

KEW GARDEN (LEASES) (NO.3) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Kew Garden (Leases) (No.3) Bill 2019 as brought from the House of Lords on 11 June 2019 (Bill 401).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill provides that the Secretary of State's powers of management in relation to the Royal Botanic Gardens, Kew (Kew) include powers to grant a lease over land at Kew for a term of up to 150 years. It also disapplies the restriction in section 5 of The Crown Lands Act 1702, in relation to a lease of land at Kew. Section 5 of that Act currently prevents the sale of Crown land (such as Kew) and limits the length of leases over it to a term of 31 years.

Policy background

- 2 The Bill removes restrictions on leases on the Kew Gardens estate. Currently the Crown Lands Act 1702, limits such leases to 31 years. This Bill would allow leases of up to 150 years.
- 3 The change will allow Kew to generate revenue to improve the quality of its estate and support its scientific research in line with its plans. Income generation will help enable Kew to achieve its core objectives and retention of UNESCO World Heritage Site status.
- 4 A lease under this Bill may only be granted if the Secretary of State is satisfied that it will not have an adverse impact on the status of the Royal Botanic Gardens, Kew as a World Heritage Site, and satisfied that the granting of a lease will not have an adverse impact on the functions of the Board of Trustees at Kew which are set out in section 24 of the National Heritage Act 1983.
- 5 The aim is to enable Kew to increase its self-generated income. Income would be generated by granting leases of up to 150 years (standard commercial and domestic terms) for the use of parts of the Kew Gardens estate for residential or commercial use. By granting leases of up to 150 years, Kew would transfer the liability and cost of maintaining these non-core assets to the leaseholder.

Legal background

- 6 Section 5 of the Crown Lands Act 1702 prevents the sale of Crown land and limits leases over Crown land to a term of 31 years. Kew is Crown land. It is managed by the Secretary of State and, where directed to do so, Kew's Board of Trustees.
- 7 This Bill provides that the Secretary of State's powers of management includes power to grant leases at Kew for up to 150 years. It disapplies the Section 5 of the Crown Lands Act 1702 (which limits leases to 31 years) in relation to leases of land at Kew.
- 8 The Secretary of State may only grant a lease if satisfied that, the lease would not have an adverse effect on the UNESCO World Heritage Site status (and would remain so), and that the lease would not have any adverse impact upon the functions of the Board of Trustees as set out under the National Heritage Act 1983.

Territorial extent and application

- 9 The Bill extends to England and Wales but applies to England only. There are no minor or consequential effects outside England and a legislative consent motion is not required.

The matters to which the provisions of the Bill relate would be within the legislative competence of the Northern Ireland Assembly if corresponding provisions in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred

matter. They would be within the legislative competence of the Scottish Parliament if corresponding provisions in relation to Scotland were included in an Act of the Scottish

Parliament, and within the legislative competence of the National Assembly for Wales if corresponding provisions in relation to Wales were included in an Act of the National Assembly of Wales.

See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

- 10 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.
- 11 The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Part 1: Power to grant a lease in respect of land at Kew Gardens

Clause 1: Power to grant a lease in respect of land at Kew Gardens

- 12 This clause provides that the Secretary of State's powers of management in relation to Kew includes power to grant a lease over land at Kew for a term of up to 150 years. It also disapplies the restriction in section 5 of the Crown Lands Act 1702 that prevented the grant of a lease of land at Kew for a term of more than 31 years. The changes made by clause 1 allow the Secretary of State to grant leases of land at Kew for terms of up to 150 years.
- 13 Before granting any lease, the Secretary of State would have to consider and be satisfied that the terms of the lease would not have any adverse impact upon the UNESCO World Heritage Status of Kew or the ability of the Board of Trustees to carry out their functions under Section 24 of the National Heritage Act 1983.

Clause 2: Extent, commencement and short title

- 14 This provision is self-explanatory

Commencement

- 15 The provisions of the Bill will come into force two months after Royal Assent.

Financial implications of the Bill

- 16 Incomes from the change will depend on further development of Kew's Estates Strategy and third party partnerships. The majority of this benefit will accrue to Kew via capital receipts and cost avoidance, although there may also be ongoing revenue impacts over the lease period. Income generation and reduced maintenance costs support Kew's targets for increasing self-generated income and becoming more financially self-sufficient.

Parliamentary approval of financial costs or charges imposed

17 Neither a money resolution nor a ways and means resolution is required for the Bill.

Compatibility with the European Convention on Human Rights

18 The Bill is compatible with the European Convention on Human Rights.

Annex A - Territorial extent and application in the United Kingdom

19 The Bill extends to England and Wales but applies to England only. There are no minor or consequential effects outside England and a legislative consent motion is not required.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	Yes	Yes	Yes	No
Clause 2	Yes	No	No	No	Yes	Yes	Yes	No

Subject matter and legislative competence of devolved legislatures

The devolved administrations could make corresponding provision (legislate to do in their territory what is being put forward in this Bill as regards England). The Welsh Assembly has corresponding competence in relation to Wales (the Government of Wales Act 2006 Schedule 7A), Scotland has corresponding competence in relation to Scotland (the Scotland Act 1998 Schedule 5), and Northern Ireland has corresponding competence in relation to Northern Ireland (the Northern Ireland Act 1998 Schedule 3).

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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