Rights of holders of special classes of shares

89. (1) If in the case of a company, the share capital of which is divided into different classes of shares, the rights attached to any such class of shares are at any time varied pursuant to section 88, one or more members who hold, or together hold, not less than 10 per cent of the issued shares of that class, being members who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled.

(2) Where any such application is made, the variation shall not have effect unless and until it is confirmed by the court.

(3) An application under this section shall be made within 28 days (or such longer period as the court, on application made to it by any member before the expiry of the first mentioned 28 days, may allow) after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On any such application the court, after hearing the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(5) The decision of the court on any such application shall be final but an appeal shall lie to the Supreme Court from the determination of the court on a question of law.

(6) The company shall, within 21 days after the date on which an order is made by the court on any such application, deliver a certified copy of the order to the Registrar.

(7) If a company contravenes subsection (6), the company and any officer of it who is in default shall be guilty of a category 4 offence.

(8) In this section "variation" includes abrogation, and "varied" shall be read accordingly.