

STATES OF JERSEY



THE LORD PORTSEA GIFT FUND: REVISED RULES AND CONDITIONS

Lodged au Greffe on 8th October 2013
by the Minister for Education, Sport and Culture

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 25th May 1971 in which they established rules and conditions with regard to the administration of The Lord Portsea Gift Fund (“the Fund”), and to their Acts dated 3rd February 1981 and 13th May 1997 in which they amended the said rules and conditions; and to agree that –

- (a) subject to the grant of the applications referred to in (b), the rules and conditions of the Fund be modified so as to be effective in accordance with the draft Constitution contained in Appendix 1 to the Report herein;
- (b) the Minister for Education, Sport and Culture be requested to apply to the Royal Court –
 - (i) for an act of incorporation in respect of the Fund, pursuant to Article 4 of the *Loi (1862) sur les teneures en fidéicommiss et l’incorporation d’associations*;
 - (ii) for orders pursuant to Articles 10 and 17 of that Law authorising the modification of the rules and conditions applying to the Fund so that the whole is effective in accordance with the terms of the said draft Constitution.

MINISTER FOR EDUCATION, SPORT AND CULTURE

REPORT

1. The Lord Portsea Gift Fund¹ was established, with the approval of the Royal Court, by Act of the States dated 25th May 1971 (“the 1971 Act”). The main purpose of the 1971 Act was to give effect to a bequest in the will of the late Miss Albina Bertram Falle, which was expressed in the following terms –

“I give and bequeath to the Royal Court and States of Jersey the sum of £17,000 to be known as ‘The Lord Portsea Gift Fund’, to help all young Jersey and Guernsey boys (of Jersey and Guernsey parentage) entering the Royal Navy, Army, Air Force, and Civil Services who are in need of Financial help. All payments to be made by the States to the ... aforesaid Fund shall be absolute and without any conditions, and I desire to place on record that both the aforesaid legacy and the conditions above conform to the wishes of the late Lord Portsea of Portsmouth.”

2. The 1971 Act also established rules and conditions with regard to the administration of the Fund, in accordance with the terms of the bequest. The Act entrusted the administration of the Fund to a Delegation constituted as follows –
 - four Jurats of the Royal Court appointed from time to time by the Superior Number of the Royal Court, and
 - four members of the Education Committee for the time being, with the President of the Education Committee for the time acting as Chairman of the Delegation, with a casting vote.
3. The 1971 Act also set out the conditions for eligibility to receive grants. The rules and conditions of the Fund were amended on 2 subsequent occasions to enable grants to be paid to females as well as males; and to raise the upper age of eligibility for a grant to 30 years. The range of occupations that applicants had entered, or proposed to enter, was also widened. The Superior Number of the Royal Court on each occasion was in agreement with the changes.
4. Further change is now sought, not least to make the administrative structure of the Fund compatible with Ministerial government. However, in order to effect the necessary changes, this Proposition seeks to place the administration of the Fund on a more conventional footing by incorporating the Fund under the *Loi (1862) sur les teneures en fidéicommis et l’incorporation d’associations* (“the 1862 Law”).
5. This will –
 - enable the rules and conditions applying to the Fund to be set out in a constitution registered in the rolls of the Royal Court rather than in successive Acts of the States, and

¹ See paragraph 8 of this Report/**Appendix 3** for the current income and expenditure of the Fund

- enable the Royal Court to exercise its jurisdiction in the normal way in respect of applications under the 1862 Law to enlarge the objects of a charitable fund.

6. The application for incorporation will be made by the Minister, and will incorporate the draft Constitution set out in **Appendix 1** hereto. Contained in the draft Constitution are the proposed terms and conditions upon which the Fund would henceforth subsist and be administered. The form of a draft representation/*demande* to the Royal Court is contained in **Appendix 2**.

7. The draft Constitution speaks for itself, but the following central features may be noted:

7.1 The Delegation – to be known as ‘the Grants Panel’

The ‘Delegation’ created by the 1971 Act is in fact an awards panel: it is not responsible for investing the fund, but merely for deciding who should receive grants. The draft Constitution therefore dispenses with the term ‘Delegation’ and refers instead to ‘the Grants Panel’.

7.2 The Grants Panel – see clause 7

The Panel will be reduced in size to 3 persons *viz* –

- (i) one Jurat appointed by the Full Court;
- (ii) one elected member of the States appointed by the Minister; and
- (iii) one person appointed by the Minister, with the approval of the Bailiff, to be its Chairman.

(Note that the Minister, unlike the President of the former Committee, will not automatically chair the Panel.)

Provision will be made for the place of the Jurat or States member, as the case may be, to be filled temporarily by another Jurat or States member if the appointed member of the Panel is unable to act because of absence from Jersey, illness or other reasonable cause.

7.3 Persons eligible for grant – see clauses 4 and 8

These will be Jersey or Guernsey persons (or of Jersey or Guernsey parentage) under 30 who have entered or intend to enter –

- a. the Royal Navy²
- b. the Army³
- c. the Royal Air Force⁴

² Previous references to the Women’s Royal Naval Service are now redundant.

³ Previous references to the Women’s Royal Army Corps are now redundant.

⁴ Previous references to the Women’s Royal Air Force are now redundant.

- d. any of the Service Colleges
- e. the Merchant Navy
- f. the United Kingdom Civil Service, or
- g. the employment of the States of Jersey or States of Guernsey or of a parish or local authority in Jersey, Guernsey or the United Kingdom.

A grant will be made to assist in a person's maintenance, further education, welfare or advancement in life. Any grant will have to be used for the purposes for which it is made.

7.4 Accounts – see clause 9

Proper accounts of the finances of the Trust must be kept. In this respect, Article 67 of the Public Finances (Jersey) Law 2005 makes special provision relating to money in any legacy or bequest in favour of the States or held in trust for the States (such as The Lord Portsea Fund). Any such money is not paid into, and does not form part of, the consolidated fund but is held, managed, handled and accounted for in accordance with Regulations made by the States – the relevant provision being found in Chapter 6 of the Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005 (“Chapter 6”).

To be clear, under Chapter 6 –

- money forming part of trust assets must be managed, handled and accounted for by the Treasurer of the States;
- any bank account used to manage, handle or account for money forming part of trust assets must be kept with a bank approved for the purpose by the Minister for Treasury and Resources;
- the Treasurer of the States has the same personal accountability in respect of the money as an accounting officer of a States funded body has in respect of the financial management of the resources of the body;
- in particular the Treasurer must ensure that the money is used for the purpose intended;
- the internal auditor may carry out an internal audit of the transactions and internal controls and systems of the Treasurer in respect of the money forming part of trust assets as if the Treasurer were a States funded body;
- the Comptroller and Auditor General has the same functions in respect of the Treasurer as would be the case if the Treasurer were a States funded body; and
- offences under the Public Finances (Jersey) Law 2005 apply in respect of the money as if it were money being managed, handled and accounted for by a States funded body.

The above is the position in relation to the accounts of the Lord Portsea Fund; and such is reflected in the draft Constitution.

7.5 Future alterations of the Constitution – see clause 10

Any alteration would require –

- (a) unanimous approval of the Grants Panel;
- (b) agreement of the Minister;
- (c) approval of the Royal Court under the 1862 Law.

7.7 Dissolution of the Trust – see clause 12

Dissolution would require –

- (a) agreement of the States Assembly on the recommendation of the Minister; and
- (b) permission of the Royal Court under Article 10 of the 1862 Law.

8. The Income and Expenditure of the Trust for the period ended 31st August 2013 are shown in **Appendix 3**.

Financial and manpower implications

There are no additional financial and manpower implications for the States arising from this Proposition. The need to draft Acts of the States in connection with the Fund would fall away for the future.

The Lord Portsea Gift Fund, Incorporated

CONSTITUTION

1. Definitions

In this Constitution, the following expressions in the left-hand column shall, unless the context otherwise requires, have the meanings given to each of them in the right-hand column:

The Fund	The Lord Portsea Gift Fund bequeathed to the Royal Court and States of Jersey by the will of the late Miss Albina Bertram Falle proved on the 15h August 1957
The Grants Panel	The persons for the time being forming the Panel appointed pursuant to clause 7
Guernsey	The Bailiwick of Guernsey
The Minister	The Minister for Education, Sport and Culture
The Trust	The Lord Portsea Gift Fund, Incorporated
The 1862 Law	The <i>Loi (1862) sur les teneures en fidéicomis et l'incorporation d'associations</i> , as amended.

2. Name and Incorporation

The Trust shall be called “The Lord Portsea Gift Fund, Incorporated” and shall be incorporated under the 1862 Law.

3. Administration of the Fund

The application and disposal of the Fund by the Grants Panel shall be governed by the terms of this Constitution.

4. Objects

4.1 In confirmation of the Lord Portsea Gift Fund (Jersey) Act 1971 (dated 25th May 1971), the Lord Portsea Gift Fund (Jersey) Act 1971 (Amendment) Act 1981 (dated 3rd February 1981) and the Lord Portsea Gift Fund (Jersey) Act 1971 (Amendment No. 2) Act 1997 (dated 13th May 1997), and pursuant to Article 17 of the 1862 Law, in extending the benefit of the said Law to a trust established otherwise than in accordance with Article 3 or 4 of the said Law, the objects of the Trust are declared to be: to make grants out of the income of the Fund to persons who –

- (1) have not attained the age of 30 years; and

- (2) are Jersey or Guernsey persons, or have one or more parents who are Jersey or Guernsey persons; and
- (3) have entered or are about to enter or have expressed the intention to enter, one of the following –
 - (a) the Royal Navy;
 - (b) the Army;
 - (c) the Royal Air Force;
 - (d) any of the Service Colleges;
 - (e) the Merchant Navy; or
 - (f) the United Kingdom Civil Service, or
 - (g) the employment of the States of Jersey or States of Guernsey or of a parish or local authority in Jersey, Guernsey or the United Kingdom.

4.2 The reference in clause 4.1(2) to Jersey or Guernsey persons is a reference to persons –

- (i) who are domiciled in either Bailiwick, or
- (ii) who have been ordinarily resident in either Bailiwick for the 5 years immediately preceding the application, or
- (iii) who demonstrate to the satisfaction of the Grants Panel that they have a substantial personal or family connection with either Bailiwick.

5. Powers

In furtherance of the Trust's objects, the Grants Panel may cause the Trust to do all such things permitted or authorized by law as are necessary or conducive to the attainment of its Objects, including (but without limiting its foregoing powers) the following –

- (1) To make or establish loans, grants, bursaries or scholarships as the Grants Panel may from time to time (having regard to the income produced by the Trust) think fit.
- (2) To raise money by means of contributions, donations, devises, legacies, grants, loans or other sources.
- (3) To receive from any source gifts and grants of money or of any kind of property moveable or immovable whether unconditionally or subject to any terms, conditions or trusts.

6. Application of assets etc.

The income and property of the Trust shall be applied solely towards the objects of the Trust and no part thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or profit, or other payment made, to any member of the Trust, except for expenditure properly incurred on the Trust's behalf.

7. The Grants Panel

7.1 The Trust shall consist of and be governed by a Grants Panel of 3 persons –

- (1) 1 being a Jurat of the Royal Court appointed by the Full Court;
- (2) 1 being an elected member of the States (other than the Minister) appointed by the Minister; and
- (3) 1 being a person appointed by the Minister, with the approval of the Bailiff, to be its Chairman.

7.2 Each member of the Panel shall nominate another Jurat or States Member, as the case may be, as a standing alternate to fill the place of that member of the Panel whenever he or she is unable to act because of his or her absence from Jersey, illness or other reasonable cause. The name of the alternate member shall be lodged with the Bailiff and the Minister.

7.3 References to a member of the Grants Panel in clause 7.4 include a Jurat or States Member serving as an alternate in accordance with clause 7.2., and references in this Constitution to the Panel shall be construed accordingly.

7.4 At a meeting of the Grants Panel –

- (1) 2 of its members shall form a quorum;
- (2) the Chairman shall preside or, if the Chairman is not able to be present, the member who is a Jurat shall chair that meeting;
- (3) each member shall have one vote;
- (4) subject to clause 10, decisions are by a majority of votes if all three members are present, and by unanimity if only 2 members are present.

7.5 A member of the Grants Panel may resign from the Panel, but before such resignation can take effect, notice thereof must be given to –

- (a) the other members of the Panel;
- (b) the Bailiff; and

(c) the Minister.

That member shall remain eligible for re-appointment.

- 7.6 A member of the Panel ceases to be such a member if he or she would no longer be eligible for appointment as such.
- 7.7 An appointment to fill any vacancy in the Panel shall be made as soon as reasonably practicable (in accordance with clause 7.1).
- 7.8 An Honorary Secretary shall be appointed by the Grants Panel, in consultation with the Bailiff and the Minister, to undertake such functions as are required of the Honorary Secretary by this Constitution and as the Panel may reasonably require from time to time.
- 7.9 Accurate minutes of all meetings of the Grants Panel shall be recorded and maintained by the Honorary Secretary.
- 7.10 Such minutes will be considered and, subject to any amendment being agreed, approved at the meeting immediately following that which they record.
- 7.11 The Minister shall furnish such executive support to the Grants Panel as it may reasonably require for the efficient discharge of its functions.

8. Award of grants

- 8.1 The Grants Panel may in its absolute discretion from time to time make grants out of the income of the Trust (including accumulated income in accordance with clause 8.6), of such amount as it considers appropriate, to persons who are eligible under clause 4 above (objects).
- 8.2 A grant to a person so eligible shall be made for the purpose of assisting in the maintenance, further education, welfare or advancement in life of that person and shall, subject to clause 8.3, be absolute and free from any condition.
- 8.3 A grant must be used for the purposes for which it is made.
- 8.4 If a person who has received a grant makes a further application for a grant, no further or additional grant shall be made unless the person –
- (a) has satisfactorily completed the course of study to which the initial grant related, and
 - (b) at the date of making the application, has enrolled for the course of study to which the application relates.

8.5 No grant shall be paid to any person for any period exceeding 3 calendar years beginning with the year in which the person attained the age of 30.

8.6 The Grants Panel may make grants out of the accumulated income of the Trust, as well as out of current income, as it may from time to time consider expedient.

9 Accounts

9.1 Proper accounts of the finances of the Trust shall be kept in respect of –

(a) all sums of money received and expended by the Trust and the matters in respect of which such receipts and expenditure take place; and

(b) all assets and liabilities of the Trust.

9.2 Chapter 6 of the Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005, with such other provision as may from time to time be made by Regulations pursuant to Article 67(4) of the Public Finances (Jersey) Law 2005, applies to the administration of the assets of the Trust.

9.3 The accounts of the finances of the Trust shall be available for inspection at all reasonable times by any member of the States.

10 Alteration to the Constitution

10.1 This Constitution may be altered by a resolution passed unanimously by the full Grants Panel:

10.2 PROVIDED ALWAYS that no alteration to this Constitution shall be effective until approved –

(a) by the Minister; and thereafter;

(b) by the Royal Court in accordance with –

(i) Article 4, or

(ii) Article 10,

as the case may be, of the 1862 Law.

11 Representation

The Chairman for the time being of the Grants Panel shall represent the Trust before the Royal Court and before all Tribunals.

12 Dissolution

- 12.1 The Trust may not be dissolved –
- (a) without the agreement of the States on the recommendation of the Minister; and
 - (b) unless the requirements of Article 10 of the 1862 Law have been met.
- 12.2 In the event of a decision being made to dissolve the Trust, the remaining funds and assets shall be dispensed according to the decisions of the Grants Panel subject always to the approval of the Royal Court pursuant to an application in accordance with Article 10 of the 1862 Law.

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

IN THE MATTER OF

The incorporation of
The Lord Portsea Gift Fund

DRAFT

REPRESENTATION/DEMANDE

The Minister for Education, Sport and Culture has the honour to represent to the Court as follows –

1. THAT by the provisions of her holograph will of movable estate, which was proved in the Royal Court (Probate Division) on the 15th August, 1957, Miss Albina Bertram Falle, deceased, bequeathed the sum of £17,000 to the Royal Court and States of Jersey, in the following terms:

“I give and bequeath to the Royal Court and States of Jersey the sum of £17,000 to be known as 'The Lord Portsea Gift Fund', to help all young Jersey and Guernsey boys (of Jersey and Guernsey parentage) entering the Royal Navy, Army, Air Force, and Civil Services who are in need of Financial help. All payments to be made by the States to the ... aforesaid Fund shall be absolute and without any conditions, and I desire to place on record that both the aforesaid legacy and the conditions above conform to the wishes of the late Lord Portsea of Portsmouth.”

References hereafter to “**the Fund**” are references to The Lord Portsea Gift Fund.

2. THAT on the 23rd January 1968 the States, adopting a Proposition of the Education Committee, accepted, with the approval of the Royal Court, the aforesaid gift of £17,000, and resolved that all stocks, shares and securities (other than securities to bearer) held by the States of Jersey for the purposes of the trusts of the Will of the Testatrix should be registered or inscribed, as the case might be, in the name of the Treasurer of the States of Jersey and that all securities to bearer held by the States of Jersey for the purposes of the said trusts should be deposited in the Jersey Branch of a Bank approved by the Finance Committee, in the joint names of the President of the Finance Committee, and the Treasurer of the States of Jersey.
3. THAT the need to establish rules and conditions with regard to the administration of the Fund became apparent and, on 25th May 1971, the

States by Act (“**the 1971 Act**”) [R&O 5537] adopted a Proposition of the Education Committee with regard to the administration of the Fund; and a Delegation consisting of 4 Jurats and 4 members of the Education Committee was nominated to administer the Fund (“**the Delegation**”).

4. THAT the Delegation was empowered to make grants out of the income of the Fund to persons of the male sex who had not attained the age of 20 years or who were natives of Jersey or Guernsey, or whose parents were natives of Jersey or Guernsey, or either of whose parents was a native of Jersey or Guernsey, and who had entered or were about to enter the Royal Navy, the Army, the Royal Air Force, including the Service Colleges or the Civil Services of the United Kingdom or the Channel Islands in order to assist in the maintenance, further education, welfare, or advancement in life of such persons, provided that such persons were, in the opinion of the Delegation, in need of financial assistance.
5. THAT The Lord Portsea Gift Fund (Jersey) Act, 1971 (Amendment) Act, 1981 (“**the 1981 Act**”) [R&O 6902] amended the 1971 Act to widen the scope of the Fund so as to –
 - (i) include females;
 - (ii) include applicants entering the Merchant Navy;
 - (iii) raise of the age of eligibility from 20 to 25 years; and
 - (iv) include all employees of the States of Jersey and Guernsey.
6. THAT The Lord Portsea Gift Fund (Jersey) Act, 1971 (Amendment No. 2)) Act, 1997 (“**the 1997 Act**”) [R&O 9085] amended the 1971 Act so as to increase the upper age limit for eligibility for a grant from the Fund to 30 years.
7. THAT the 1971 Act, the 1981 Act and the 1997 Act had each received the approbation of the Full Court before being made by the States.
8. THAT the administration of the Fund still requires adaptation to Ministerial government; and further revision of the administration and objects of Fund has been proposed, to the effect that –
 - A. the Delegation will become known as the Grants Panel and be reduced in size;
 - B. the Grants Panel will be enabled to make grants out of the income of the Fund to persons who –
 - (1) have not attained the age of 30 years; and
 - (2) are Jersey or Guernsey persons, or have one or more parents who are Jersey or Guernsey persons; and
 - (3) have entered or are about to enter or have expressed the intention to enter, one of the following –

- (a) the Royal Navy
- (b) the Army
- (c) the Royal Air Force
- (d) any of the Service Colleges
- (e) the Merchant Navy, or
- (f) the United Kingdom Civil Service
- (g) the employment of the States of Jersey or States of Guernsey or of a parish or local authority in Jersey, Guernsey or the United Kingdom.

9. THAT the existing terms of the Trust are restrictive of the range of beneficiaries to an extent that is making it impracticable fully to meet the underlying intent of the Trust in the conditions of the 21st Century. The proposed revised objects therefore represent a widening of the discretion of the Delegation/Grants Panel.

10. THAT in order to effect the necessary changes, it is sought to place the administration of the Fund on a more conventional footing for the future –

- (a) by incorporating the Fund under Article 4 of the *Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations* (“**the 1862 Law**”) so that the administration of the Fund may become effective in accordance with the terms of the Constitution of ‘The Lord Portsea Gift Fund, Incorporated’ appended hereto (rather than in successive Acts of the States);
- (b) by extending, pursuant to Article 17 of the 1862 Law, the benefit of Article 10 of the Law to the Fund so that the revised objects of the Trust as set out in the Constitution appended hereto may take effect according to their tenor,

and thereby enabling the Royal Court, should the need arise again, to exercise its jurisdiction in the normal way in respect of applications under the 1862 Law to amend the Constitution and/or to enlarge or alter the objects of the Fund.

11. THAT the 1862 Law requires notice of an application under Article 10 to be given in the Jersey Gazette on six occasions. However, under Article 2 of the Official Publications (Jersey) Law 1960, an enactment passed before 28th March 2003 which provides for the publication of any notice or other matter in the Jersey Gazette “... shall have effect as if it provided instead either –

- (a) *for reasonable steps to be taken to bring the purport of the notice or other matter to the attention of the public or of persons likely to be affected by it; or*

(b) *for the publication of the notice or other matter in the Jersey Gazette*".

12. THAT the present application has been the subject of a Proposition [P. /2013] lodged *au Greffe* on theday of.....2013 and debated and approved by the States on the.....day of.....2013. Accordingly the proposed revised objects of the Fund have been a matter of public record and of debate by the States, and it is submitted that that has satisfied the requirement "*for reasonable steps to be taken to bring the purport of [this] matter to the attention of the public or of persons likely to be affected by it.*"

WHEREFORE the Representor brings the abovementioned to the attention of the Court and humbly REQUESTS that the Court may be pleased –

I. in accordance with Article 4 of the *Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations* to grant an Act incorporating the Fund under the name of 'The Lord Portsea Gift Fund, Incorporated' and authorising the Fund to hold purchase accept by gift or legacy take on lease or otherwise acquire and to sell let on lease or otherwise alienate charge or otherwise deal with all forms of property both immovable and movable and wheresoever situate in order that the objects of the Fund may be achieved;

II. pursuant to Article 17 of the said Law to extend the benefit of Article 10 of the Law to the Fund so that the revised objects of the Trust as set out in the Constitution appended hereto may take effect according to their tenor.

AND the Representor DECLARES declare that in pursuance of Articles 4 and 12 of the 1862 Law The Chairman for the time being of the Grants Panel shall represent the Trust before the Royal Court and before all Tribunals.

AND the Trust DECLARES that the names of the person charged to represent the Trust in accordance with the first paragraph of Article 5 of the 1862 Law is

LORD PORTSEA GIFT FUND

Income and Expenditure for the period ended 31st August 2013

	Period ended 31 Aug 2013	Year ended 31 Dec 2012
	£	£
INCOME		
Loan, Bank and Notional Interest	–	4
Gain on Investment	–	8,887
Investment Income	1,652	7,958
	<u>1,652</u>	<u>16,849</u>
EXPENDITURE		
Grants and Subsidies Payments	3,500	14,500
Supplies and Services	155	221
Administration Expenses	49	107
	<u>3,704</u>	<u>14,828</u>
Net Income for the period/year	<u><u>(2,052)</u></u>	<u><u>2,021</u></u>
INCOME ACCOUNT		
Balance at 1 January	108,145	106,124
Net Income for the period/year	(2,052)	2,021
	<u>106,093</u>	<u>108,145</u>