



Department  
for Environment  
Food & Rural Affairs

# Framework Document

# Royal Botanic Gardens, Kew

June 2018

Royal Botanic Gardens  
**Kew**



© Crown copyright 2018

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit [www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/) or email [PSI@nationalarchives.gsi.gov.uk](mailto:PSI@nationalarchives.gsi.gov.uk)

This publication is available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to us at

Accountability and Governance Team, Defra, Seacole Building, 2 Marsham Street, London, SW1P 4DF

[www.gov.uk/defra](http://www.gov.uk/defra)

## Contents

|   |    |
|---|----|
| 1. Introduction .....   | 1  |
| 2. Purpose of RBG Kew.....  | 2  |
| 3. Governance and accountability.....   | 2  |
| 4. Status of RBG Kew .....  | 3  |
| 5. Partnership between Defra and RBG Kew.....   | 4  |
| 6. Operating Principles.....  | 6  |
| 7. Funding and Resources.....   | 6  |
| 8. Operational Freedoms .....   | 7  |
| 9. Ministerial Responsibility.....  | 8  |
| 10. Defra Accounting Officer's specific accountabilities and responsibilities as Principal Accounting Officer ..... | 9  |
| 11. Responsibilities of RBG Kew's Director as Accounting Officer .....  | 10 |
| 12. The Board of Trustees .....   | 13 |
| 13. Annual Report and Accounts .....  | 14 |
| 14. Internal Audit.....   | 14 |
| 15. Audit of Receipts and Payments from the European Union .....  | 15 |
| 16. External Audit .....  | 15 |
| 17. Maladministration.....  | 16 |
| 18. Freedom of Information.....   | 16 |
| 19. Management and financial responsibilities .....   | 16 |
| 20. Risk management.....  | 17 |
| 21. Corporate and operational plans.....  | 17 |
| 22. Budgeting procedures.....   | 18 |
| 23. Grant-in-aid and any ring-fenced grants .....   | 18 |
| 24. Reporting performance to Defra .....  | 18 |

|   |    |
|---|----|
| 25. Delegated authorities .....   | 19 |
| 26. RBG Kew staff .....   | 19 |
| 27. Review of RBG Kew’s status (and winding-up arrangements).....                             | 20 |
| 28. Arrangements in the event that RBG Kew is wound up .....                                  | 20 |
| 29. Signatures.....   | 21 |
| Annex A - BACKGROUND NOTE ON LEGAL FRAMEWORK FOR KEW .....                                    | 22 |
| Annex B - COMPLIANCE WITH GOVERNMENT-WIDE CORPORATE GUIDANCE AND INSTRUCTIONS.....            | 25 |
| Annex C - RBG KEW ENTERPRISES LTD AND HMT’S MANAGING PUBLIC MONEY ..                          | 28 |
| Annex D - DISPUTE RESOLUTION PROCEDURE .....  | 31 |
| Annex E - DEFRA GROUP DESIGN PRINCIPLES (TAKEN FROM DEFRA GROUP TARGET OPERATING MODEL) ..... | 32 |

# 1. Introduction

**1.1** This Framework Document has been drawn up by the Department for Environment Food and Rural Affairs (“**Defra**”) in consultation with the Royal Botanic Gardens, Kew (“**RBG Kew**”). This document sets out the broad framework within which RBG Kew and Defra will operate. The document does not convey any legal powers or responsibilities but it sets out how RBG Kew and in particular the Board of Trustees of RBG Kew (the “**Board**” and members of the Board, the “**Trustees**”) and Defra, as its sponsoring department and principal charitable regulator, will work together. It is signed and dated by Defra and RBG Kew. Copies of the document and any subsequent amendments have been placed in the Libraries of both Houses of Parliament and made available to members of the public on the [www.kew.org](http://www.kew.org) website.

**1.2** The legal framework that defines the relationship between RBG Kew and Defra is described in Appendix 1, and reflects RBG Kew’s status as both an executive Non Departmental Public Body (“**NDPB**”) and an exempt charity. Appendix 2 lists the legislation and other documents in addition to this Framework Document, which are relevant to understanding the relationship between the two bodies.

**1.3** This Framework Document replaces the Management Statement and Financial Memorandum and any previous versions of the Framework Document.

**1.4** This Framework Document also sets out agreed terms of the relationship between the sponsor department and its arm’s-length body (“**ALB**”), and how such a relationship will be conducted in accordance with the principles of the Partnerships between Departments and ALBs: Code of Good Practice. Defra and RBG Kew will have an open and honest, trust-based partnership supported by the principles of the Code. As such, both parties will ensure that they clearly understand the strategic aims and objectives of their partners. Both partners will also commit to keeping each other informed of any significant issues and concerns. The terms of engagement are included in this document including a description of the meetings that will take place and how any disputes between the Department and RBG Kew will be resolved.

## 2. Purpose of RBG Kew

**2.1** The National Heritage Act 1983 (“**the Act**”) sets out the statutory functions and powers of RBG Kew. The General Functions of RBG Kew (s.24 of the Act) are to:

- carry out investigation and research into the science of plants and related subjects, and disseminate the results of the investigation and research;
- 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;
- provide other services (including quarantine) in relation to plants;
- care for their collections of plants, preserved plant material other objects relating to plants, books and records;
- 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
- 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.

## 3. Governance and accountability

**3.1** RBG Kew’s powers and duties stem from sections 23-29 and Schedule 1 Part IV of the Act as amended.

**3.2** In addition, the following Ministerial Directions have been issued under the Act:

- Direction to Board of Trustees to manage land at Kew Gardens and Wakehurst (27 March 1984)
- Direction to Board of Trustees to manage Kew Palace grounds (29 March 1984) as subsequently varied in respect of the transfer of management responsibility from RBG Kew to Historic Royal Palaces for the land and buildings forming the Royal Kitchens at Kew and the Pagoda (effective 1 April 2011 and 1 April 2015 respectively)

*Taking on additional functions*

**3.3** As provided for in s.29 of the Act, the Secretary of State (“**SoS**”), with HM Treasury (“**HMT**”) approval, may impose conditions on funding provided by Parliament to RBG Kew. The SoS must ensure that any such conditions are consistent with the General Functions, and are consistent with RBG Kew’s status as a charity.

## 4. Status of RBG Kew

**4.1** RBG Kew is an executive NDPB with exempt charitable status (Schedule 3 Charities Act 2011), sponsored by Defra. It carries out its statutory functions with technical expertise, impartiality and transparency, at arm's length from its sponsor, Defra.

**4.2** As an exempt charity, RBG Kew is subject to charity law. The Trustees of an exempt charity have the same general duties and responsibilities as Trustees of other charities. The overriding duty of RBG Kew Trustees, as for all charity Trustees, is to advance the purposes of their charity.

**4.3** The SoS is the nominated principal regulator for RBG Kew under the Charities Act 2011 and as such has a statutory duty to ensure that RBG Kew and the Trustees comply with their duties under charity law.

**4.4** RBG Kew is led and directed by a Board of Trustees. In accordance with Schedule 1 Part IV of the Act, 11 of its Trustees are appointed by the SoS and one is appointed by Her Majesty the Queen. The SoS shall appoint the Chairperson or may recommend to Her Majesty the Queen that her Trustee appointment fulfils this role.

**4.5** As a public body within Central Government, RBG Kew is expected to follow the principles of managing public resources, set out in HMT's Managing Public Money ("**MPM**"), and in so doing is accountable to the UK Parliament. This includes its decisions on the acquisition, disposal, or management of assets (including charitable assets) as well as its spending decisions and management of income.

**4.6** RBG Kew Enterprises Ltd ("**Enterprises**") is a wholly owned subsidiary of a public body. Enterprises is also a company limited by shares hence Enterprises is subject to company law requirements. As Enterprises accounts are fully consolidated into RBG Kew's accounts (and therefore are consolidated in Defra's Annual Report and Accounts), rules set out in **MPM** still apply to Enterprises, although its employees are not public servants (see Appendix 3).

**4.7** UNESCO (United Nations Educational, Scientific and Cultural Organization) seeks to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity. This is embodied in the World Heritage Convention 1972, of which the UK government is a State Party (or signatory). In 2002 Defra and the Department for Digital, Culture, Media and Sport (DCMS) nominated the Kew Gardens' site of the Royal Botanic Gardens, Kew for inscription onto the World Heritage List. The nomination recognised the outstanding universal value of the site resulting from its unique history, diverse historic landscape, rich architectural legacy, unique botanic collections, its position as one of the world's leading botanic gardens, and its scientific research and educational roles. The World Heritage Committee at UNESCO inscribed the site of Kew Gardens onto its World Heritage List on 5 July 2003. When a State Party nominates a property, it gives details of how a property is

protected and provides a management plan for its upkeep. On behalf of the UK government, as the 'State Party', Defra – working with RBG Kew – is also expected to protect the World Heritage values of the properties inscribed and is encouraged to report periodically on their condition.

## 5. Partnership between Defra and RBG Kew

**5.1** Both Parties recognise and understand RBG Kew's powers and duties set out in paragraphs 2 and 3 and Appendix 1.

**5.2** Defra acknowledges that the Board is:

- a body corporate with a separate legal identity that is expected to operate at arms-length; and
- not a servant or agent of the Crown (except in so far as it exercises management functions of the SoS in connection with land and properties at Kew Gardens).

**5.3** Defra further acknowledges that:

- RBG Kew is an exempt charity;
- the Trustees must exercise independent judgment in order to fulfil their duties as charity Trustees;
- as RBG Kew's principal regulator, Defra has a statutory duty to ensure that RBG Kew and the Trustees comply with their duties under charity law; and
- in its regulation and monitoring of RBG Kew, a proportionate, risk-based regulatory regime is appropriate.

**5.4** RBG Kew acknowledges that:

- the SoS has certain express powers in relation to RBG Kew and the Board under the Act;
- the SoS has express power under the Act to attach conditions to Grant-in-Aid subject to HMT approval in accordance with 29(2) of the Act;
- through its funding relationship with RBG Kew, Defra can set out what it expects RBG Kew to achieve in support of Defra's aims and objectives, in return for the funding received by RBG Kew from Defra – consistent with RBG Kew's statutory functions and status as a charity;

- RBG Kew should provide prompt and frequent management information so that Defra can fulfil its responsibilities as RBG Kew's principal regulator and sponsor department;
- RBG Kew's Accounting Officer has personal responsibilities in accordance with MPM, as detailed in paragraph 5 below;
- RBG Kew shall follow the principles, rules, guidance and advice in MPM, mindful of RBG Kew's charitable status and shall also have regard to wider Government initiatives such as those which seek to improve the efficiency, economy and effectiveness of public services; and
- RBG Kew is committed to relevant international law, conventions and agreements to which the UK Government is a signatory party.

**5.5** Both Parties recognise that, in seeking to fulfil their diverse duties and responsibilities as set out above, it may be difficult sometimes for the Parties to reconcile conflicting obligations.

**5.6** Consequently:

- both Parties will approach the relationship in a spirit of trust, cooperation and good faith;
- as a public body, RBG Kew will exercise reasonable and prudent control over the use of public money; and
- RBG Kew will respect Defra's duty to operate within central Government constraints;
- any statements in the Framework Document which express Defra's control over the activities, functions and objectives of RBG Kew, the Board or individual Trustees must be read in the context of their independent and charitable status and are intended to be and operate as legitimate, reasonable and prudent control over the use of public money. If RBG Kew considers that there is a specific concern that a control may interfere with the Trustees' obligation to fulfil their charitable duties then the Department must be notified at an early stage of the specific instance, setting out the detail of the non-compliance, so that an exemption can be considered.

**5.7** Any dispute between the Parties arising out of the Framework Document or as a result of a conflict between the Parties' respective duties and responsibilities shall be resolved in accordance with the procedure set out in Appendix 4.

## 6. Operating Principles

**6.1** Defra has agreed a group operating model that supports joint working in pursuit of shared outcomes.

**6.2** The organisations involved are working to deliver the relevant strategic objectives set out in the Defra group strategy (<http://www.gov.uk/government/publications/defras-strategy-to-2020-creating-a-great-place-for-living>), guided by the design principles underpinning the Target Operating Model (Appendix 5).

**6.3** The organisational model for the Defra group identifies six main areas where the organisations collectively deliver outcomes: food and farming, animal and plant health, floods and water, environmental quality, natural environment and rural, marine and fisheries. All the organisations involved in delivering outcomes in each area come together as an outcome system under the guidance of a system leader.

**6.4** The group operating model does not replace the accountability of RBG Kew's Accounting Officer ("AO") and its Board of Trustees.

**6.5** The Defra group Executive Committee ("ExCo") is responsible for overseeing the strategic direction and tracking the performance of the Defra group from policy through to delivery; and for strategic decisions that affect more than one organisation or set a precedent for the future. System leaders are members of ExCo, providing a direct connection to all the organisations within the group operating model. They are supported by outcome system groups bringing together leaders from all the organisations that contribute to delivering outcomes in that system.

## 7. Funding and Resources

**7.1** s.29 of the Act is the statutory basis on which the SoS has the power to grant fund RBG Kew. The SoS can impose conditions on such payment. However any such conditions must, as a matter of public law and charity law, be reasonable, proportionate and consistent with RBG Kew's statutory functions and powers under the Act, and not have the effect of undermining RBG Kew's status under charity law.

**7.2** Subject to those caveats, the SoS can attach conditions to the funding and set out the framework within which RBG Kew receives grant-in-aid. As such within the context of the funding relationship Defra can set out what it expects RBG Kew to achieve, in terms of its delivery of objectives, in return for the public funding.

**7.3** Defra expects RBG Kew to utilise its expertise, data, collections and resources to support the development and delivery of UK Government policies where they fit with RBG Kew's statutory functions, mission and strategic objectives.

**7.4** Defra expects RBG Kew to maximise opportunities to increase income, reducing reliance on grant-in-aid. This is likely to include RBG Kew maximising charitable donations, trading, and other income. RBG Kew must respect the principles of MPM in this context, including following set processes for novel, contentious or repercussive proposals.

## 8. Operational Freedoms

**8.1** At the end of 2014 RBG Kew was granted certain operating freedoms from general public sector control on a pilot basis, and from December 2015 this was made permanent.<sup>1</sup> The freedoms are:

- Permission to spend previously generated reserves;
- Flexibility to opt in or out of central procurement on a case by case basis;
- Power to borrow through voted loans from their sponsoring department subject to a sector cap of £60m per year;
- Authorisation to invest non-grant income;
- HMT commitment to respond to capital business cases within 28 days, and training to ensure business cases are proportionate and cost-effective;
- Cabinet Office commitment to respond to redundancy and restructuring applications within two business days;
- HMT commitment to reduce the administrative burden from severance payment business cases and to achieve quicker decisions;
- HMT and sponsoring departments undertaking to consider favourably requests for Departmental Expenditure Limits cover to meet exceptional depreciation charges;
- Exemption from the requirement to use the Government Banking Service;
- Exemption from central marketing and advertising controls; and
- Opt out of the Principal Civil Service Pension Scheme

On 31 October 2017 RBG Kew was additionally granted pay freedoms which enable RBG Kew to implement pay reforms, on the condition that it does not exceed its funding settlement.

---

<sup>1</sup> At the time of writing, this list largely copies the “museum freedoms” that were agreed by HMT/DCMS for certain museums and galleries in 2013

**8.2** This list may be augmented with others that may be added with the approval of HMT from time to time.

## 9. Ministerial Responsibility

**9.1** The SoS is accountable to Parliament for the activities and performance of RBG Kew. A Parliamentary Under-Secretary acts as responsible minister (“**Responsible Minister**”) with day to day responsibility and accountability for the business of RBG Kew.

**9.2** The role of the SoS is:

- through the operational planning process, to review RBG Kew’s overall priorities and objectives each year;
- at their discretion, to allocate resources to RBG Kew for its activities;
- to monitor, through regular reviews and reports to the Defra Board, the performance of RBG Kew in relation to key targets and risks;
- to keep Parliament informed about RBG Kew’s performance and answer Parliamentary Questions after consultation with RBG Kew where appropriate;
- to appoint 11 members of RBG Kew Board and approve the terms and conditions of Board members;
- to appoint the Chairperson or recommend to Her Majesty the Queen that her Trustee appointment fulfils this role;
- to confirm the appointment of RBG Kew’s Director;
- to remove any Trustee appointed by them for unsatisfactory performance or for any other reason specified at the time of appointment;
- to issue any general guidance or specific directions insofar as within their authority under the Act or under public law;
- to lay copies of RBG Kew’s Annual Report and Accounts (“**ARA**”) before Parliament each year<sup>2</sup>;

---

<sup>2</sup> NHA Schedule 1 Part IV 39(7) states that ‘The Comptroller and Auditor General shall examine, certify and report on the statement sent to him under sub-paragraph (6) and shall lay copies of it and of his report before each House of Parliament.’ In practice, Secretary of State lays RBG Kew’s Annual Report and Accounts before Parliament each year as noted above.

- to approve any acquisition or disposal of land (except in the case of the grant of a lease, a licence or concession for less than one year) in accordance with s.24(6) of the Act;
- to approve the establishment of a company by RBG Kew in accordance with s.25 of the Act;
- to determine with RBG Kew, as set out fully in Article 5 of Enterprises' Articles of Association, when Enterprises can:
  - incur any contingent liability;
  - establish or promote any other company;
  - purchase all or part of a business;
  - amalgamate with any other company
- To act as the nominated principal regulator for RBG Kew under the Charities Act 2011 and as such to ensure that RBG Kew and the Trustees comply with their duties under charity law.

## 10. Defra Accounting Officer's specific accountabilities and responsibilities as Principal Accounting Officer

**10.1** The Principal Accounting Officer ("**PAO**") of Defra has designated the Director as RBG Kew's AO. The respective responsibilities of the PAO and AOs for arms-length bodies are set out in Chapter 3 of MPM which is sent separately to the AO on appointment.

**10.2** The PAO is accountable to Parliament for the issue of any grant-in-aid to RBG Kew. The PAO is also responsible for advising the responsible minister:

- on an appropriate framework of objectives and targets for RBG Kew in the light of the Department's wider strategic aims and priorities;
- on an appropriate budget for RBG Kew in the light of the sponsor department's overall public expenditure priorities; and
- how well RBG Kew is achieving its strategic objectives and whether it is delivering value for money.

**10.3** The PAO is also responsible for ensuring arrangements are in place in order to:

- monitor RBG Kew's activities;
- address significant problems in RBG Kew, making such interventions as are judged necessary;
- periodically carry out an assessment of the risks both to the department and RBG Kew's objectives and activities;
- inform RBG Kew of relevant government policy in a timely manner; and
- bring concerns about the activities of RBG Kew to the full RBG Kew Board of Trustees, and, as appropriate to the departmental Board requiring explanations and assurances that appropriate action has been taken.

**10.4** The Natural Environment and Rural System Support team in Defra is the primary contact for RBG Kew. They are the main source of advice to the responsible minister on the discharge of their responsibilities in respect of RBG Kew. They also support the PAO on their responsibilities toward RBG Kew.

**10.5** Senior Defra representative(s) may attend Board meetings, as appropriate in agreement with RBG Kew where this might aid discussion, help inform decision making or in an observer capacity.

## 11. Responsibilities of RBG Kew's Director as Accounting Officer

**11.1** The Director is recruited through open competition. In accordance with Schedule 1, Part IV of the Act, the appointment is made by the Board and is subject to approval by the SoS. The Director is not and cannot be a Trustee on the Board of Trustees because of RBG Kew's charitable status, but in practice, in accordance with the terms of reference of the Board, attends Board meetings. The AO shall put in place mechanisms for Board decisions to allow the AO to fulfil their obligations under MPM – the Board must allow such mechanisms. As provided by s.34 of Part IV of the Act, the Director shall be responsible to the Board for the general exercise of the Board's functions. The Board should set performance objectives for the Director which reflect both the responsibilities under the Act, AO responsibilities and the Director's role in delivering the strategy set by the Board of Trustees.

**11.2** The Director as AO is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of RBG Kew. In addition, he or she should ensure that RBG Kew as a whole is run on the basis of the standards, in terms of governance, decision-making and financial

management that are set out in Box 3.1 of MPM and bring any concerns to the attention of the Board and the Department as necessary.

### *Responsibilities for accounting to parliament*

#### **11.3** The accountabilities include:

- signing the accounts (in addition to the requisite signature on behalf of the Board of Trustees) and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the SoS;
- preparing and signing a Governance Statement covering corporate governance, risk management and oversight of any local responsibilities, for inclusion in the ARA;
- ensuring that effective procedures for handling complaints about RBG Kew are established and made widely known within the ALB;
- acting in accordance with the terms of this document, MPM and other instructions and guidance issued from time to time by the Department, the Treasury and the Cabinet Office;
- giving evidence, normally with the PAO, when summoned before the Public Accounts Committee on RBG Kew's stewardship of public funds.

#### **11.4** Particular responsibilities to Defra include:

- establishing, through dialogue with the Department, RBG Kew's corporate and operational plans in the light of the department's wider strategic aims and agreed priorities. Further recognising that grant-in-aid is contingent on Defra being satisfied with RBG Kew's corporate and operational plan;
- informing the department of progress in helping to achieve the department's policy objectives and in demonstrating how resources are being used to achieve those objectives; and
- ensuring that timely forecasts and monitoring information on performance and finance are provided to the department; that the department is notified promptly if over or under spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise, and whether detected by internal audit or by other means, are notified to the department in a timely fashion.

#### **11.5** Responsibility for:

- ensuring that RBG Kew works in collaboration with other parts of the Defra group, in line with the Act and RBG Kew’s charitable purposes, to secure the most efficient and effective delivery of outcomes;
- ensuring that RBG Kew’s Board of Trustees is fully engaged in any decision affecting RBG Kew and other organisations where the Defra group Executive Committee has overall strategic responsibility; and
- supporting the system leader for the Natural Environment and Rural outcome system in their role of managing, guiding and coordinating the system to deliver strategic outcomes across the Defra group.

### *Responsibilities to the Board*

#### **11.6** The Director is responsible for:

- advising the Board on the discharge of RBG Kew’s responsibilities as set out in this document, in the founding legislation and in any other relevant instructions and guidance that may be issued from time to time;
- advising the Board on RBG Kew’s performance compared with its aims and objectives;
- ensuring that financial considerations are taken fully into account by the Board at all stages in reaching and executing its decisions, and that financial appraisal techniques are followed;
- putting in place mechanisms for the Director to have visibility of Board activity with sufficient time before Board decisions are agreed. The mechanism will enable the Director to take action where needed, including as set out in paragraph 3.8.6 of MPM if the Board, or its Chairperson, is contemplating a course of action involving a transaction which the Director considers would infringe MPM principles. MPM states:

*“...if the chair or board of such an ALB is minded to instruct its accounting officer to carry out a course inconsistent with the standards in box 3.1, then the accounting officer should make his or her reservations clear, preferably in writing. If the board is still minded to proceed, the ALB accounting officer should then:*

- *ask the accounting officer of the sponsor department to consider intervening to resolve the difference of view, preferably in writing;*
- *if the board’s decision stands, seek its written direction to carry it out, asking the sponsor department to inform the Treasury;*
- *proceed to implement without delay; and*
- *follow the routine in paragraph 3.4.5.”*

**11.7** The responsibilities of RBG Kew's AO are essentially similar to those of AOs in Defra arm's length bodies. However, paragraph 3.8 of MPM recognises that the AO in a body such as RBG Kew, which is governed by an independent board, must also take account of their special responsibilities and powers. RBG Kew's AO has personal responsibilities as set out in Chapter 3 of MPM, plus additional sensitivities to consider as a result of RBG Kew's charitable status.

## 12. The Board of Trustees

**12.1** The Board is collectively responsible and has ultimate non-delegable responsibility for RBG Kew. The Board should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control, including complying with MPM. In particular the Board will need to ensure that appropriate arrangements are in place so that the AO can fulfil their responsibilities effectively, including taking appropriate action if the Board or its Chairperson are contemplating a course of action which conflicts with MPM.

**12.2** In accordance with s.33(5) of the Act, RBG Kew Trustees are appointed for a term not exceeding five years by the responsible minister. They may be reappointed in certain circumstances and subject to satisfactory performance assessment. Such appointments are regulated by the Independent Commissioner for Public Appointments and will comply with the Government's Code of Governance for Public Appointments. Trustees appointed by the SoS may resign by notice given in writing to the SoS (s.33(6) of the Act).

### *The Chairperson*

**12.3** The Chairperson is responsible to Ministers for the overall leadership, direction and effectiveness of RBG Kew in line with strategies and plans (agreed with Defra as appropriate).

**12.4** The Chairperson will represent RBG Kew and will be the primary contact with Ministers for the Board, discussing issues with Ministers as appropriate and ensuring that the other Board members are kept aware of such communications. These actions should be clearly communicated and disseminated throughout RBG Kew any policies and actions discussed.

**12.5** The Chairperson also has an obligation to ensure that the Board is run in line with the Government Code of Good Practice for Corporate Governance and in line with Charity Commission guidance on Trustee Boards.

**12.6** The Chairperson and Board of Trustees should

- support the delivery of the Defra group's objectives whilst respecting RBG Kew's independence;

- support RBG Kew’s Executive Board in working collaboratively with other parts of the Defra group, building relationships with other Boards and helping to remove barriers to joint working; and
- engage fully and constructively with strategic decision-making led by the Executive Committee where a decision impacts on RBG Kew’s formal duties and responsibilities.

## 13. Annual Report and Accounts

**13.1** The ALB Board must publish its ARA after the end of each financial year. A draft or drafts of the ARA should be submitted to the department as required to agreed timetables. RBG Kew shall provide Defra with its finalised (audited) accounts in line with the agreed timetable each year in order for the accounts to be consolidated within Defra’s.

**13.2** RBG Kew’s ARA must be audited by the Comptroller and Auditor General before being laid before the House of Commons by the SoS. The ARA must also be published on gov.uk ideally on the same day, but not before, the document has been laid before parliament.

**13.3** The ARA must comply with the Statement of Recommended Practice (“**SORP**”) Accounting by Charities issued by the Charity Commission. The ARA should also comply with the principles in HMT’s Financial Reporting Manual (“**FreM**”) to the extent to which these do not conflict with SORP, and provide the additional disclosures required by the Manual where these go beyond the SORP.

## 14. Internal Audit

**14.1** RBG Kew's Board has a general responsibility to ensure that proper internal audit arrangements are established and maintained in accordance with HMT’s Public Sector Internal Audit Standards (PSIAS)

<https://www.gov.uk/government/publications/public-sector-internal-audit-standards>

The Board should establish an Audit and Risk Committee (“**ARC**”) in accordance with MPM and the Cabinet Office’s Guidance on Codes of Practice for Public Bodies.

**14.2** To assist with the provision of assurance to the PAO, RBG Kew will ensure that the agenda and minutes of all ARC meetings are shared with relevant Defra contacts and papers are also shared with Defra’s Group Internal Audit Service (“**GIAS**”). At its discretion, RBG Kew may also extend an invitation to Defra’s GIAS and other Defra Finance representatives to attend its ARC meetings.

**14.3** RBG Kew shall keep records of, and prepare and forward to the department, an annual report on fraud and theft suffered by RBG Kew and notify the sponsor department of any unusual or major incidents as soon as possible.

**14.4** The Defra Group Chief Internal Auditor has a right of access to all documents as required.

## 15. Audit of Receipts and Payments from the European Union

**15.1** RBG Kew should be aware that receipts and payments from European Union (“EU”) bodies are subject to audit by the EU. Where RBG Kew receives funding from the EU, it may be subject to an audit by the European Court of Auditors. It may also be subject to audit from other auditors acting under the terms governing the provision of the financial assistance or the protocol arrangements agreed between Government departments and the EU.

## 16. External Audit

**16.1** The Comptroller & Auditor General (“C&AG”) audits RBG Kew’s ARA and SoS lays it before Parliament (see para 9.2), together with his report. The C&AG’s role in relation to RBG Kew is set out in s.39 of Schedule I, Part IV of the Act and in MPM.

**16.2** The C&AG:

- will consult the department and RBG Kew on whom – the NAO or a commercial auditor – shall undertake the audit(s) on his behalf, though the final decision rests with the C&AG;
- has a statutory right of access to relevant documents, including by virtue of section 25(8) of the Government Resources and Accounts Act 2000, held by another party in receipt of payments or grants from RBG Kew;
- will share with the sponsor department information identified during the audit process and the audit report (together with any other outputs) at the end of the audit, in particular on issues impacting on the Department’s responsibilities in relation to financial systems within RBG Kew;
- will, where asked, provide departments and other relevant bodies with Regulatory Compliance Reports and other similar reports which departments may request at the commencement of the audit and which are compatible with the independent auditor’s role.

**16.3** The C&AG may carry out examinations into the economy, efficiency and effectiveness with which RBG Kew has used its resources in discharging its functions. For the purpose of these examinations the C&AG has statutory access to documents as provided for under section 8 of the National Audit Act 1983. In addition, RBG Kew shall provide, in conditions to grants and contracts, for the C&AG to exercise such access to documents held by grant recipients and contractors and sub-contractors as may be required for these examinations; and shall use its best endeavours to secure access for the C&AG to any other documents required by the C&AG which are held by other bodies.

**16.4** RBG Kew will in the light of the provisions in the Companies Act 2006 ensure that the C&AG is appointed auditor of any company subsidiaries that it controls and/or whose accounts are consolidated within its own accounts. RBG Kew shall discuss with Defra the procedures for appointing the C&AG as auditor of the companies.

#### *Right of access*

**16.5** Defra has the right of access to all RBG Kew records and personnel for any lawful purpose including for example audits and operational investigation.

## **17. Maladministration**

**17.1** The Parliamentary and Health Service Ombudsman may investigate all functions of RBG Kew in relation to complaints where an individual believes there has been injustice or hardship because RBG Kew has not acted properly or fairly or has given a poor service and not put things right.

## **18. Freedom of Information**

**18.1** RBG Kew (and its wholly owned subsidiaries) is subject to the Freedom of Information Act and the Environmental Information Regulations which ensure that the public can, on request, be given access to information, in accordance with its statutory obligations.

## **19. Management and financial responsibilities**

### **MPM and other government-wide corporate guidance and instructions**

**19.1** Unless agreed by Defra and, as necessary, HMT, and consistent with its charitable status, RBG Kew shall follow the principles, rules, guidance and advice in MPM, referring any difficulties or potential bids for exceptions to Defra in the first instance. A list of guidance and instructions with which RBG Kew should comply is in Appendix B.

**19.2** Once Defra funding has been approved by Defra and subject to any restrictions imposed by statute, the responsible minister's instructions, or this document, RBG Kew shall have authority to incur expenditure approved in the budget without further reference to Defra, on the following conditions:

- RBG Kew shall comply with MPM regarding novel, contentious or repercussive proposals;
- inclusion of any planned and approved expenditure in the budget shall not remove the need to seek formal departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed;
- RBG Kew shall provide the sponsor department with such information about its operations, performance individual projects or other expenditure as Defra may reasonably require.

**19.3** RBG Kew shall comply with the delegated financial limits agreed with Defra and set out in an annual delegation letter issued prior to the commencement of a new financial year. These delegations shall not be altered without the prior agreement of Defra.

## 20. Risk management

**20.1** RBG Kew shall ensure that the risks that it faces are dealt with in an appropriate manner, adopting the principles contained within HMT guidance *Management of Risk: Principles and Concepts* (<https://www.gov.uk/government/publications/orange-book>). Applying the common Defra risk language, risks should be escalated where required and fully contribute to an annual central review of all of their corporate risks.

**20.2** RBG Kew should adopt and implement policies and practices to safeguard itself against fraud, error, bribery, money laundering and theft, in line with HMT guidance (see Appendix 3).

## 21. Corporate and operational plans

**21.1** An operational plan will be required annually. The plan should set out delivery of objectives, outputs and performance targets for efficiency, costs and resources and must have regard to guidance issued by the Department

**21.2** The plans should be developed as appropriate through the Defra group governance. They should build on joint working between policy and delivery teams to ensure coherent plans are proposed.

## 22. Budgeting procedures

**22.1** Prior to the start of the financial year and in light of the decisions relating to financial provision and the policy delivery requirements of Defra, RBG Kew will receive:

- a formal statement of the four year settlement and annual budgetary provision allocated by Defra in the light of competing priorities across the department and of any forecast income approved by Defra; and
- notification of any planned changes in Defra or wider government policy affecting RBG Kew delivery and policy functions. These will be discussed and agreed as part of an on-going dialogue between RBG Kew and Defra and recorded as part of the regular performance process.

## 23. Grant-in-aid and any ring-fenced grants

**23.1** Any grant-in-aid provided by Defra for the year in question will be voted in Defra's Supply Estimate and be subject to Parliamentary control.

**23.2** The grant-in-aid will normally be paid in monthly instalments on the basis of written applications showing evidence of need. RBG Kew will comply with the general principle, that there is no payment in advance of need. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds shall be kept to a minimum level consistent with the efficient operation of RBG Kew. Grant-in-aid not drawn down by the end of the financial year shall lapse. Subject to approval by parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash balances at the year-end, the department will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors.

**23.3** In the event that Defra provides RBG Kew separate grants for specific (ringfenced) purposes, it would issue the grant as and when RBG Kew needed it on the basis of a written request. RBG Kew would provide evidence that the grant was used for the purposes authorised by Defra. RBG Kew shall not have uncommitted grant funds in hand, nor carry grant funds over to another financial year.

## 24. Reporting performance to Defra

**24.1** Financial planning and performance reporting will be integrated across the Defra group. A single performance framework is prepared by Defra including the organisation's key responsibilities identifying outcomes, money, resource, customer feedback, measures and progress against milestones in one report to the Defra group. Defra's Executive Committee ("ExCo") will track performance across the whole group from policy to delivery.

**24.2** ExCo's role is to oversee performance of the Defra group as a whole and they will intervene where performance issues require a cross-departmental approach.

**24.3** Responsibility for management of performance will continue to lie with the relevant delivery organisation and/or policy director and further details of the underlying organisational performance indicators, outputs and costs should be made available to ensure a clear line of sight from policy through to front-line delivery.

## 25. Delegated authorities

**25.1** RBG Kew's delegated authorities are set out in the annual letter from Defra. A copy is available from Defra's Finance Director. RBG Kew shall obtain Defra's prior written approval in accordance with MPM before:

- entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the ALB's annual budget as approved by the department;
- incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;
- making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the department;
- making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
- carrying out policies that go against the principles, rules, guidance and advice in MPM.

## 26. RBG Kew staff

### *Broad responsibilities for staff*

**26.1** Within the Act and the arrangements approved by the Responsible Minister and HMT, pursuant to Schedule 1 Part IV of the Act and delegations of authority, RBG Kew will have responsibility for the recruitment, retention and motivation of its staff.

### *Staff costs*

**26.2** Subject to its delegated authorities, RBG Kew shall ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them.

### *Pay and conditions of service*

**26.3** Staff of RBG Kew are public servants (but not civil servants) with a duty to serve the public well. They are subject to levels of remuneration and terms and conditions of service (including pensions) within the general pay structure approved by Defra and HMT as per Schedule 1 Part IV of the Act. Subject to the operating freedoms at 8.1 RBG Kew must seek agreement from Defra and HMT to amend these terms and conditions.

**26.4** The Board may pay the Trustees such reasonable allowances in respect of expenses or loss of remuneration as the SoS may determine with Treasury approval (Schedule 1 Part IV of the Act s.37). The travel expenses of Board members shall be tied to the rates allowed to senior staff of RBG Kew. Reasonable actual costs shall be reimbursed.

#### *Pensions, redundancy and compensation*

**26.5** RBG Kew has the freedom (see para 5.4) to opt out of the Principal Civil Service Pension Scheme.

**26.6** Proposals on severance must comply with the rules in MPM.

## **27. Review of RBG Kew's status (and winding-up arrangements)**

**27.1** RBG Kew will be reviewed in line with Defra and Cabinet Office requirements. The Framework Document should be formally reviewed every three years with light touch annual reviews as necessary. Changes can be made by addendum in advance of formal reviews if required. Certain events could also trigger a review of Framework Documents, such as the appointment of a new Chairperson or Director of RBG Kew or changes in senior personnel.

## **28. Arrangements in the event that RBG Kew is wound up**

**28.1** Defra shall put in place arrangements to ensure the orderly winding up of RBG Kew as set out in MPM and having regard to trust and charity law.

**28.2** RBG Kew shall provide Defra with full details of all agreements where RBG Kew or its successors have a right to share in the financial gains of developers. It should also pass to Defra details of any other forms of claw-back due to RBG Kew.

## 29. Signatures

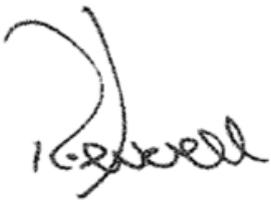
Signed

A handwritten signature in black ink that reads "Sonia Phippard". The name is written in a cursive style, with "Sonia" on the top line and "Phippard" on the bottom line. A horizontal line is drawn under the name.

Sonia Phippard

Date 29/06/2018

(on behalf of Defra)

A handwritten signature in black ink that reads "Richard Deverell". The name is written in a cursive style, with "Richard" on the top line and "Deverell" on the bottom line. A horizontal line is drawn under the name.

Richard Deverell

Date 29/06/2018

(on behalf of the Royal Botanic Gardens, Kew)

# Annex A - BACKGROUND NOTE ON LEGAL FRAMEWORK FOR KEW

RBG Kew is governed by a complex set of rules relating to its powers, functions, and accounting. It is therefore not simple to align requirements imposed by the combination of the Act, charity law and the public law framework including the SoS duty to account to Parliament and the MPM guidance. Likewise the powers of control, rights and obligations of the SoS in relation to RBG Kew derive from different sources. So we need to consider the various 'hats' that Defra wears. Key elements of the framework are:

## **National Heritage Act 1983:**

- This is the backbone legislation which establishes RBG Kew and confers powers on it. RBG Kew (as a statutory body) has power to do only those things that are stated in the Act or which are necessary for the discharge of its functions. Neither the Board nor Ministers should do anything that might frustrate the purpose of the Act.
- The Act explicitly establishes RBG Kew as a separate body corporate that operates at arms-length from Government. It is independent from the Crown as other NDPBs are (and see notes below about charity law).
- However, in respect of some functions and activities the Act confers on the SoS certain powers of 'direction' or of making certain provisions subject to their 'consent' and in some cases Treasury 'approval'.

## **Public law framework**

- The Act forms the principal public law framework governing RBG Kew.
- This is supplemented by the financial and accounting controls which flow from RBG Kew being classified as a NDPB.
- The Director of RBG Kew is the AO and so individually accountable for the efficient expenditure of public money in accordance with MPM. However, MPM 3.8 recognises that there are sensitivities about the role of the AO in an ALB such as RBG Kew which is governed by an independent board.
- The SoS is accountable to Parliament for the public money spent by RBG Kew as an NDPB and so has an interest in establishing mechanisms that provide them with appropriate assurance as to the exercise of RBG Kew's functions and the management of risks. s.39-40 of Schedule 1, Part IV of the Act establish the foundations for this.
- The accountability of the trustees, the AO and the SoS for the public money spent by RBG Kew includes all grant-in-aid, income self-generated by RBG Kew and charitable

donations etc (i.e. our total expenditure, not just taxpayer funds). In so doing they follow the MPM guidance.

## **Charity law framework**

- RBG Kew is an exempt charity subject to charity law. Charity law imposes another tier of regulatory framework on RBG Kew and the trustees. The Charities Act 2011 (replacing earlier legislation) explicitly lists RBG Kew as an exempt charity for which its principal regulator for charity law purposes is the SoS.
- As principal regulator the SoS has a duty to take reasonable steps to ensure that RBG Kew is complying with its duties under charity law, and has a relationship with the Charity Commission as set out in the Defra-CC Memorandum of Understanding (<https://www.gov.uk/government/publications/memorandum-of-understanding-charity-commission-and-the-department-for-environment-food-rural-affairs>).
- For a body to be a charity, it must exist for its charitable purpose for the public benefit only and therefore must demonstrate independence from any forces that might seek to prevent it from doing that. See Appendix 2 for Charity Commission ‘The Independence of Charities from the State –RR7’
- As explained in RR7, where a governmental authority has been given powers under a charity’s governing document eg the Act, it is bound to exercise those powers solely in the interests of the charity, and therefore the SoS cannot exercise that power for its own benefit.
- RR7 recognises that funding authorities have a responsibility to protect the interests of taxpayers and service users, and have a legitimate interest in monitoring the proper use of funds granted. However those measures should be reasonable and proportionate to those legitimate interests and not overstep the line such that the charity is no longer independent in the way that it operates.

## **Funding relationship**

- s29 of the Act is the statutory basis on which the SoS has the power to grant fund RBG Kew. The SoS can impose conditions on such payment. However any such conditions must, as a matter of public law and charity law, be reasonable, proportionate and consistent with RBG Kew’s statutory functions and powers under the Act, and not have the effect of undermining RBG Kew’s status under charity law.
- Subject to those caveats, the SoS can attach conditions to the funding and set out the framework within which RBG Kew receives grant-in-aid. As such within the context of the funding relationship Defra can set out what it expects RBG Kew to achieve, in terms of its delivery of objectives, in return for the public funding.

- The key point here though is that it is through this funding relationship that Defra can set out what it wants RBG Kew to achieve – it is not through any more general right of control.
- But as noted above, the accountability of the Board of Trustees, the AO and the SoS for the public money spent by RBG Kew includes all grant-in-aid, income self-generated by RBG Kew and charitable donations etc (i.e. total expenditure, not just taxpayer funds), and assets/capital considerations.

# Annex B - COMPLIANCE WITH GOVERNMENT-WIDE CORPORATE GUIDANCE AND INSTRUCTIONS

RBG Kew shall comply with the following general guidance documents and instructions where this is consistent with RBG Kew's charitable status:

- This Framework Document;
- Defra-Charity Commission Memorandum of Understanding

<https://www.gov.uk/government/publications/memorandum-of-understanding-charity-commission-and-the-department-for-environment-food-rural-affairs>

- Partnerships between departments and arm's-length bodies
- [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594345/Partnerships\\_between\\_departments\\_and\\_arm\\_s\\_length\\_bodies-code\\_of\\_good\\_practice.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594345/Partnerships_between_departments_and_arm_s_length_bodies-code_of_good_practice.pdf)
- Appropriate adaptations of sections of *Corporate Governance in Central Government Departments: Code of Good Practice*

<https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments>;

- *Code of Conduct for Board Members of Public Bodies*
- <https://www.gov.uk/government/publications/board-members-of-public-bodies-code-of-conduct>
- *Managing Public Money (MPM)*

<https://www.gov.uk/government/publications/managing-public-money>

- Fees and Charges Guide, Chapter 6 of MPM;
- Departmental Banking: A Manual for Government Departments, annex 5.6 of MPM;
- Relevant Freedom of Information Act guidance and instructions (Ministry of Justice); A7.2 Drawing up framework documents MPM
- Public Sector Internal Audit Standards,

<https://www.gov.uk/government/publications/public-sector-internal-audit-standards>

- Management of Risk: Principles and Concepts;

<https://www.gov.uk/government/publications/orange-book>

- HMT Guidance on Tackling Fraud,

[http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/managing\\_the\\_risk\\_fraud\\_guide\\_for\\_managers.pdf](http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/managing_the_risk_fraud_guide_for_managers.pdf)

- Government Financial Reporting Manual (FReM),

<https://www.gov.uk/government/publications/government-financial-reporting-manual> ;

- Regularity, Propriety and Value for Money,

[http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/psr\\_governance\\_valueformoney.htm](http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/psr_governance_valueformoney.htm);

- The Parliamentary and Health Service Ombudsman's Principles of Good Administration

<http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples>

- Relevant Dear Accounting Officer letters;
- Consolidation Officer Memorandum, and relevant DCO letters;
- Other relevant guidance and instructions issued by HMT in respect of Whole of Government Accounts;
- Other relevant instructions and guidance issued by the central Departments;
- Specific instructions and guidance issued by the sponsor Department;
- Recommendations made by the Public Accounts Committee, or by other Parliamentary authority, that have been accepted by the Government and relevant to the ALB.

### **Charity law framework**

- National Heritage Act 1983 <http://www.legislation.gov.uk/ukpga/1983/47/contents>
- Charities Act 2011 <http://www.legislation.gov.uk/ukpga/2011/25/contents>

### **Charity Commission & NCVO guidance**

- The Hallmarks of an Effective Charity, Charity Commission, July 2008
- [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387134/CC10\\_LowInk.indd.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387134/CC10_LowInk.indd.pdf)

- Charity Commissions guidance: The Essential Trustee: What you need to know, March 2012 <http://www.charitycommission.gov.uk/Publications/cc3.aspx>;
- The Charity Commission guidance 'The Independence of Charities from the State' (RR7) <https://www.gov.uk/government/publications/independence-of-charities-from-the-state-rr7>
- FRS102 Statement of Recommended Practice, Accounting and Reporting by Charities (SORP) [http://www.charitycorp.org/media/619101/frs102\\_complete.pdf](http://www.charitycorp.org/media/619101/frs102_complete.pdf)
- The Charity Governance Code 2017

<https://www.charitygovernancecode.org/en>

# Annex C - RBG KEW ENTERPRISES LTD AND HMT'S MANAGING PUBLIC MONEY

## Governance at RBG Kew

Our Board of Trustees is collectively responsible and has ultimate non-delegable responsibility for RBG Kew. In accordance with the National Heritage Act 1983 and charity law, the Board should ensure that effective arrangements are in place to provide assurance on risk management, governance, remuneration and internal control.

The Board of Trustees meet formally quarterly to enable it to discharge its responsibilities, and the relevance of HMT's MPM is noted at paragraph 2 of the Board's terms of reference: *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.*

The terms of reference acknowledge the role of the Director as Accounting Officer (paragraph 5) and note that the Director is invited to attend all meetings (paragraph 18).

The Board also establishes Committees which are led by non-executives which provides assurance that RBG Kew is run effectively and efficiently, handles funds with probity and has appropriate internal controls in place. The principal Committees with oversight of Enterprises' activities are Finance Committee and Audit and Risk Committee.

The purpose of the Finance Committee is to examine and advise on the financial plans and affairs of RBG Kew and to provide assurance to the Board of Trustees. Its main responsibility is to review significant financial matters on behalf of the Board and make recommendations to the Board for further consideration. This includes reviewing Kew's operational plan, financial plans including funding arrangements, annual budgets and in-year financial results. RBG Kew's planning and budget framework brings together all aspects of RBG Kew business, and as such, Enterprises is integrated within the annual planning round.

Paragraph 2 of the terms of reference of Audit and Risk Committee sets its constitution in terms of MPM: *HMT's Managing Public Money requires that an arms-length public body has an audit committee to provide assurance on its risk management, governance and internal control.*

The Committee's purpose is set out at paragraph 4: *The Audit and Risk Committee supports the Board and the Director (as Accounting Officer) by reviewing the comprehensiveness of assurances in meeting the Board and Accounting Officer's assurance needs, and reviewing the reliability and integrity of these assurances.*

The Board of Enterprises meets quarterly and across the year reviews Enterprises' performance, agree budgets and strategy and review risks. MPM requires Accounting Officers of public bodies to have adequate oversight of subsidiaries. This is facilitated by Article 15 (of Enterprises Articles of Association) which provides that the Accounting Officer of RBG Kew from time to time is an ex officio director of Enterprises. The Accounting Officer's position on the Board of Enterprises gives him visibility to and a level of oversight of Enterprises, and thus the opportunity to raise any concerns as AO. Otherwise the right to appoint directors to the Board is reserved to RBG Kew as sole member, further enabling the RBG Kew trustees to have adequate control and oversight by RBG Kew trustees as required by charity law. Other Directors include Executive Board Directors (with commercial, fundraising and finance responsibilities), the Head of Commercial Activities and non-executives. RBG Kew Enterprises Ltd is a separate legal entity from RBG Kew, and is accountable to its only shareholder, RBG Kew. RBG Kew Trustees must act in the best interests of the charity and the RBG Kew Accounting Officer must act in the best interests of the taxpayer. For these reasons, the overriding presumption is that RBG Kew will not support Enterprises, except where it is in the best interest of both the charity and the taxpayer. RBG Kew would inform, prior to any final decision, the Defra PAO in such an instance. To date RBG Kew has not subsidised any losses of Enterprises.

The controls by which this is achieved include:

- a) A budget specifically for Enterprises which shows a profit – approved by the Board of Directors (who are appointed by RBG Kew and include the Accounting Officer).
- b) Monitoring of financial performance during the year including forecasts to ensure the budget is achieved; reviewed by management and Directors.
- c) Service level agreements to ensure all costs to RBG Kew are recovered from Enterprises and a profit is generated. Enterprises budgets and accounts are consolidated with RBG Kew's accounts and will be scrutinised by both the Finance Committee and the Board of Trustees. This provides a mechanism for the Board to retain oversight of the risks of losses in Enterprises and make decisions about how that situation should be managed.
- d) Wholly owned subsidiaries established under charity law (such as Enterprises) are only established to allow non-primary purpose trading, and are a vehicle for protecting the assets of the charity from costs associated with non-mission related activity.
- e) Where there is a justification that allows them to continue to exercise their duty to charity beneficiaries, Trustees can agree that charity assets/funds can be used by subsidiaries (which is to say that they must protect the interests of the charity and its beneficiaries and therefore any use by the subsidiary must not be to the detriment of that).

f) These charity law requirements strongly replicate the requirements under MPM for Trustees, as the Board of a public body, to ensure that taxpayers are protected from expenditure that does not deliver value for money to the public.

g) In broad terms, charity trustees must always put the interests of the parent charity first. 'This will sometimes mean liquidating, or selling, a failing trading subsidiary. If trustees keep a failing trading subsidiary going at the charity's expense, they may be personally liable for consequential losses to the charity' (para 4.16 of CC35)<sup>3</sup>;

h) Indirect investment by the parent charity such as allowing the use of staff time and office equipment is allowed, it being recognised that this is an important means of support to a trading subsidiary. However the charity must charge the subsidiary, at fair value, for such services and use of facilities (para 4,22 CC35). Accordingly RBG Kew does not seek to subsidise Enterprises and charges, at cost, for such services and use of facilities made available by RBG Kew.

---

<sup>3</sup> Charity Commission Guidance CC35 'Trustees trading and tax: how charities may lawfully trade' and HMRC <https://www.gov.uk/guidance/charities-and-trading>

## Annex D - DISPUTE RESOLUTION PROCEDURE

1. If there is a dispute between the Parties (a “**Dispute**”), the relevant officials of both Parties shall use reasonable endeavours to resolve the Dispute.
2. If the relevant officials cannot resolve the Dispute within 30 days of the dispute arising, either Party may refer the Dispute to the Director (for RBG Kew) and the relevant Defra Director/Director General.
3. The Directors shall each use reasonable endeavours to resolve the Dispute but if they cannot resolve it within 30 days either Party may refer the Dispute to the Chairperson and the Responsible Minister.
4. The Chairperson and the Responsible Minister shall each use reasonable endeavours to resolve the Dispute.
5. The Parties acknowledge that, as an exempt charity, RBG Kew can ask the Charity Commission to exercise its powers to provide advice and guidance on charity law, subject to the Charity Commission consulting with Defra as Principal Regulator in accordance with the memorandum of understanding agreed between them. If a Dispute concerns charity law, either Party may make such an approach to the Charity Commission at any time.

# Annex E - DEFRA GROUP DESIGN PRINCIPLES (TAKEN FROM DEFRA GROUP TARGET OPERATING MODEL)

## **Act together**

We will work in a joined-up way to deliver a consistent and fair customer experience, giving extra help to those who need it. We will join up customer journeys so customers do not need to understand how we organise ourselves to engage with us.

## **Make it simpler**

We will make things simpler and quicker for customers by designing digital services based on their needs. We will simplify the way we communicate by creating a single virtual Defra group contact centre.

## **Avoid duplication**

We will provide a single point of contact with minimal handovers. Our systems will have a single view of customers irrespective of the channel or service used. We will use our existing data to simplify the customer journey, ensuring we only collect that data once.

## **Maximise impact**

We will focus on the activities that only government can carry out. We will redesign our content and information based on what people want, using customer insight to drive improvement at every stage. We will be quick and timely in our responses. We will provide third parties with access to our data so they can innovate the way services are delivered.

## **Embrace digital and data**

We will migrate our customers to online channels, building common ICT platforms and sharing data to improve and simplify the customer experience. All digital services will be designed according to Government Digital Service best practice and the Digital Service Standard.