

## SCHEDULES

### SCHEDULE 1

#### THE BOARDS

#### PART II

##### ROYAL BOTANIC GARDEN, EDINBURGH

###### *Status*

- 11 The Board of Trustees of the Royal Botanic Garden, Edinburgh shall be a body corporate.
- 12 (1) Subject to sub-paragraph (3), the Board shall not be regarded as the servant or the agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) The trustees and their staff shall not be regarded as Crown servants and the Board's property shall not, subject to section 20 of this Act, be regarded as property of, or held on behalf of, the Crown.
- (3) In relation to any matters as respects which the Board act by virtue of a direction under section 11(2), the Board shall enjoy the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the Secretary of State.
- (4) Subject to section 20 of this Act and to any other enactment, the Board shall not be exempt from any tax, duty, rate, levy or other charge whatever (whether general or local).

###### *Membership*

- 13 (1) The Board shall consist of not less than 5 and not more than 9 members (referred to in this Part of this Schedule as "trustees").
- (2) The trustees shall be appointed by the Secretary of State.
- (3) In appointing any trustee, the Secretary of State shall have regard to the desirability of the person's having knowledge or experience of the science of plants, conservation, horticulture, education, management, industrial relations, administration or any other subject knowledge or experience of which would be of use to the Board in exercising their functions.
- (4) The Secretary of State shall appoint one of the trustees to be chairman.
- (5) Subject to the following provisions of this paragraph, a trustee or chairman shall hold and vacate office in accordance with the terms of his appointment, but no trustee shall be appointed for a period of more than 5 years.

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- (6) A chairman or trustee may resign his office by notice in writing addressed to the Secretary of State.
- (7) If a chairman ceases to be a trustee he shall also cease to be a chairman.
- (8) A person who ceases to be a trustee, or ceases to be a chairman, shall be eligible for re-appointment.

#### *Staff*

- 14 (1) There shall be a Keeper of the Royal Botanic Garden, Edinburgh, who shall be known as the Regius Keeper, and who shall be appointed by Her Majesty on such terms as Her Majesty may determine.
- (2) The Regius Keeper shall be responsible to the Board for the general exercise of their functions.
- 15 (1) The Board may appoint such employees as the Board think fit.
- (2) The employees shall be appointed on such terms and conditions as the Board may determine.
- (3) A determination under sub-paragraph (2) shall be subject to the approval of the Secretary of State given with the Treasury's consent.
- (4) Employment with the Board shall be included among the kinds of employment to which a scheme under section 1 of the <sup>M1</sup>Superannuation Act 1972 can apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed) "Royal Botanic Garden, Edinburgh" shall be inserted after "National Portrait Gallery".

#### **Marginal Citations**

**M1** 1972

- 16 (1) The Board shall make, not later than such date as the Secretary of State may determine, an offer of employment by the Board to each person employed immediately before that date in the civil service of the State for the purposes of the institution known as the Royal Botanic Garden, Edinburgh.
- (2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (3) In determining whether the terms of an offer are more or less favourable to that person than those enjoyed by him on the date of the offer no account shall be taken of the fact that employment with the Board is not employment in the service of the Crown.
- (4) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.
- (5) Where a person becomes an employee of the Board in consequence of this paragraph, then for the purposes of [<sup>F1</sup>the Employment Rights Act 1996], the period of employment in the civil service of the State shall count as a period of employment

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by the Board and the change of employment shall not break the continuity of the period of employment.

- (6) Where an offer is made to any person in pursuance of this paragraph, none of the agreed redundancy procedures applicable to persons employed in the civil service of the State shall apply to him; and if he ceases to be employed as mentioned in sub-paragraph (1) above—
- (a) on becoming a member of the staff of the Board in consequence of this paragraph; or
  - (b) having unreasonably refused an offer made to him in pursuance of this paragraph, he shall not be treated for the purposes of any scheme under section 1 of the Superannuation Act 1972 as having been retired on redundancy.
- (7) Without prejudice to sub-paragraph (6) above, where a person has unreasonably refused an offer made to him in pursuance of this paragraph, the Secretary of State shall not terminate that person's employment unless he has first had regard to the feasibility of employing him in a suitable alternative position in the civil service.
- (8) Where a person continues in employment in the civil service either—
- (a) not having unreasonably refused an offer made to him in pursuance of this paragraph, or
  - (b) having been placed in a suitable alternative position as mentioned in sub-paragraph (7) above, he shall be treated for all purposes as if the offer mentioned in sub-paragraph (1) had not been made.
- (9) Any dispute arising under this paragraph as to whether or not the terms of any employment offered by the Board are, taken as a whole, less favourable than those applying to a person's employment in the civil service of the State shall be referred to and determined by an [F<sup>2</sup>employment tribunal].
- (10) An [F<sup>2</sup>employment tribunal] shall not consider a complaint whereby a dispute mentioned in sub-paragraph (9) is referred to it unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.
- (11) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an [F<sup>2</sup>employment tribunal] under this paragraph; and no appeal shall lie except to the Employment Appeal Tribunal from any decision of an [F<sup>2</sup>employment tribunal] under this paragraph.

#### Textual Amendments

- F1** Words in Sch. 1 Pt. II para. 16(5) substituted (22.8.1996) by 1996 c. 18 ss. 240, 243, Sch. 1 para. 24(b) (with ss. 191, 192, 193, 194, 195, 202)
- F2** Words in Sch. 1 Pt. II para. 16(9)(10)(11) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

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### *Proceedings*

- 17 (1) The Board may regulate their own procedure (including, subject to sub-paragraph (8), quorum).
- (2) In doing so, they may make arrangements for any of their functions, other than the power to acquire or dispose of land, to be discharged by committees.
- (3) Any committee shall be appointed, and may be dissolved, by the Board.
- (4) A committee may include as members persons who are not trustees, but the chairman must be a trustee.
- (5) A committee shall act in accordance with such directions as the Board may make from time to time.
- (6) The arrangements may provide for anything done by a committee to have effect as if done by the Board.
- (7) The quorum for meetings of the Board shall not at any time be less than three.
- (8) 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.

### *Allowances*

- 18 The Board may pay to 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.

### *Instruments*

<sup>F3</sup>19 .....

#### **Textual Amendments**

**F3** Sch. 1 Pt. II para. 19 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(7), 13, 14(3))

### *Accounts*

- 20 (1) The Board shall keep proper accounts and proper records in relation to them.
- (2) The Board shall prepare, in accordance with the best commercial practice, a statement of accounts in respect of each financial year.
- (3) The statement shall comply with any directions given by the Secretary of State with the Treasury's consent as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- (4) The Board shall send the statement to the Secretary of State at such time as he may direct.
- (5) The Secretary of State shall, <sup>F4</sup> . . . send to the [<sup>F5</sup>Auditor General for Scotland for auditing] the statement prepared by the Board under sub-paragraph (2) for the financial year last ended.

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<sup>F6</sup>(6) .....

- (7) In this paragraph “financial year” means the period commencing with vesting day and ending with the 31st March following that day, and each successive period of 12 months.

**Textual Amendments**

- F4** Words in Sch. 1 para. 20(5) repealed (1.4.2000) by 2000 asp 1, s. 26, Sch. 4 para. 5(3)(a); S.S.I. 2000/10, art. 2(3)
- F5** Words in Sch. 1 para. 20(5) substituted (1.4.2000) by 2000 asp 1, s. 26, Sch. 4 para. 5(3)(a); S.S.I. 2000/10, art. 2(3)
- F6** Sch. 1 para. 20(6) repealed (1.4.2000) by 2000 asp 1, s. 26, Sch. 4 para. 5(3)(b); S.S.I. 2000/10, art. 2(3)

*Information*

- 21 (1) The Board shall make to the Secretary of State a report on the exercise of their functions since the last report was made or (in the case of the first) since the Board’s establishment.
- (2) The first report shall be made not later than the expiry of the period of 3 years (or such shorter period as the Secretary of State may direct) commencing with the date of the Board’s establishment.
- (3) Each subsequent report shall be made not later than 3 years (or such shorter period as the Secretary of State may direct) since the last was made.
- (4) The Secretary of State shall lay a copy of each report before each House of Parliament.
- (5) Each report shall include a statement of action taken by the Board to enable disabled members of the public to use any services or facilities provided by the Board.
- (6) The Board shall furnish the Secretary of State with such information relating to their property and the discharge and proposed discharge of their functions as he may require, and for that purpose they shall permit any person authorised by him to inspect and make copies of the accounts or other documents of the Board and shall give such explanation of them as that person or the Secretary of State may require.

**Changes to legislation:**

There are currently no known outstanding effects for the National Heritage (Scotland) Act 1985, Part II.