

COMPANIES ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 17: a Company's Share Capital

Chapter 9: Classes of Shares and Class Rights

Section 636 to 640: Matters to be notified to the registrar

944. These sections replace various provisions in sections 128 and 129 of the 1985 Act which are concerned with notification to the registrar of the creation of, and variations to, rights attached to a class of a company's shares (section 128 of the 1985 Act) or class rights of members (section 129 of that Act).
945. Under the Act, where a limited company creates a new class of shares, it will be required to provide details of the rights attached to the shares in the return of allotment and statement of capital required under section 555. There is a similar requirement in section 556 where an unlimited company allots a new class of share. Those provisions replace section 128(1) and (2) of the 1985 Act.
946. In addition, where a company varies the rights attached to any of its shares (or assigns a name or other designation, or a new name or other designation to any class or description of its shares) it will in future be required to register particulars of the rights affected under section 637 (or 636) irrespective of how the variation in rights was achieved. Currently companies are not required to provide this information if the rights attached to a particular share or class of shares are varied by an amendment to the company's memorandum or articles or by special resolution or agreement of the company's members which is required to be filed under section 380 of the 1985 Act. Sections 638 to 640 make similar changes to the disclosure requirements which apply to companies limited by guarantee not having a share capital and unlimited companies not having a share capital which may, nevertheless, have different classes of members.
947. It should be noted, that, in contrast to other alterations to a company's share capital, there is no requirement in section 637 for a statement of capital (see note on section 619). Such a requirement would be superfluous, as a variation of class rights will not result in a change to the aggregate amount of a company's subscribed capital.