

*These notes refer to the Companies Act 2006 (c.46)
which received Royal Assent on 8 November 2006*

COMPANIES ACT 2006

EXPLANATORY NOTES

TERRITORIAL EXTENT AND DEVOLUTION

Part 4: a Company's Capacity and Related Matters

Section 39: A company's capacity

122. This section provides that the validity of a company's acts is not to be questioned on the ground of lack of capacity because of anything in a company's constitution. It replaces the present section 35(1) and (4) of the 1985 Act, which made similar provision for restrictions of capacity contained in the memorandum.
123. The section does not contain provision corresponding to section 35(2) and (3) of the 1985 Act. It is considered that the combination of the fact that under the Act a company may have unrestricted objects (and where it has restricted objects the directors' powers are correspondingly restricted), and the fact that a specific duty on directors to abide by the company's constitution is provided for in section 171, makes these provisions unnecessary.
124. *Subsection (2)* indicates that the section, like section 35 of the 1985 Act, is modified in its application to charities.