

STATES OF JERSEY

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DRAFT LOIS SUR LA SOCIÉTÉ DE BIENFAISANCE DE LA MARINE MARCHANDE DE JERSEY (REPEALS) (JERSEY) LAW 200-

**Lodged au Greffe on 8th September 2006
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT LOIS SUR LA SOCIÉTÉ DE BIENFAISANCE DE LA
MARINE MARCHANDE DE JERSEY (REPEALS) (JERSEY) LAW
200-**

European Convention on Human Rights

The Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Lois sur la Société de Bienfaisance de la Marine Marchande de Jersey (Repeals) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

1. The Jersey Merchant Seamen's Benefit Society ("the Society") ranks amongst the oldest benefit societies in the World. It was formed to provide small pensions to seamen and their families when Jersey was very much on the map for shipbuilding and merchant trading and ships registered in Jersey were to be found in every seaport at one time or another.
2. Jurat Charles Le Quesne, in his book "A Constitutional History of Jersey" written in 1856, gave the following historical details –

"This Society was established in Jersey in the year 1835 by an Act of the States confirmed by Her Majesty in Council, in conformity with the provisions of an Act of Parliament establishing similar institutions in England, on the abolition of the payment by seamen of the Greenwich Hospital dues. This Society, having been prudently and carefully managed, has not undergone the fate of those in England; and it still continues in operation to the great comfort of many families. The amount paid by each seaman is seven-pence halfpenny per month. The funds now belonging to this society amount to 7,162l. 4s 0d. old Jersey currency; equal to 6,611l. 5s 8d British sterling. The amount paid in the year 1854 in pensions to the widows and orphans of seamen entitled to the fund was 305l. 16s. 2d.; and in pensions and allowances to seamen 376l.; making a total of 681l. 16s 2d. old currency, or 628l. 8s. 10d. British sterling. The number of persons receiving relief from this Society is as follows: 42 retired seamen, 153 widows, and 180 children."
3. Jurat Le Quesne would no doubt have been heartened to know that the Society would continue in existence for at least another 150 years, albeit that the scope of its activities would gradually be reduced to a point at which, at the present day, there is but one pensioner under the Fund (which as at 31st December, 2005 stood at £11,717.43).
4. There are, however, occasional calls for ordinary and extraordinary aid – as for example in 2001 when a claim was made after two fishermen were drowned when their fishing boat 'Saint Paol' foundered and sank off La Corbière.
5. There are three statutory trustees (*fidéicommissaires*) of the Fund. Captain Brian Nibbs RD* FICS FRIN FCMI is the chief trustee and Chairman (*Président*) of the Society. His deputy (*le Vice-Président*) is Captain Robert G. Asplet MNI; and Norma Asplet is the Secretary (*Secrétaire*) which office also carries with it under the existing legislation the functions of Treasurer (*Trésorier*).
6. The reasons for bringing forward this *projet de loi* are as follows.
7. Although the Society was founded in 1835, the Act of the States dated 28th May 1835 (referred to in the extract from Jurat Le Quesne's book – *see* paragraph 2.above) did not actually confer corporate status on the Society. It was not until 11th October, 1894 that the States, subject to the sanction of Her Majesty in Council, passed a Law granting an Act of Incorporation to the "*Société de Bienfaisance de la Marine Marchande de Jersey*".
8. Shortly thereafter the States, on 21st February 1895, passed another Law to govern the administration of the funds and business of the Society. This Law, when registered in the Royal Court on 1st June 1895, replaced the original Act of 28th May 1835.
9. The Law of 1895 contained a number of administrative requirements, including a requirement that the Committee of Administration meet on the first Tuesday of every month (or more often if necessary) to consider claims made upon the funds of the Society. By 1938, however, the number of merchant seamen eligible to make a claim had declined and it was necessary to change the Society's Rules.
10. The only way this could be done was to repeal and re-enact the Law of 1895. It was duly replaced by the *Loi (1938) sur la Société de Bienfaisance pour la Marine Marchande de Jersey*. This new Law was passed by the States on 25th January 1938 and registered in the Royal Court on 19th April 1938.
11. The Law of 1938 remains in force to this day along with the Law passed by the States on 11th October 1894 by which the Society was incorporated. But, of course, circumstances have again changed radically since 1938.

12. At a general meeting of the Society held on 17th February 2000, it was resolved to change the name of the Society and to enact new provisions for the administration of its funds. The intention then was to repeal and re-enact the Law of 1938 with appropriate amendments to reflect the changed circumstances of the Fund.
13. However, as work on doing this progressed, it was thought much too cumbersome to keep on using the vehicle of primary legislation to determine the rules for the administration of the Society. It was eventually agreed that the Society should, instead, seek incorporation by *acte* of the Royal Court pursuant to Article 4 of the *Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations*.
14. The jurisdiction of the Royal Court under the 1862 Law to grant such *actes* was widened by the *Loi (1963) (Amendement) sur les teneures en fidéicommiss et l'incorporation d'associations* and, were the Society to be incorporated by the Royal Court, future changes to its constitution would no longer entail the States having to pass a Law subject to the sanction of Her Majesty in Council.
15. However, before that position can be reached, it is necessary for the States to enact a Law –
 - (a) to repeal –
 - (i) the Law of 1894 by which the Society was granted its original Act of Incorporation; and
 - (ii) the Law of 1938 governing the administration of the funds and business of the Society; and
 - (b) to provide for the property, rights and liabilities of the Society to be transferred to the “Jersey Merchant Seaman’s Benefit Society Incorporated” to be incorporated by the Royal Court.
16. These provisions would only take effect upon the Royal Court actually having granted the *acte* of incorporation.
17. In short, therefore, the purpose of this projet de loi is to clear the way for the “*Société de Bienfaisance de la Marine Marchande de Jersey*” to become the “Jersey Merchant Seamen’s Benefit Society Incorporated” upon being incorporated by the Royal Court.
18. There are no financial or manpower implications for the States arising from this draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 4th September 2006 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Lois sur la Société de Bienfaisance de la Marine Marchande de Jersey (Repeals) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 is the interpretation provision. Amongst other things, it defines the Société de Bienfaisance de la Marine Marchande de Jersey as “the Society” and the Jersey Merchant Seamen’s Benefit Society Incorporated as the “new Society”.

Article 2 provides for the Laws under which the Society was incorporated to be repealed as and from the day the new Society is incorporated under the Loi (1862) sur les teneures en fidéicomis et l’incorporation d’associations (the “incorporation day”).

Article 3 vests the property, rights and liabilities of the Society in the new Society on the incorporation day. Paragraph (2) provides for the continuation of contracts and other instruments, and of proceedings, in the name of the new Society, and for references in wills, settlements and trusts to be construed as references to the new Society. Paragraph (3) provides that the vesting of the property, rights and liabilities of the Society in the new Society shall not give rise to any remedy in contract or otherwise.

Article 4 provides for the citation of the Law and that it shall come into force 7 days after its registration in the Royal Court.



Jersey

DRAFT LOIS SUR LA SOCIÉTÉ DE BIENFAISANCE DE LA MARINE MARCHANDE DE JERSEY (REPEALS) (JERSEY) LAW 200-

Arrangement

Article

- 1 Interpretation
- 2 Repeals
- 3 Vesting of property, rights and liabilities
- 4 Citation and commencement



Jersey

DRAFT LOIS SUR LA SOCIÉTÉ DE BIENFAISANCE DE LA MARINE MARCHANDE DE JERSEY (REPEALS) (JERSEY) LAW 200-

A LAW to repeal the Loi accordant un Acte d'Incorporation à la Société de Bienfaisance de la Marine Marchande de Jersey, confirmée par Ordre de Sa Majesté en Conseil en date du 12 décembre 1894 and the Loi (1938) sur la Société de Bienfaisance pour la Marine Marchande de Jersey and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law –

“1862 Law” means the Loi (1862) sur les teneures en fidéicommiss et l’incorporation d’associations ^[1],

“1894 Law” means the Loi accordant un Acte d’Incorporation à la Société de Bienfaisance de la Marine Marchande de Jersey, confirmée par Ordre de Sa Majesté en Conseil en date du 12 décembre 1894^[2],

“1938 Law” means the Loi (1938) sur la Société de Bienfaisance pour la Marine Marchande de Jersey^[3];

“incorporation day” means the day the new Society is incorporated pursuant to an act of the Royal Court under the 1862 Law;

“the new Society” means the Jersey Merchant Seamen’s Benefit Society Incorporated to be incorporated pursuant to an act of the Royal Court under the 1862 Law;

“the Society” means the Société de Bienfaisance de la Marine Marchande de Jersey incorporated under the 1894 Law.

2 Repeals

The 1894 Law and the 1938 Law shall be repealed on the incorporation day.

3 Vesting of property, rights and liabilities

- (1) On the incorporation day the property, rights and liabilities of the Society shall vest in the new Society.
- (2) On and from the incorporation day –
 - (a) any contract, agreement, indemnity, lease, licence or other instrument entered into by or with, or given by or to, the Society shall have full force and effect as if it had been entered into by or with, or given by or to, the new Society;
 - (b) any reference in a will, codicil to a will, settlement or trust to the Society shall be construed and have effect as if it were a reference to the new Society;
 - (c) where the Society is a party to any pending civil legal proceeding, the new Society shall be substituted for the Society in the proceeding and the proceeding shall not abate by reason of the substitution.
- (3) The operation of paragraphs (1) and (2) shall not be regarded –
 - (a) as a breach of contract or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of property, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any right, liability or relationship.

4 Citation and commencement

This Law may be cited as the Lois sur la Société de Bienfaisance de la Marine Marchande de Jersey (Repeals) (Jersey) Law 200- and shall come into force 7 days after it is registered.

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- [1] *chapter 04.120*
- [2] *L.2/1894*
- [3] *chapter 19.270*