

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Chapter 4: Miscellaneous and Supplementary Provisions

Section 31: Statement of company's objects

98. This section provides for a new approach to the question of a company's objects. Under the 1985 Act all companies are required to have objects and these objects are required to be specified in the memorandum. The 1985 Act also makes specific provision for where a company states its objects to be to carry on business as a general commercial company (see section 3A of the 1985 Act).
99. Based on a recommendation of the CLR (Final Report, paragraph 9.10), under the Act a different approach is taken. Instead of companies being required to specify their objects, companies will have unrestricted objects unless the objects are specifically restricted by the articles (see *subsection (1)*). This will mean that unless a company makes a deliberate choice to restrict its objects, the objects will have no bearing on what it can do. Some companies will continue to restrict their objects. Companies that are charities will need to restrict their objects (under charities legislation) and some community interest companies may also choose to do so.
100. *Subsection (2)* provides that where a company changes its articles to add, remove or alter a statement of the company's objects, it must give notice to the registrar. The registrar is to register that notice, and the alteration does not take effect until it has been so registered.
101. *Subsection (3)* ensures that such an amendment to the company's articles will not affect any rights or obligations of the company or render defective any legal proceedings by or against it.
102. For companies which are charities, the effect of this section is subject to section 64 of the Charities Act 1993 in England and Wales and in Northern Ireland subject to the [Charities \(Northern Ireland\) Order 1987 \(SI 1987/2048 \(NI 19\)\)](#) (*subsection (4)*).
103. *Subsection (5)* makes equivalent provision for Scotland. These provisions impose additional requirements in the case of companies which are charities when changing certain aspects of their constitutions, including their objects.
104. The directors of a company are under a duty to observe the company's constitution (see section 171) although restrictions in objects will, as now, have little effect outside of the internal workings of the company because of the effect of sections 39 and 40 (except in the case of charities where modified rules again apply – see section 42).

Section 32: Constitutional documents to be provided to members

105. This section replaces section 19 of the 1985 Act and Schedule 24 to that Act. It gives members the right to obtain from the company copies of the company's articles and certain other documents of constitutional importance (see *subsection (1)*).

106. The provision in the 1985 Act which enables a company to charge its members 5p for a copy of its articles and/or memorandum has been removed. This information must in future be provided to the members (on request) free of charge.
107. Where a company fails to comply with the provisions of this section, every officer of the company who is in default commits an offence. For the penalty for this offence, see *subsection (4)*.

Section 33: Effect of company's constitution

108. *Subsection (1)* of this section replaces section 14(1) of the 1985 Act. Its effect is that the provisions of a company's constitution constitute a special kind of contract, whose terms bind the company and its members from time to time. Like section 14(1), the provisions of this section are excepted from the general principle set out in section 1 of the Contracts (Rights of Third Parties) Act 1999, so that provisions of a company's constitution will not confer any rights on persons other than the company and its members. Unlike section 14(1), section 34 refers to "*a company's constitution*", rather than its "*memorandum and articles*". This reflects the new division of formation and constitutional information between the memorandum, articles and other constitutional documents noted above.
109. The language in *subsection (1)* has been updated but there is no change to the law (the provision continues to reflect what the law has always been: in particular a company's constitution binds both the company and its members).
110. *Subsection (2)* replaces section 14(2) of the 1985 Act. It provides that amounts which a member of a company is obliged to pay to it under its constitution are debts due to the company. In England and Wales and Northern Ireland, such debts are ordinary contract debts.

Section 34: Notice to registrar where company's constitution altered by enactment

111. This section replaces section 18 of the 1985 Act and Schedule 24 to that Act.
112. The provisions of a company's constitution may be altered by legislation, rather than by a resolution or agreement of the company's members. Such legislation will either be of general relevance to all companies (for example, a new Companies Act provision that provisions of a certain type in any company's articles are void), or to all companies of a particular type (for example, new commonhold legislation changing the provisions prescribed for inclusion in the articles of all commonhold associations) or it will be relevant only to a particular company (for example, a private Act of Parliament amending the articles of a specific company established by an earlier Act).
113. In keeping with the principles underlying section 26, it is important that those searching the register of companies should be able to be made aware of the changes to companies' articles which legislation may effect. However, there is a balance to be struck between maintaining transparency on the one hand and inundating the registrar and searchers with mountains of paper which will be of little practical use to persons searching the public register (and whose contents are generally available in any event). The section therefore does not require companies to send copies of most public general Acts which alter their articles (such as Companies Acts or new commonhold legislation) to the registrar. It does however require "special enactments" (as defined in *subsection (4)*) to be sent to the registrar by companies whose articles are altered by the enactment in question.
114. Where an enactment to which this section applies alters a company's articles, or where such an enactment alters a resolution or agreement affecting the company's constitution, the company is obliged to send a copy of the articles, or the resolution or agreement in question, as altered, to the registrar.

115. The procedural rules for sending such legislation to the registrar, and the penalties for non-compliance with them, are as for section 26.

Section 35: Notice to registrar where company's constitution altered by order

116. This is a new provision which provides a mechanism for registering alterations which are made to a company's constitution by an order of the court or other authority (for example, the Charity Commission). It obliges companies to give notice of such alterations to the registrar, and to supply a copy of the articles, or the resolution or agreement in question, as altered to the registrar.

Section 36: Documents to be incorporated in or accompany copies of articles issued by company

117. This section replaces section 380(2), (6) and (7) of the 1985 Act and Schedule 24 to that Act. It provides that every copy of a company's articles which it issues must be accompanied by various documents: in particular resolutions, agreements, enactments or orders which affect or evidence alterations to the company's constitution (see *subsection (1)*) unless the effect of the resolution, agreement, enactment or order has been incorporated into the company's articles or is no longer in force.
118. The intention behind this provision is that information provided on a request for a copy of the company's articles should be up-to-date but the company should not be obliged to provide the same information twice (i.e. in different forms).

Section 37: Right to participate in profits otherwise than as member void

119. This section restates section 15(1) of the 1985 Act. It provides that a company limited by guarantee without a share capital cannot, by means of a provision in its articles or a resolution of its members, confer on any person a right to participate in its divisible profits otherwise than as a member. As under the 1985 Act, there is no statutory restriction on the members of such companies participating in their profits, unless they have sought exemption from the use of the word "limited" in their names.

Section 38: Application to single member companies of enactments and rules of law

120. Under section 7 it will be possible for a single person to form any type of company. This section provides that in future any enactment or rule of law that is applicable to companies formed by two or more persons (or having two or more members) applies (with any necessary modifications) to companies formed with one member (or having only one person as a member). This is already the case in respect of private limited companies: see the [Companies \(Single Member Private Limited Companies\) Regulations 1992 \(SI 1992/1699\)](#).