

**NATIONAL ARCHIVES**

**IRELAND**



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P.S.S. 5/6/81  
Pl. show to Secretary

4/6/81

Note:

Election of Prisoners in Northern Ireland and  
Republic to Dail Eireann.

The following is the position as given to me by Mr. Tim Sexton of the Franchise Section of the Department of Environment regarding the election of prisoners in Northern Ireland and the Republic to the Dail.

Northern Ireland

A person who is a prisoner in Northern Ireland, provided that he or she is an Irish citizen, may stand in a Dail election and may be elected as a member of the Dail. There is no statute bar in existence against such persons standing for election and being elected. They would not obviously be able to sign on in the Dail and consequently draw a salary but this would not stop them remaining Dail Deputies and effectively being non-attending T.D.s. Such a situation occurred before in the period 1922-26. Regarding the description that such candidates may use this is a matter for themselves and must be accepted by the Returning Officer unless it is considered to be incorrect, too long or provides inadequate identification of the candidate. The Returning Officer has no discretion as to who he may put on the ballot paper. Provided that the nomination form has been properly completed and the description of the candidate is accepted the candidate's name must go down on the ballot paper. In the present election returning officers have accepted descriptions such as 'H-Block candidate' and at least in one case the description 'political prisoner'.

Prisoners in N.I.?

The Republic

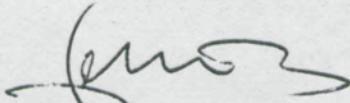
The Electoral Act 1923, Section 51, sub-section 2A states that:-

"a person who is undergoing a sentence of imprisonment with hard labour for any period exceeding 6 months or of penal servitude for any term imposed by a Court of competent jurisdiction in Saorstát Eireann".

shall be disqualified from being elected or sitting as a member of the Dail. This would appear to rule out prisoners such as those in Portlaoise. However, in the light of what has been said above in relation to prisoners from Northern Ireland there is no reason why such a prisoner's name may not appear on the ballot paper. If he receives sufficient votes he may be declared elected by the Returning Officer and his name returned to the Clerk of the Dail. It is not too clear what may happen after that as the Act does not cover this but either of the following situations could arise:-

- (i) An unsuccessful candidate in the constituency where the prisoner was elected could petition that the election was not valid as the candidate was not properly qualified. In these circumstances the Electoral Court may be asked to look into the matter and decide whether another election should be called or whether another unsuccessful candidate should be declared elected instead etc.
- (ii) Alternatively the Dáil could take note of the fact that that prisoner was not properly qualified and could move that a writ be issued in respect of his seat.

Failing either of these events occurring (which is most unlikely) <sup>what is unlikely?</sup> it is possible that the prisoner could remain as a T.D. indefinitely.



Michael Collins

3 June 1981

c.c. Mr. ~~Nelligan~~  
Mr. Whelan  
Mr. Burke  
Ambassador, London  
Ambassador, Washington.