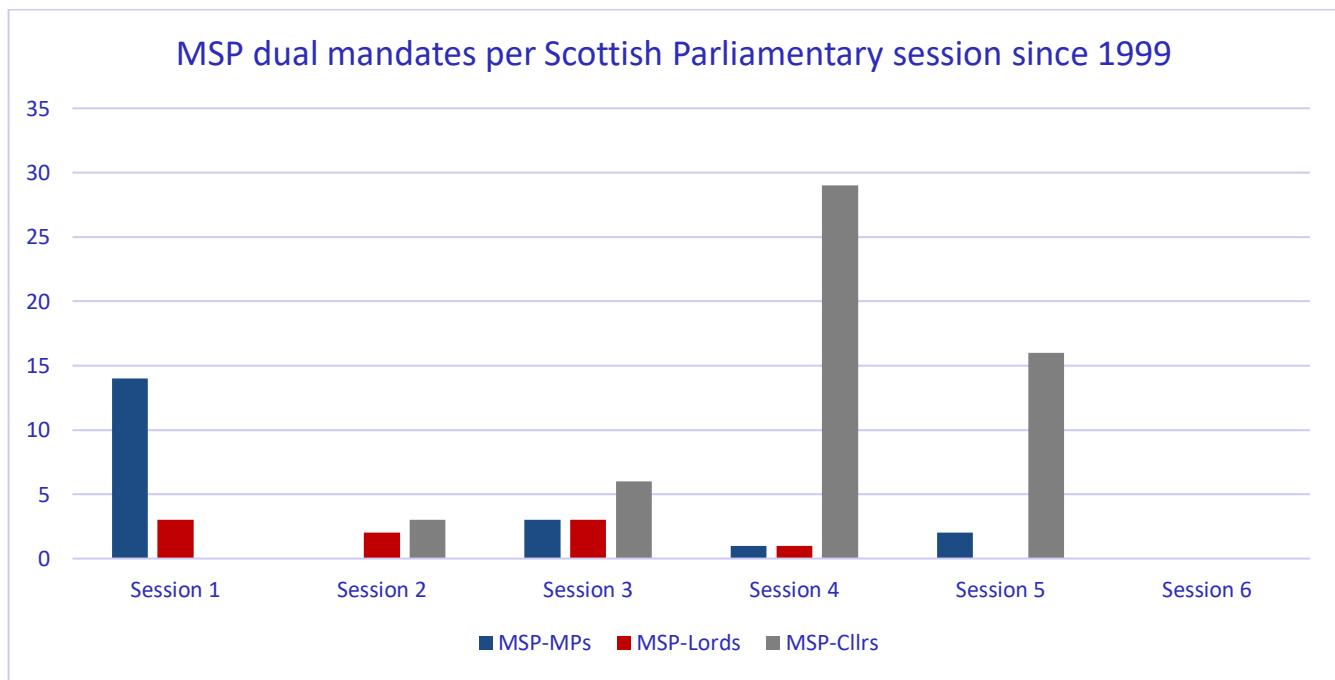


Figure 1: MSP dual mandates per Scottish Parliamentary session since 1999

Source: Scottish Parliament

Session 1 (1999 – 2003)

The story of dual mandates at the parliament's inception was determined by the significant number of MPs elected in 1997 seeking election to the Scottish Parliament at its first election in 1999. Of the 14 newly elected MSPs, most of whom were Labour or SNP, 11 fully committed to the Scottish Parliament by not standing for the UK Parliament in 2001. The other three were Labour's Donald Dewar, Scotland's initial first minister who died tragically in 2000, the SNP's Alex Salmond MSP, who resigned as SNP leader and an MSP in 2001 (before rejoining the parliament in 2007), and Sam Galbraith, a Labour politician who resigned in 2001 for health reasons.

In addition to MSPs with additional House of Commons mandates, three members of the House of Lords were elected to Holyrood in 1999, one from each of the three main UK-wide parties. James Douglas-Hamilton (Conservative), David Steel (Liberal Democrats) and Mike Watson (Labour) all held both roles throughout their time in the Scottish Parliament.

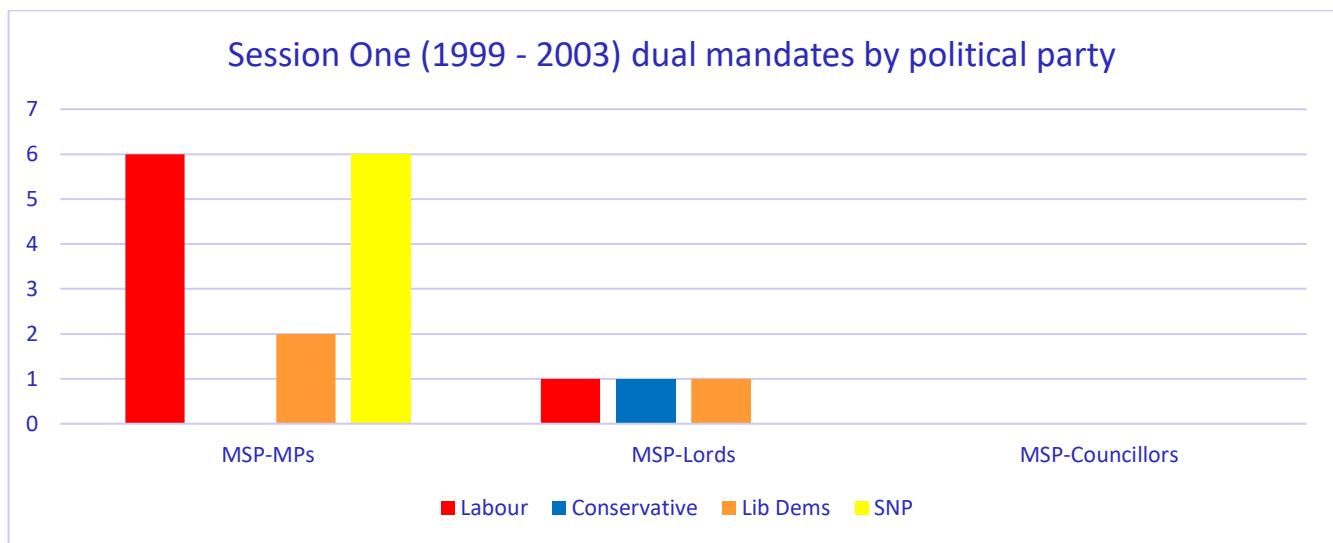


Figure 2: Session One (1999 -2003) dual mandates by political party

Source: Scottish Parliament

Session 2 (2003 – 2007)

Just five MSPs held dual mandates between 2003 and 2007. The drop largely reflects the settled nature of the chamber, with a limited number of seats changing hands in 2003 meaning that new MSPs were less likely to have existing roles. Two of the MSPs in this session were members of the House of Lords (James Douglas-Hamilton and Mike Watson), who also had dual mandates in session 1.

The other three were existing councillors who either resigned at a local level following election to Holyrood in 2003 (Mike Pringle of the Liberal Democrats) or became MSPs halfway through the Holyrood term in 2005 (Labour's Charlie Gordon and the Liberal Democrats' Andrew Arbuckle). Both Charlie Gordon MSP and Andrew Arbuckle MSP stayed as councillors until the 2007 local elections, which were held the same day as the next Scottish General Election.

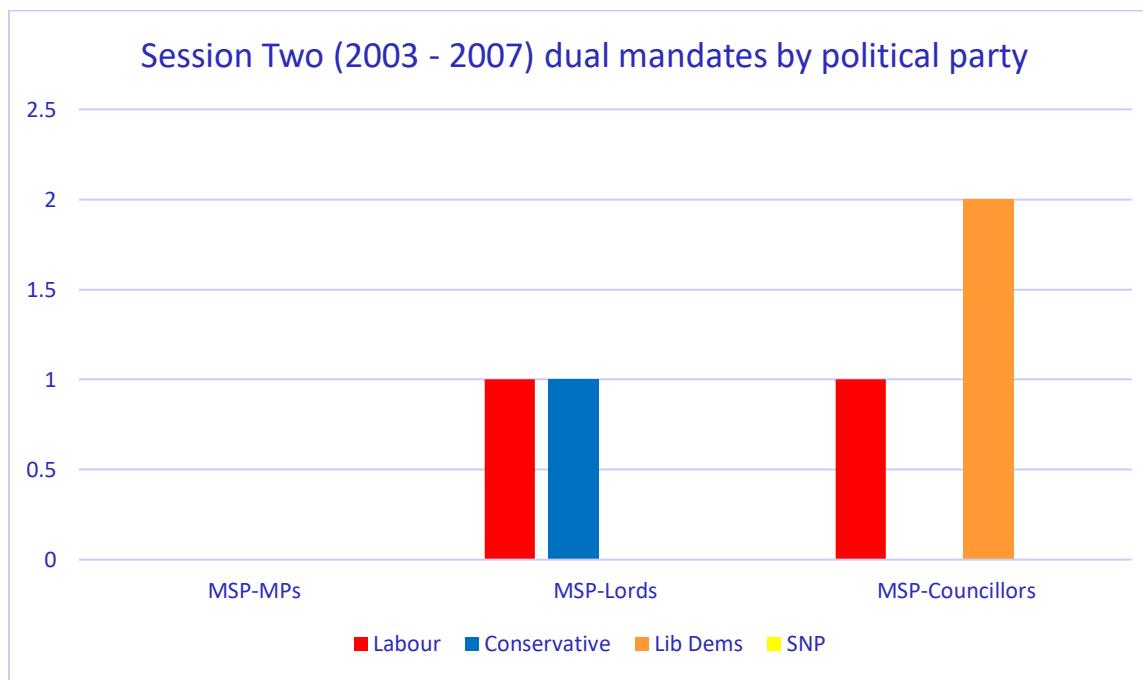


Figure 3: Session Two (2003 -2007) dual mandates by political party

Source: Scottish Parliament

Session 3 (2007 – 2011)

Five of the six MSPs who were also councillors in this session were SNP members, first elected to Holyrood at the 2007 election, as part of the party's success at the time. Two resigned as councillors in 2009, one resigned as a councillor in August 2007 and one, Stefan Tymkewycz, stepped down as an MSP just three months into the job to concentrate on his role as an Edinburgh councillor. The other two councillors (the SNP's Willie Coffey and the Lib Dem's Jim Hume) held both positions throughout the session. There were also three MSPs who were MPs, one being Alex Salmond who returned to Holyrood at the 2007 election and became first minister, and two Labour MPs (Margaret Curran and Cathy Jamieson) who won Westminster seats in 2010 and did not stand for re-election in 2011.

In addition, three MSPs (Labour's George Foulkes and former First Minister Jack McConnell and the Lib Dem's Nicol Stephen) were appointed to the House of Lords in Session 3. All three stepped down from Holyrood at the 2011 election.

Session Three (2007 - 2011) dual mandates by political party

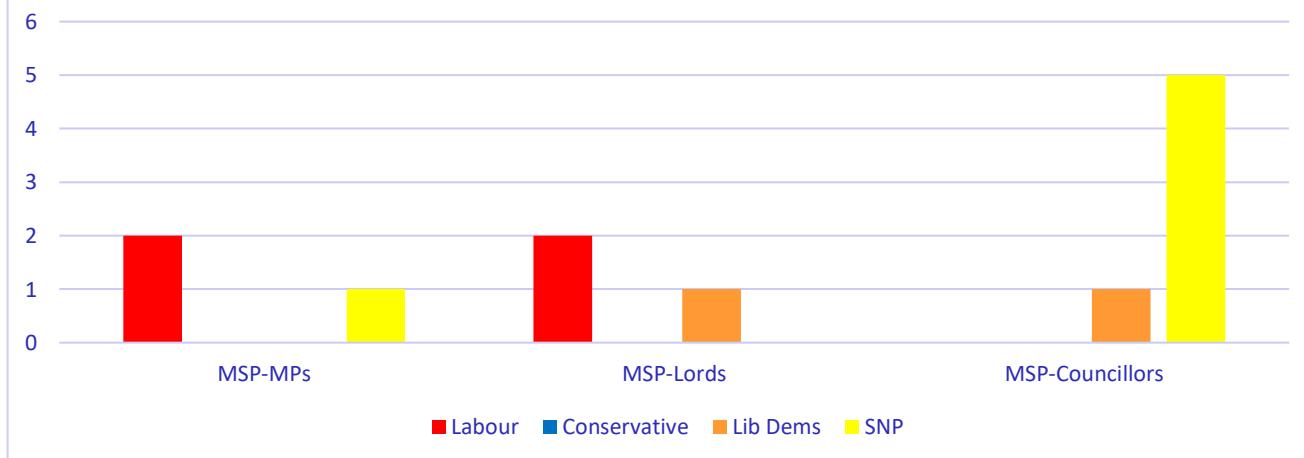


Figure 4: Session Three (2007 - 2011) dual mandates by political party

Source: Scottish Parliament

Session 4 (2011 – 2016)

The high number of MSPs who were also councillors in Session 4 is largely down to the SNP's success at the 2011 election where they secured an overall majority. All of these members either did not stand for re-election to council in 2012 or resigned before then. Three Labour councillors (Cara Hilton, Lesley Brennan and Jayne Baxter) were not initially elected in 2011 but moved up the list to replace colleagues who resigned in Session 4 and become MSPs themselves.

In addition, former leader of the Scottish Conservatives Annabel Goldie MSP was appointed to the House of Lords in Session 4 and Alex Salmond MSP became an MP once again at the 2015 election. Both held dual mandates throughout the rest of the fourth Scottish Parliamentary term.

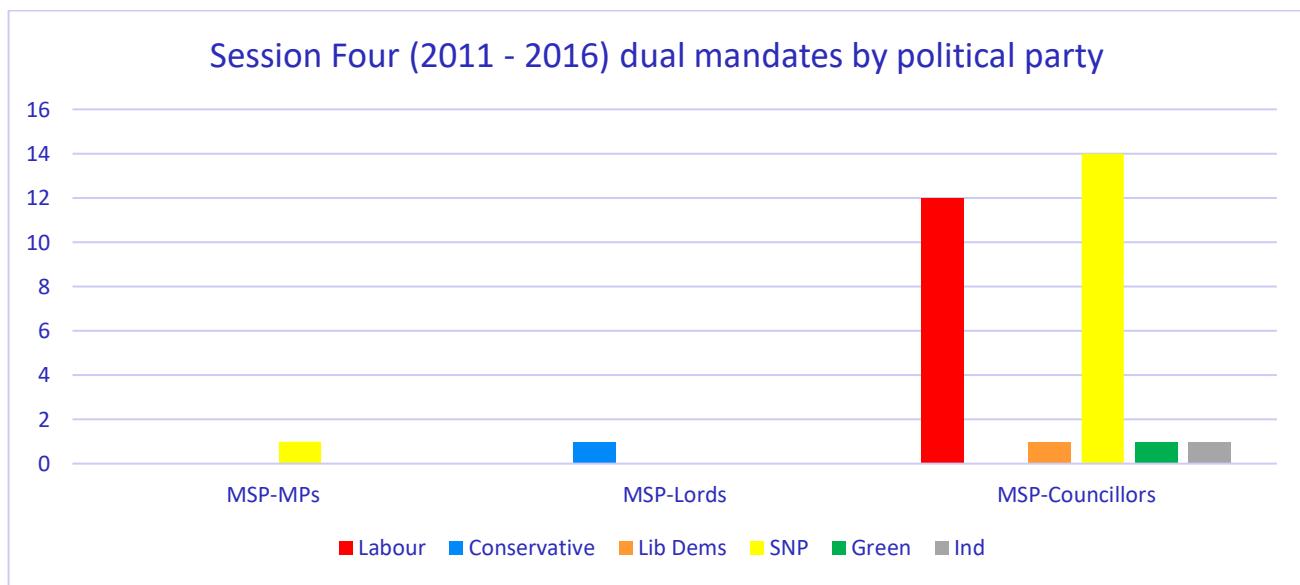


Figure 5: Session Four (2011 - 2016) dual mandates by political party

Source: Scottish Parliament

Session 5 (2016 – 2021)

Dual mandates in session 5 were largely the result of the influx of new Conservative MSP's when the party led by Ruth Davidson leapfrogged Labour to become the official opposition at Holyrood. This was the case for seven of the sixteen MSPs who were all councillors, all of whom stepped down from their local councils for the 2017 local elections. This also was the case for two Labour MSPs (Colin Smyth and Monica Lennon).

A further three SNP councillors were elected to Holyrood in 2016 but stood down as councillors throughout 2016. Two more, (the then Conservative's Michelle Ballantyne and the Liberal Democrats' Beatrice Wishart) stepped down as councillors soon after they joined Holyrood in the middle of the session via ascension on the list system and a constituency by-election respectively. In contrast, Tom Mason was a Conservative councillor throughout the session having joined the parliament in 2017 following Ross Thomson's resignation.

Lastly, there were two MSPs who also held MP mandates. Ross Thomson and Douglas Ross were first elected to Holyrood in 2016 but were subsequently elected to Westminster in 2017 following which they quit as MSPs. Thomson's departure led the appointment of Councillor Tom Mason as an MSP for the North East region. Mason remained MSP and Councillor despite criticism about his dual mandate role.

In July 2020, Douglas Ross declared his intention to stand for Holyrood ahead of his Scottish Conservative leadership launch with the commitment to holding a dual mandate for both parliaments. In the same week, former Scottish Conservative leader Ruth Davidson was given a seat in the House of Lords, however, she said she would not take her place until the end of her mandate at Holyrood.

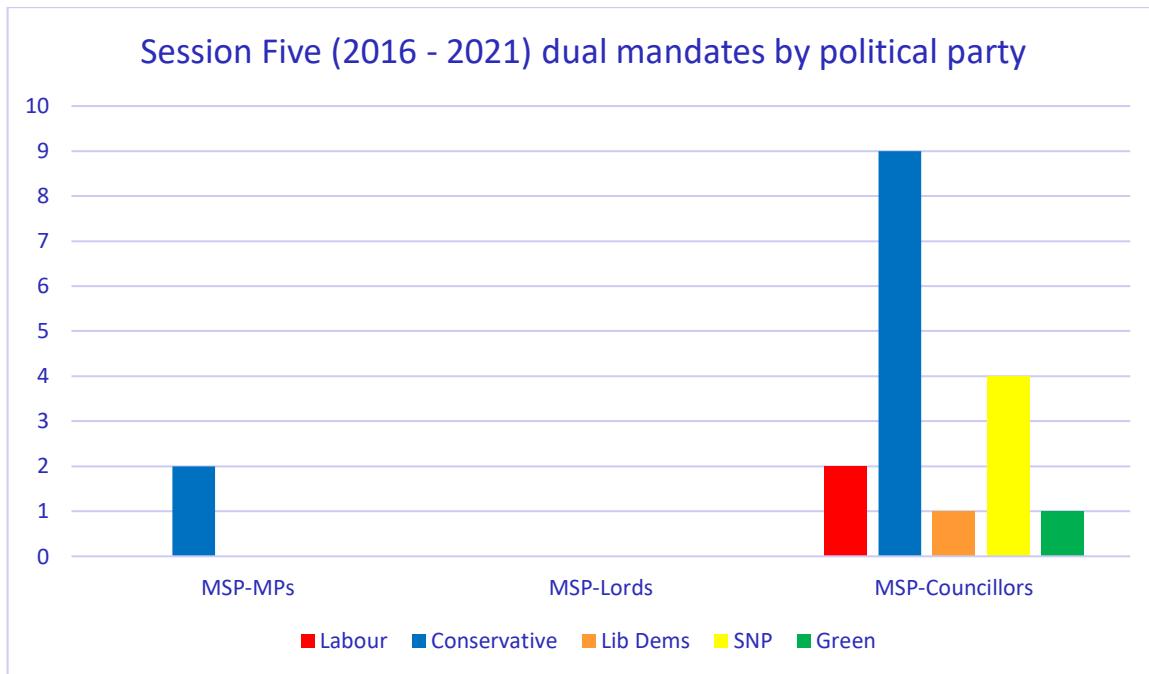


Figure 6: Session Five (2016 – 2021) dual mandates by political party

Source: Scottish Parliament

Summary

Overall, dual mandate patterns are largely representative of changing political winds such as the influx of Labour and SNP MSPs at the parliament's inception, the surge in support for the SNP in 2007 and 2011 and the jump in representation of Scottish Conservatives in 2016.

Dual mandates in the 1999 – 2003 session are largely the result of Labour and SNP MPs taking up the new opportunity of the Scottish Parliament while the 2003 election says little due to limited change. However, dual mandates in subsequent sessions are largely symptomatic of the Scottish (and British) political career ladder. Local government is often viewed as a stepping-stone to Holyrood or Westminster hence the significant rise in MSP-councillors. There are also hints of a pattern of this with MPs becoming MSPs and vice versa; the career-ladder will depend on an individual's

position on the union, that is to say whether they view Holyrood or Westminster as the main point in Scottish politics.

Dual mandates are not a major issue and are often resolved within a year or two when new MSPs step down as councillors at subsequent local elections. This situation more closely resembles the German pattern of “transitory” dual mandates discussed previously rather than the French situation where the accumulation of mandates has been a widespread phenomenon (Navarro 2009).

However, despite not being a massive issue, discussed dual mandates are problematic as they divide the attention of elected representatives.

4.2 Salaries and dual mandate MSPs

While dual mandates are permitted in Scotland, it is worth highlighting that there exists a salary cap for joint MSP-MPs. The cap’s existence, while saving the taxpayer money, is a recognition that the duties of both jobs cannot be carried out to the same extent as if they were carried out by one individual each.

An MSP that also holds a mandate for Westminster is only paid a partial salary for their duties at Holyrood. As of 2021, such MSP-MPs are paid £21,490 for their role in the [Scottish Parliament \(2020\)](#).

4.3 A note on dual mandate councillors

At this point it is worth highlighting the issue of local authority councillors with dual mandates. Being an MSP or an MP (or indeed a peer) is a full-time role. The principled and practical case against dual mandate holders for any of these roles is overwhelming for reasons already outlined. However, the case is slightly different for local authority councillors. The role of elected councillor in Scotland is a paid part-time position

(around £18,000 per year as of 2020) with many councillors conducting their council duties in addition to other employment ([Scottish Government 2021](#)).

That said, it is worth noting that senior councillors do get paid more and their job evolves into a de facto full-time role. For instance, the leaders of “band A” councils (which includes Inverclyde, Orkney Islands Council and Stirling) are salaried at around £30,000 as of 2020. Band D leaders (City of Edinburgh and Glasgow City councils) get over £50,000 per annum. However, most councillors are part-time with much less pay than that.

This is worth highlighting because the commitments of a joint MSP-councillor or MP-councillor are fewer than a join MSP-MP. A dual mandate of this nature is still intense and unfair on constituents, but it is worth highlighting, especially when there are no joint devolved legislator and local councillor bans in Wales and Northern Ireland. The main focus of the bans there was on full-time roles only. Furthermore, while any discussions on dual mandate restrictions should cover councillors, this aspect is less of priority (especially when council elections are usually now held just one year after Scottish elections).

It is also worth considering that a dual mandate restriction involving an immediate resignation for councillors elected as MSPs or MPs would create a number of by-elections that could potentially change the make-up of local authorities across Scotland. On one hand, there is nothing wrong with this (other than perhaps the arguably unnecessary impact on local politics because of an individual climbing the political ladder) but the main issue with this is the nature of local government by-elections.

The voting system used to elect councillors (the Single Transferable Vote) is largely proportional and allows voters to express a somewhat nuanced opinion at elections by ranking candidates in order. At an ordinary council election, voters elect three or four

councillors. However, when a councillor resigns mid-term, a by-election is held in the entire multi-member ward but for the vacated councillor position only. This in effect amounts to an Alternative Vote election.

The problem with this is that the dominant party in that constituency can take a seat from a smaller party that resigns mid-term. Say for example, there is a three-seat ward where the first two councillors elected are from the SNP and the third from Labour. If the Labour councillor resigns (or is hypothetically forced to quit due to a dual mandate restriction) the current process leads to an all-ward by-election. The election is likely to result in an SNP victory as it will be based on filling one vacancy across the entire ward. This in itself is an issue that needs addressed separately as well, but it shows a small problem (with potentially large consequences) for restrictions on MSP-councillor or MP-councillor dual mandates.

Upgrade Holyrood will address this at a separate time but a solution to this (and the wider issue of STV by-election resignations) would involve the nomination of a replacement councillor from the party of the departed councillor or a back-up list created by the councillor upon election in the event they leave their post. However, this has problems such as the lack of accountability from the electorate as well as the obvious restriction on the opportunity for an independent councillor to replace the vacated seat. Another solution would introduce a list voting system where the next person would replace the list or the next person due to be elected on the original STV list would get elected.

Any discussions on dual mandates restrictions should take these arguments into account. The issue of dual mandate councillors will be further addressed later in this report.

4.4 A side note on ministers

In Scotland, as in other UK institutions and countless other parliamentary democracies, the executive (government) is derived from the legislature. MSPs that become ministers remain MSP – they are part of the legislature and the executive and as such vote on their own proposed laws. First Minister Nicola Sturgeon MSP decides legislation and votes on it too. Prime Minister Boris Johnson MP does the same as do Prime Minister Jacinda Arden in New Zealand and Prime Minister Justin Trudeau in Canada.

In these situations, there is no dual mandate but there is no separation between the legislature and the executive as representatives take on joint roles. This is a conversation for another time but the roles of MSPs that also hold governing positions are clearly stretched in a similar manner to the practical consequences of dual mandates.

It is worth highlighting that the USA, which has an executive presidential model, does not have this issue as the government is elected separately from the legislature. This set-up is completely different than the UK's but some parliamentary democracies take a different approach. In Estonia, MPs that become government ministers vacate their seats and don't vote on legislation. Instead, they are replaced by the next person on their party list (ERR News 2020). This solution would not work exactly under Scotland's Additional Member System or Westminster's First Past the Post (unless a nomination replacement system were to be introduced) but it's an interesting aside if Scotland or the UK addressed the issue of stretched parliamentarians and the fusion of the legislature and executive.

This is a topic for another time, but it is worth highlighting as a relevant related issue.

4.5 The return of dual mandates in Scotland

As stated, dual mandates, particularly MSP-MP dual mandates, have not been a major concern in recent years. Most councillors elected as MSPs either soon resign or stand down at the subsequent election (one year later). The same is also very much the case for MSPs elected to the House of Commons, most recently Douglas Ross and Ross Thomson who resigned immediately after the 2017 General Election. It's also worth noting that John Lamont MSP stood down (causing a by-election) before the 2017 General Election to stand for the UK General Election (following which he became an MP).

The most prominent dual mandate holder was Alex Salmond who was a dual mandate holder (MSP-MP) on three separate occasions. Most notably he was an MSP-MP between 2007 and 2010 while also first minister in Scotland.

However, the issue of dual mandates is set for a comeback. Upon election as leader of the Scottish Conservatives, Douglas Ross MP pledged to retain his seat at Westminster if elected as an MSP in the Scottish Parliament (Learmonth 2020). It looks highly likely that there will therefore be a dual mandate holder (MSP-MP) until at least the 2024 UK General Election. This is an interesting contrast with his predecessor Ruth Davidson who will only take her seat in the House of Lords after she steps down from the Scottish Parliament at the 2021 Scottish General Election.

This is compounded by the defections of sitting MPs Kenny MacAskill and Neale Hanvey from the SNP to Alba. Both have pledged they will remain MPs if elected to Holyrood in May.



Douglas Ross (above) held a dual mandate in 2017 when elected as an MP while also an MSP. He subsequently quit his Holyrood role but declared his intention to hold a dual mandate at Holyrood and Westminster when elected leader of the Scottish Conservatives in August 2020. [Official Portrait of Douglas Ross MP](#) by David Woolfall ([CC BY 3.0 LISENCE](#)). Cropped.

5. For and against restrictions on dual mandates

Upgrade Holyrood supports improving Scotland's representative democracy. Dual mandates fall foul of this and must be restricted to ensure fair and efficient representation outcomes.

As part of this, Upgrade Holyrood supports fair and efficient representation. Using this framework to analyse the situation, dual mandates are clearly unfair on constituents, who deserve full-time representation from full-time representatives, as part-time representatives mean inefficient representation with parliamentarians required to assess different issues in different levels of government. Not to mention the reality of being in multiple places at once, either physically or virtually. The arguments against dual mandates are outlined below followed by arguments for them followed-up with appropriate rebuttals.

5.1 The case for restricting dual mandates

The main reason for restricting dual mandates is that they are inefficient at ensuring fair and effective political representation. This argument comes in two parts. There is the principled argument that constituents deserve their full-time representatives (on full-time pay) to give all their time and energy to the role they are elected to. An MSP also elected as an MP is unlikely to be able to fulfil their duties in both roles to the same extent as if they were elected to just one of their roles. Put simply, constituents deserve MSPs and MPs where their sole focus is on one job in one institution.

The practical element of this is that it's just not realistic for an MSP also elected as an MP to complete all their parliamentary duties in Holyrood and Westminster, not to mention their constituency roles. Westminster needs to modernise and Holyrood needs to learn lessons from the pandemic about adopting a more inclusive parliament but allowing for remote voting at Westminster and retaining a hybrid parliament at Holyrood would not overcome the logistical challenges of different duties in different

parliaments. This isn't just limited to voting and taking part in debates and committees. This also includes preparation for all these things. Navarro's (2009: 21) analysis of MEPs finds that those with additional mandates finds that there is a significant difference in terms of parliamentary workload done between dual mandate holders and MEPs without additional roles. The argument is further enhanced by the fact that most MSPs and MPs often work more than a standard working week. They are already under incredible time pressures.

Related to this last point is the argument that different institutions have different roles and different responsibilities. Sure, there will be some overlap in terms of local issues discussed at both Holyrood and Westminster by dual mandate holders but more broadly the powers discussed in each chamber do not overlap. MSPs and MPs do have their own staff, but each institution has different responsibilities that representatives do take on.

Lastly, there is the argument that dual mandates can lead to corruption. This has not been an issue in the UK so far but Navarro (2009: 19) highlights this argument in the context of French MPs with additional local mandates. He writes:

"As noted by Bernard Chantebout, in the French context, the parliamentarians are not usually corrupted in their capacity as parliamentarians: only those MPs who are in charge of a local executive have been convicted of corruption. It is indeed all the more tempting for "cumulants" to accept a bribe when they decide (at the local level) about a public tender or about any urban policy that they are protected from prosecution by their parliamentary immunity."

This is a striking take that further weakens the case for retaining dual mandates.

Overall, dual mandates are ultimately unfair on constituents who deserve full-time representatives. An MSP or MP must be fully committed to their role – to do otherwise is unfair and impractical as evidenced by empirical research.

5.2 The case for keeping dual mandates (with rebuttals)

Other than the purely personal rewards-based argument in favour of dual mandates (multiple payments for doing multiple roles not to mention status) there are some arguably rational arguments in favour of dual mandates. These are shown to illustrate the other side of the story and perhaps explain why dual mandates exist (especially in countries such as France). However, each of these arguments has its flaws which are addressed below.

The first argument in favour of dual mandates is that they ensure politicians have closer links with their constituents. MEPs with national representation will arguably take more interest in national issues and feed that into the European Parliament while MPs or MSPs who are also councillors will in theory take that to Holyrood and Westminster. The theory goes that they will therefore better represent local issues in the national parliament. While this is an interesting argument, it still doesn't negate the one of the main problems of dual mandates which is that they take up lots of time. Yes, an MSP-councillor may take local issues to Holyrood but their time in the local council will be restricted by parliamentary commitments. Furthermore, academic evidence (Van de Voorde 2020) finds that while national MPs also elected as MEPs will go to Brussels with a mindset more favourable to national issues, their analysis suggests that this attitude isn't manifested by actions in the European Parliament. This empirical evidence weakens the case for one of the main arguments in favour of dual mandates.

There is also the argument that dual mandates give politicians more political heft and capital, as if having more mandates gives them additional weight in the parliamentary chamber. Arguably having multiple mandates gives MPs additional status and allows them to champion local issues with more authority at the national level. However, as shown above evidence suggests that having additional local mandates does not translate into parliamentary results.

In addition to these arguments, there is also a case to be made that dual mandate holders are elected to each of their roles by the public and if constituents didn't like that they would simply vote them out. On the face of it this seems reasonably sound: *"if voters like dual mandate holders, then why not keep them? That's democracy in action"*. However, it is a rather simplistic narrative that ignores two features of our politics. Firstly, while individual candidates do play a role in determining how people vote, how people vote is largely determined by parties and their policies and leaders (in addition to systemic long-term factors), not necessarily local candidates. Under First Past the Post and the FPTP element of AMS, voters only have one choice of candidate per party and the issue of dual mandates will therefore be less of a factor. Secondly, most people won't know (or perhaps even care) if a candidate has another mandate, and while they might not like the idea it's less likely to have an impact on their decision if they are generally supportive of that particular party.

Furthermore, there is the argument that when it comes to local government, councillors are part-time and often have full-time roles. There is a case that since full-time workers can have part-time council roles, MPs and MSPs should also be able to do the same. This is a legitimate point, and while there is an argument to make that councillors should be full-time roles, this is not the place for such a discussion. Under the current set-up, this is accepted as standard so why shouldn't MPs and MSPs get to be councillors as well? In response, the issue of MSP-councillors and MP-councillors is less pressing than MSP-MPs so this is less of an issue. However, MSPs and MPs often work more than full-time hours and so make the possibility of doing one of those roles in addition to being a part-time local councillor more challenging, not to mention the challenge of being in multiple places at once.

6. Ways to restrict dual mandates in Scotland

Now that it has been established that dual mandates should be restricted, the question follows: in what form should such restrictions be implemented? How should they be implemented and what elected roles should they cover?

This section addresses four possible models that could be adopted for representatives in Scotland. This will mainly be assessed through effectiveness at restricting dual mandates as well as disruptions to other legislatures and local authorities.

It is worth highlighting that the following analyses discuss a broad application of such models. The issue of how it would be applied to specific positions will be discussed later.

6.1 The Canadian Model: effective but disruptive

The Canadian model would see a ban on sitting MSPs from standing for election to the House of Commons. This could also extend to restricting sitting MPs from standing for the Scottish Parliament, as well as a ban on sitting councillors from standing for the Scottish Parliament and the House of Commons. A similar mechanism could exist for appointments to the House of Lords.

Such a ban would be extremely effective in preventing dual mandates as it would make them impossible. It could also deter existing representatives from standing for other positions as there is a risk that stepping down to stand for another role would result in failure.

However, a Canadian model would likely cause significant disruption. Resignations of councillors, MSPs and MPs ahead of elections would cause significant disruption at all levels of government, which would arguably be incredibly unnecessary. That such a model goes as far as banning existing representatives from being candidates would be even more disruptive than a ban on just holding a dual mandate candidate as some candidates would lose having caused an unnecessary by-election in the process. In

addition to this, a Canadian-style restriction would be detrimental to smaller parties where talent pools may be concentrated.

Overall, Canada's solution is an effective model at achieving the aim of restricting dual mandates. But the extreme nature of a ban on existing representatives from even being candidates is arguably too disruptive a restriction as it would ultimately cause unnecessary impacts on other legislative bodies and local authorities.

6.2 The European Union Model: effective but uncertain

The approach taken by the European Parliament offers another model that could be adopted by Scotland. This model would result in anyone elected to a new position having to declare that they don't have any other mandates. If said individual has an existing mandate, they would have to quit before taking their new seat.

The model would be fairly effective at restricting dual mandates. Technically under such an approach it would prevent dual mandates from even taking place which is an obvious benefit. It also eliminates the problems with the Canadian approach as it would allow existing MSPs to stand as candidates for the House of Commons (for example) without resigning their existing position. This would limit disruption to the Scottish Parliament.

However, the model has some limits. It could leave some representatives (and their constituents) in limbo, as highlighted by the case of Geert Wilders for the European Parliament who refused to resign his position as an MP to take his seat as an MEP (Kroet 2014). Without a strong obligation for a member to resign one of their positions, such an outcome is detrimental to constituents.

6.3 The Northern Ireland Model: effective

The Northern Ireland model is somewhat similar to the European Parliament's as it puts a ban on dual mandate representatives, but it doesn't go as far as the Canadian model in terms of the bans on existing representatives from even being candidates.

The Northern Ireland (Miscellaneous Provisions) Act 2014 legislated for an eight-day grace period for MPs elected to Stormont as MLAs during which they must resign from the Commons. MLAs elected to the Commons must immediately resign from the Northern Ireland Assembly.

If adopted in Scotland (whether with an immediate resignation from one institution or a short grace period), this delivers an effective ban on long-term dual mandates. Such a solution would minimize disruptions caused by the Canadian model while recognizing that representatives will want to change institution from time to time. It would also address the uncertainty in the European Parliament's approach.

6.4 The Welsh Model: effective but practical

An alternative to the above models would be the Welsh approach. Wales has the exact same arrangement as Northern Ireland and with it all the benefits outline above.

However, it does have one practical addition. This is the “372-day rule”, which allows for Members of the Welsh Parliament to keep their role in the Senedd even after being elected to the House of Commons (assuming a Senedd election takes place within 372 days of getting elected at Westminster).

This addition means that the Welsh approach is less effective at ending dual mandates all round. However, it is arguably a small price to pay to limit stability with an election just one year away.

6.5 A note on applying any restrictions to different positions in Scotland

Despite dual mandates not being a widespread issue in Scotland, there is a principled and practical case for making them a thing of the past.

Any restrictions on dual mandates should take place following a detailed discussion from stakeholders including politicians and better democracy advocates. Empirical evidence should also be considered.

When considering restrictions on dual mandates in Scotland, it should be recognised that there is a hierarchy of political positions. In the past, the political career ladder of elected positions in Scotland went from councillor to MSP to MP.

As the Scottish Parliament has gained more power, however, the centre of gravity in Scottish politics has shifted from Westminster to Holyrood. With this in mind, MSPs and MPs are viewed as joint top of the political ladder, with one's views on that likely to be seen through the prism of their position on the union. Independence supporting politicians are likely to see the Scottish Parliament as most important while unionist and federalist politicians are likely to see the House of Commons as the most important.

Unlike Wales where the 372-day rule indicates that politicians are more likely to jump from the Senedd to Westminster, the framing of any legislation with regards to banning dual mandates in Scotland should recognise that Holyrood and Westminster are both top of the political ladder in Scotland. Adopting a Northern Ireland for MSPs and MPs is likely the best approach as it recognises both legislative bodies as worthy of going from one to the other.

In addition to this, it is again worth highlighting that many councillors often go on to become MSPs and MPs, causing disruption at a local level. This is somewhat a natural phenomenon in multi-levelled governance structure where party politics is dominant. Without any reforms to local governance in Scotland, a balance could be struck between an outright ban on councillor-MSPs and councillor-MPs. In line with the principle of ensuring fair and efficient representation, dual mandate restrictions should cover these positions but with some caveats are worth considering as outlined below.

6.6 Upgrade Holyrood recognitions and recommendations

Having looked at dual mandates in Scotland, across the UK and Europe, as well as different models to address them around the world, this final section sums up next steps to tackle dual mandates in Scotland. This begins with three broad recognitions about dual mandates in Scotland followed by six recommendations for any discussions about banning dual mandates in future.

Each model outlined above offers a different solution to the clear identified problem of dual mandates. If the aim of a policy on dual mandates is to end them, each one achieves that outcome and Better Holyrood would broadly welcome any approach. However, it would make sense for Scotland to adopt a model like that used in Wales and Northern Ireland. This is not only familiar in the UK, but is also less restricting on political candidates (like in the Canada model which seems extreme and disruptive) and offers more certainty and clearer timelines compared to the European Parliament model.

It is also worth saying that any discussions on restricting dual mandates should cover all political roles including councillors, however, the more pressing priority is for MSPs, MPs and Lords.

Recognition 1: Upgrade Holyrood recognises that dual mandates go against the principles of fair and efficient representative democracy as individuals in such roles cannot fully represent constituents in each of their positions as if they just held one of their mandates.

Recognition 2: Upgrade Holyrood recognises that dual mandates are impractical as backed up by empirical evidence.

Recognition 3: Upgrade Holyrood recognises that a straightforward ban on all dual mandates while effective would risk ignoring many political realities, particularly at a local level. This is reflected below.

Having outlined the three key recognitions concerning dual mandates, the six recommendations are included below:

Recommendation 1: Dual mandates should be ended in Scotland. This likely needs legislation from Westminster (like for Wales and Northern Ireland in 2014) but the Scottish Parliament has taken on new powers regarding elections so it may be possible to implement change from Holyrood.

Recommendation 2: A model similar to that used in Northern Ireland should be adopted in Scotland. Under this system, MSPs, MPs, Lords and councillors elected (or appointed) to any other position would either immediately resign from one position or have a short grace period (for example, eight days) to resign from one position.

Recommendation 3: The additional provision in the Welsh model allowing for a 372-day grace period should be *considered* for councillors elected to the Scottish Parliament or the House of Commons. This would minimise disruption at the local level and recognise that councillors are part-time roles. It should also be considered on the basis that council elections normally fall a year after Scottish Parliament elections and that council by-elections are not truly representative. Any longer than a year's grace period would, however, risk a significant impact on the work of local councillors.

Recommendation 4:

Any Councillor, MSP or MP appointed as a peer should be unable to take their position in the House of Lords until their term as an elected member is complete (either through stepping down upon appointment or stepping down at the end of the next election). This would formalise the route taken by Ruth Davidson MSP.

Recommendation 5:

Any process looking into ending dual mandates in Scotland should recognise that Holyrood and Westminster both play central roles in Scotland's democracy and that the direction of travel for politicians seeking positions in either legislature is a two-way street.

Recommendation 6:

Any legislative process looking to end dual mandates in Scotland should hear evidence from stakeholders, democracy campaigners and academic research on the matter.

7. Conclusion

Dual mandates are not the biggest issue facing Scottish democracy but their likely return in 2021 highlights the case for them to be discussed and addressed. There is a clear case against dual mandates, most notably the fact they are disrespectful to constituents who deserve full-time representatives, a principled argument backed up by evidence. Dual mandates are unfair and lead to inefficient democracy, with constituents ultimately losing out. The arguments in favour of dual mandates do not hold up to scrutiny, helping build the strong case for implementing restrictions.

The extent of dual mandates varies around the world, but the trend has been towards clamping down on them, as evidenced by recent restrictions in France, a country where dual mandates are a strong part of the country's political culture.

Scotland remains the only devolved nation where dual mandates are not restricted one way or another. Politics can and must be better, and on the argument for restricting dual mandates, as well as different routes to do so, Scotland can learn from around the world to implement a set of restrictions that work for Scotland where the devolved parliament and Westminster have equal pull and prestige in the eyes of politicians.

This paper has analysed the different approaches taken in the European Parliament, Canada, Wales and Northern Ireland. The paper recommends Northern Ireland approach, with clearly defined end dates for representatives who win additional mandates while also considering Scotland's political reality in terms of the prominence of both Holyrood and Westminster, as well as the impact by-elections can have on local government.

Dual mandates go against the principles of fair and efficient representation, backed up by evidence highlighting their inherent impractical nature. A discussion on dual mandate restrictions should ultimately be had in the next Scottish Parliamentary session at both Holyrood and Westminster, as well as in the mainstream media.

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9. About Upgrade Holyrood

Upgrade Holyrood is a political blog and resource dedicated to improving Scotland's representative politics and delivering relevant political analysis and commentary. The blog offers research and insight into Scottish politics while also advocating significant improvements to our democracy.

Guided by the principle that our democracy can and must be better, Better Holyrood supports:

- **Accountable representation:** a return to fixed four-year parliamentary terms
- **Fair and efficient representation:** an end to dual mandates in Scottish politics and restrictions on second jobs for politicians
- **Inclusive representation:** a permanent hybrid parliament
- **Local representation:** more powers for local communities across Scotland
- **Proportional representation** a fairer voting system to elect MSPs

The Scottish Parliament has more democratic legitimacy than Westminster, but improvements can be made. Upgrade Holyrood exists to provide a space to discuss ways to reform Scottish democracy for the better.

About Richard Wood

Upgrade Holyrood is run by Richard Wood, a Scot from Edinburgh now working in Westminster. He is a passionate advocate of Proportional Representation and wider electoral reforms with experience as an activist with campaign organisation Make Votes Matter. He currently works for an MP and have a background in communications, media, politics and research.

10. Appendix

Appendix A – Legislation texts restricting dual mandates in Canada, Wales and Northern Ireland

Ineligible candidates

65 The following persons are not eligible to be a candidate:

- (a) a person who is not qualified as an elector on the date on which his or her nomination paper is filed;
- (b) a person who is disentitled under paragraph 502(3)(a) while they are so disentitled;
- (c) a member of the legislative assembly of a province;

Figure 1. Canadian legislation outlining the country's dual mandate ban

Source: *Canada Elections Act (2000)*. (S.C. 2000, c. 9)

MPs to be disqualified from membership of Assembly

(1) In section 16(1) of GOWA 2006 (disqualification from being Assembly member), before paragraph (a) insert—

“(za) is a member of the House of Commons (but see sections 17A and 17B),”.

(2) After section 17 of that Act insert—

17AException from disqualification by virtue of being an MP: recently elected members

(1) A person returned at an election as an Assembly member is not disqualified under section 16(1)(za) (disqualification by virtue of being an MP) at any time in the period of 8 days beginning with the day the person is so returned.

(2) Subsection (3) applies where a person—

(a) is returned at an election as an Assembly member,

(b) on being so returned is a candidate for election to the House of Commons, and

(c) is subsequently returned at that election as a member of that House.

(3) The person is not disqualified under section 16(1)(za) at any time in the period of 8 days beginning with the day the person is returned as a member of the House of Commons.

(4) A person is a “candidate for election to the House of Commons” if the person’s nomination paper for election as a member of the House of Commons has been delivered to the returning officer under rule 6 of Schedule 1 to the Representation of the People Act 1983 (parliamentary election rules).

17BException from disqualification by virtue of being an MP: general election of Assembly members within 372 days

(1) This section applies if—

(a) an Assembly member is returned as a member of the House of Commons, and

(b)the expected day of the next general election of Assembly members is within the period of 372 days beginning with the day the person is so returned (“the return day”).

(2)The member is not disqualified under section 16(1)(za) (disqualification by virtue of being an MP) at any time in the period—

(a)beginning with the return day, and

(b)ending immediately before the day of the next general election of Assembly members.

(3)For the purposes of subsection (1)(b) the expected day of the next general election of Assembly members is to be determined by reference to the circumstances as at the beginning of the return day (“the relevant time”).

(4)Where, at the relevant time, section 5(2) or (3) (extraordinary general elections) applies—

(a)if an Order in Council under section 5(4) has been made, the expected day is the day on which the poll is required to be held in accordance with that Order;

(b)if no Order in Council under section 5(4) has been made but a day has been proposed under section 5(1), that is the expected day;

(c)otherwise, the expected day is to be treated as being within the period mentioned in subsection (1)(b).

(5)For the purpose of determining the expected day, no account is to be taken of the possibility of—

(a)an order under section 4 (power to vary date of ordinary general election) being made after the relevant time, or

(b)section 5(2) or (3) (extraordinary general elections) first applying after that time.

(6)References in this section to the “day” of the election are to the day on which the poll at the election is held.”

(3)The National Assembly for Wales (Representation of the People) Order 2007 ([S.I. 2007/236](#)) is amended as follows.

(4) In article 34 (false statements in nomination papers), at the end of paragraph (5)(c) insert “or to the best of his knowledge and belief he is disqualified only under section 16(1)(za) of the 2006 Act (disqualification of MPs)”.

(5) In Schedule 5 (Assembly election rules), in rule 9(4)(c)(ii) (consent to nomination) after “Assembly” insert “or that to the best of his knowledge and belief he is disqualified for membership of the Assembly only under section 16(1)(za) of the 2006 Act (disqualification of MPs)”.

Figure 2: Wales Act (2014)

Source: <https://www.legislation.gov.uk/ukpga/2014/29/section/3/enacted>

MPs to be disqualified for membership of Assembly

(1) In section 1(1) of the Northern Ireland Assembly Disqualification Act 1975 (disqualification of holders of certain offices etc), before paragraph (a) insert—

“(za)is a member of the House of Commons;”.

(2) After section 1 of that Act insert—

1AMembers of the House of Commons

(1) A person returned at an election as a member of the Northern Ireland Assembly is not disqualified under section 1(1)(za) at any time in the period of 8 days beginning with the day the person is so returned.

(2) Subsection (3) applies where a person—

(a) is returned at an election as a member of the Northern Ireland Assembly,
 (b) on being so returned is a candidate for election to the House of Commons, and

(c) is subsequently returned at that election as a member of that House.

(3)The person is not disqualified under section 1(1)(za) at any time in the period of 8 days beginning with the day the person is returned as a member of the House of Commons.

(4)A person is a “candidate for election to the House of Commons” if the person's nomination paper for election as a member of the House of Commons has been delivered to the returning officer under rule 6 of Schedule 1 to the Representation of the People Act 1983 (parliamentary election rules).

(3)In section 37(1) of the Northern Ireland Act 1998 (effect of disqualification)—

- (a)in paragraph (a), after “by virtue of” insert “ the Northern Ireland Assembly Disqualification Act 1975 or ”;
- (b)in paragraph (b), after “by virtue of” insert “ that Act or ”.

(4)In section 47(4) of that Act (remuneration of members), for “either House of Parliament” substitute “ the House of Lords ”.

Figure 3. Northern Ireland (Miscellaneous Provisions) 2014 Act

Source: <https://www.legislation.gov.uk/ukpga/2014/13/section/3>