



ISLE OF MAN GENERAL ELECTION

SEPTEMBER 2021



CPA BIMR ELECTION OBSERVATION MISSION

FINAL REPORT

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EXECUTIVE SUMMARY

- At the invitation of the Clerk of Tynwald, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted an Election Observation Mission to the Isle of Man General Election in September 2021.
- Overall, the Mission found that the Isle of Man's electoral legal framework was conducive to holding democratic elections, in line with international standards.
- The right to vote is inclusive in the Isle of Man. The right to stand as a candidate is relatively inclusive, although there are no specific provisions to encourage women or persons with disabilities to run for office.
- Training for Deputy Returning Officers, who are responsible for the conduct of their constituency election, appears to be limited, and the interpretation of the legal framework for elections is determined by individual Deputy Returning Officers. This led to regulations being implemented differently across constituencies, although this did not seem to affect the integrity of the electoral process as a whole.
- The election campaign was relatively competitive, and candidates campaigned freely and peacefully, despite the pandemic. However, the Mission received worrying reports of women candidates being specifically targeted in their campaign.
- The Mission found that access for persons with disabilities to the political process was feasible but difficult, despite efforts to make it easier. For instance, the Mission observed that half of all observed polling stations were not independently accessible to voters with mobility issues.
- On election day, voting across the Isle of Man took place in a calm and orderly manner, and procedures were generally followed. Polling station staff worked in a professional and efficient manner to ensure a smooth process throughout election day. There was some variation in the application of the regulations, and the Mission observed some instances of family voting, where voters use the same polling booth, that were not challenged by polling station staff.
- The CPA BIMR Election Observation Mission offers 10 recommendations in this report to enhance the conduct of elections in the Isle of Man and to bring it more fully into line with international obligations and standards for democratic elections.



Press conference by the core members of the CPA BIMR Election Observation Mission upon arrival

INTRODUCTION TO THE MISSION

At the invitation of the Clerk of Tynwald, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted an Election Observation Mission (EOM) to the Isle of Man General Election on 23 September 2021.

This is the first time CPA BIMR was invited to observe a general election in the Isle of Man. The Mission was present in the Isle of Man from 14 September until 25 September 2021.

The eight-member mission was composed of:

- Head of Mission – Stewart Dickson MLA (Northern Ireland)
- Deputy Head of Mission – Deputy Rob Ward (Jersey)
- Short-Term Observer – Hon. Robert Cutajar MP (Malta)
- Legal and Political Analyst – Delphine Blanchet (France)
- Electoral and Campaign Analyst – John Ault (UK)
- CPA BIMR Mission Coordinator – Fleur ten Hacken (the Netherlands)
- CPA BIMR Mission Administrator – Sonu Masania (UK)
- CPA BIMR Mission Administrator – Martin Vickery (UK)



The CPA BIMR election observers

The Mission conducted an independent assessment of the Isle of Man General Election against international 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 the participation of persons with a disability. The Mission met key stakeholders, including election officials, candidates, the Attorney General's office, civil society groups, voters, and attended a number of 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 44 (out of 56) polling stations across all the 12 constituencies. The Mission also observed the vote count in four constituencies.

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 under the auspices of the United Nations in 2005.

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

BACKGROUND & ELECTORAL SYSTEM

The government of the Isle of Man is a parliamentary representative democracy. As a Crown Dependency, it is not subordinate to the government of the United Kingdom except for defence and external affairs matters. The head of state of the Isle of Man is the monarch of the United Kingdom, whose representative on the island is the Lieutenant Governor of the Isle of Man who has mostly ceremonial powers. Executive power is vested in the Lieutenant Governor (as Governor-in-Council), the Chief Minister and the Isle of Man's Council of Ministers. The judiciary is independent of the executive and the legislature.



Tynwald Building, Douglas, Isle of Man

The legislative power of the government is vested in the High Court of Tynwald ("Tynwald") which has an unlimited, but not necessarily exclusive, legislative competence. Tynwald consists of two Branches. The lower Branch, the House of Keys, has 24 elected members. The upper Branch, the

Legislative Council, is a revising chamber of 11 indirectly elected and ex-officio members. The Branches sit separately to consider primary legislation, but they also sit together as Tynwald for other parliamentary purposes. Ministers, including the Chief Minister, are derived from the Members of the House of Keys, covering various aspects of policy within government.

The 24 members of the House of Keys are directly elected by universal suffrage. Elections to the House of Keys are regularly held every five years, on the last Thursday of September. After every House of Keys general election, the members of Tynwald elect from amongst themselves the Chief Minister of the Isle of Man, who serves as the head of government for five years.

Following the redrawing of constituency boundaries in 2016, the Isle of Man is divided into twelve two-member constituencies each electing two members by first-past-the-post, effectively the 'first-two-past-the-post'. Voters can cast either one or two votes.

The House of Keys is historically made up of independent members; in the 2016 General Election, only 5 members were affiliated to a political party, and in 2021 only 3 of the 9 candidates affiliated to one of three registered political parties (the Green Party, the Manx Labour Party, and Liberal Vannin) were elected.

COVID-19 PANDEMIC

Despite the election being conducted during the COVID-19 pandemic, the Mission identified little impact of the virus on the electoral process. Voters did not seem to be limited in their willingness to attend polling stations and candidates and other party campaigners were still able to campaign via door-knocking and in-person events such as public meetings. Even large public events such as the counting of votes saw few, if any, restrictions due to COVID-19.

Voters who wished to vote in person at a polling station were able to do so at their local polling station as normal with no limitations due to the pandemic.¹

Due to COVID-19, the following adaptations in relation to voting procedures were made:

- Proxy voting was extended to allow ill or self-isolating people to vote by proxy. The deadline to apply for a vote by proxy was extended to 5pm the day before Election Day. Approximately 0.3% of registered voters applied for a proxy vote.²
- Advance voting was withdrawn, which previously allowed Deputy Returning Officers and their staff to enter venues such as nursing homes to allow voters who could not attend a polling station to vote at home. As COVID-19 has been particularly impactful on this vulnerable group, this was widely perceived as being a sensible resolution.

LEGAL FRAMEWORK

As a British Crown Dependency, international conventions applicable to the UK are not directly applicable to the Isle of Man, but need to be extended on a case by case basis. The Isle of Man is party to the most significant international conventions relevant to guarantee credible, transparent and democratic elections:

- the International Covenant on Civil and Political Rights,³
- the International Convention on the Elimination of All Forms of Racial Discrimination,⁴
- the Convention on the Elimination of All Forms of Discrimination against Women,⁵
- the United Nations Convention Against Corruption.⁶

However, the Convention on the Rights of Persons with Disabilities, which was ratified by the UK on 8th June 2009, has not been extended to the Isle of Man yet.

The Isle of Man has no written Constitution or Bill of Rights. The 2001 Human Rights Act set out the people's fundamental rights for the first time. The Isle of Man had already been party to the European Convention for the Protection of Human Rights and Fundamental Freedoms for fifty years before it decided to incorporate it into its domestic law by adopting the Human Rights Act in 2001.⁷ The Act gives further effect to the rights protected by the Convention, as they are now enforceable in Manx Courts. The Act makes it unlawful for a public authority to infringe upon the rights protected in the Act, unless it is in conflict with an Act of Tynwald. The Act is the only piece

¹ With the exception of the Douglas South constituency where voters could vote in any of the three polling stations because of the electoral register pilot being conducted there.

² Across the island, 213 voters applied for a proxy ballot, although only 157 proxy ballots were used.

³ Extended to the Isle of Man simultaneously with the UK's ratification on 20/5/1976.

⁴ Extended to the Isle of Man simultaneously with the UK's ratification on 7/3/1969.

⁵ Extended to the Isle of Man simultaneously with the UK's ratification on 7/4/1986.

⁶ Extended to the Isle of Man on 9/11/2009.

⁷ The Human Rights Act came fully into force in 2006.

of primary legislation of the Isle of Man that sets out the basic guiding principles for democratic elections, including:

- freedom of expression (article 10),
- the right to free assembly and association (article 11),
- freedom from discrimination (article 14),
- the right to a fair trial (article 6),
- the right to free elections (Part IA: the First Protocol, article 3).⁸

Acts of Tynwald

The 2021 General Election to the House of Keys was the first general election to occur after a broad and long electoral reform process, which was conducted inclusively, in line with good international practice. The Isle of Man engaged in an electoral reform process straight after the 2016 election when a number of irregularities and a lack of uniform application of the law had brought to light the need for reforming the legal and regulatory framework for elections. To this end, a Select Committee



was set up on 18 October 2016, and in parallel the Cabinet Office launched a large nationwide consultation of key stakeholders. Issues such as accessibility, modernisation and digitisation and consistency between national and local elections were the basis for discussions.

This electoral reform culminated with the adoption of two Acts in October 2020 and of their related regulations a few months later:

- the Elections (Keys and Local Authorities) Act;
- the Registration of Electors Act.

The COVID-19 pandemic hit the island while the last phases of the legislation were being reviewed by the House of Keys. Although all legislation was considered and discussed according to Tynwald procedures, readings were often done remotely, which added an element of complexity and slowed down the process. Despite these constraints, the election legislation was largely discussed and submitted to long public consultations before approval. In addition, the Crown and Elections team held a targeted consultation for six weeks about the regulation on the Elections (Keys and Local Authorities) Act 2020.⁹

As a result, the two Acts and their Regulations came into force late in the electoral cycle, with the regulations of the Registration of Electors Act being adopted by Tynwald as late as July 2021. When bringing changes to the legal framework, it is usually considered good practice to do so well ahead of an election, so all stakeholders have sufficient time to adapt to the changes in the legal framework.¹⁰ In the case of the Isle of Man, this was balanced by the large consultation process that happened before the adoption of the Acts. In addition, some provisions were still not fully operational for the 2021 election such as:

⁸ Human Rights Act 2001, Part IA: the First Protocol, Article 3, by which “the High Contracting parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature”.

⁹ The consultation included all Deputy Returning Officers, MHKs, the Chief Registrar and the Information Commissioner.

¹⁰ Venice Commission (2002) ‘Code of Good Practice in Electoral Matters’.

- the new voter registration system that will provide for continuous, individual registration (as per the Registration of Electors Act);
- the procedures for a petition process through which Members of the House of Keys who, during their mandate, and after appeals are exhausted, have been convicted of an offence and sentenced to custody could be recalled.

The main elements of the new legal framework that were operational for this election included:

- A new, more centralised organisation of the election administration, including:
 - The Chief Secretary of the Civil Service being allocated the role of Returning Officer, giving them overall responsibility for the general coordination and oversight of the election;
 - Constituency hustings (“pre-election meetings”) organised by the Elections Team;
- An extended, “on-demand” postal voting system;
- The introduction of a low-level complaints redress mechanism.

Overall, the Mission found that the Isle of Man’s electoral legal framework was conducive for holding democratic elections, in line with international standards.

BOUNDARY DELIMITATION

The 2021 General Election was organised under the same boundaries as the 2016 election. Boundary delimitation had long been an issue in the Isle of Man, until a Boundary Review Committee was set up in 2010 to address the issue of constituencies of unequal sizes returning three, two or one Member of the House of Keys (MHK). After a transparent and inclusive consultation, the Committee delivered its conclusions in 2013 and the members agreed a new structure of twelve equal constituencies which would each be represented by two MHKs and with an average population of around 7,000.

The new constituencies were in line with previous Tynwald resolutions that:

- there should be equality of representation;
- the 24 House of Keys seats should be divided into 12 constituencies with 2 members each;
- and that the population size of constituencies should not vary from the average by more than 15%.

For the 2021 election, two constituencies (Glenfaba and Peel, and Ramsey) had respectively 15% and 14% more registered voters than the national average of voters per constituency, while Douglas East, North and South had less voters than the national average, however within the 10-15% limit. This is an acceptable difference, but it needs to be addressed in the next review of the boundaries, which should happen once the results of the last census are published.

It is a good international practice that the drawing of boundaries be undertaken in a transparent and consistent procedure established by law, and that boundaries are regularly reviewed to reflect demographic changes. This is currently not entirely the case. The Elections (Keys and Local Authorities) Act provides for 12 constituencies, each returning two members, but the governing principles of equality and of an independent review are not spelled out in the law. This limits the transparency of boundary delimitation. The Mission was informed that an Election Commission will be appointed by the Governor in Council¹¹ “within twelve months of the 2021 elections and every second national election thereafter”, that will have, among other things, a mandate to review

¹¹ Elections (Keys and Local Authorities) Act 2020, Part 5, Division 1 « The electoral commission”.

the number of constituencies and their boundaries. The Elections (Keys and Local Authorities) Act 2020 is silent on the principles that will guide this review.

Recommendation 1: The Election Commission could set and follow the guiding principles of transparency, inclusivity and equality for its work reviewing boundary delimitations. The Elections (Keys and Local Authorities) Act 2020 could be amended to include those principles in the tasks of the Electoral Commission.

ELECTION ADMINISTRATION

Election administration in the Isle of Man has been adapted following legislative change in 2020, followed by new regulations in 2021.¹² This means that the previous arrangements, where twelve Returning Officers (one for each constituency) were directly appointed by the Lieutenant Governor of the Isle of Man, have been replaced by a central Returning Officer (the Chief Secretary) being the designated head of elections with twelve Deputy Returning Officers conducting the election process. The previous appointment by the Lieutenant Governor has been replaced by appointment by the Returning Officer.

The twelve Deputy Returning Officers have significant independence in conducting their local polls but much of the day-to-day administration has been taken in-house by the Elections Team, which sits within the secretariat of the Crown and Elections office of the Cabinet Office. The Elections Team is responsible for the planning and implementation of many aspects of the election process from public meetings to the production of election materials for polling stations. It is a demanding role, with fixed deadlines and limited resources. The Mission commends the Elections Team for their hard work in their attempt to achieve an effective election operation.

The Returning Officer (the Chief Secretary) is responsible for recruiting Deputy Returning Officers. Historically, Deputy Returning Officers have been recruited amongst experienced advocates on the island. The recruitment of Deputy Returning Officers has become increasingly challenging.

CPA BIMR observer at an election hustings



¹² Elections (Keys and Local Authorities) Act 2020, followed by the Elections (Keys) Regulations 2021

Deputy Returning Officers are responsible for the conduct of their constituency election. They are the recipients and certifiers of candidate nominations and postal vote applications. They are responsible for the conduct of polling day operations and counting. They are also responsible for recruiting and training polling station staff, for which they often recruit colleagues in their respective law firms or friends and family. There is no open recruitment and selection process for polling station staff, which is not transparent and could hinder the perceived impartiality of the election administration.

Recommendation 2: There should be an open recruitment and selection process for polling station staff to increase transparency and to ensure impartiality of the election administration.

Training for Deputy Returning Officers appears to be limited and the interpretation and implementation of the legal framework for the electoral process is determined by individual Deputy Returning Officers. This led to regulations being implemented differently across constituencies, although this did not seem to affect the integrity of the process as a whole.¹³

Recommendation 3: Training for Deputy Returning Officers should be delivered systematically to ensure a consistent implementation of legislation across all constituencies.

Issues were noted in relation to the ballot paper production. In one constituency, a candidate's party had been omitted from the ballot paper, in contravention of Regulation 20(2)(c) of the Elections (Keys) Regulation 2021. In another incident, an unknown number of ballot papers were printed blank.

Historically ballot papers have been manufactured in booklets, in which the ballot paper counterfoils remain attached to the booklet together. A new design of the ballot paper was used in this election, which meant that the counterfoil needed to be detached from the bottom of the ballot paper before being issued to the voter. The loose counterfoils caused administrative difficulties.

THE RIGHT TO VOTE

The right to vote is inclusive in the Isle of Man and is not dependent on citizenship. To be able to cast a vote, a person needs:

- to be 16 years old on the day of the election;
- to have been a resident for the past 12 months;
- and to be included in the voter register.

There are few reasons why a person may not have the legal capacity to vote. Under Section 126 of the Elections (Keys and Local Authorities) Act 2020, a person convicted by the High Court for corrupt or illegal practice may be deprived by the Court from the right to vote for up to five years.

¹³ For instance, polling cards were dealt with in different ways in different polling stations, and the way the counting of votes was organised across different constituencies also varied.

Corrupt or illegal practices encompass bribery, personation, multiple voting or undue influence, but may also include offences such as the production of unlawful election materials.

There is no restriction in the Elections (Keys and Local Authorities) Act on mental capacity, which would allow patients in mental hospitals to be allowed to cast a postal ballot, but the Mission was not able to ascertain if this took place. Prisoners who have not lost their suffrage rights have the right to apply for a postal ballot, but the Mission was informed that no prisoner had registered nor expressed the will to vote.

VOTER REGISTRATION

Voter registration in the Isle of Man is active and compulsory. If someone fails to register, they could receive a fine but in practice fines are not imposed on those who do not register.

The deadline for voter registration for this election was 3 weeks before Election Day, giving voters ample time to register. Voters could also register online. In total 64,744 voters were on the register for Election Day.

The Mission was informed that several thousand potential voters do not appear on the electoral register.¹⁴ There are many reasons why potential voters would choose not to register. For example, the Mission was informed that some people refrain to register out of fear of being called for jury duty, as jury duty is drawn from the register. Anecdotal evidence was shared with the Mission that voter registration amongst certain groups of eligible voters is significantly lower, for instance amongst residents with a migrant background. This would be concerning and should be addressed for future elections.

The Registration of Electors Act 2020 introduces individual voter registration, rather than registration based on households. However, the new voter registration system was not operational in time for the election due to the COVID-19 pandemic.

Recommendation 4: Further efforts could be undertaken by the Crown and Elections Team to develop methods to encourage registration amongst any under-represented groups.

THE RIGHT TO STAND FOR ELECTION & CANDIDATE REGISTRATION

The right to stand as a candidate is relatively inclusive in the Isle of Man. To be a candidate, a person needs to:

- be a registered voter,
- be aged 18 or above;
- and have a minimum of five years of residency or have British or Irish citizenship.

Some legal incapacities are listed in the Election (Keys and Local Authorities) Act 2020 which are commensurate to criminal offences adjudicated by a court.

¹⁴ This number will become more evident following the publication of the 2021 census results. Based on the 2016 census data, the resident population of the Isle of Man aged 16 and above was 69,081, although a small percentage of this number would not be eligible to vote due to restrictions, for instance if they have not been a resident of the Isle of Man for at least 12 months.

There are no specific provisions to encourage women or persons with disabilities to run for office.

Across the twelve two-member constituencies, a total of 65 candidates were officially nominated for the 24 vacant seats. Whilst political parties exist in the Isle of Man the vast majority of these candidates stood as independents.

As per the Government website, to become nominated as a candidate for this General Election, candidates had to:

'submit a completed Nomination Paper and a Declaration of Relevant Interests form to the Returning Officer for the constituency between 10am on Wednesday 18 August 2021 and 1pm on Wednesday 25 August 2021 at a time and place to be agreed with the Returning Officer.'¹⁵

A prospective candidate also had to have two signatures, being the candidate's nominator and seconder, plus no fewer than 20 more signatures to support their nomination. These signatories are allowed to nominate, second or subscribe to two nominations as each constituency returns two Members of the House of Keys.

ELECTION CAMPAIGN

The election campaign was relatively competitive, with 65 candidates contesting 24 seats across 12 constituencies. Out of the 65 candidates, 49 candidates were men and 16 were women. Only one candidate was from an ethnic minority.

Candidates campaigned freely and peacefully, with no reports of impediments to campaign activities. Despite the pandemic, campaigning was conducted via door-to-door canvassing and posters. Some candidates reported damage to election materials. The Mission received worrying reports of women candidates being specifically targeted in their campaign. Their posters were defaced or destroyed, and they reported being attacked on social media.

There is a strong tradition of public meetings in the Isle of Man, which have generally been conducted by the local 'Captains of the Parish' across the island.¹⁶ These are called requisition meetings and have historically been called by Captains upon receiving a petition for an election meeting. These have been generally very well attended in the past.

These events are based in the local constituencies with a manageable number of candidates in attendance, ranging from 4 to 8, on this occasion. These event venues and the publicity for them were organised by the Elections Team. Several other public meetings have also been organised by bodies such as the National Association of Head Teachers. According to several of those involved, attendance was lower than in the past, and some have attributed this to the lack of local engagement in the planning and organisation of these events. However, due to the COVID-19 pandemic, some of this reluctance to attend public meetings might also, at least to some extent, be attributed to public health concerns.

¹⁵ See: <https://www.gov.im/categories/home-and-neighbourhood/elections-and-voting/2021-general-election/>

¹⁶ 'Captain of the Parish' is a historic office that is unique to the Isle of Man. Historically, the Captain of the Parish was authorised to raise his own militia in case of an invasion.

CAMPAIGN FINANCE

Election spending is limited to ensure that all prospective candidates have similar levels of spending on their campaigns. Once prospective candidates have shown an intention to stand for election at the forthcoming election, they are required to manage this spending for the twelve months running up to polling day, namely from 23 September 2020. Spending limits are set at £2,150 per prospective candidate plus 54p for each registered voter in their constituency. Constituencies have between 4,755 and 6,380 registered voters, meaning that this limit can be anywhere between £4,717.70 and £5,595.20.

Most candidates in the Isle of Man election stand as independent candidates and, as such, are generally supported by their own funds. Any donations over £50 must be declared as part of their declaration, which needs to be submitted a week before election day, and there is no limit on the size of a donation. This process is transparent and is designed to give evidence to the public as to whether any individual candidate has received financial support from donors.

Some candidates stand as a member of a political party. Independent and party-political candidates are treated equally in terms of campaign finance, even though there appears to be a discrepancy in the official guidance¹⁷ published for candidates and the website page¹⁸ with information for political party candidates.

The Isle of Man Government funds the postage of a candidate's manifesto to each household through the Isle of Man postage service. Candidates are required to provide a manifesto to the postal service for franking with sufficient time before the election. The cost of this delivery does not contribute to the candidate's other election expenses and effectively acts as a subsidy to their campaign at no cost to them, subject to limitations on the size of the manifesto. Only those items which breach the standard size for a manifesto would incur any declarable election expense.

The implicit financial support offered by the free postage of an item of literature for every candidate does allow good access for voters to those seeking to contest the election.

MEDIA & SOCIAL MEDIA

Although not extensive, the Isle of Man has a healthy media landscape which seems free and open. The island is served by a dedicated radio station, Manx Radio, which is supported by a government subsidy but also by advertising revenue. It is regarded as the national public service broadcaster and provides news and current affairs programs about the island. The island is also covered by the Northwest England region of the BBC in the UK, who have dedicated staff on the island. Additionally, there are other local radio stations and there is an independent media outlet for television. There is also active social media engagement, which appears to have been especially popular during the election campaign.

¹⁷ Isle of Man Government (2021) 'Guidance for Candidates', available on: <https://www.gov.im/media/1371853/guidance-for-candidates-general-election-2021-300421-v2.pdf>. It notes "Spending limits are capped at £2,150 plus 54p for each elector in the constituency."

¹⁸ Isle of Man Government (2021) 'Political Candidates', available on: <https://www.gov.im/about-the-government/departments/enterprise/central-registry/registration-of-political-parties-and-candidates-registers/political-candidates/>. It notes: "The 'maximum amount' is the total of £2,000 plus 50 pence for each person registered as an elector on the relevant register for the constituency in which the candidate is standing for election."

The press landscape also includes several local newspapers, which are owned by the Isle of Man Newspapers Ltd. These cover island news and are well distributed across the island.

The media is generally self-regulated in terms of their output. Manx Radio, being the main source of media on the island, were diligent in their attempt to give equal coverage to candidates. They covered debates and produced features and online content concerning the election.

Newspapers did not apply the same ‘impartiality’ self-regulation that the broadcast media did. However, they attempted to give equal access to the process for candidates. Some of the press also took paid-for advertising content from those who sought it.

DIVERSITY AND INCLUSION

Several international human rights instruments that generally protect against discrimination are directly applicable to the Isle of Man.¹⁹ However, the Convention on the Rights of Persons with Disabilities 2006 (ratified by the UK on 8th June 2009) has not been extended to the Isle of Man yet. Importantly, Tynwald passed the Equality Act in 2017, which is a landmark piece of legislation that defines and protects against all sorts of discrimination. Of particular relevance to the accessibility of persons with disability to the electoral process, the Equality Act:

- makes it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function;²⁰
- enshrines in law that public authorities have a duty of care²¹ including the duty to make reasonable adjustments for disabled persons in relation to providing services and exercising public functions.²²

The Mission found that access for persons with disabilities to the political process was feasible but difficult, despite efforts to make it easier. During the campaign, campaign events organised by the Crown and Election team at the Cabinet Office were not always fully accessible. In line with the Isle of Man’s Equality Act and the European Convention, polling stations should be independently accessible to disabled electors and be equipped with voting booths suitable for wheelchair users.²³ The Mission observed that half of all polling stations observed were not independently accessible to voters with mobility issues because of a lack of step-free access and the positioning of polling booths. Some polling stations had been provided



Tactile Voting Device

¹⁹ Such as the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women, and the European Convention on Human Rights.

²⁰ Part 3

²¹ Part 11

²² Part 11, section 21.

²³ On 26 October 2021, the European Court of Human Rights made a relevant decision in the case of ‘Toplak and Mrak v. Slovenia, Applications nos. 34591/19 and 42545/19’, available on: <https://laweuro.com/?p=17193>

with ramps, but they were not always readily available to voters on arrival. Some voters who required step-free access also had more indirect routes to access polling station buildings.

The placement of polling booths should also be considered when attempting to give equal access to voters with mobility issues. Polling booths had a lower shelf to ensure access to wheelchair users, but the Mission observed that some booths were not placed correctly to allow access to wheelchair users.

Blind and partially sighted voters were given the opportunity to use Tactile Voting Devices. These were not always evident in polling stations. Voters who required assistance, including the blind and partially sighted, were assisted by the Presiding Officer.

Recommendation 5: In order to fully comply with the Equality Act, the electoral process should be fully accessible to persons with disabilities. In particular, all spaces used for the purpose of an electoral process, during the campaign and on election day, should be independently accessible.

There were 16 women standing in the election (24.6% of candidates). A record number of ten women were elected (42%). This is a sharp improvement compared to the previous election when five women were elected, even though no positive measures were taken to promote women's participation. The Convention on the Elimination of All Forms of Discrimination against Women, which has been extended to the Isle of Man, allows for positive measures to support the advancement of women in political life. Also, the Mission received worrying reports of women candidates being specifically targeted in their campaign, with their posters defaced or destroyed. Some women candidates also reported to the Mission being attacked on social media.

Recommendation 6: Authorities should consider a review to promote measures to strengthen women's participation in elections, in order to consolidate and improve upon the success of the number of women elected in this election, in line with international good practice.

In the observed polling stations, 62% of polling station staff were women, whereas 41% of those holding the position of presiding officer (the person in charge of the polling station) were women.

ELECTION DAY

On election day, voting across the Isle of Man commenced in a calm and orderly manner, and procedures were generally followed across the island's 57 polling stations. Polling station staff worked in a professional and efficient manner to ensure a smooth process throughout election day. Polls were open from 8am until 8pm and voting was consistent throughout the day. The voting process was transparent to the observers.

Dependent on the area, there were varying methods of training for staff, including some being instructed on how to conduct polling day operations at the opening of polls. This should not be considered an appropriate method of training.

The delivery of electoral administration should be consistent across the island. There was some variation in the application of the regulations. Some polling staff asked electors to show ID if they were not in possession of their polling card, but this requirement is not prescribed by the relevant legislation. In this election, ballot papers were pre-franked to avoid the possibility of ballots being rejected due to the lack of an official mark. All ballots seen by the election observers were pre-franked. However, some polling staff continued to frank ballot papers, as had been common practice in previous elections.

A unique 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. This practice exists so that in case of a legal challenge, a full recount can take place by which the ballot papers can be verified by tracing them back to the individual voters. However, this system carries some risk of compromising the secrecy of the ballot.

Postal voting was changed from requiring a specific reason to apply for a postal vote to a system of on-demand postal voting, to facilitate greater access to those unable or unwilling to attend polling stations. Approximately 2.5% of registered voters applied for a postal vote.

As evidence of their trust in the electoral administration, candidates did not generally take up the opportunity to observe the voting process inside the polling stations, whether for themselves or through their appointed polling agents, but preferred to be outside greeting voters. At times the large numbers of candidates and agents stationed outside might have been considered a hindrance to voters, but the groups of candidates were invariably well-mannered to those arriving at the polling stations.

Very little voter confusion was evident concerning the voting process. Voter turnout was relatively good, with notable lower figures in the urban area of Douglas. Some queues were observed in a few locations, particularly at the opening of polls and at peak periods. All those polling stations observed by the Mission opened for voting on time and the ballot boxes observed at that time were seen to be empty before being sealed by Presiding Officers.

Family voting, where voters use the same polling booth, or oversee the vote of another, should be considered a breach of the secret ballot. In 20% of observed polling stations, the Mission observed group or family voting, particularly when relatives or carers were assisting elderly voters or those with disabilities. This was generally not challenged by staff.



CPA BIMR observer on Election Day

Recommendation 7: Training for polling station staff should be delivered systematically to ensure a consistent delivery of an election across the island. Training could include a specific focus on family voting and how to prevent it.

All polling stations observed closed on time and no voters were observed queuing at 8pm. Overall, the Mission rated the voting process to be generally positive but with differing methodologies for delivering the election across the island.²⁴

TECHNOLOGICAL INNOVATION

A pilot project for an online electoral register took place in the constituency of Douglas South. Polling station staff in this constituency trialed the use of an electronic voter register. This meant voters were able to vote in any of the three polling stations within their constituency. Using a computer application, polling staff across the three stations were able to mark an electronic version of the register when a voter had cast their ballot and therefore were unable to vote again at any polling station. The application was delivered through dedicated iPads.

The pilot project appears to have been a success, based on the Mission's polling day observations. The system was easy to use for staff and numerous voters attended polling stations that were not their originally designated one. The Mission was informed that the pilot had identified voters who had been issued with postal votes and therefore could not vote in person at a station, which gave evidence that the process functioned well. Staff coordinating the technology supporting the online process reported no errors or failures of the system during polling day. This pilot could be extended in the future, opening up the opportunity to voters to vote in any polling station in their own constituency, or even across the island.²⁵

COUNTING & RESULTS

Counting of the votes took place in twelve polling stations, one in each constituency. Opening of the ballot boxes began as soon as all ballot boxes had been delivered to the counting centre and had been checked by the Deputy Returning Officer and their team.

Polling station staff were given coded cable ties or plugs to seal ballot boxes with at the start of polling day. However, the Mission observed that these were not used consistently. In addition, codes on the cable ties were not checked by the Deputy Returning Officer on arrival at the vote count to ensure the ballot boxes had not been reopened since the start of polling day. Not checking these codes could lead to questions about the integrity of the ballot. At the counting centres observed by the Mission, none of the ballot boxes had been interfered with since the Mission had checked the codes earlier on polling day.

Recommendation 8: Coded seals on ballot boxes should be used consistently, and should be checked by the Deputy Returning Officer before ballot boxes are opened.

²⁴ Of the 44 polling stations attended by the CPA BIMR election observers, 50% were identified as being 'Very Good', 45% were identified as being 'Good' and the final two were identified as 'Bad' due to observations of family voting and the layout of the polling station that made it difficult to access.

²⁵ The Mission understands that voters would only be allowed to vote at any of the polling stations within their constituency because of the necessary use of a constituency ballot paper to vote for their local MHKs. However, in population centres such as Douglas, where many islanders travel to work, a dedicated all-island polling station could accommodate voters from any constituency in the future.

Across the twelve counts, the number of ballot papers received was verified at the start of the count. However, as voters were able to vote for more than one candidate on a single ballot paper, the number of votes cast did not equal the number of ballot papers received. Therefore, there should be an additional stage in the verification process, to establish the number of votes cast. This would avoid confusion and a lack of clarity concerning the number of votes cast.²⁶ However, this additional verification stage does not take place.

Recommendation 9: In addition to verifying the number of valid ballot papers, verifying the number of votes cast could be introduced as a separate verification stage of the counting process.

The counting process takes several different forms across the island, dependent on the Deputy Returning Officer's preference for conducting the process.

Candidates, agents, and counting agents have full access to the verification and counting process and the Mission did not observe any objections made to this aspect of the election. Deputy Returning Officers explained the process to candidates at the various key stages of the process and asked if they accepted the adjudication of staff. No objections were identified by the Mission.

ELECTORAL JUSTICE

Access to a meaningful remedy is a fundamental right of an electoral process. In the Isle of Man internal legal order, Article 6 of the Human Rights Act 2001 provides for access to a fair trial.

Election petitions are heard by the highest level of the judiciary, the High Court, which is presided over by a Deemster. The head of the judiciary is the First Deemster and Clerk of the Rolls. Appeals are heard at the Appeal Court by the Judge of Appeals, and final appeals at the Judicial Committee of the Privy Council in the United Kingdom. The First Deemster, the Second Deemster and the Judge of Appeals are appointed by the Lieutenant Governor. The decisions of the High Court on electoral petitions decisions are final. However, the High Court can grant leave in its decision for an appeal.²⁷



CPA BIMR observers at a candidate event at a high school

²⁶ For example, in the Douglas South constituency, 2295 voters cast a ballot paper with either 1 or 2 votes on each paper. Therefore, the minimum number of votes cast was 2295 and the maximum was 4590. After the vote count, it was announced that 4132 votes had been counted, although this number had not been verified separately before the start of the vote count. Thus, there was a potential variance of around 10% between the maximum number of votes possible and the number of votes counted. In close elections, this variance could lead to the possibility of recounts or challenges as the number of valid votes is never ascertained as part of the verification process.

²⁷ Elections (Keys and Local Authorities) Act 2020, Schedule 1, Section 20

Any voter or candidate may dispute the election result within 28 days after the official results. There is no time limit on the process of adjudication of election petitions, which may take as long as two years, and the petitioner bears the cost of it. Both the length and the cost of the process may act as a deterrent for lodging petitions. To partially address this, the new Elections (Keys and Local Authorities) Act 2020 introduced the practice of lower-level complaints on issues not related to an undue election being dealt with by the Deputy Returning Officers.²⁸ There is no specific procedure nor deadline for the Deputy Returning Officer to address those complaints.²⁹

Deputy Returning Officers have wide powers in relation to electoral justice. Their powers are similar to those of a Justice of Peace, but for electoral matters.³⁰ Of particular concern is that Deputy Returning Officers traditionally retain the powers to arrest, detain or admit to bail, or try and convict any person who commits an offence to the Elections (Keys and Local Authorities) Act 2020.³¹ Interlocutors told the Mission they were surprised at the retention and irrelevance of this last provision, given its potential incompatibility with other provisions of the law which allow for due process for an electoral offence, as well as with the provisions of the Human Rights Act 2001. These powers are also not fully in line with relevant international standards that provide for a meaningful remedy.³² Whilst it is understandable that Deputy Returning Officers need authority to maintain order inside polling stations and counting centres, the Isle of Man rule of law framework is adequate enough to address those issues without these extensive powers being extended to Deputy Returning Officers.

Recommendation 10: The Elections (Keys and Local Authorities) Act 2020 should be amended to ensure the powers of the Deputy Returning Officers are fully aligned with the Human Rights Act 2001 and relevant international standards.

A wide range of election offences is listed in the Elections (Keys and Local Authorities) Act and penalties range from low fines to custody. A person found guilty of an illegal or corrupt activity such as bribery, personation, or undue influence, may additionally be disqualified from participation in public elections during a time proportionate with the gravity of the offence.

To date, no objection on the voter register nor on the nomination of candidates was registered, and no complaint was filed during the pre-election period or on election day. So far, no election petition has been filed.

ELECTION RESULTS

The declaration of the results was issued in the hours following the close of poll at 8pm through to the early hours of the next morning, dependent on the pace of counting. Each local Deputy Returning Officer declared the result to the attending staff, candidates, counting agents and media at the counting venue.

²⁸ Part 10, Section 155

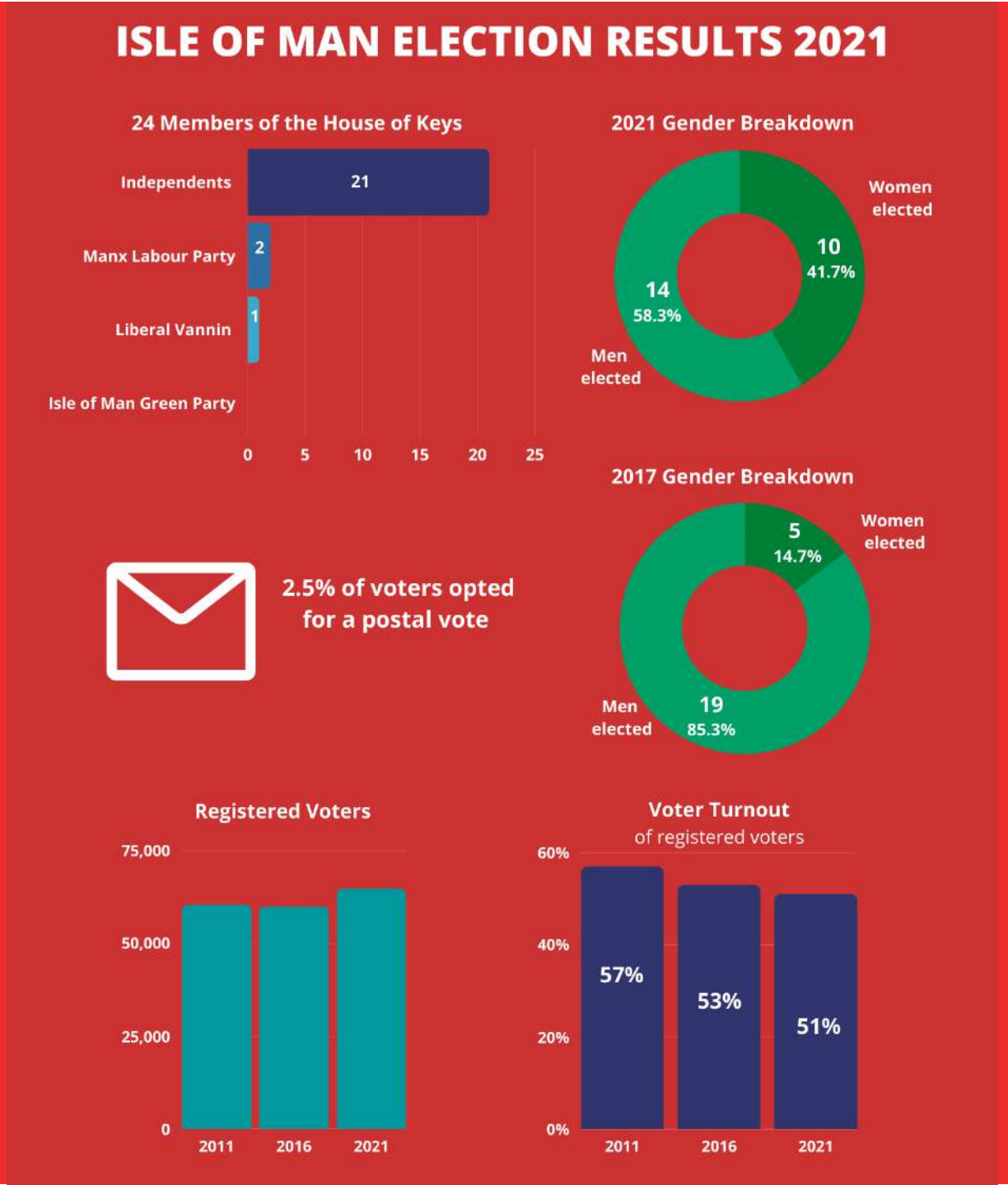
²⁹ Elections (Keys) Regulations 2021, Section 59

³⁰ Elections (Keys and Local Authorities) Act 2020, Section 68, (3)

³¹ Elections (Keys and Local Authorities) Act 2020, Section 68, (2)

³² In particular the UN International Covenant on Civil and Political Rights 1966 and the European Convention on Human Rights 1950.

Candidates were informally presented with the results before the formal certification by the Deputy Returning Officer and their public announcement. The results are announced live on Manx Radio. Other media outlets, such as online platforms, also broadcast the results live where possible. These results were accepted as being an accurate reflection of the counting process in all instances.



RECOMMENDATIONS

1. BOUNDARY DELIMITATIONS

The Election Commission could set and follow the guiding principles of transparency, inclusivity and equality for its work reviewing boundary delimitations. The Elections (Keys and Local Authorities) Act 2020 could be amended to include those principles in the tasks of the Electoral Commission.

2. RECRUITMENT OF POLLING STATION STAFF

There should be an open recruitment and selection process for polling station staff to increase transparency and to ensure impartiality of the election administration.

3. TRAINING DEPUTY RETURNING OFFICERS

Training for Deputy Returning Officers should be delivered systematically to ensure a consistent implementation of legislation across all constituencies.

4. VOTER REGISTRATION

Further efforts could be undertaken by the Crown and Elections Team to develop methods to encourage registration amongst any under-represented groups.

5. ACCESSIBILITY

In order to fully comply with the Equality Act, the electoral process should be fully accessible to persons with disabilities. In particular, all spaces used for the purpose of an electoral process, during the campaign and on election day, should be independently accessible.

6. WOMEN'S PARTICIPATION

Authorities should consider a review to promote measures to strengthen women's participation in elections, in order to consolidate and improve upon the success of the number of women elected in this election, in line with international good practice.

7. TRAINING POLLING STATION STAFF

Training for polling station staff should be delivered systematically to ensure a consistent delivery of an election across the island. Training could include a specific focus on family voting and how to prevent it.

8. BALLOT BOXES

Coded seals on ballot boxes should be used consistently, and should be checked by the Deputy Returning Officer before ballot boxes are opened.

9. VERIFICATION OF VOTES

In addition to verifying the number of valid ballot papers, verifying the number of votes cast could be introduced as a separate verification stage of the counting process.

10. ELECTORAL JUSTICE

The Elections (Keys and Local Authorities) Act 2020 should be amended to ensure the powers of the Deputy Returning Officers are fully aligned with the Human Rights Act 2001 and relevant international standards.

ACKNOWLEDGEMENTS

The CPA BIMR Election Observation Mission wishes to express its gratitude to the authorities of the Isle of Man, election officials, candidates and to the people of the Isle of Man 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**.



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