

Guidance regarding remote observation of hearings at the Employment Appeal Tribunal

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A. What is 'remote observation'?

1. Since, 28th June 2022, pursuant to [section 85A of the Courts Act 2003](#)¹ and the [Remote Observation and Recording \(Courts and Tribunals\) Regulations 2022](#)² (RORR 2022) the Employment Appeal Tribunal (EAT) has specific power to allow reporters and other members of the public to observe hearings remotely.
2. The EAT can permit individuals who are not taking part in proceedings, to watch or to listen to them through images or sounds of the proceedings being transmitted electronically, either where those proceedings are held in public, or where the EAT has allowed a non-participant to attend a private hearing.
3. The legislation referred to above, and this guidance applies to non-parties who wish to observe a hearing, not to parties. Different considerations apply, and a different procedure is adopted where *parties* (and/or their representatives) wish to participate in a hearing through remote means.

B. How and when should I make an application to observe a hearing remotely?

4. Generally, you should aim to make your application as soon as possible and, in any event, by no later than 4pm on the Friday before the hearing is due to take place. If you are aware of the hearing before the Friday before the listed hearing date you should lodge your application sooner and, preferably at least 5 days before the listed hearing date.

¹ As inserted by section 198 of the Police, Crime, Sentencing and Courts Act 2022.

² SI 2022 No 705.

5. In some instances, you will know that a case which you wish to observe remotely is due to be heard, but may not know the exact date of the hearing. You can still make your application in anticipation of the hearing date being fixed.
6. Making an application in good time allows the EAT time to consider your application, refer your request to the Registrar or a Judge for a decision, and ensure that the technology is in place to facilitate remote observation.
7. The EAT will try to facilitate consideration of all applications, but those outside the timeframes stipulated above will not, generally, be able to be considered unless there are compelling reasons why the application was not made before that date.
8. Please note that applications to attend a hearing will be dealt with in priority of the date upon which they are received, i.e., those received first will be considered first.

C. What information do I need to include in my application?

9. In order to grant an application to observe remotely, three criteria must be met:
 - (i) The EAT must be satisfied that it would be in the **interests of justice** to allow remote observation of the particular hearing; and,
 - (ii) The EAT must be satisfied that **there is the capacity and technological capability to enable transmission**; and
 - (iii) The EAT must be satisfied that giving effect to the direction for **remote observation would not create an unreasonable administrative burden**.
10. In your application you should provide information which will assist the Registrar or Judge in considering whether your application meets these criteria.
11. In addition, when the Registrar or Judge considers your application, they are required to consider a list of other (non-exhaustive) mandatory considerations set out in regulation 4 of the RORR 2022. This means that the Registrar or Judge must consider the matters on the list, but there may also be other relevant considerations in a particular case which the Registrar or Judge will need to consider.
12. You have been asked to provide information to enable the Registrar or Judge to consider your application alongside those considerations and any other relevant matters in a particular case.

The list of considerations in reg. 4 of the RORR 2022

The considerations expressly identified in reg. 4 which the Registrar/Judge must take into account are:

1. The need for open justice.
2. The timing of any access request and its impact on the business of the EAT.
3. The extent to which the resources necessary for effective remote observation are or can be made available.
4. Any statutory limitation on those entitled to observe.
5. Any issues that might flow from observation by people outside the UK. (The EAT may also wish to consider which might arise if the person seeking to observe remotely is in another UK jurisdiction so it is helpful if you identify where you wish to observe from.).
6. Any impact which making or withholding a direction regarding remote observation, or its terms, might have upon:
 - (i) The content and quality of the evidence;
 - (ii) Public understanding;
 - (iii) The ability of the media and public to observe and scrutinise; and
 - (iv) The safety and right to privacy of any person involved with the proceedings.

13. When you provide the EAT with the information requested, remember that you only need to tell the EAT what is relevant in your particular case. You do not have to write anything lengthy. You may wish to focus on:

- (i) Why you wish to observe the hearing remotely;
- (ii) Where you will attend from (i.e., the premises and geographical location). Although the regulations make express reference to issues that might arise if someone wishes to observe from a location outside of the UK, the EAT may also wish to consider any issues which might arise if you are located in another UK jurisdiction. It is helpful if you identify your proposed exact geographical location;
- (iii) How you propose to attend.

D. What happens if many people wish to observe remotely?

14. Remote observation should not be allowed to jeopardise the administration of justice in any case before the EAT, or the EAT's ability to meet the needs of other cases. If a large number of people wish to observe remotely this may cause administrative or technological problems.

15. In some instances, where there is a risk that that may occur, a limit on the number of observers may be imposed.

E. What happens if my application is granted?

16. You will be required to confirm in writing your agreement to the directions made by the Registrar or Judge who allowed your application and your agreement to the EAT Rules and Guidance regarding remote observation of hearings.
17. In advance of the hearing, a member of the EAT administrative staff will provide you with a link and instructions for joining.
18. You will be required to comply with the instructions of the administrative staff when joining, for example, ensuring that your camera is turned off and your microphone is on mute. You will also need to be aware of how to turn your microphone on and off.

F. What can I do if my application is refused, and I disagree?

19. If your application is refused, you can apply to revoke or vary the direction made.
20. You will need to act promptly and in accordance with the time frame set out within the direction. If you do not make your application to vary or renew within the time frame set out in the direction your application to vary or revoke the direction is unlikely to be able to be considered. This is because applications for remote observation must not interfere with the administration of the EAT's work and applications made outside the set time scales are likely to impede the work undertaken by the EAT.
21. You must set out your application to revoke or vary the direction in writing. You will need to explain clearly why you consider the direction was wrong and should be revoked, or why it should be varied.
22. Your application may then be considered by a Judge of the EAT on the papers or, exceptionally, at a hearing which may be one which takes place shortly before the hearing which you wish to observe remotely.

G. What if there are problems with technology?

23. The EAT will make all reasonable efforts to ensure that remote observation is possible when it has been directed. In some cases, however, for reasons beyond either the EAT's or the observer's control, problems with the technology arise unexpectedly which may mean that remote observation cannot be established or maintained.
24. Remote observation should not be allowed to jeopardise the administration of justice in the case before the EAT or the EAT's ability to meet the needs of other cases. If the technological difficulties cannot be resolved relatively rapidly, the Judge hearing the case may direct that the hearing should proceed, even if observers who had been permitted to observe remotely cannot do so.

H. Standard directions for those observing remotely

Where remote observation has been allowed in any hearing before the EAT, directions will be given which will lay down the rules that you must follow. The standard directions that will be given for those observing remotely are set out below.

25. You will be asked to identify yourself to the EAT before the hearing by providing your full name and email address to the EAT at least 3 days before the hearing. You must do so.
26. When you join a link to observe remotely you must mute both your microphone and turn off your camera on the relevant platform when asked to do so. You must ensure that you are able to do this in advance of the hearing and do so at the request of the administrative staff.
27. You must not interrupt proceedings and must follow any instructions from the Judge. At all times, you must conduct yourself appropriately and in accordance with the EAT's directions during the transmission. If the Judge considers that your conduct, actions, or remote observation, at any stage, is likely to impede, or is impeding, the administration of justice your authorisation to observe remotely may be revoked.
- 28. You must not record or transmit the hearing by any means. Breach of this rule is a contempt of court. If you are found guilty of contempt of court your assets may be seized, you may be fined and/or you may be imprisoned for up to a maximum term of 2 years in prison.**
29. Only those individuals who have been authorised by name by a decision of the Registrar or a Judge of the EAT may observe the hearing remotely. Links provided by the court to join a hearing must not under any circumstances be shared with other individuals.
30. Individuals who have been authorised may be asked to demonstrate their authorisation to observe remotely and provide some proof of identity. They must provide that information when asked to do so, either by a Judge or by a member of administrative staff.
31. You must identify, when asked, either by a Judge or by a member of administrative staff, any other individuals who are present at the place from which you are present and who are able to hear or see the proceedings.

32. Those who have not previously been authorised to observe remotely are prohibited from observing remotely.
33. Please try to be in a private quiet area so that the proceedings cannot be overheard by others and that you can hear everything. It is important that you are ready to receive a call or are waiting in the Teams, CVP or VHS (or other relevant platform) lobby to join the hearing.
34. Nothing in this Guidance precludes the ordinary reporting of proceedings, except where a reporting restriction is concerned. You must, however, follow any reporting restrictions that may be in place.
35. Persons of age 14 and under will generally not be allowed to observe EAT proceedings either in person or remotely.