

RBG KEW BOARD OF TRUSTEES – TERMS OF REFERENCE

CONSTITUTION

1. The Board of Trustees is a body corporate established under sections 23 to 29 of the *National Heritage Act 1983 (the Act)*.
2. The Board of Trustees works within the framework defined by the Act and the *Management Statement and Financial Memorandum* agreed between the Board of Trustees and the Department for Environment, Food and Rural Affairs (“Defra”). As such the Board works within the public law framework of HMT’s *Managing Public Money*.
3. The Board of Trustees is an exempt charity as confirmed in the Charities Act 1993, Schedule 2 – Exempt Charities, which reads:

“The following institutions, so far as they are charities, are exempt charities within the meaning of this Act, that is to say—

...(n) the Board of Trustees of the Royal Botanic Gardens, Kew;”

PURPOSE

4. The Board of Trustees is established to oversee compliance with, and successful implementation of, the Act, maintain high standards of corporate governance and determine the overall strategic direction of RBG Kew with the policy and resources framework agreed with the Secretary of State.

AUTHORITY

5. The Board derives its authority from the Act, as set out in Part IV to Schedule 1, Section 36 – “*Proceedings*”, respecting other controls laid down by Defra, Cabinet Office, HM Treasury and Government, and acknowledging that the Director is the Accounting Officer for RBG Kew.
6. The Board may regulate its own procedure as described under Part IV to Schedule 1, Section 36(1) of the Act. This will be in accordance with Governance at RBG Kew where financial and other delegations are outlined.
7. With the consent of the Secretary of State, the Board has the power to form companies as per Section 25(1) of the Act.

“....25.—(1) With the consent of the Minister of Agriculture, Fisheries and Food and subject to any conditions he may impose, the Board may form or take part in forming one or more bodies corporate which (or each of which) has as its main object or objects one or more of those mentioned in subsection (2).

(2) The objects are—

- (a) the production and publication of books, films or other informative material relating to the science of plants or related subjects or to the Board and their functions,*
- (b) the production of souvenirs relating to plants or to the Board’s activities,*
- (c) the sale of plants produced by the Board or objects relating to plants, of informative material relating to the science of plants or related subjects, or of souvenirs relating to plants or to the Board’s activities, and*
- (d) the provision of catering or car parking or other services or facilities for the public at any land occupied or managed by the Board.”*

8. The Board may hold interests in any such body as per Section 25(3) of the Act.

“....(3) The Board may hold interests in any such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of it (including assistance by way of guarantee of its obligations).”

9. The Board may acquire and dispose objects as per Section 27 of the Act.

“....27. —(1) The Board may acquire (whether by purchase, exchange or gift) any objects which in their opinion it is desirable to add to their collections.

(2) The Board may not dispose of an object the property in which is vested in them and which is comprised in their collections unless—

- (a) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised, or*
- (b) the disposal is by way of sale, exchange or gift of an object which in the Board’s opinion is unsuitable for retention in their collections and can be disposed of without detriment to the interests of students or other members of the public, or*
- (c) the disposal (by whatever means, including destruction) is of an object which the Board are satisfied has become useless for the purposes of their collections by reason of damage, physical deterioration, or infestation by destructive organisms.*

(3) An object may be disposed of as mentioned in subsection (2)(c) notwithstanding a trust or condition (express or implied) prohibiting or restricting the disposal of the object.”

MEMBERSHIP

- 10. The Board shall consist of 12 members (referred to as Trustees) as set out in Part IV to Schedule 1, Section 33(1) of the Act. One of the Trustees shall be appointed by HM The Queen and others shall be appointed by the Secretary of State as set out in Part IV to Schedule 1, Section 33(2) of the Act.
- 11. The Secretary of State shall appoint one of the Trustees to be Chair as set out in Part IV to Schedule 1, Section 33(4) of the Act.
- 12. If a Chair ceases to be a Trustee he shall also cease to be a Chair as set out in Part IV to Schedule 1, Section 33(7) of the Act.
- 13. Under Public appointment rules, no Trustee shall be appointed for an initial period exceeding five years, nor shall they serve more than two terms in the same office. However, the practice established over many years and with Defra and Ministerial agreement, is for a maximum of two three-year terms.

SECRETARY TO BOARD

- 14. The Director shall appoint a Secretary to the Board.

ATTENDANCE AT MEETINGS

- 15. The quorum of the Board of Trustees shall not at any time be less than four as set out in Part IV to Schedule 1, Section 36(7) of the Act.
- 16. Quorum should always include the Chair or designate of the Chair.
- 17. The validity of any proceedings of the Board shall not be affected by any vacancy among the Trustees or by any defect in the appointment of any Trustee.
- 18. The Director and members of the Executive Board shall attend all meetings.
- 19. If the Chair of the Foundation Council is not a Trustee of RBG Kew, s/he shall be invited to attend meetings or parts of the meetings.
- 20. Other senior management (or staff) of RBG Kew may be invited to attend.

FREQUENCY OF MEETINGS

21. There shall be scheduled at least four meetings a year.
22. Board papers shall normally be distributed to members seven days in advance of a meeting.

MINUTES OF MEETINGS

23. The Secretary shall minute the proceedings and resolutions of all meetings of the Board of Trustees, including recording the names of those present and in attendance.
24. The Secretary shall ascertain, at the beginning of each meeting, the existence of any conflicts of interest and minute them accordingly.
25. The Secretary will circulate minutes of meetings of the Board of Trustees to all members of the Board. This will usually be as a paper to the next full Board meeting after the Committee meet.

RESOLUTIONS

26. Voting on any matters will be decided by a majority of votes. In the case of an equality of votes, the Chair shall have a second or casting vote.
27. Preference is for resolutions to be made at a scheduled meeting. Given the volume of decisions that arise, resolutions can also be taken by correspondence. In these cases, Trustees should be apprised in advance and the correspondence must set out on whose authority the decision is sought (preferably the Director of RBG Kew or Chairman).

MAIN RESPONSIBILITIES

28. The Board shall appoint a Director of RBG Kew as set out in Part IV to Schedule 1, Section 34(1) of the Act, with approval of the Secretary of State as set out in the Management Statement and Financial Memorandum, Section 4.2.1(i).
29. The Board has corporate responsibility for:
 - a) overseeing the delivery of planned results by monitoring performance against agreed strategic objectives and targets and by ensuring corrective action is taken where necessary;
 - b) ensuring that the Board operates within the limits of its statutory authority; within the limits of the Board's delegated authority agreed with its sponsor department; and in accordance with any other conditions relating to the use of public funds;
 - c) ensuring that, in reaching decisions, the Board has taken into account any guidance issued to the Board by the sponsor department;
 - d) ensuring that fundraising is carried out in such a way that protects RBG Kew's reputation and encourages public trust and confidence. This includes:
 - following the law and recognised standards, protecting RBG Kew from undue risk, and showing respect for donors, supporters and the public; and
 - ensuring that RBG Kew's approach to raising funds is followed in practice and reflects RBG Kew's values;
 - e) ensuring that, in reaching decisions, they take into account any guidance issued by Defra;
 - f) formulating appropriate strategies for implementing Codes of Practice required by Government;
 - g) ensuring that they operate sound environmental policies and practices; and
 - h) appointing the Director with the Secretary of State's approval.

30. Under Section 24 of the Act, the Board shall

“....24.—(1) So far as practicable and subject to the provisions of this Act, the Board shall—

- (a) carry out investigation and research into the science of plants and related subjects, and disseminate the results of the investigation and research;*
- (b) provide advice, instruction and education in relation to those aspects of the science of plants with which the Board are for the time being in fact concerned,*
- (c) provide other services (including quarantine) in relation to plants,*
- (d) care for their collections of plants, preserved plant material, other objects relating to plants, books and records,*
- (e) keep the collections as national reference collections, secure that they are available to persons for the purposes of study, and add to and adapt them as scientific needs and the Board's resources allow, and*
- (f) afford to members of the public opportunities to enter any land occupied or managed by the Board for the purpose of gaining knowledge and enjoyment from the Board's collections.*

(2) For those purposes the Board may, subject to the provisions of this Act—

- (a) enter into contracts and other agreements (including agreements for the Board's occupation or management of land),*
- (b) acquire and dispose of land and other property, and*
- (c) require payment for any advice, instruction, education or other service provided by the Board or for any goods provided by them or for entry to any land occupied or managed by them.*

(3) Subject to the provisions of this Act, the board may do such things as they think necessary or expedient—

- (a) for preserving, and increasing the utility of, their collections,*
- (b) for securing the due administration of anything vested in or acquired by them, and any land occupied or managed by them, under or by virtue of this Act, and*
- (c) otherwise for the purposes of their functions.”*

31. The Board shall determine and approve the Operational Plan and shall approve the Annual Reports and Accounts before its submission to the Secretary of State.

32. The Board may appoint other such employees as the Board think fit, pay to their employees such remuneration and allowances as they determine, and on such other terms and conditions as they determine as set out in Part IV to Schedule 1, Section 34(3) to (5) of the Act. These require approval of the Secretary of State given with H.M. Treasury's consent.

33. The Board shall:

- a) keep proper accounts and proper records in relation to them – as set out in Part IV to Schedule 1, Section 39(1) of the Act;
- b) prepare a statement of accounts in respect of each financial year – as set out in Part IV to Schedule 1, Section 39(2) of the Act;
- c) show a true and fair view – as set out in Part IV to Schedule 1, Section 39(3) of the Act;
- d) comply with ministerial directions – as set out in Part IV to Schedule 1, Section 39(4) of the Act; and

- e) send the statement to the Minister – as set out in Part IV to Schedule 1, Section 39(5) of the Act.
34. The Board may pay each of the Trustees and the members of any committee such reasonable allowances in respect of expenses or loss of remuneration as the Secretary of State may determine with the Treasury's approval, as set out in Part IV to Schedule 1, Section 37 of the Act.
35. The Board shall adopt safeguards to prevent conflicts of interests arising from the acceptance of outside appointments during or after tenure as a Trustee.
36. The Board shall adopt and regularly review guidance covering those matters delegated to staff and those reserved for decision by the Board.
37. The Board shall maintain an overview of any subsidiaries set up by the Board, and shall receive regular reports on those subsidiaries.

OTHER RESPONSIBILITIES

38. Part IV to Schedule 1, Section 36(2) provides that the Board may delegate any of their functions, other than the power to acquire or dispose of land, to committees.
39. The Board shall constitute Board Committees for Audit and Risk, Capital Development, Finance, Foundation Council, Remuneration and Nominations, Science, Visitor and Commercial and any other Committee as the Board determines.
40. Each Committee shall have separate Terms of Reference.
41. Self-assessment of the functions of the Board of Trustees shall be undertaken and reported on annually.

OTHER MATTERS

42. The Board of Trustees shall:
- make available its Terms of Reference; and
 - review and update Terms of Reference annually.

Approved by RBG Kew Board on 24 June 2021