

# STATES OF JERSEY GENERAL ELECTION

JUNE 2022

**CPA BIMR ELECTION OBSERVATION MISSION**

**FINAL REPORT**



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## EXECUTIVE SUMMARY

- At the invitation of the Privileges and Procedures Committee of the States Assembly, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted an Election Observation Mission to the Jersey General Elections in June 2022.
- The make-up of the States Assembly Members elected in these General Elections changed, following extensive electoral reform adopted by the States Assembly in late 2021. The reforms abolished the 8 Senators that were previously elected from a single island-wide constituency and added 8 additional Deputies to the Assembly.
- Overall, Jersey's legal framework provides a basis for the conduct of democratic elections. While the laws that are relevant for the holding of elections provide detailed guidance in some areas, they are often general and may lack sufficient specificity in several instances.
- The administration of the electoral process is fragmented, with involvement from the Parishes at the local level, the Judicial Greffe and the States Greffe as well the newly created Jersey Electoral Authority at the central level.
- Ahead of the 2022 elections, the boundaries of electoral districts for Deputies were redrawn to ensure greater compliance with international standards. The boundaries for the election of Deputies now all respect international good practice as articulated by the Venice Commission. The Connétables continue to be elected from the 12 Parishes.
- The number of uncontested seats fell from 14 in 2018 (28%) to 8 in 2022 (16%). All uncontested seats were for a Connétable seat, with 8 out of 12 Connétables elected unopposed (67%). Efforts should continue to ensure more competitive elections.
- Election Day was calm, and the election administration did its utmost to facilitate voting by all eligible voters. The commitment of the Autorisés and of the numerous volunteers who worked as polling station staff (*Adjoints*) has to be commended.
- There is no legal requirement for voters to use photo ID to vote, but the Mission observed that voters were almost always asked to show a proof of identification such as a passport or driving licence. Voters who may not have such documents are at risk of being prevented from voting by an administrative practice.
- The system of administrative redress remains limited. Only candidates could address their grievances to the newly formed Jersey Electoral Authority. The absence of an administrative complaints procedure available to a wider range of stakeholders, including voters, and lack of an ombudsperson's office may narrow the possibilities for redress.
- In this report, the CPA BIMR Election Observation Mission offers 14 recommendations to enhance the conduct of elections in Jersey and to bring it more fully into line with international obligations and standards for democratic elections.

## INTRODUCTION TO MISSION

At the invitation of the Privileges and Procedures Committee of the States Assembly, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted an Election Observation Mission (EOM) to the Jersey General Elections on 22 June 2022.

The Mission was present in Jersey from 13 June until 24 June 2022. The Mission was guided by the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers. The nine-member mission was composed of:

- Head of Mission - Martin Whitfield MSP (Scotland);
- Short-Term Observer - Claire Christian MHK (Isle of Man);
- Short-Term Observer - Hon. Gathoni Wamuchomba MP (Kenya);
- Short-Term Observer - Wesley Howell (Cayman Islands);
- Electoral & Campaign Analyst - Delphine Blanchet (France);
- Legal & Political Analyst - Stefan Szwed (Poland);
- CPA BIMR Election Observation Lead - Fleur ten Hacken (The Netherlands);
- CPA BIMR Mission Coordinator - Josephine Jengo (Sierra Leone);
- CPA BIMR Mission Administrator - Chris Brown (UK).



The CPA BIMR team of international observers

This was the second time CPA BIMR was invited to observe a General Elections in Jersey. In 2018, CPA BIMR conducted its first EOM to Jersey which resulted in the publication of a report with 18 recommendations.<sup>1</sup> With 13 out of 18 recommendations either partially or fully implemented, the Mission commends the Jersey authorities for addressing many issues that were highlighted in the 2018 report.

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<sup>1</sup> The CPA BIMR 2018 report is available on: <https://www.uk-cpa.org/media/2417/eom-jersey-2018-final-report.pdf>

The Mission conducted an independent assessment of the Jersey General Elections against international legal standards, commitments and obligations as well as domestic laws. Its assessment encompassed the legal framework, election administration, political campaign, media, and opportunities for complaints and appeals. In addition, the Mission considered a number of cross-cutting issues such as gender equality and participation of persons with a disability. The Mission met key stakeholders, including election officials, candidates, the judicial branch, civil society groups, representatives of the media and voters. They also attended various campaign events. The Mission also received submissions from anyone who wanted to share a concern via a publicly shared email address. On Election Day, the Mission visited all 19 polling stations across the 9 constituencies and 12 Parishes. The Mission also observed the vote count of eight polling stations.

The Mission is independent in its composition, findings and conclusions, adhering to the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers signed at the United Nations in 2005.

This report offers 14 recommendations which it is hoped will be given due consideration by all the election stakeholders, particularly the States Assembly, for the continued improvement of future elections in Jersey.

## BACKGROUND

The Bailiwick of Jersey is a self-governing Crown Dependency. According to the 2021 population census, it is home to more than 103,000 people, approximately a third of whom live in the Parish of St Helier, which serves as the capital.<sup>2</sup> Jersey is autonomous and self-governing, with its own independent legal, administrative and fiscal systems. The British Monarch is the Head of State, and the Lieutenant Governor acts as the Crown's representative.

Jersey's unicameral legislature is the States Assembly, which includes 49 elected members. The legislature is composed of:

- 12 Connétables (Constables), one elected in each Parish;
- 37 Deputies, elected across 9 constituencies.

All Members of the States Assembly are elected for four-year terms. There are also five non-voting Members appointed by the Crown:

- the Bailiff, who is also the President of the Royal Court and President of the States Assembly;<sup>3</sup>
- the Lieutenant Governor of Jersey;

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<sup>2</sup> Jersey has a unitary system of governance and powers and administration of the 12 Parishes, which have both civil and religious administrative functions, are governed by laws enacted by the States Assembly.

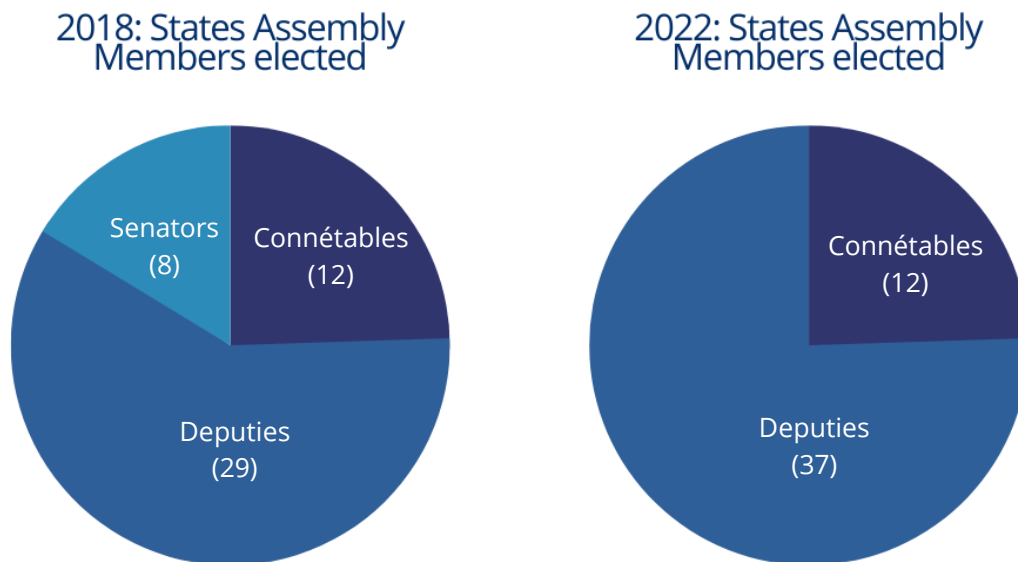
<sup>3</sup> The Bailiff's dual role as the head of the judiciary and unelected speaker of the States has been criticised. At least two States-commissioned reviews (the 2000 [Clothier report into the Machinery of Government](#) and the [Carswell review](#) commissioned in 2009) recommended that the two roles be separated. The reviews acknowledged that concerns about institutional independence and conflict of interest have arisen only in theory rather than practice, but noted that in the absence of safeguards this must not always necessarily hold in the future. Judicial independence is widely recognised as a key principle for the protection of fundamental freedoms or assuring effective remedy in elections. See paragraph 46 in the United Nations Center for Human Rights (1994) [Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections](#).

- the Dean of Jersey, who leads the Church of England on the Island;
- the Attorney General;
- the Solicitor General.

The Council of Ministers is led by the Chief Minister and includes ministers, who together make up the Government of Jersey. Some government functions are exercised by 12 territorial units known as Parishes.

Jersey has limited experience with political parties, with most candidates traditionally running as independents.<sup>4</sup> Nonetheless, freedom of association is protected in the 2000 Human Rights Law, although the document does not reference political parties specifically. The debate whether Jersey may see the development of a more robust political party system intensified ahead of the 2022 General Elections. In these elections, three new political parties joined the race. Another political party that had already successfully participated in the 2018 elections doubled the number of representatives in the States Assembly from 5 to 10.

The make-up of the States Assembly Members elected in these General Elections changed, following extensive electoral reform adopted by the States Assembly in late 2021. Discussions concerning the reform of the electoral system have been ongoing for close to a decade. In 2013, a consultative referendum was held, in which voters could choose from among three options, including the status quo. Although at 26% of registered electors the turnout was low, voters opted for a system not dissimilar from the one ultimately adopted in 2021. The recent reforms abolished the 8 Senators that were previously elected from a single island-wide constituency, and added 8 additional Deputies to the Assembly.



<sup>4</sup> In 2018, only 19 candidates (25% of all candidates) stood for a political party. This number increased to 36 (47% of all candidates) in 2022.

In the media and in political discourse, the 2022 General Elections were sometimes treated as an important test of the recent reforms, with some describing them as a stepping stone towards further amendments.<sup>5</sup> Conversely, the Mission was told that some voters would prefer to revert to the old system, especially the return of Senators with an island-wide mandate.

## LEGAL FRAMEWORK

Overall, the legal framework provides a basis for the conduct of democratic elections. While the laws that are relevant for the holding of elections provide detailed guidance in some areas, they are often general and may lack sufficient specificity in several instances, thus opening space for inconsistent interpretations.

Jersey's ability to determine its laws, raise taxation, and hold elections is based on long-standing constitutional precedent. The legal framework for elections comprises:

- 2002 Elections (Jersey) Law;
- 2005 States of Jersey Law;
- 2008 Connétables Law.

Relevant provisions are also included in:

- 2008 Political Parties (Registration) Law;
- 2014 Public Elections (Expenditure and Donations) Law;
- 2018 Data Protection Law;
- 2018 Data Protection Authority Law.

Other relevant documents include the 2002 Elections Regulations and the 2022 Highway Election Advertising Guidelines. In addition, the newly formed Jersey Electoral Authority (JEA) issued several guidance documents for contestants, including a Code of Conduct for Candidates and Their Supporters.<sup>6</sup>

The 2002 Elections (Jersey) Law saw considerable amendments introduced in 2021, which have a significant effect on the composition of the States Assembly. Some of these changes also stand to alter the way in which Jersey is governed. Among others, the amendments included:

- The abolition of the office of Senator and a commensurate increase in the number of Deputies;
- The creation of nine newly delimited constituencies from which the 37 Deputies are elected;
- The introduction of a 'none of the candidates' option on the ballot in elections where the number of candidates does not exceed the number of seats to be elected;
- The formation of the JEA.

Some interlocutors claimed that these changes were introduced hastily without sufficiently wide consultation. As noted by the European Commission for Democracy through Law (the Venice Commission of the Council of Europe), substantive changes to the legal framework less than a year before voting may undermine confidence in the process, thus contravening good practice.<sup>7</sup>

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<sup>5</sup> See chapter on Legal Framework.

<sup>6</sup> See the [Code of Conduct](#) on the [Vote.je](#) website.

<sup>7</sup> Substantive changes to the law so close to the election challenge the principle of stability of law. See Section II.2 of the 2002 European Commission for Democracy Through Law (Venice Commissions) [Code of Good Practice in Electoral Matters](#) (Opinion no. 190/2002, Strasbourg, 30 October 2002).

***Recommendation 1: Substantive amendments to the election law should be adopted well in advance of the next election and never less than a year before.***

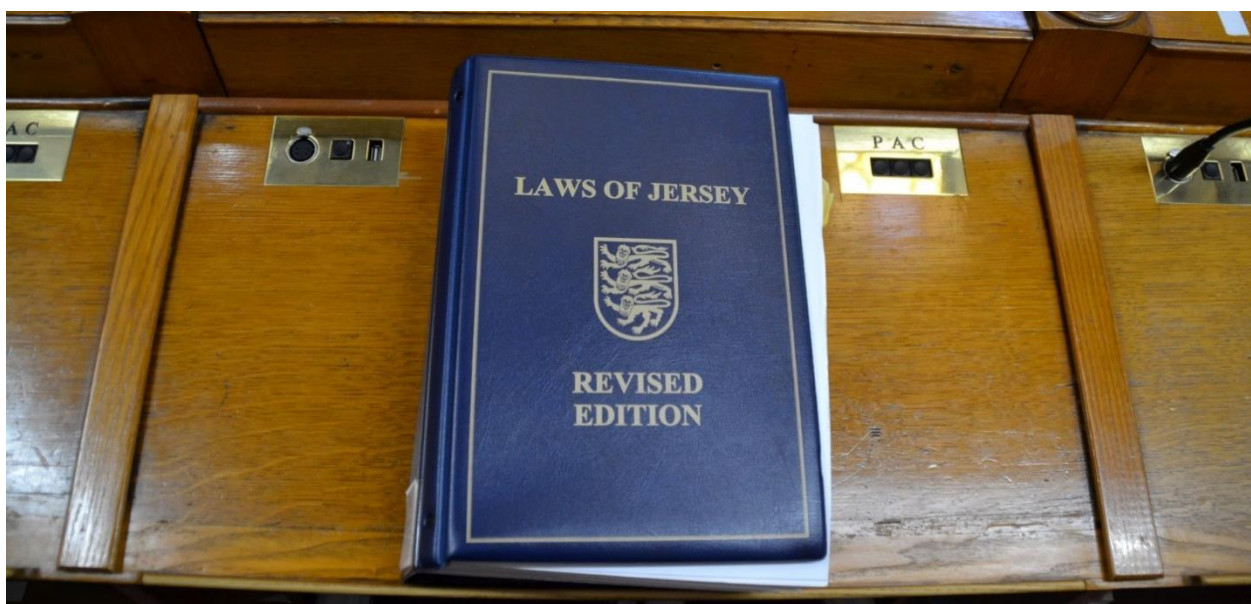
Fundamental freedoms are protected in the 2000 Human Rights Law, based closely on the United Kingdom's Human Rights Act 1998. The Human Rights Law requires Jersey courts to interpret legislation in ways that are compatible with rights and freedoms guaranteed by the European Convention on Human Rights.

Although international instruments are not automatically applicable to Crown Dependencies and British Overseas Territories, international human rights law creates obligations concerning the conduct of elections in Jersey.<sup>8</sup> Several international human rights instruments have been extended to Jersey, including:

- 1966 International Covenant on Civic and Political Rights;
- 1953 European Convention of Human Rights;
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination;
- 2005 UN Convention against Corruption.

Most recently, the 1979 Convention on the Elimination of All Forms of Discrimination against Women was extended to Jersey in 2021. Among instruments that do not extend to Jersey is the 2008 United Nations Convention on the Rights of Persons with Disabilities. This Convention makes important provisions for persons with disabilities in relation to freedom of expression, access to information, and participation in political and public life.

***Recommendation 2: The 2008 United Nations Convention on the Rights of Persons with Disabilities should be extended to Jersey. Domestic laws should be amended to ensure compliance with this instrument, as necessary, even before its extension to Jersey.***



<sup>8</sup> UN International Covenant of Civil and Political Rights Committee (2015) [CCPR/C/GBR/CO/7](#) noted with concern that human rights instruments applicable to the UK are not directly applicable to the British Overseas Territories and Crown Dependencies.



## ELECTION ADMINISTRATION

The administration of the electoral process is fragmented. Historically, the following institutions were involved: the Parishes at the local level, and the Judicial Greffe and the States Greffe at the central level.

The Parishes are in charge of the voter registration, setting up polling stations and running them on Election Day. At the head of the Parish administration, the Parish Secretary conducts these processes as the election administrator, a new positive feature introduced by the 2021 amendments to the 2002 Elections (Jersey) Law, as in the past Connétables were the election administrator of the Parish.

The Judicial Greffe is directly responsible for pre-polling, and special voting arrangements, and for ensuring that the *Autorisés* (Returning Officers) nominated by the Bailiff are properly informed, resourced and trained to oversee polling and counting and the declaration of results. The Royal Court appointed 17 *Autorisé* to cover the 17 constituencies.

The States Greffe is responsible for voter education. It ran an extensive voter engagement and information campaign through digital (“Vote.je”) and other communication tools.

CPA BIMR observer visiting a voter education campaign stall on St Helier High Street



To these three existing branches of election administration, the Elections (Jersey) Law amendments of December 2021 added the Jersey Electoral Authority (JEA).<sup>9</sup> The JEA consists of six members nominated:

- four members, including a chair and a Parish representative, were nominated for a four-year term by the States Assembly’s Privileges and Procedures Committee in January 2022;
- the States Greffier (ex-officio);
- the Judicial Greffier (ex-officio).

The JEA is empowered to regulate its own proceedings. The States Assembly may adopt regulations concerning the proceedings of the JEA, but none were passed in time for the 22 June General Elections.

<sup>9</sup> The 2018 CPA-BIMR mission made a recommendation to create a permanent and independent oversight election management body.

The JEA's contribution to these elections was limited. The JEA was created late in the electoral cycle, which impeded its full functioning. Moreover, the JEA does not enjoy budgetary autonomy and is not staffed, and thus depends on the States Greffe for its functioning. At the time of the General Elections, it had not published its internal rules of procedure.

The JEA is vested by law with oversight and direct implementation responsibilities over some aspects of the electoral process:

- Administering the candidates' nomination process, which used to be the responsibility of Parishes;
- Publishing a Code of Conduct for candidates;
- Dealing with complaints from candidates;
- Scrutinising campaign expenses reporting.

The JEA successfully published a Code of Conduct for candidates, which was comprehensive and covered the campaign and campaign finances. The Code of Conduct was part of the nomination documents candidates had to complete and sign.

On Election Day, the JEA may observe polling stations. Within six months after the elections, the JEA has to submit a report on the process to the States Assembly's Privileges and Procedures Committee.

Some of the JEA's responsibilities need to be performed in close coordination, and sometimes may overlap, with other branches of the election administration, such as the Parishes during the candidates' nomination process or for the ballot boxes design,<sup>10</sup> and the Judicial Greffe for pre-polling arrangements.<sup>11</sup>

Mission interlocutors were often not aware of the JEA's role, and some were dissatisfied with its set-up as it was not perceived to be conducive to an effective administration of elections.

In general, the administration of the elections was successfully completed thanks to the good will and commitment of the States Greffe, the Judicial Greffe, and the Parish Secretaries. Considerable efforts were deployed by the States Greffe on voter information, including in minority languages,<sup>12</sup> and by the Judicial Greffe in implementing pre-polling and postal voting. However, there was uncertainty over certain procedures or deadlines, for instance with regards to the role of the Parishes in the nomination period. There were also issues with the delivery of voter education materials by Jersey Post.

The JEA could have undertaken the coordination and circulation of information of the three branches of election administration, but it did not do so. Among Parishes, the circulation of information is organised by the Comité des Connétables, an association gathering all Connétables.

***Recommendation 3: To improve the general efficiency and transparency of the administration of elections, consideration could be given to reviewing the different roles, processes, coordination opportunities, and necessary resources for the implementation of the elections.***

<sup>10</sup> 2002 Elections (Jersey) Law Art. 26 (6), 26 (7)

<sup>11</sup> The JEA sets out the timelines for applications for postal voting, but the Judicial Greffe implements it.

<sup>12</sup> Portuguese, Polish and French

## **SPECIAL VOTING ARRANGEMENTS**

Apart from in-person voting on Election Day, voters were granted a large array of alternative methods for casting their vote.

In-person pre-polling was available in one polling site in St Helier from 13 to 17 June. Voters were able to cast their vote for either one or both races (Connétable and Deputy) of their constituency, and were consequently marked in the electronic Excel copy of the voter register as having voted. Based on the available data, it is estimated that fewer than 2,000 voters voted via pre-poll.<sup>13</sup>

Following recent amendments to the Election Law, postal voting was available to all voters with no justification required. Voters could apply for a postal vote until 1 June. They had until Election Day itself, at noon, to send their ballot back to the Judicial Greffe, or were also granted the possibility to cast their ballot in-person in their polling station.

All ballots cast by postal vote or during pre-polling were delivered to their corresponding polling station where they were added to the ballots cast on election day. In total, 2,709 voters applied for a postal ballot.

Voters who were ill or in a care home, as well as their caretakers, could apply for mobile voting, either during the pre-poll period or on Election Day. According to the available data, 279 voters cast their ballot through mobile voting.



## **BOUNDARY DELIMITATION**

Following the 2018 elections and the 2018 CPA BIMR EOM Final Report, which pointed to equality of the vote shortcomings of the previous system and recommended a more equitable distribution of voting power, the boundaries of electoral districts for Deputies were redrawn to ensure greater compliance with international standards.<sup>14</sup> Given their historical and political significance, as well as their role in administering some aspects of elections, the Parishes served as the basis for the new delimitation. Several of the less densely populated Parishes were amalgamated to create larger constituencies, whilst the capital St Helier maintained a division into three separate constituencies as the most populous Parish by a significant margin.<sup>15</sup>

Reduction of the malapportionment and greater equality of the vote overall were achieved on the basis of the number of inhabitants rather than being adjusted for the number of eligible voters or the historically differing levels of voter registration or turnout figures.<sup>16</sup> The boundaries for the election of Deputies now all respect international good practice as articulated by the Venice

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<sup>13</sup> Only 1,468 voters cast their vote in the Deputy election at pre-polling. The exact number of votes for Connétables was not known at the time of drafting, due to the judiciary process and recount of ballots for the position of Connétable in St Saviour.

<sup>14</sup> Previously, the deviation from the average number of votes necessary to return a Deputy was well in excess of the minimum levels recommended by the Venice Commission.

<sup>15</sup> The boundaries of the three constituencies that comprise St Helier were revised.

<sup>16</sup> The Venice Commission's Code of Good Practice in Electoral Matters (2002) states that apportionment criteria may include "the number of residents in the constituency, the number of resident nationals (including minors), the number of registered electors, or possibly the number of people actually voting."

Commission, which states that while “the maximum admissible departure from the distribution criterion adopted depends on the individual situation, [...] it should seldom exceed 10% and never 15%, except in really exceptional circumstances”.<sup>17</sup>

Some Mission interlocutors contended that the creation of the amalgamated constituencies had confused voters and aggravated a sense of unequal voting rights (inequity) given the discrepancies in the number of candidates that voters may cast a vote for depending on the specific district. For instance, while voters in St Saviour could choose a total of six candidates (five Deputies and one Connétable), voters in Grouville or St Martin could only select four (three Deputies and one Connétable).<sup>18</sup> However, when it comes to electing Deputies, voters across Jersey now had more proportional ‘weight’ than in the 2018 elections.

The Connétables continue to be elected from the 12 Parishes. While Connétables have a unique placing in Jersey’s electoral system, the equality of the vote margins recommended by the Venice Commission are in some cases exceeded when the ratio of electors to elected representatives includes both Deputies and Connétables.

In line with international good practice, delimitation of boundaries should be subject to a review at regular intervals.<sup>19</sup> Although a Boundary Commission was not yet in place for the 2022 elections, in 2021 the States Assembly agreed to establish a Boundary Commission. A review of the boundaries of the electoral districts has to be undertaken by 2026.

## THE RIGHT TO VOTE

The right to vote in Jersey is extended broadly and does not depend on UK citizenship. The 2002 Elections (Jersey) Law establishes that a person is entitled to have their name included on the electoral register for an electoral district or a Parish if on that day the person is:

- at least 16 years old;
- resident in that district and has either been resident in Jersey for a period of at least 2 years;
- or ordinarily resident in Jersey for a period of at least 6 months, as well as having been ordinarily resident at any time for additional periods that total at least 5 years.

A voter may be registered in only one district. Persons may register up to three months before they attain the above criteria.

Provisions for voter registration are inclusive overall. However, according to some interlocutors, there are foreign workers in Jersey that may not qualify for residency that would permit franchise.

Anyone convicted for an offence and sentenced to more than four years in prison is deprived of the right to vote. Such blanket restrictions, rather than individualised decisions forming part of the

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<sup>17</sup> See Venice Commission, Code of Good Practice in Electoral Matters (2002).

<sup>18</sup> See Section I.2.1 of the Venice Commission’s Code of Good Practice in Electoral Matters (2002), which states that “each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.”

<sup>19</sup> According to the Venice Commission’s Code of Good Practice in Electoral Matters (2002), “in order to avoid passive electoral geometry, seats should be redistributed at least every ten years, preferably outside election periods, as this will limit the risks of political manipulation.”

sentence, contravene international standards for democratic elections.<sup>20</sup> According to one interlocutor, lack of regulation of the rights of persons held on remand effectively disallows them from exercising their right to vote.

***Recommendation 4: To allow for broader electoral participation on an equal basis, the blanket ban on the right to vote for persons serving prison sentences exceeding four years should be removed.***

According to the 2002 Elections (Jersey) Law, those eligible to vote have a duty to register on the voter list.<sup>21</sup> However, there is no enforcement mechanism in place.

## VOTER REGISTRATION

Voter registration is active in Jersey, requiring the voter to make an application for inclusion in the voter register. Parishes' electoral administrators are responsible for this process. Voters can register online, by post or in person. For the 2022 elections, the Parishes used a bespoke digitalised voter registration system which generates the voter register used for Election Day. An Excel version is downloaded for ease of use. Each Parish has its own register and registers are not shared across Parishes. For pre-polling, the twelve Parishes uploaded their Excel documents onto a shared Microsoft Teams folder.

Voter registration is continuous, as every year, before 1 November, the Parish electoral administrator should send each household a notice to verify the electoral situation of all members of the household. Although voter registration is not compulsory, Article 7 of the 2002 Elections (Jersey) Law mentions that it is the "duty" of each person to ensure this statement is returned before 1 December. The Mission was informed that voters remain on the Parish's voter register for three years, until being removed, unless they have voted in this lapse of time.<sup>22</sup> Before removing a voter, the Parish sends a notification, so the voter can take action.

Three months before Election Day (during the first two weeks of March), Parishes sent a notice by post to each household informing voters about their registration status and the location of their polling station. A postal vote application form was sent with each notice, which created some issues as only one application form was sent even if there might have been various voters in one household. Additionally, some voters understood the application for postal voting as if they had to register again, which created some additional work for the Parish election administration.

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<sup>20</sup> In the UK, the blanket removal of voting rights of prisoners serving a custodial sentence was repealed in 2018, thus making the country compliant with the judgements by the European Court of Human Rights (ECtHR) and recommendations or other bodies (e.g. OSCE Office of Democratic Institutions and Human Rights). See the 2018 Resolution on the Execution of ECtHR judgment in the case of *Hirst v. the UK*. See also *Scoppola v. Italy* (No. 3 [GC] 22 May 2012, application no. 126/05) and *Anchugov and Gladkov v. Russia* (4 July 2013, applications nos. 11157/04 and 15162/05).

<sup>21</sup> See the 2002 Elections (Jersey) Law Art. 7 (4).

<sup>22</sup> Voters would become "de-activated" on the voter register, but it would be possible for an election administrator to retrieve their file.

The law does not prescribe how voters need to prove their identity to register, either online, by post or in person. On Election Day, checking the identity of a voter is left to the “satisfaction of the Autorisé”.<sup>23</sup>

The voter register was closed six weeks before Election Day (on 10 May). By then, 59,478 voters were on the register. However, there was also the possibility to register on a “supplementary” register until the week before Election Day (15 June at noon), and 1,223 voters were added onto the supplementary register. The total number of registered voters was 60,701. This is a decline from 2018, when there were 62,123 registered voters.

According to the census from March 2021, Jersey has 86,791 residents over 16 years. If this number is taken as a base to assess the inclusivity of the voter register, around 70% of the population aged 16 and above would be included in the voter register. However, the census does not capture the other eligibility criteria such as the residency requirement, so it is not possible to know exactly what percentage of the eligible voting population is on the voter register.

Voters who had registered but were not found on the voters’ list on Election Day because of an administrative error, could be granted a ballot and separately added to the list, provided that the Autorisé deemed their request justified and that they signed a pledge of their eligibility. The Mission observed a few instances of administrative errors.<sup>24</sup>

***Recommendation 5: Consideration should be given to performing an audit of the voter registration system for accuracy, inclusivity and data security.***

## THE RIGHT TO STAND FOR ELECTION

The right to stand for election as Deputy or Connétable is set out in the 2005 States of Jersey Law and in the 2008 Connétables (Jersey) Law respectively. Both provide that a candidate must be:

- 18 years old;
- a UK citizen;
- resident in Jersey for a period of at least 2 years up to Election Day;
- or resident for a period of 6 months up to Election Day as well as additional periods that total at least 5 years.

The law sets out a number of factors that disqualify a person from being a Deputy or Connétable, including:

- having become bankrupt or made a debt settlement with the person’s creditors;
- having been convicted for any offence and sentenced to more than three months in prison, which bars a person from standing in elections for a period of seven years;
- having been convicted of an offence under the 2006 Corruption (Jersey) Law while serving a public function, which strips the person of the right to stand indefinitely;<sup>25</sup>

<sup>23</sup> See chapter on Election Day.

<sup>24</sup> See chapter on Election Day.

<sup>25</sup> See the 2006 Corruption (Jersey) Law.

- serving as a paid officer in the service or the administration of the States unless otherwise permitted to stand.<sup>26</sup>

Jersey's restrictions pertaining to bankruptcy and current or past convictions are not objective and reasonable in the sense of the International Covenant on Civil and Political Rights.<sup>27</sup> Paragraph 15 of General Comment No. 25 stipulates that "the effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election [...] must be justifiable on objective and reasonable criteria."<sup>28</sup>

Additional grounds to disqualify a person from standing as candidate for Deputy or Connétable is the person having been detained in an approved establishment or being subject to guardianship under the 2016 Mental Health Law, as well as a person in respect of whom a delegate has been appointed under the 2016 Capacity and Self-Determination Law.<sup>29</sup> Blanket restrictions on standing for office based on mental incapacity are contrary to Jersey's international obligations.<sup>30</sup>



Site visit to Jersey's Prison

***Recommendation 6: To allow for broader electoral participation on equal basis, candidature rights should be reviewed and brought in line with international standards and good practices for democratic elections, including:***

- The blanket ban on the right to stand for seven years for anyone previously sentenced to more than three months in prison ought to be removed;***
- The indefinite blanket ban on the right to stand for anyone found guilty of electoral offences under the 2006 Corruption Law while serving a public function should be removed;***
- Any restrictions on the right to stand against persons with disabilities should be eliminated from the law.***

<sup>26</sup> The provision exempts persons permitted to stand by or under the 2005 Employment of States of Jersey Employees (Jersey) Law.

<sup>27</sup> See Paragraph 4 of the 1996 UNHRC General Comment No. 25.

<sup>28</sup> See Paragraph 4 of the 1996 UNHRC General Comment No. 25, which states that "the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable."

<sup>29</sup> See the 2016 Mental Health (Jersey) Law and 2016 Capacity and Self-Determination (Jersey) Law.

<sup>30</sup> See footnote 19 in *The Right to Vote* section. See also Guideline I. 1.1. d. iii. of Venice Commission's Code of Good Practice in Electoral Matters; as well as the Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections (CDLAD(2010)036).

## CANDIDATE REGISTRATION

Since the last General Elections, changes were made to the nomination process, the responsibility for which now falls on the newly appointed JEA. In practice, most of the administrative work was still done by the States Greffe, in coordination with the Parish Secretaries. The 2002 Elections (Jersey) Law prescribes at least two days for submitting nomination forms, but in practice the nomination period took 8 days. The Mission received reports that deadlines were not always clear nor respected. Once submitted, the form was forwarded to the electoral administrators of the Parish, for checking the eligibility of the candidate and of their proposer and seconders. The reviewed form was sent to the JEA who confirmed the nomination by sending an e-mail to the candidate. There was the possibility to correct the information and no complaint was filed during this process.

Alongside the nomination forms, candidates had to sign the Code of Conduct developed by the JEA for candidates and their supporters. This Code of Conduct is a candidates' guide and covers not only the campaign dos and don'ts but also the expenses remittance.

In total, 76 candidates were nominated for the 37 Deputy seats:

- 40 independents;
- 14 candidates for Reform Jersey;
- 13 candidates for Jersey Alliance;
- 5 candidates for Jersey Liberal Conservatives;
- 4 candidates for the Progress Party.

Seventeen candidates were nominated for the twelve Connétable seats, only one was from a political party (Jersey Alliance). Notably, 6 out of 8 Senators elected in 2018 decided to stand again as a Deputy in this election.

All 93 candidates' nominations were accepted, but one independent Connétable candidate withdrew his candidacy after being nominated. The number of uncontested seats fell from 14 in 2018 (28%) to 8 in 2022 (16%). All uncontested seats were for a Connétable seat, with 8 out of 12 Connétables elected unopposed (67%).

***Recommendation 7: Efforts should continue to ensure more competitive elections, to avoid uncontested seats in future elections.***

## ELECTION CAMPAIGN

The election campaign is not strictly regulated by law, in particular its duration may be subject to interpretation. Whilst it is commonly understood that the campaign starts once candidates are nominated, the Public Elections (Expenditure and Donations) (Jersey) Law 2014 defines a regulated period (starting four months before the day of the elections, i.e. since 22 February) when specific rules apply on campaign finance.<sup>31</sup>

Candidates campaigned freely, actively and peacefully, and there was a high number of hustings. The "official" hustings were organised at Parish level by the candidates themselves. The Mission

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<sup>31</sup> See chapter on Campaign Finance.



received informal complaints from candidates receiving late notice of official hustings, having to attend numerous hustings and having to manage conflicting campaign commitments. These hustings were recorded on video by the States Greffe and posted on its YouTube channel as well as on the Vote.je website. In addition, some organisations arranged hustings in which they asked candidates to present their ideas on specific issues of interest to them and sometimes asked candidates to take a pledge on those. Candidates were often unaware of the nature of these hustings and felt compelled to attend.

In terms of campaigning, despite the growing influence of social media, most candidates still preferred the direct contact with voters by way of knocking on doors, even if the COVID-19 pandemic made this practice more difficult.

Campaign posters were widely displayed across the island. The Department of Infrastructures regulates campaign posters in public areas under its authority. The Department issued its Guidelines at the beginning of May. Candidates reported this as being too late, as some had already started to display posters by then, regardless of the dates for their nomination.<sup>32</sup> The Guidelines consider dates, type of material, location, maintenance and dismantling of election advertising on roundabouts and highways. The Guidelines are based on safe practice with the aim of protecting all road users.

Campaign posters in St Helier



Overall, the campaign was positive and a variety of information and campaign materials was available to voters to assist them in making an informed choice. Campaign topics focused on the high cost of living and in particular the housing crisis. Local issues at Parish level were also largely discussed during hustings, as well as the return of Senator seats in the States Assembly elected by an island-wide vote. The Mission noted limited instances of anonymous campaigning for the “none of the candidates” option.

A ‘period of sensitivity’ started with the opening of nominations (11 May) whereby there were restrictions on what the States of Jersey and States Assembly could do, both in terms of initiating policy and in using official resources, so that public resources were not used to support the campaign of any candidate.

<sup>32</sup> Political parties can start to put up their posters as early as 4 months before Election Day, i.e. 22 February.

However, the States Assembly does not dissolve under the law and as such members of the outgoing legislature stay in office until the newly elected members are sworn in. This may give candidates seeking re-election an unfair advantage over other candidates as they have access to some resources that could be misused.

Each candidate had a manifesto published by the States Greffe, which was available online on the Vote.je website and in constituency leaflets. However, Jersey Post failed to deliver some of the election booklets and delivered incorrect information to a number of households. Candidates were also granted the possibility to record a two-minute video about their programme, which was posted on Vote.je. In addition, the States Greffe organised online sessions of questions and answers during which candidates could interact with voters. This considerable effort, which was publicly funded, granted all candidates the same opportunities. The Mission did not observe distortions of the level playing field and assessed positively the conditions for genuine campaigning.

## **CAMPAIGN FINANCE**

In Jersey, the funding of election campaigns is essentially regulated by the 2014 Public Elections (Expenditure and Donations) (Jersey) Law. The law stipulates expenses (direct and notional), campaign ceilings, and donations (money, loans, goods and services) that candidates can spend when standing for election to the States as a Connétable or Deputy.<sup>33</sup> Anonymous donations are forbidden. Each candidate was able to spend £2,050 plus 13p for every person on the electoral register for their Parish (Connétable) or constituency (Deputy). The Mission did not receive complaints from candidates about the level of these ceilings. As the supplementary register closed a week before Election Day (15 June), only then would a candidate know exactly what expense ceiling to abide by. Materials used during the previous election (such as banners) can be re-used without constituting an expense.

Candidates can start campaigning at any time, and do not have to wait until they are nominated or registered. They must however report expenses incurred at any time before Election Day that relate to the supply of goods or services used during the regulated period (22 February-22 June) to promote a candidate's election or to prejudice the electoral prospects of another candidate at the same election. Candidates struggled to understand how to report on expenses related to website management. In some cases, website expenses were incurred prior to the regulated period, and in other instances, only part of already existing websites were used for campaigning purposes. The JEA, now in charge of oversight of campaign finances, had not clarified this issue at the time of the CPA BIMR Mission.

A "Third Party" is an entity that is not a candidate, but who campaigns to promote - or campaigns against - the election of a candidate. In this regard, a campaign for the "none of the candidates" option could, in theory, be considered as a Third Party. Third Parties are also required to submit a declaration of expenditure after the election if their expenses exceed £600. Their spending limit is half the allowance for a candidate.<sup>34</sup> They are also required to declare any donations they receive

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<sup>33</sup> Notional expenses are those such as when services are provided free of charge or at a discounted rate. The notional value is the difference between the open market/commercial rate for those goods and services and the actual cost to the candidate. If that value exceeds £145 then the candidate must declare that as a donation.

<sup>34</sup> So £1,025 plus 6.5p per person on the electoral register of the Parish/Constituency.

which exceed £145. The Mission is not aware of those campaigning for “none of the candidates” being asked to submit their campaign expenditure.

On 1 March 2022 the States Assembly adopted an amendment to its Standing Orders inserting paragraph (4) in section 5 which related to ‘Gifts, hospitality and other benefits’. As a result, a Connétable was not required to register an interest in relation to a gift, hospitality or benefit if the giving or offer of the gift, hospitality or benefit entirely related to his or her parochial duties and conferred no personal benefit on the Connétable or a relevant person. This provision could be abused in the context of a campaign and give an advantage to the incumbent, although the Mission did not receive evidence to this effect.

The JEA is now vested by law with the role of receiving and examining candidates’ reports (due one month after Election Day, on 22 July).<sup>35</sup> The JEA may also ask a candidate to show invoices, receipts and other proofs of expenses. It is an offence liable to a fine to omit or to be late in reporting electoral campaign finances. Political parties are not required to report to the JEA, but each candidate presented by the party should report separately. The JEA is required by law to make these reports public, which they did by publishing them on Vote.je.

The JEA does not currently have the capacity to audit reports on campaign expenses, due to a lack of resources. If the JEA were to decide upon an audit of a candidate’s account, it would be a positive measure in line with international good practice. However, it currently has no budget allocated for it.



Hustings in St Ouen Parish Hall

## MEDIA AND SOCIAL MEDIA

Despite a relatively small population, Jersey enjoys a wide array of print and electronic media.<sup>36</sup> The media is largely self-regulated, and there is no oversight authority. There is therefore no obligation to provide equal or equitable coverage to candidates and parties. However, each media outlet applies its own rules and code of conduct.<sup>37</sup> The Mission received no reports from candidates of express bias by the media.

Paid advertisement is not prohibited by law, but was marginally used. Some media outlets provided coverage of hustings, on a case by case basis. Most media outlets chose to systematically cover all races (Connétables and/or Deputies), on an equal basis, using interviews, podcasts and written reports. In general, the media was careful not to give coverage to acts of Ministers in power during the campaign period. Voter education and information was also conveyed by the media, notably on the new electoral system and on the “none of the candidates” vote.

<sup>35</sup> Public Elections (Expenditure and Donations) (Jersey) Law 2014 as amended in 2021 and the 2002 Elections (Jersey) Law, as amended in 2021

<sup>36</sup> Two TV stations, BBC and ITV Island, two radio stations, two newspapers, one printed and one online only.

<sup>37</sup> For instance, BBC and ITV follow their own codes of conduct, as in the UK.

Internet penetration is high in Jersey (84% in January 2022).<sup>38</sup> Facebook is the main social media, with an 81% penetration rate. Candidates and parties tend to own a Facebook page, however not many used its advertisement facility for campaigning purposes. The Mission was not informed of WhatsApp groups being used to target voters. Twitter, Instagram, and TikTok were also used by some political contenders, as well as by the States Greffe for its voter information campaign.

Although defamation is still penalised in Jersey, the media met by the Mission did not report it as an obstacle to their work.

## DIVERSITY AND INCLUSION

Of the 92 candidates standing for election for Deputies and Connétables, 32 were women (35%). Out of 32 women candidates, 21 stood as independents and 11 stood for a political party. Whereas in 2018, only 15 women were elected (30%), in 2022 a total of 21 women were elected (43%), including:

- 19 out of 37 Deputies (51%);
- 2 of 12 Connétables (17%).<sup>39</sup>

The gains in elected women Deputies were achieved despite the absence of special measures to address the historical disparity in representation, as envisioned in Article 4 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was extended to Jersey in 2021.

Some interlocutors shared that online harassment was at times more demeaning towards women, which may have discouraged some women from standing for office. Article 7 of the CEDAW obliges State parties to take measures to “eliminate discrimination against women in political and public life of the country” and ensure that women “hold public office and perform all public functions at all levels of government”. Fewer women than men hold prominent public office in Jersey. For instance, only three women were among the eleven ministers in the outgoing government. However, in 2021 a woman was appointed as Chief Executive (head of the civil service) for the first time and both the Greffier of the States and the Director-General of Justice and Home Affairs are women. Despite the continued existence of a pay gap,<sup>40</sup> women are well represented in the labour force and are increasingly visible in executive leadership positions.

The 2006 Convention on the Rights of Persons with Disabilities (ratified by the UK in 2009) has not been extended to Jersey.<sup>41</sup> Nonetheless, the Discrimination (Jersey) Law was adopted in 2013. Whilst the law initially provided protection against racial discrimination, it was subsequently amended to include sex, sexual orientation, gender reassignment, as well as pregnancy and maternity (2015), age (2016) and disability (2018) as protected characteristics.

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<sup>38</sup> Internet World Stats, available on: <https://www.internetworldstats.com/europa2.htm#je>

<sup>39</sup> The outgoing legislature included 3 (of the 8) Senators, 3 (of the 12) Constables and 9 (of the 29) Deputies who were women. Among the candidates standing in the 2022 General Elections, 27 of the 76 candidates for Deputies (36%) and 4 of the 16 candidates for Connétables (25%) were women.

<sup>40</sup> Gender Pay Gap Scrutiny Review Panel (13 April 2022), [Jersey's Gender Pay Gap: Follow-up Review](#).

<sup>41</sup> Article 29 of the 2006 United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides for the participation in political and public life of persons with disabilities, and Article 21 requires signatories to take all appropriate measures to ensure access to fundamental freedoms by those concerned. See chapter on Legal Framework, including the recommendation to extend the CRPD to Jersey.

The Mission observed that most polling stations were independently accessible to persons with physical disabilities. In contrast, some of the venues that hosted campaign events were not easily accessible to voters with restricted mobility. There are no provisions for voters with visual impairments, such as braille templates, magnifying frames or lenses or even more luminous lighting, thus hindering independent in-person participation. Accessibility to the chamber of the States Assembly is limited, which may discourage persons with limited mobility from standing.

Although according to the law, the Autorisé is empowered to decide on the kind of assistance that may be provided to a voter with special needs, as a matter of convention such voters are not free to choose the person who assists them. There are provisions for alternative methods of voting, including mobile voting and postal voting, but these are not adequate substitutes for accommodating voters with special needs.

Candidates generally did not disclose their disabilities if any during the campaign. Hustings could be watched online with captions to make them more accessible to viewers and listeners with special needs. Issues of inclusion or the needs of persons with disability generally did not feature in the campaign.

Candidate manifesto booklets and "I Voted" stickers



A commendable effort was made by the election administration and civil society actors who worked with different stakeholders to disseminate information more broadly about voting and to promote participation. Information for voters was translated into Portuguese, Polish and French to reach a greater number of electors. Nonetheless, the candidates standing in this election continued to lack ethnic and cultural diversity overall. Notably, one political party (Reform) nominated several candidates of different backgrounds, most of whom obtained seats including the first black woman Deputy and first Romanian Deputy. Most of the candidates stemming from minority communities were women.

Many interlocutors expressed frustration at the persistently low turnout figures in elections and the sense of apathy or disengagement which in their view remains prevalent among sections of the electorate. According to media reports as well as some stakeholders, foreign-born voters, those identifying with minority communities and young people may be especially disaffected.<sup>42</sup> Lack of robust statistical information to support these claims can hinder efforts to address these perceived shortcomings.<sup>43</sup>

<sup>42</sup> Some Mission interlocutors pointed to the comparatively lower turnout figures in the urban constituencies as an indicator of these trends.

<sup>43</sup> Among others, Paragraph 40.13 of the 1991 OSCE Moscow Document commits participating States to "ensure the collection and analysis of data to assess adequately, monitor and improve the situation of

***Recommendation 8: To foster a more open and inclusive process, consideration could be given to conducting a careful analysis of factors that may hold back some voters from participating and prospective candidates from standing for office:***

- a. In order to consolidate and improve upon the success of the number of women elected in this election, measures to strengthen women's participation in elections could be considered, especially in elections for Connétables, in line with international good practice;***
- b. Efforts could be increased to eliminate barriers to inclusion and greater participation in the electoral process by persons with disabilities, including physical access to campaign events, availability of facilities for visually impaired voters before and on Election Day and treatment of issues related to disability in the campaign.***
- c. Work on disseminating information about elections among minority communities should continue, with the aim of promoting their participation in the process.***

## ELECTION DAY

The Mission observed polling in all 19 polling stations (sometimes more than once).<sup>44</sup> They also observed four openings and four closings of polling stations. All observed polling stations opened and closed on time. In the vast majority of polling stations, the election materials were present and key procedures were always followed.<sup>45</sup> CPA BIMR observers rated the performance of polling staff as "Very Good" in 70% and as "Good" in 30% of the observed polling stations.

Election Day was calm, and the election administration did its utmost to facilitate voting by all eligible voters. Voters were granted multiple opportunities during the electoral process to cast a vote, which caused some strain for the staff on Election Day.<sup>46</sup> Postal votes delivered to polling stations were checked by the Autorisé for the declaration of identity and once the ballots had been accepted, they were added to the other ballots inside the ballot box.<sup>47</sup> Similarly, pre-poll ballots and mobile ballots were first counted during the course of the day to be included into the ballot box. In one case, the count of these numerous ballots took around 5 hours to be completed.<sup>48</sup>

Inaccuracies of the voter register were directly observed on 34 occasions, either because voters had been de-activated from the register and did not know about it, or because of what the law refers to as "administrative errors". Changes in addresses and different deadlines and steps for

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women". See also the 1989 General Recommendation No. 9 adopted by the CEDAW Committee (A/44/38) and Goal 17.18 of the UN 2030 Agenda for Sustainable Development adopted in 2015.

<sup>44</sup> The Mission undertook 27 visits/observations of the polling. Seven polling stations were visited twice, and one polling station was visited three times.

<sup>45</sup> Voters were marked on the VR, ballots were always stamped and counterfoils always marked with the number of the voter.

<sup>46</sup> Advance polling, postal vote and homebound voting were particularly complex.

<sup>47</sup> For each received postal ballot, the voter had to include a signed declaration of identity in a separate envelope. The causes for rejection of a ballot were either an incomplete or a lack of a declaration of identity. Unsigned declarations were void, a procedure that is merely administrative, as the Autorisé had no means to verify the accuracy of signature.

<sup>48</sup> St Helier North counting centre.

registering seem to be the root cause for the administrative errors. As prescribed by law, the Autorisés interpreted potential administrative errors on a case by case basis, with the intention of granting the right to vote rather than restricting it. However, as solving these issues is left to the discretion of the Autorisé, their approach may differ from one constituency to another. In constituencies where borders had changed, or where new polling stations had been created, the Mission observed voters turning up at the wrong polling station and being sent to another polling station to vote. Several voters in St Helier complained that the website Vote.je had directed them to the wrong polling station.

Observers observing a polling station before opening



At all polling stations, the presence of candidates and agents outside was notable, and in 19% of the Mission's observations at polling stations they were actively campaigning outside. Most candidates and their agents preferred to stay outside the polling station to greet the voters than to observe the process inside the polling station, which could be seen as a sign of trust in the work of the polling station staff.

Measures to prevent the spread of COVID-19 were present in most visited polling stations, such as using hand sanitisers, but were not often followed. Jersey's Honorary Police, consisting of volunteers, were present at polling stations to assist with traffic and queue management.

The understanding of the voting process by voters was rated as "very good" in 78% of the observed polling stations and "good" in 22%. Only three occasions were observed whereby the new "none of the candidates" option on the ballot had to be explained to voters.

The commitment of the Autorisés and of the numerous volunteers who worked as polling station staff (*Adjoints*) has to be commended. This is also reflected in the high level of trust they enjoy within their communities.

There was a significant disparity in the number of registered voters allocated to each polling station, with numbers ranging from 1,370 to 8,030. In some of the polling stations with larger voter numbers, the Mission observed large queues, which appeared to demonstrate a lack of space. If there had been a high turnout, the management of larger polling stations would have been even more difficult. In addition, good practice would recommend that polling stations should be close to their voters to facilitate participation, including in rural areas. The idea of accessibility of a polling station does not only concern voters with mobility issues, but should also consider the ability of voters to travel to their polling station either by walking or by public transport. It is up to the election administration to ensure polling stations are situated close enough to the residence of the voters.

***Recommendation 9: The number of voters per polling station should be reviewed, to ensure polling stations are in close proximity to voters' residences and/or easily accessible via public transport, and to ensure that polling stations are manageable if many voters turn out on Election Day.***

The Mission observed that voters were almost always asked to show a proof of identification such as a passport or driving licence, and in some polling stations posters were up highlighting the need for photo identification. There is no legal requirement for voters to use photo ID to vote, but polling officials were instructed to request a (photo) ID in cases where the identity of the voter is not known to a polling official or to other voters who may be voting at the same time. Voters who may not have such documents are at risk of being prevented from voting by an administrative practice, as there is no system in place for these voters to obtain a specific voter ID document that includes a photo.<sup>49</sup> Any procedural step that may prevent an eligible voter from voting must be established in legislation and not solely as an administrative instruction or guidance.

***Recommendation 10: As the requirement for voters to use photo ID to prove their identity is not established in law and restricts suffrage, consideration should be given to whether the use of photo ID as evidence of voter eligibility should be maintained or whether other alternative methods of proving identity are suitable.***

A traceable serial number is printed on the back of each ballot paper, as well as on the counterfoil. When a voter is handed their ballot paper, polling station staff write the voter's registration number on the counterfoil, allowing for the retracing of a ballot paper to an individual voter. This practice is traditionally justified because it allows for invalidly cast ballots to be located and removed and for a full recount to take place by which the ballot papers can be verified by tracing them back to the individual voters. Several voters, polling station staff and candidates shared concerns with the Mission that they felt this practice does not protect the secrecy of the vote. Although the likelihood of retracing ballot papers to individual voters is rare and only permitted under exceptional circumstances, in one instance on Election Day, an Autorisé ordered that at the start of the vote count, a ballot that was cast invalidly earlier that day should be traced back and removed. Public concerns that the secrecy of the ballot cannot be guaranteed creates a broader risk that confidence in the integrity of the process is undermined.

***Recommendation 11: The use of traceable counterfoils could be reviewed, especially whether their retention for the purpose of removing invalid ballots is proportionate to the broader risk of undermining public confidence in the secrecy of the ballot. If their use is retained, authorities should take significant steps to strengthen the safeguards in place to protect the secrecy of the ballot, as well as steps to assure voters of these safeguards.***

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<sup>49</sup> There is no data available on the number of eligible voters, especially younger voters, who may not have photo ID.



## COMPLAINTS AND APPEALS

Election dispute resolution rests with the judiciary and the system generally provides voters and candidates with effective judicial remedy. The Royal Court is the main body handling electoral complaints and appeals. Any person may dispute the elections within 12 months, which is an unusually generous timeframe that may hinder the effectiveness of remedy.<sup>50</sup> The Court may decide to re-examine ballot papers and is empowered to reject votes deemed valid by an Autorisé. It may announce a vacancy or decide the entire election invalid. The Royal Court's decisions are subject to an appeal at the Court of Appeal, whose decisions are final.<sup>51</sup>

The system of administrative redress remains limited. Only the candidates could address their grievances to the newly formed JEA.<sup>52</sup> Although the JEA may develop further provisions about its functions and the procedure to be followed on receipt of a complaint, it had not done so ahead of the 22 June General Elections. The absence of an administrative complaints procedure available to a wider range of stakeholders, including voters, and lack of an ombudsperson's office may narrow the possibilities for redress.<sup>53</sup> As noted by the Venice Commission, access to effective remedy should be as simple and as widely available as possible.<sup>54</sup>

***Recommendation 12: In order to bolster the system of election dispute resolution and make it more inclusive, consideration could be given to the establishment of administrative redress available to persons other than the contestants.***

A wide range of election offences are listed in the 2002 Elections (Jersey) Law and fines range from £200 to £10,000. Anyone found guilty may be additionally disqualified from participation in public elections for up to four years. Offences listed in the law include:

- knowingly making false declarations;
- attempting to register or vote more than once;
- attempting to vote in a district other than the one of actual registration;
- removing a ballot from the polling station;
- failing to follow the instructions of the Autorisé or the JEA.

Voters may appeal a decision to exclude or not include them from the electoral register within 28 days after the election. The Royal Court's decision in such matters is final without further appeal.

<sup>50</sup> The statute of limitation on criminal offences related to elections is also 12 months.

<sup>51</sup> See Article 12 of the [1961 Court of Appeal Law](#).

<sup>52</sup> Candidates may raise complaints about the conduct of another candidate or the conduct of any person carrying out functions in connection with the election.

<sup>53</sup> A 2017 report by the Jersey Law Commission recommended that some consideration be given to the establishment of an administrative redress system. The States of Jersey Complaints Panel lacks competency in electoral matters.

<sup>54</sup> Stressing the necessity of the possibility for judicial review, the Venice Commission's Code of Good Practice in Electoral Matters nevertheless states that "there is much to be said for [a system of administrative appeal to election management body] in that the commissions are highly specialised whereas the courts tend to be less experienced with regard to electoral issues." Several international public law instruments stress the importance of availability of an effective remedy, including among others Article 8 of the 1948 [Universal Declaration of Human Rights](#); Article 2.3 of the 1976 International Covenant of Civil and Political Rights, Article 13 of the 1953 [European Charter of Human Rights](#) and paragraph 10 of the 1990 [OSCE Copenhagen Document](#).

On Election Day, anyone may object to the vote of another person – for instance if they suspect impersonation – but the voter may be allowed to vote by casting a ‘doubtful’ ballot, which is not included in the vote count unless there is a legal challenge whereby that vote could make a difference in the election result.

According to the law, the Royal Court is to declare the election of a candidate void if it finds that the candidate elected to office is disqualified or is guilty of inducement or threat during the campaign or of interference in the poll. The former offence includes among others the publication of false statements about a person who is a candidate at the election, knowing the statement to be untrue. Such limitations are not in line with international standards for democratic elections.<sup>55</sup>

In the results of the election for the Connétable in the Parish of St Saviour, there was an unusually high discrepancy recorded on the Report and Reconciliation Form between the number of valid ballots and the tally of the votes received by the candidate and the ‘none of the candidates’ option.<sup>56</sup> Prompted by the Judicial Greffe who noticed the discrepancy, the Attorney General petitioned the Royal Court for a recount. On 13 July the Royal Court ordered the recount to be conducted on 18 July. The recount found that two and twelve additional votes should be accorded to the candidate and the ‘none of the candidates’ option respectively, but did not find the existence of a larger discrepancy, thus confirming the winning candidate.

The JEA considered two complaints, including one from a candidate and another from a member of the public. A contestant alleged bias on part of Parish officials responsible for the administration of the elections, including on Election Day. The JEA found no evidence of wrongdoing and the Mission heard from interlocutors that there is wide recognition of the importance of neutrality by public bodies among all stakeholders involved in the delivery of the election, also with a view to social media communication.



Polling station

The complaint lodged by a member of the public concerned a private entity’s social media activities during the campaign, which the claimant believed resembled policy advocacy and should have been treated as a ‘Third Party’ campaign. The JEA rejected the complaint on the grounds that the plaintiff lacked standing.

<sup>55</sup> The holding of democratic elections and hence the very existence of democracy are impossible without respect for fundamental freedoms, among others the freedom of expression. Although often intended to protect the integrity of the process, undue restrictions can limit free speech and chill public debate. See Section II.1 Paragraph 61 of the Venice Commission’s Code of Good Practice in Electoral Matters, which states that “European standards are violated by an electoral law which prohibits insulting or defamatory references to officials or other candidates in campaign documents, makes it an offence to circulate libelous information on candidates, and makes candidates themselves liable for certain offences committed by their supporters.”

<sup>56</sup> If counted correctly, there should not be a discrepancy between the reported number of valid ballots and the aggregate total of votes cast for both the candidate and the ‘none of the candidates’ option. However, in this instance the discrepancy was higher than the difference between the number of votes for the candidate and the ‘none of the candidates’ option, thus opening the theoretical possibility that the result could be overturned.

## **ELECTION RESULTS**

The Mission observed the counting of eight polling stations. The count and its reporting was complex and often lasted long hours. Fourteen polling stations were set as “counting centres”, gathering ballots from other polling stations. In multi-parish constituencies or in a multi-constituency Parish like St Helier, this resulted in large numbers of ballots to be counted in those counting centres. However, further tabulation of the results of the polling stations was made easier by this set up. Although guidance had been provided by the Judicial Greffe, some aspects of the process remained complex, such as the completion of the result and reconciliation forms, the addition of postal and pre-poll votes to the count and their reconciliation with the total number of votes cast.

In the observed counts, candidates or their agents were present, as well as the media and the Honorary Police. Invalid ballots were mostly sorted by the Autorisé according to the law, only in one instance were they not sorted by the Autorisé.

Results had to be announced by the Autorisé at the end of the count for each race to the public present, including candidates and their agents under the form of:

- number of votes per candidate;
- total number of votes cast;
- number of spoilt papers;
- turnout percentage (this was optional).

The total number of voters having cast a ballot was not required to be announced, which makes it difficult for the general public to calculate the turnout. In fact, the Mission noted that counting the number of voters having cast a vote according to the voters’ lists was not a requirement, thus impeding the reconciliation of the number of ballots cast versus the number of voters having cast a ballot.

***Recommendation 13: At the start of each vote count, a separate verification stage could be introduced, reconciling the number of voters having cast a ballot with the number of ballots received and the number of counterfoils.***

At the time of writing this report, the results published on the Vote.je website focused on how many votes each candidate received, but did not provide information on the number of voters who have cast a ballot, number of valid ballots, and turnout per polling station as well as per constituency or Parish. It is a good practice for this information to be made publicly available as soon as possible.

***Recommendation 14: Results should be announced and published per polling station and per constituency or Parish, including the total number of voters on the voters’ list, the number of voters having cast a ballot, the number of invalid ballots, and the number of votes cast per candidate.***

An unsuccessful candidate or their representative may request a recount within 24 hours of being informed of the result, if the difference between the number of votes cast for the unsuccessful

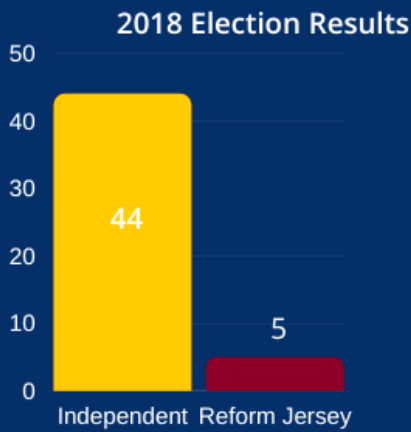
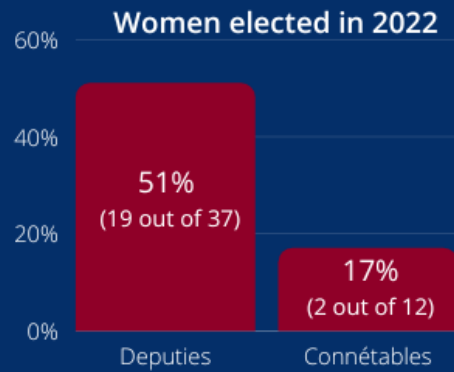
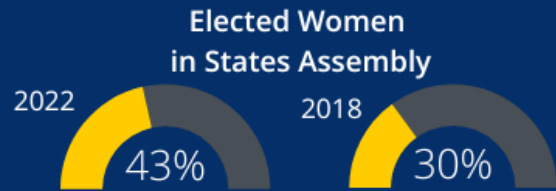
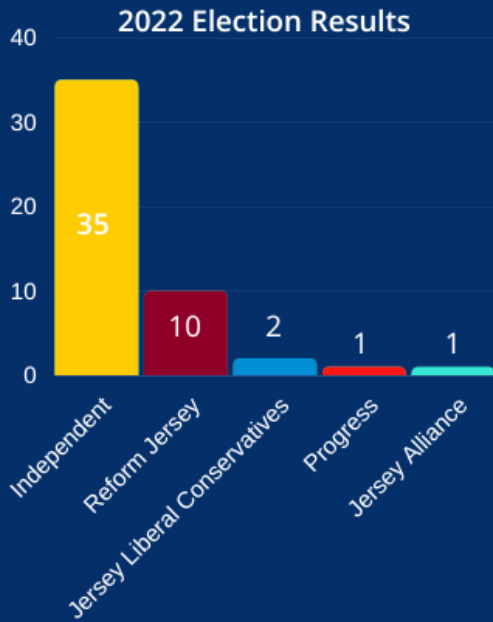
candidate and the number of votes cast for the elected person just before the candidate, is less than 1% of the total number of valid votes cast in the election.

A recount took place in July for the position of St Saviour Connétable, where only one candidate was standing, therefore the ballot included the option to vote for “none of the candidates”. This recount was triggered by a discrepancy of 460 votes between the total number of aggregate votes for the two options on the ballot, and the total number of valid votes as recorded on the Report and Reconciliation Form. The difference between the winner and the “none of the candidates” option was 406 votes, so the discrepancy may have impacted on the result. As this discrepancy was noticed by the Judicial Greffier, he brought it to the attention of the Attorney General who in turn asked the Royal Court for a recount that was performed on 18 July. The recount established that the number of valid ballots entered on the Report and Reconciliation Form was a mistake, and confirmed the candidate as the winner of the office of Connétable.

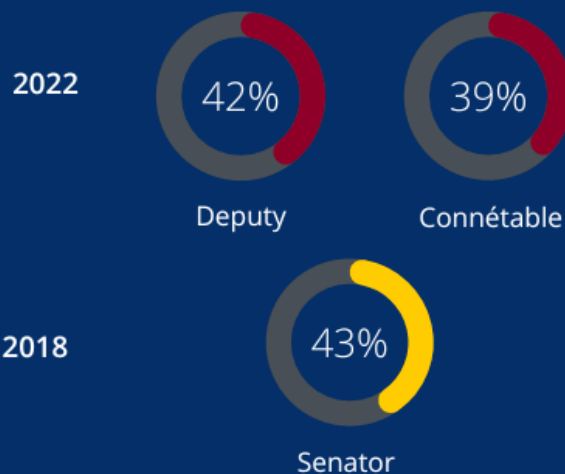


The CPA BIMR election observation team

## Jersey 2022 Elections Results



### Turnout of registered voters based on the number of ballots received\* per election



\*rather than the number of electors that have voted according to the voter register

## RECOMMENDATIONS

### 1. ELECTORAL REFORM

Substantive amendments to the election law should be adopted well in advance of the next election and never less than a year before.

### 2. PERSONS WITH DISABILITIES

The 2008 United Nations Convention on the Rights of Persons with Disabilities should be extended to Jersey. Domestic laws should be amended to ensure compliance with this instrument, as necessary, even before its extension to Jersey.

### 3. ELECTION ADMINISTRATION

To improve the general efficiency and transparency of the administration of elections, consideration could be given to reviewing the different roles, processes, coordination opportunities, and necessary resources for the implementation of the elections.

### 4. PRISONERS' RIGHT TO VOTE

To allow for broader electoral participation on an equal basis, the blanket ban on the right to vote for persons serving prison sentences exceeding four years should be removed.

### 5. VOTER REGISTER

Consideration should be given to performing an audit of the voter registration system for accuracy, inclusivity and data security.

### 6. RIGHT TO STAND

To allow for broader electoral participation on equal basis, candidature rights should be reviewed and brought in line with international standards and good practices for democratic elections, including:

- a. The blanket ban on the right to stand for seven years for anyone previously sentenced to more than three months in prison ought to be removed;
- b. The indefinite blanket ban on the right to stand for anyone found guilty of electoral offences under the 2006 Corruption Law while serving a public function should be removed;
- c. Any restrictions on the right to stand against persons with disabilities should be eliminated from the law.

### 7. UNCONTESTED SEATS

Efforts should continue to ensure more competitive elections, to avoid uncontested seats in future elections.

### 8. DIVERSITY AND INCLUSION

To foster a more open and inclusive process, consideration could be given to conducting a careful analysis of factors that may hold back some voters from participating and prospective candidates from standing for office:

- a. In order to consolidate and improve upon the success of the number of women elected in this election, measures to strengthen women's participation in elections could be considered, especially in elections for Connétables, in line with international good practice;
- b. Efforts could be increased to eliminate barriers to inclusion and greater participation in the electoral process by persons with disabilities, including physical access to campaign events, availability of facilities for visually impaired voters before and on Election Day and treatment of issues related to disability in the campaign.
- c. Work on disseminating information about elections among minority communities should continue, with the aim of promoting their participation in the process.

#### **9. POLLING STATIONS**

The number of voters per polling station should be reviewed, to ensure polling stations are in close proximity to voters' residences and/or easily accessible via public transport, and to ensure that polling stations are manageable if many voters turn out on Election Day.

#### **10. VOTER ELIGIBILITY**

As the requirement for voters to use photo ID to prove their identity is not established in law and restricts suffrage, consideration should be given to whether the use of photo ID as evidence of voter eligibility should be maintained or whether other alternative methods of proving identity are suitable.

#### **11. BALLOT PAPERS**

The use of traceable counterfoils could be reviewed, especially whether their retention for the purpose of removing invalid ballots is proportionate to the broader risk of undermining public confidence in the secrecy of the ballot. If their use is retained, authorities should take significant steps to strengthen the safeguards in place to protect the secrecy of the ballot, as well as steps to assure voters of these safeguards.

#### **12. COMPLAINTS AND APPEALS**

In order to bolster the system of election dispute resolution and make it more inclusive, consideration could be given to the establishment of administrative redress available to persons other than the contestants.

#### **13. VOTE COUNT**

At the start of each vote count, a separate verification stage could be introduced, reconciling the number of voters having cast a ballot with the number of ballots received and the number of counterfoils.

#### **14. ELECTION RESULTS**

Results should be announced and published per polling station and per constituency or Parish, including the total number of voters on the voters' list, the number of voters having cast a ballot, the number of invalid ballots, and the number of votes cast per candidate.

## ACKNOWLEDGEMENTS

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

## 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 [cpabimr@parliament.uk](mailto:cpabimr@parliament.uk).



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