



# GUERNSEY GENERAL ELECTION

OCTOBER 2020

## CPA BIMR ELECTION EXPERT MISSION FINAL REPORT



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## EXECUTIVE SUMMARY

*"This was an election of firsts. The first time election observers were invited by Guernsey; the first use of a new electoral system; the first inclusion of advance polling days; and, on top of all this, the first election to be conducted during a global pandemic.*

*The Guernsey Election was a successful democratic exercise. Guernsey's legal framework for elections complies with international standards for democratic elections. The introduction of new island-wide voting has led to some challenges. Many of these were effectively dealt with while others still remain as outlined in our report."*

*Jim Wells MLA, Head of Mission*

**The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission to the Guernsey General Election in October 2020.** This was the first time that international election observers had been invited by the States of Guernsey. Due to the Covid-19 pandemic, research was carried out online, and interviews with a wide range of stakeholders were conducted using digital meeting platforms.

Guernsey's legal framework that provides for the conduct of elections complies with local, regional and international standards for democratic elections. The right to vote is well protected, including the voting rights of prisoners. The right to stand for election is also well protected, except for anyone who, during the five years preceding the election, was sentenced to imprisonment for a period of six months or more by a court in the UK, the Channel Islands or the Isle of Man.

Election administration in Guernsey is not a permanent aspect of the governmental infrastructure, which caused pressure on the elections team in the lead up to the election. Voter registration in Guernsey is voluntary, and an extensive media campaign took place in the lead up to the election to encourage eligible voters to register, which was temporarily interrupted due to the outbreak of COVID-19.

A record total of 119 candidates were nominated for this election. This offered voters an unprecedented level of choice, while it also required them to read a broad range of manifestos. In the lead up to the election, three new political parties were registered and presented candidates, a total of 41 between the three of them.

This election saw a variety of new measures being introduced, including new campaign finance regulations for political parties, advance polling days, and new vote count technology. Voting took a significantly different form compared to previous elections, as some two-thirds of the registered electorate registered for a postal vote.

There is an absence of equality law and of any special measures to promote the increased participation of women in political life in Guernsey. The political participation right of persons with disabilities is protected by the legal regime, and commendable efforts were made by the elections team to ensure access to polling stations for persons with physical disabilities.

**The CPA BIMR Election Expert Mission offers 12 recommendations in this report to enhance the conduct of elections in Guernsey and to bring it fully into line with international obligations and standards for democratic elections.**

## INTRODUCTION TO THE MISSION

At the invitation of the Guernsey States' Assembly & Constitution Committee (SACC), the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission (EEM) to the Guernsey General Election in October 2020. The SACC's invitation followed consultation with the Policy & Resources Committee and agreement by the States of Deliberation. This was the first time that CPA BIMR had been invited to observe elections in Guernsey.

The Mission was composed of:

- Jim Wells MLA – Head of Mission (Northern Ireland)
- Anne Marlborough – Legal/Political Analyst (Ireland)
- John Ault – Electoral/Campaign Analyst (UK)
- Fleur ten Hacken – CPA BIMR Election Coordinator (The Netherlands)
- Jessica Onion – CPA BIMR Election Administrator (UK)

The Mission held virtual meetings between 28 September and 9 October. The Mission was guided by the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers.

The Mission conducted an independent assessment of the Guernsey election against international legal standards, commitments and obligations as well as domestic laws. Its assessment considered the legal framework, election administration, political campaign, media, and opportunities for complaints and appeals. In addition, the Mission considered a number of wider issues such as gender equality and participation of persons with a disability. The Mission met key stakeholders, including the Bailiff, the Chief Minister, HM Procureur and HM Comptroller, the Chief Officer of the Guernsey Police, the Registrar-General of Electors, election officials, candidates, political parties, civil society groups, media outlets and voters.



The CPA BIMR Team of international observers

Election observers were introduced into the law of Guernsey for the first time in anticipation of this election. Article 72B was added to the Reform (Guernsey) Law, 1948, which enables the States' Assembly & Constitution Committee, after consultation with the Policy & Resources Committee, to appoint observers. Such observers will have the right to receive a copy of the Electoral Roll, to be present at any polling station, and to be present during the counting of votes.

An invitation was accepted by CPA BIMR to observe this election. Due to the COVID-19 pandemic, the Mission was originally planned to be delivered as a hybrid mission. The observers would conduct virtual meetings with stakeholders and visit Guernsey for a limited period of time to conduct in person observations of Advance Voting, Election Day and the Vote Count in Guernsey. In consultation with Public Health Guernsey, the observers were granted Critical Worker Travel Permits and had agreed to adhere to strict regulations, including daily COVID-19 testing, while in Guernsey.

Shortly before departure to Guernsey, the Mission was informed that there was increased concern in Guernsey around interacting with observers visiting from abroad due to the risk of COVID-19. Consequently, restrictions were proposed on the observers' access to polling stations, which led to the abandonment of plans to observe the election in person. In close consultation with the Registrar-General of Electors, the decision was taken to continue the Mission virtually. CPA BIMR had prior experience with this innovative adaptation of election observation methodology, as it had carried out a successful virtual Election Expert Mission to the Anguilla General Election in June 2020.

The Mission acknowledges its limitations, in particular the inability of members to visit the island in person and to observe the proceedings on Advance Polling Day, Election Day and the Vote Count. Despite this, the Mission has striven to look at the wider electoral process to the best of its abilities.

This report will offer a number of recommendations which it is hoped will be given due consideration by all the election stakeholders, particularly the States of Guernsey, for the improvement of future elections in Guernsey.

## **BACKGROUND & ELECTORAL SYSTEM**

The "Bailiwick of Guernsey" is one of three British Crown Dependencies and is located in the English Channel, off the coast of France. The Bailiwick of Guernsey consists of three separate sub-jurisdictions, namely Guernsey, Alderney and Sark.

Guernsey is an island of 24 square miles and has a population of around 63,000.<sup>1</sup> Guernsey is administered by the States of Guernsey. Its assembly is the States of Deliberation, which comprises of 38 elected People's Deputies and two representatives of the States of Alderney who are elected separately in Alderney. The Election Expert Mission's mandate covers the election of the 38 deputies in the October 2020 General Election. This was the first time that deputies were elected via a First-Past-The-Post system on an island-wide basis.

The States of Deliberation acts as the overarching executive and legislative assembly with the power to raise taxation and determine expenditure. The States of Deliberation meets every month, except in school holidays, to discuss and debate reports, draft legislation and other matters.

The States of Deliberation has three unelected ex-officio members. The Bailiff of Guernsey is a member and presides over the States. The Bailiff is unelected and non-political, and also serves as the Chief Justice of Guernsey. Both Her Majesty's Procureur (Attorney-General) and Her Majesty's Comptroller (Solicitor General) also sit ex-officio.

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<sup>1</sup> States of Guernsey website, available on: [www.gov.gg/population](http://www.gov.gg/population)

## COVID-19 PANDEMIC

The COVID-19 pandemic, inevitably, had an impact upon the electoral process in Guernsey. The election was initially due to take place on 17 June 2020, but in April 2020 it was postponed by a year until June 2021. However, Guernsey's policies to stop the outbreak of COVID-19 worked well, and life in Guernsey returned to normal earlier than expected. Therefore, after several weeks, some Members of the States started lobbying for the election to take place later in 2020. This would mean the delay of the election by an entire year, which had been criticised by some sitting deputies and members of the public, would be shortened to a few months. Eventually, a decision was taken by the States of Deliberation on 1 July 2020 that the election would take place on 7 October 2020.

## LEGAL FRAMEWORK

The fundamental law of Guernsey governing elections is found in the Reform (Guernsey) Law, 1948. This law establishes the overarching system of government and the electoral system, including provisions on the right to vote and the right to stand for election. Amended frequently since 1948, the most recent amendments have their origins in a referendum conducted in 2018<sup>2</sup> which mandated revision of the electoral system. The Reform (Guernsey) (Amendment) (No.2) Law, 2019 gave effect to the changes arising from the decision taken in the referendum. The Reform (Guernsey) (Amendment) (No.2) Law, 2019 (Commencement) (Ordinance), 2020 brought this law into force on 22 April 2020.

This was just short of six months in advance of the election date, offering minimal time for the legal changes to be put into effect. It is usually not considered good practice to amend electoral law so close to an election. The Venice Commission<sup>3</sup> recommends that "the fundamental elements of electoral law, in particular the electoral system proper [...] should not be open to amendment less than one year before an election".

Subsidiary legislation, in the form of ordinances and regulations, provides detail on some aspects of the electoral process, including on the registration of political parties, electoral expenditure by candidates, postal voting and the location and timing of polling. Rules on other aspects of the electoral process are dispersed across other pieces of legislation including, for example, the Land Planning and Development (Exemptions) Ordinance, 2007, which provides for an exemption from planning restrictions on the erection of election signs. Some matters are largely unregulated, such as procedures for complaints and appeals relating to voter registration and candidate nomination. Other aspects of the electoral process are governed by customary law and practice, resulting in a lack of certainty in the absence of clear written rules.

International human rights law creates obligations in relation to the conduct of elections in Guernsey. While Guernsey is a British Crown Dependency, international instruments applicable to the UK are not directly applicable in Guernsey<sup>4</sup> but must rather be extended on an individual basis. Several of the main international instruments pertinent to democratic elections have been

<sup>2</sup> Conducted on 10/10/2018, five options were given to voters who chose Option A, to have a single island-wide election for 38 deputies to the States of Determination, with a four-year term in office.

<sup>3</sup> European Commission for Democracy through Law (Venice Commission) [Opinion No. 190/2002 CDL-AD\(2002\)023rev2-cor](#) (2002) Paragraph II.2 Regulatory levels and stability of electoral law.

<sup>4</sup> UN ICCPR Committee (2015) [CCPR/C/GBR/CO/7](#), in reviewing UK record, noted with concern that the human rights instrument applicable to the UK was not directly applicable to Crown Dependencies

extended to Guernsey.<sup>5</sup> These include the International Covenant on Civil and Political Rights and the International Convention on the Elimination of Racial Discrimination. The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities have not yet been extended to Guernsey. The relatively recent 2017 UK national report<sup>6</sup> under the Universal Periodic Review of the UN Human Rights Council stated that work is underway on a broad equality and human rights programme in Guernsey, including on disability and inclusion.

The European Convention on Human Rights applies to Guernsey and has been given domestic effect in the Human Rights (Bailiwick of Guernsey) Law, 2000, which came into force in 2006. This legislation is binding upon public authorities and enforceable in the local courts. A broad swathe of political rights is protected in the Human Rights Law.

Guernsey's legal framework that provides for the conduct of elections complies with local, regional and international standards for democratic elections. Rights of political participation are well protected, with both the right to vote and the right to stand for election particularly well established. The Human Rights (Bailiwick of Guernsey) Law, 2000, and the access to the local courts to vindicate the rights comprised therein, is significant.

***Recommendation 1: Greater codification of electoral rules and procedures, either via amending existing election law or via enacting a new omnibus election law, could be considered, in order to ensure that there is certainty and consistency in the law and that it applies equally to all concerned.***

## BOUNDARY DELIMITATION

Previously, the States deputies were elected in seven multi-member constituencies, called districts (Castel, St Peter Port North, St Peter Port South, St Sampson, South East, Vale and West). These districts elected between five and six deputies, depending on the population of each district. In previous elections, all candidates were independent. However, there was frustration on the island that voters could only vote for a limited number of candidates in their district. There was a call for change by supporters of island-wide votes.

Following considerable discussion in Guernsey, a multi-option referendum was conducted on 10<sup>th</sup> October 2018 which offered voters the opportunity to vote on the future structure of the electoral system. The States had agreed to adopt the outcome of the referendum if 40% of people on the electoral roll cast their ballot. The referendum was decided on via preferential and transferable voting, with voters ranking up to five options in order of preference. The details of the referendum were set out in The Electoral System Referendum (Guernsey) Law, 2018.<sup>7</sup> These options were either:

- Option A, one 38-member constituency covering the whole island. Deputies would serve four-year terms;

<sup>5</sup> [UN HRI/CORE/GBR/2014 Common core document](#) forming part of the reports of States parties: UK, has an extensive commentary on & catalogue of human rights instruments relevant to Guernsey

<sup>6</sup> [UPR National Report of the UK, British Overseas Territories and Crown Dependencies](#) (2017)

<sup>7</sup> Available on: <http://www.guernseylegalresources.gg/article/165225/Electoral-System-Referendum-Guernsey-Law-2018>



- Option B, seven districts with five or six seats. Deputies would serve four-year terms. This option was essentially the status quo;
- Option C, seven district constituencies with three, four or five seats, and one 10-member constituency covering the whole island. Voters would vote in one district constituency and the whole-island constituency. Deputies would serve four-year terms;
- Option D, four constituencies with 9, 10 or 11 seats. Deputies would serve four-year terms;
- or Option E, a single island-wide 38-member constituency with one-third of the members (12 or 13) elected every two years for a six-year term.<sup>8</sup>

Option A, which proposed island-wide voting, secured the greatest number of votes in the final round of counting, having received 52.48% of the votes ahead of Option C which received 47.52%. Option B came third in the referendum. The turnout was 45.1%, which meant that the referendum result was adopted.

Thus, the 2020 election saw the institution of a novel format for all stakeholders to deal with the election of States deputies. Deputies were elected in a single island-wide district for the first time. Voters had 38 votes and were able to choose from the full list of candidates. Deputies were elected to serve for a term of 4 years.<sup>9</sup> The formation of political parties was provided for by law, and three parties were registered to participate in the election.

The institution of island-wide voting had the effect of creating several outcomes that perhaps had not been entirely predicted before the election, such as a complex ballot paper and a significantly elongated counting process requiring the use of ballot scanning and electronic tabulation.<sup>10</sup>

## **ELECTION ADMINISTRATION**

Election administration in Guernsey is not a permanent aspect of the governmental infrastructure. The staff are drawn from other parts of the civil service, including the Registrar-General of Electors who maintains electoral registration. The elections team seems to have general respect among stakeholders for carrying out its activities in an independent and impartial manner and for its readiness to provide information to voters and candidates. Nonetheless, the International Covenant on Civil and Political Rights, which applies to Guernsey, has been interpreted as requiring that an independent electoral authority should be established to supervise the electoral process.<sup>11</sup>

The elections team is responsible for the planning and implementation of all aspects of the election process from publicity to polling day and from staff recruitment to engaging technology to conduct the counting process. The work is extremely demanding, with fixed deadlines and limited resourcing. The staff are to be commended for their work in achieving an effective election operation and polling day.

<sup>8</sup> States of Guernsey website, available on: [www.gov.gg/referendum](http://www.gov.gg/referendum)

<sup>9</sup> Due to the change in election dates due to COVID-19, the States agreed that the next election should be held in June 2025. Effectively, the deputies will therefore serve a term of 4 years, 8 months and 14 days.

<sup>10</sup> Island-wide voting had previously been used to elect a smaller number of Conseillers for the island.

<sup>11</sup> UN Committee on Human Rights (27 Aug 1996) [General Comment 25 "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," 1510th meeting \(fiftyseventh session\)](#)



The Mission was told that nearly all arrangements for the June 2020 General Election were in place in early March, and that postponing the election to October meant a number of changes were needed, including adapting the recruitment of volunteers, amending the [www.election2020.gg](http://www.election2020.gg) website, reorganising services being offered by third parties (in particular the production of ballot papers and the provision of electronic ballot scanners), reorganising training sessions, rewriting guidance and introducing contingency plans to cover all eventualities should the island move backwards in relation to COVID-19.

The restrictions imposed by the States of Guernsey to combat the spread of COVID-19 interrupted the election preparations for several months. Public outreach activities resumed once restrictions were lifted. The election administration should be commended for producing engaging public service announcements and making these available to the public on online platforms. This election took place in a context of extraordinarily challenging barriers, but the elections team still managed to deliver an effective election.

***Recommendation 2: A permanent dedicated elections body should be constituted so that institutional knowledge and expertise can be embedded in the Guernsey electoral system. This body could provide continuous electoral oversight, including oversight of candidate and voter registration, political parties and campaign finance.***

## THE RIGHT TO VOTE

The right to vote is well protected in the law of Guernsey. Article 27 of the Reform (Guernsey) Law, 1948, sets out the qualifications to vote. Any resident on the island may apply to be included in the Electoral Roll, without any criteria as to nationality or citizenship. The only requirement is that a voter be “ordinarily resident”, which is defined as meaning that someone is living lawfully, and has a home, in Guernsey. One may be ordinarily resident without a fixed or permanent address.

In addition to being ordinarily resident when applying for inscription in the Electoral Roll, the intending voter must have been ordinarily resident for a period of at least two years immediately prior to the date of registration, or else for a period or periods of five years in total at any time prior to this. Persons aged 16 and above may vote, but they may be included in the Electoral Roll from the age of 15. Article 30 of the Reform (Guernsey) Law, 1948, provides that voting is by secret ballot.

The voting rights of prisoners are protected in the Reform (Guernsey) Law, 1948, in Article 27A. Two possibilities are available, in that prisoners may register for a postal vote or may vote in person, at the discretion of the Prison Governor. Postal voting has been available to all absent voters since 1972. Advance voting was provided for the first time in this election.



Polling stations

## VOTER REGISTRATION

Voter registration in Guernsey is voluntary. There is no requirement for residents to be on the register. The Electoral Roll opened in December 2019 and was subject to an extensive media campaign. As a result of the outbreak of COVID-19 in March 2020, outreach initiatives had to be scaled back and reconsidered in light of the uncertain situation the island found itself in.

It was originally decided to delay the election from June 2020 to the same time in 2021. However, following the decision of the States of Guernsey to proceed with the election in October 2020, the election team campaigned extensively from 1st July onwards to encourage voters to register, with an extensive multi-channel approach, from radio, television, door drops, bus advertising and social media to more traditional methods.

The voting age in Guernsey is 16. In order to vote residents should have been registered by 21<sup>st</sup> August. The Election Expert Mission was informed that when the Electoral Roll closed at midnight on Friday 21<sup>st</sup> August, 31,301 voters had registered to vote. The population of Guernsey was 63,021 at the end of December 2019.<sup>12</sup> This number includes residents of Alderney and Sark (approximately 2,500), as well as people under the age of 16, neither of whom are eligible to vote in this election. An estimated 79% of people were eligible to vote (49,807).<sup>13</sup> Of these estimated eligible voters, only 62.8% were registered on the electoral roll. So, although the number of registered voters was higher than in the past two General Elections in 2012 and 2016, there is still a significant gap between those who are registered to vote and those that could be entitled to vote. And even though this election saw a record voter turnout of registered voters (79%), only an estimated 49.6% of eligible voters voted in this election.

Voter registration is conducted on an ad hoc basis in the lead up to a General Election, and there is no rolling register of electors throughout the years in which no election is being held. This means the election team conducts voter registration campaigns, while having to organise all other aspects of the election simultaneously. The electoral roll is available for public inspection on an annual basis in March. However, access to the roll ahead of the election, as amended since March, was unclear.

***Recommendation 3: Formal processes of voter registration could be introduced as part of an ongoing rolling process of registration. Voter registration could be done as part of any annual engagement that residents have with the state, such as filing tax returns.***

## THE RIGHT TO STAND FOR ELECTION

The right to stand for election is set out in Article 8 of the Reform (Guernsey) Law, 1948. This requires only that a candidate be of full age, which is 18 years of age, and be ordinarily resident on the island on the date of nomination. A candidate must have been ordinarily resident in the island for either a period of two years immediately before the date of nomination, or for a period or periods of at least five years in total at any time prior to nomination. The candidate must also be a registered voter, a qualification which was introduced in advance of this election.

<sup>12</sup> States of Guernsey (29 Oct 2020) 'Guernsey Quarterly Population, Employment and Earnings Bulletin', p.9, available on: <https://www.gov.gg/CHttpHandler.ashx?id=132534&p=0>

<sup>13</sup> Ibid

Nomination requires the support in writing of two voters who are on the Electoral Roll. No deposit or fee is payable. The nominee must submit a declaration of eligibility to hold the office of People's Deputy. The person must also declare any unspent convictions which resulted in imprisonment anywhere in the world, or else the absence of such convictions.

There is a disqualification in Article 8 which excludes anyone who, during the five years preceding the election, was sentenced to imprisonment for a period of six months or more by a court in the UK, the Channel Islands or the Isle of Man. The International Covenant on Civil and Political Rights, applicable to Guernsey, provides, in Article 25, that citizens shall have the right and opportunity to take part in the conduct of public affairs. This has been interpreted to mean that the right to stand for election may be suspended or excluded only on grounds which are "objective and reasonable".<sup>14</sup> It is arguable that the exclusion of all those sentenced to imprisonment, without regard to the nature of the offence, is unreasonable.

***Recommendation 4: Consider removing the provision in Article 8 of the Reform (Guernsey) Law, 1948, which disqualifies voters who have been sentenced to imprisonment for a period of six months or more, from eligibility to become a People's Deputy.***

## CANDIDATE REGISTRATION

A record total of 119 candidates were nominated for this election. This offered voters an unprecedented level of choice, while it also required them to read a broad range of manifestos. Although the vast majority of candidates stood as independents, three political parties were registered and nominated candidates, a total of 41 between the three of them. These were:

- the Alliance Party, registered in February 2020, which nominated eleven candidates, two of whom were women;
- the Guernsey Party, registered in August 2020, which nominated nine candidates, including one woman;
- and the Guernsey Partnership of Independents, also registered in August 2020, which nominated 21 candidates, nine of whom were women.

Political parties are narrowly defined in the Reform (Guernsey) Law, 1948, which provides that a political party is "a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections." Applications for registration are made to the States' Greffier, who maintains a register of political parties. Registration depends upon a party having certain office holders, a constitution, and submission of an application signed by two party members who are registered voters, and payment of a fee of £80.<sup>15</sup> Parties will be registered on satisfaction of these requirements, unless the name or emblem of the party is offensive or confusing.

In addition to rules on registration, political parties also have obligations to file annual accounts with the Greffier. They must also comply with the rules on election expenditure, set out in Article 45 of the Reform (Guernsey) Law, 1948, and the Electoral Expenditure Ordinance, 2020. Beyond

<sup>14</sup> UN Committee on Human Rights (27 August 1996) [General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service \(Art. 25\)](#), paragraph 4.

<sup>15</sup> [The Registration of Political Parties \(Fees\) Regulation, 2020](#)



these rules, there is no further regulation of political parties. While this has not hindered the conduct of the election, further legislative intervention may become necessary to govern the operation of parties in political life.

## **ELECTION CAMPAIGN**

Not visiting the island has considerably restricted the Mission's ability to analyse the nature of the campaign in Guernsey, but aspects have been possible to assess through evidence gathered from online and social media, as well as through interlocutor meetings.

The election campaign appears to have been extremely competitive, with a large number of candidates, 119, seeking one of the 38 seats available. Independent candidates and political parties campaigned freely and peacefully, with no reports of impediments to campaign activities. The creation of party politics saw 41 candidates stand for one of the three political parties, while the remaining 78 candidates fought as independents.

There is a strong tradition of public meetings in Guernsey. This has somewhat changed with the arrival of island-wide voting due to the logistical challenges of hosting 119 candidates. Previously, these events were based in the local constituencies with a more manageable number of candidates in attendance. However, some public events were organised by several civil society groups. These include: the Guernsey Disability Alliance; Standing up for Guernsey's Environment; Life in Guernsey 2020 Work, Rights and Wellbeing Hustings; Guernsey Churches Convention for Candidates; Guernsey Institute Stakeholder event for candidates; Grammar School Meet the Candidates, and the Royal College of Nursing Hustings.

Campaigning has been different in this election, with some candidates campaigning on their own and others through one of the three parties. The introduction of parties was a focus point in the campaign of many candidates.

Candidates issued literature of their own, and posters were displayed. Whilst canvassing was once seen as the norm in smaller district constituencies, the practical limitations of candidates visiting every registered elector meant that in-person meetings and campaigning have been less frequent than in previous elections.

## **CAMPAIGN FINANCE**

In a small jurisdiction like Guernsey, access to candidature is relatively open and the issues of campaign finance were not raised to any great extent with the Election Expert Mission. However, because of the significant change in boundary delimitation that took place for this election, moving from local smaller constituencies to an island-wide system, there are possible challenges to future potential candidates accessing the process.

Each nominated candidate received some support for their candidature from the States of Guernsey. Support took the form of:

- A candidate manifesto booklet containing a maximum of two sides of A4 sized paper per candidate, produced by the States of Guernsey and delivered to all homes on the Electoral Roll.
- A grant of £500 for each candidate.

- A free dedicated web page consistent with the manifesto booklet for each candidate.
- An event organised to facilitate voters meeting candidates. Each candidate was given an allocated table and chairs in a large sports hall. Arranged alphabetically they were either grouped by political party, or individually. Members of the public were encouraged to meet each candidate as desired. Whilst not a financial benefit there is an implicit 'in kind' financial element to this event.

There is no nomination fee or deposit required to stand for election, which facilitates ease of access to participate in the election. Campaign finance regulations for political parties were introduced for the first time this election. The regulations stated that the candidate expenditure limit would be £6,000 (including the generous £500 state support) and that the expenditure by a political party was only permissible by virtue of candidates affiliated to that party assigning a maximum of 50% of their permitted electoral expenditure to the party, and that such expenditure by a political party in any election may not exceed in total twice the permissible electoral expenditure for an individual candidate or £9,000, whichever is the lesser.<sup>16</sup>

The appearance of three registered parties in this election was a matter of considerable discussion. The nature of the parties' appearance in the election meant that their capacity to campaign, share finance and collaborate in saving on costs of their campaigns made them potentially better resourced than their independent opponents.

Some consideration should be given to the so-called pre-election period. Whilst election expenses are defined and limited for the period when the election campaign is 'live' and candidates have been nominated, no such limitations or reporting requirements exist for the period before an election, when a candidate or party has indicated its intent to contest an election. This period could potentially see high levels of spending by election campaigners without any oversight or limitation. With the advent of parties in the Guernsey context this may become an area of concern where parties exist and function throughout the period of a session of the States of Deliberation but there is limited oversight of their funding, finances or campaign expenditure except to make an annual declaration of their accounts to the nominated officer – the Greffier. This could lead to a significant imbalance in campaign parity between parties, richer individuals and ordinary citizens who wish to seek election in the future, whether as a party-affiliated candidate or as an independent candidate.

***Recommendation 5: Political parties should be subject to oversight, and their finances should be evaluated on an annual basis. Individual candidates' pre-election fundraising and expenditure should also be assessed and recorded. Reporting should not be onerous but simply conducted by the production of evidence.***

***Recommendation 6: Boundaries of pre-election and annual expenditure should be clearly defined. The limitations of expenditure outside the formal period of nominated candidature could be within similar boundaries to those defined for the election period, except with no additional public subsidy.***

<sup>16</sup> Guernsey Election Website (August 2020): 'Information for Prospective Candidates: Guidance Notes', p.15, available on: <https://election2020.gg/media/k0ghm3qj/guidance-for-candidates-final-26-08-2020.pdf>

## MEDIA

Although not extensive, Guernsey is served by an active, engaged, and local media. There is also active social media engagement, which appears to have been especially popular during the election campaign, spawning accessible processes for voters to assess who they might be most aligned with. There is a healthy media landscape which, although small, is free and open.

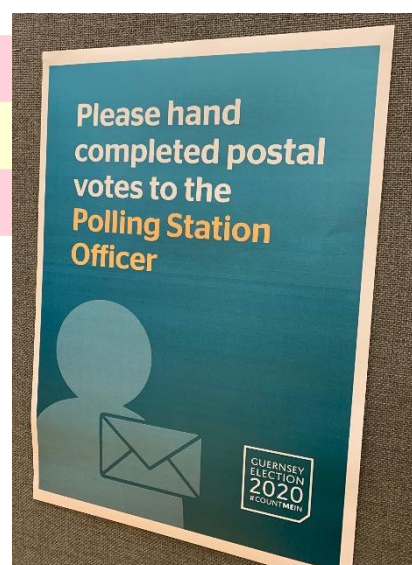
BBC Guernsey is a dedicated arm of the UK's BBC, which is funded by a license fee. It is based in Guernsey and reported on the campaign. During the election, BBC Guernsey broadcast a series of candidate hustings on the radio and it reported extensively on the various changes and novelties of the election reflecting the changing nature of the process, such as the number of candidates and the length of the ballot paper.

Guernsey is also served by ITV, in the form of Channel TV and a news website. It covers all of the Channel Islands, not simply Guernsey.

The Guernsey Press is the newspaper in Guernsey. Founded in the nineteenth century, the daily newspaper has significant coverage in Guernsey. As well as covering the election it also took paid advertising from candidates and parties. It has had no stated editorial line on support for parties or individual candidates. Guernsey is also served by The Bailiwick Express, an online media platform, which also covers Jersey.

Some media outlets faced challenges when covering the election because of quarantine restrictions in Guernsey due to COVID-19, as it impeded their ability to move equipment and personnel to Guernsey. Whilst not a limitation on press freedom, this does seem to have had some effect on the variety and depth of some of the media channels' capacity to offer its planned programming concerning the election.

Although some media respected an informal period of silence in their reporting on election-related matters during Advance Voting days and Election Day, this was not formalised. One aspect of the media coverage that was notable was the approach taken by the media towards incumbent politicians. The media's policy and practice of maintaining impartiality during the election period to afford equal and fair access to all candidates, whether incumbent or otherwise, was commendable.



Poster inside a polling station

Guernsey also has an active social media landscape, which was especially active during the island-wide election, where the 119 candidates may have been less individually known to the electorate. Interlocutors shared significant commentary that the electorate was active on social media and that it engaged with the issues of the campaign. Little or no evidence of intimidation or abuse was provided beyond the normal cut and thrust of political debate during an intensive election campaign. No comments or significant concerns were shared by the election authorities, law enforcement or candidates about intimidation, or worse, on social media.



## TECHNOLOGICAL INNOVATION

Whilst much of the technology used in the election was focused on the process of encouraging residents to register to vote through social media there was also significant investment in technology to assist the vote count because of the significant change in the voting process.

As voters were offered up to thirty-eight votes on their ballot paper, scannable ballots were issued to voters that could either be cast in a polling station or by post.

As part of the counting process these ballot papers were then scanned, using commercially available scanning equipment. Optical Mark Recognition (OMR) technology was used to scan each vote on the ballot paper and record it. This was supplied by a UK-based company that was brought to Guernsey with all the necessary equipment to conduct the count. One of the challenges discussed with the interlocutors was the impact of the high number of returned postal ballots that were creased and ripped, which meant that ballots could not get scanned by the software.

This led to a high number of votes being rejected by the scanners and then being replaced (transposed) with a new non-creased ballot which the scanning equipment could accept. Whilst the equipment worked well, from the virtual observations that the Election Expert Mission could conduct, there was still a high number of human interactions with the ballots such as the 'transposition' process and the need for manual adjudication. Please see the section on Counting for further comment on this.

## VOTING

Voting took a significantly different form compared to previous elections, as 69% of the registered electorate registered for a postal vote. In total, 21,271 postal votes were issued, including those sent to voters outside Guernsey.

Guernsey also saw significant extensions to the methods of voting for those who wished to vote in person at a polling station. As the information from the elections team indicates, 'it was agreed to introduce advance polling stations to increase the number of days that people on the Electoral Roll could cast their votes, and to enable voters to choose from voting in their parish polling station or at a 'super-polling' station.'<sup>17</sup>

Polls were open from 8am to 8pm as follows:

- Saturday 3 and Sunday 4 October: St Sampson's High School and The Princess Royal Performing Arts Centre;
- Tuesday 6 and Wednesday 7 October (formal polling day): all parish polling stations (14 in total) and The Princess Royal Performing Arts Centre.

Voters could attend the polls in person and vote for up to 38 deputies. Those who had been issued with a postal ballot were not eligible for a replacement ballot but could deliver their completed postal ballot to a polling station at any stage in the process.

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<sup>17</sup> Guernsey Election 2020 website, available on: <https://election2020.gg/voting/where-to-vote/>

To be issued with a ballot paper, voters are only required to give their name and no identification is required. The process depends on trust that the voter will not impersonate another voter on the electoral register, and no concerns about this practice were shared with the Mission. Voters also have the capacity, at the discretion of the Registrar General of Electors, to register to vote in the polling station on polling day if they have been inadvertently left off the register due to administrative error. The Mission was informed that this facility was used on a handful of occasions.



Polling booths inside a polling station

The staffing of polling stations is done on an unpaid voluntary basis. In previous elections, staffing of polling stations was arranged by the Douzaines, the administrative bodies of the parishes. For the first island-wide General Election the polling stations were the responsibility of the Registrar-General of Electors. The Douzaines still ran the polling stations using parish officials and volunteers and the States also advertised for volunteers to carry out various tasks on polling days. If extra staff were required, they were co-opted by members of the Douzaine from the local area as required. There did not seem to be an open process of application for these roles. With polling station staff working in shifts throughout polling days, there can be a high turnover of staff on the same day. This could potentially lead to a variable service for voters visiting the polling stations at different times throughout the day and lead to an inconsistency of electoral administration. The elections team provided training to all staff working in polling stations, which most staff attended. However, some staff felt strongly that training was unnecessary and there is evidence that some staff volunteered without having received training.

***Recommendation 7: The recruitment process for polling station staff should be open and publicly advertised, and increased training for polling station staff should be considered.***

The ballot paper caused a number of concerns for third sector groups, especially those associated with voters with partial sight or motor problems. The nature of the ballot required voters to fill in small oval shapes on the ballot (which could be scanned and recorded using the electronic counting equipment). This posed challenges for some voters as these ovals were relatively indistinct on investigation.

## COUNTING

Counting began on Thursday 8 October at the Beau Sejour Leisure Centre in St Peter Port. Ballot boxes started to arrive from secure storage at 6am, with staff and counting teams arriving from approximately 8am. The Chief Returning Officer briefed those candidates attending the count at 8.30am. The first ballot boxes were opened at 9am and counting began.

Counting staff are paid a fee of £15 per hour. Specialised ballot scanners and software were engaged from the UK to conduct the count. The staff associated with the scanning technology were afforded critical worker status to conduct their work in Guernsey.

Counting should have three separate stages in the following order, in line with international best practice:

1. a verification of the number of ballot papers cast;
2. a verification of the number of votes cast (this stage is only relevant if voters can vote for more than one candidate, such as in the Guernsey 2020 election);
3. a vote count verifying how many votes the candidates received.

These three steps ensure a rigorous counting process. However, in this election the first two steps did not appear to take place as separate parts of the counting process. The first step would involve the counting staff counting how many ballots were received before moving on to counting votes, which would be relatively easy to implement. The second step would be more complex. Bearing in mind each elector had anywhere between 1 and 38 votes to cast, the total number of votes cast could have been up to approximately 900,000 votes in this instance. This could potentially be labour intensive and time consuming.

***Recommendation 8: The number of ballot papers cast should be verified at the start of the vote count. Adding an additional verification step should also be explored, namely the verification of the total number of votes cast.***

Once the ballots had been opened, in the case of postal ballots, and emptied from ballot boxes, they were fed through the electronic scanning equipment to analyse whom the elector had chosen. Two scanning machines were used for this purpose. Ballots were checked for accuracy by staff on desktop screens and approved as required.

Numerous ballot papers were rejected because the scanning equipment was unable to assess them correctly, due to being creased when returned in the post or ripped when envelopes were opened by counting staff. In these cases, counting staff assessed the ballot paper and then 'transposed' the original information onto a fresh ballot paper that would be accepted by the ballot scanner. This was a labour-intensive process, and to third party observers it was an unusual and potentially concerning method, due to the large amount of human engagement which could facilitate possible human error. While no evidence of malpractice was observed virtually, this could have been a possibility, particularly as a significant number of ballots were transposed via this method (852 in total). Once the original ballot had been transposed, it was kept in a separate pile from the newly transposed ballots, with no apparent audit trail in place linking the two ballot papers. This could have prevented a rigorous countback audit process. If candidates or agents had wanted to check the audit trail to ensure no errors had been made in this transposition process, this would not have been possible.

***Recommendation 9: A rigorous countback audit process should be put in place, so that an original ballot paper that is 'transposed' can be checked against the newly transposed ballot paper that is used to replace it.***



The declaration of the results was issued in the early hours of Friday morning 9 October, broadcast live on BBC Radio Guernsey and other media outlets. All candidates were announced in alphabetical order, and those elected were listed separately in the order of their election.

Following the declaration, a recount was requested, which had been widely anticipated. As per the Reform (Guernsey) Law, 1948, a recount could be requested by unsuccessful candidates if the margin of difference between them and the successful candidate placed 38<sup>th</sup> was 2% of the total number of people voting. Under the new island-wide voting system, this translated to a margin of approximately 400-500 votes. This is a generous margin which means the chances of a recount are high. In this election, six candidates were eligible to request a recount, and four of them did. Election authorities may wish to re-evaluate the basis on which recounts can be requested in future elections under the current island-wide system. It might be more practical if the margin of difference between the candidate placed 38<sup>th</sup> and those below him/her would relate to a percentage of the difference between these contestants in the number of votes cast, rather than a percentage of the total number of ballots issued.

The recount was conducted on Saturday 10 and Sunday 11 October, with the final results being available on Sunday evening. There was no material difference between the original declaration and that made after the weekend recount.

## **PARTICIPATION OF WOMEN**

Women have long been participants in the States of Deliberation, but in numbers which have been quite inconsistent. In 2016 twelve women were elected, amounting to 32% of the representation of Guernsey in the assembly. This was the cause of some celebration, as just five women had been elected in 2012, amounting to 11% of the then membership.

Of the 119 candidates in this election, only 28 were women. Just eight of them were elected, among the total of 38 deputies representing Guernsey, amounting to 21%. This figure falls short of the minimum advocacy goal of 30% of women in parliament espoused in the Beijing Platform for Action, and very far short of the goal of gender parity of 50% men and women.

This is a disappointing outcome from the perspective of gender equality. Guernsey's legal framework offers scant regulation promoting equality of access to political office for women. The absence of equality law, particularly in the sphere of employment rights and equal pay, offers some evidence of historical and cultural discrimination against women which has yet to be eradicated. There is also an absence of any special measures to promote the increased participation of women in political life.

The UN Convention on the Elimination of All Forms of Discrimination against Women has not yet been extended to Guernsey. Attention was drawn to this fact when the Committee on the Elimination of Discrimination against Women most recently examined the 2017 report of the UK on compliance with the treaty obligations. In its concluding observations the Committee stated<sup>18</sup> that it remained concerned that the provisions of the Convention have not been given effect in Guernsey.

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<sup>18</sup> UN Committee on the Elimination of Discrimination against Women (14 March 2019) [CEDAW/C/GBR/CO/8 Concluding Observations on the Eighth Periodic Report of the UK](#), page 4/16.

A new Discrimination Ordinance is under preparation in Guernsey, but this is narrow in focus. Article 4 of CEDAW would, if extended to Guernsey, make provision for the enactment of temporary special measures to accelerate de facto equality for women, such as to promote the candidacy of women. Among measures to support to women, political parties, in particular, could be encouraged “to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women’s full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election”.<sup>19</sup> Article 7 of CEDAW obliges parties to the convention to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country” which includes ensuring that women “hold public office and perform all public functions at all levels of government”.

***Recommendation 10: Extension of Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey should be pursued without delay. This will entail enactment of legislation to enable fulfilment of convention obligations in advance of the extension.***

## PARTICIPATION OF PERSONS WITH DISABILITIES

The Convention on the Rights of Persons with Disabilities makes provision in Article 29 for the participation in political and public life of persons with disabilities. Article 21 of the convention further requires that parties shall take all appropriate measures to ensure the freedom of expression and opinion and access to information of those concerned. The convention has yet to be extended to Guernsey. Legislative preparations are underway to allow such extension, as equality law in the form of a new discrimination ordinance has been drafted and appears likely to be enacted soon.

***Recommendation 11: Extension of Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities should be pursued without delay. This will entail enactment of equality legislation to enable fulfilment of convention obligations in advance of the extension.***

In the meantime, the present legal regime protects the political participation rights of persons with disabilities. In 2016 a provision was added to the Reform Law which abolished “the mental incapacity” to vote. Article 27B now provides that any rule of law which provides that a person is subject to a legal incapacity to vote “by reason of his or her mental state” is abolished. This represents a liberal approach to voters with intellectual disability or mental illness.

Commendable efforts were made by the Registrar-General and her team to ensure access to polling stations for persons with physical disabilities. Polling stations were almost entirely accessible independently, with the exception of the polling station in St. Andrews. This deficiency was well communicated in advance and all voters wishing to do so could vote instead at the super polling station at the Performing Arts Centre, which was accessible.

<sup>19</sup> UN CEDAW (1997) [General Recommendation 23: Political and Public Life](#), paragraph 32.

The ballot paper, which required the careful shading in of small ovals, to be recorded by optical scanner, gave rise to some concerns regarding difficulties posed for voters with visual or motor impairments. The ovals were relatively indistinct on investigation. Magnifiers were available for those who wished to use them. Voters may, by law, be assisted to vote, but secrecy is compromised for such voters. They do not have the facility to vote independently.

## **ELECTORAL JUSTICE**

One of the fundamental elements of a legitimate electoral process is that provision is made for access to justice to resolve any disputes which may arise. International law provides for the right to an effective remedy, which includes both fairness and timeliness.<sup>20</sup> There is little detail of any procedures, in electoral law in Guernsey, to facilitate the making of complaints and appeals during the electoral process. There is no evidence, however, that there was any denial of access to justice or fair procedures during this election.

Electoral disputes are not segregated from other legal disputes in Guernsey. There is a presumption that fair procedures will be applied throughout the electoral process, including in relation to voter registration and candidate nomination. Recourse to judicial review before the courts is available. Uniquely in the Guernsey electoral sphere, the rules on the registration of political parties provide that decisions of the Greffier may be challenged in the Royal Court, with an appeal from that decision available to the Court of Appeal.

There were no complaints or appeals brought to the courts related to this election.

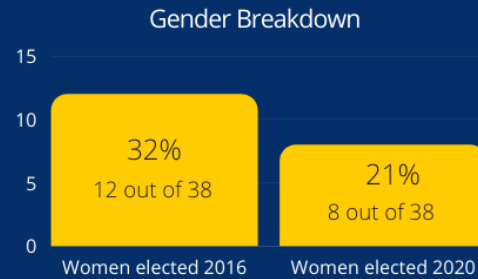
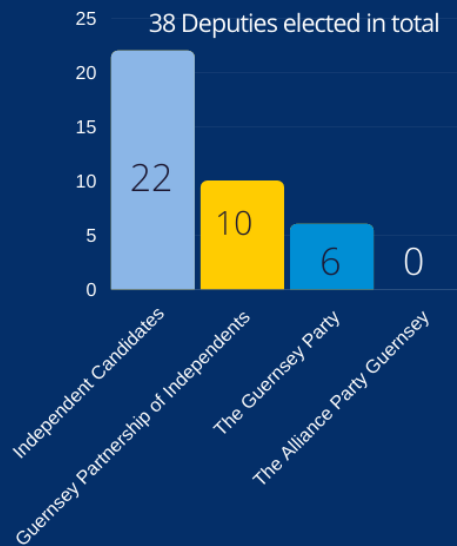
***Recommendation 12: Consideration should be given to the introduction of a system of complaints and appeals for all stages of the electoral process. Detailed procedures should be set out regarding the authority responsible to receive and adjudicate upon disputes arising in relation to voter registration, candidate nomination, voting and counting and all other aspects of the electoral cycle. Fair procedures must apply to any such regulations, with clear deadlines providing for the submission of complaints, making appeals and delivery of decisions, as well as rules of standing to lodge complaints.***

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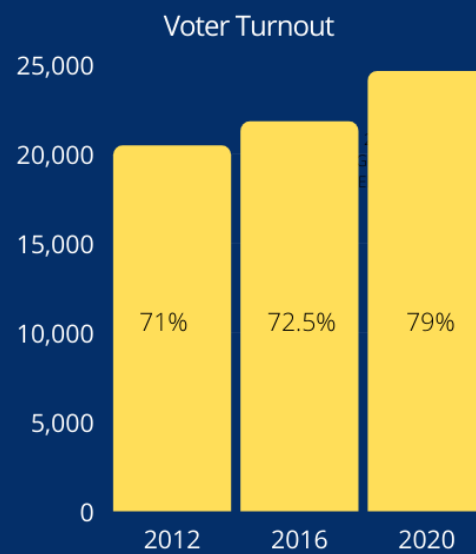
<sup>20</sup> The International Covenant on Civil and Political Rights establishes the right to an effective remedy in Article 2.3; the Universal Declaration of Human Rights also provides for an effective remedy in Article 8, and for a fair and public hearing by an independent and impartial tribunal in Article 10.

## ELECTION RESULTS

### Guernsey 2020 Election Results



Over 67% of registered voters opted for postal votes.





## RECOMMENDATIONS

### 1. LEGAL CODIFICATION

Greater codification of electoral rules and procedures, either via amending existing election law or via enacting a new omnibus election law, could be considered, in order to ensure that there is certainty and consistency in the law and that it applies equally to all concerned.

### 2. ELECTIONS BODY

A permanent dedicated elections body should be constituted so that institutional knowledge and expertise can be embedded in the Guernsey electoral system. This body could provide continuous electoral oversight, including oversight of candidate and voter registration, political parties and campaign finance.

### 3. VOTER REGISTRATION

Formal processes of voter registration could be introduced as part of an ongoing rolling process of registration. Voter registration could be done as part of any annual engagement that residents have with the state, such as filing tax returns.

### 4. RIGHT TO STAND

Consider removing the provision in Article 8 of the Reform (Guernsey) Law, 1948, which disqualifies voters who have been sentenced to imprisonment for a period of six months or more, from eligibility to become a People's Deputy.

### 5. OVERSIGHT OF POLITICAL PARTIES

Political parties should be subject to oversight, and their finances should be evaluated on an annual basis. Individual candidates' pre-election fundraising and expenditure should also be assessed and recorded. Reporting should not be onerous but simply conducted by the production of evidence.

### 6. CAMPAIGN EXPENDITURE

Boundaries of pre-election and annual expenditure should be clearly defined. The limitations of expenditure outside the formal period of nominated candidature could be within similar boundaries to those defined for the election period, except with no additional public subsidy.

### 7. POLLING STATION STAFF

The recruitment process for polling station staff should be open and publicly advertised, and increased training for polling station staff should be considered.

### 8. VOTE COUNT

The number of ballot papers cast should be verified at the start of the vote count. Adding an additional verification step should also be explored, namely the verification of the total number of votes cast.

**9. COUNTBACK AUDIT PROCESS**

A rigorous countback audit process should be put in place, so that an original ballot paper that is 'transposed' can be checked against the newly transposed ballot paper that is used to replace it.

**10. PARTICIPATION OF WOMEN**

Extension of Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey should be pursued without delay. This will entail enactment of legislation to enable fulfilment of convention obligations in advance of the extension.

**11. PARTICIPATION OF PERSONS WITH DISABILITIES**

Extension of Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities should be pursued without delay. This will entail enactment of equality legislation to enable fulfilment of convention obligations in advance of the extension.

**12. ELECTORAL JUSTICE**

Consideration should be given to the introduction of a system of complaints and appeals for all stages of the electoral process. Detailed procedures should be set out regarding the authority responsible to receive and adjudicate upon disputes arising in relation to voter registration, candidate nomination, voting and counting and all other aspects of the electoral cycle. Fair procedures must apply to any such regulations, with clear deadlines providing for the submission of complaints, making appeals and delivery of decisions, as well as rules of standing to lodge complaints.

## ACKNOWLEDGEMENTS

The CPA BIMR Election Expert Mission wishes to express its gratitude to the States of Guernsey, election officials, candidates and to the people of Guernsey for their cooperation and assistance during the course of the virtual Mission.

For further information about this Mission, please contact [cpauk@parliament.uk](mailto:cpauk@parliament.uk).

## CPA BIMR ELECTION OBSERVATION SERVICES

The first objective of the BIMR Strategy is to strengthen parliaments and the skills of their members. As part of this work, CPA BIMR facilitates election observations when invited to do so.

For more information about these services, please contact the CPA BIMR Secretariat at [cpauk@parliament.uk](mailto:cpauk@parliament.uk).



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