

## Guidance Regarding Remote Observation of Hearings at the Employment Appeal Tribunal

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#### A. **What is 'remote observation'?**

1. The Employment Appeal Tribunal (EAT) has specific powers to allow reporters and other members of the public to observe its hearings remotely. These are conferred by [section 85A Courts Act 2003](#)<sup>1</sup> and the [Remote Observation and Recording \(Courts and Tribunals\) Regulations 2022](#)<sup>2</sup> (RORR 2022).
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 allows a non-participant to observe a private hearing.
3. The legislation, and this guidance, apply 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. Please refer to the EAT's Practice Direction 2023 at section 8.14.

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

4. You should make your application as soon as possible, preferably at least 5 days before the date of the hearing and, in any event, no later than 4pm on the Friday before the hearing. In some instances, you will know that there is going to be a hearing which you wish to observe remotely, but may not yet know the date. You can still apply while waiting for the hearing date to be announced. Making an application in good time allows the EAT time to refer your request to the Registrar or a judge for decision, and to establish if the technology can be put in place to facilitate remote observation.

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<sup>1</sup> As inserted by section 198 Police, Crime, Sentencing and Courts Act 2022.

<sup>2</sup> SI 2022 No 705.

5. Applications should be made in accordance with section 8.15 of the EAT's Practice Direction 2023 and using the application form at Appendix 2 of the Practice Direction. Your completed application form should be emailed to the EAT at [LondonEAT@Justice.gov.uk](mailto:LondonEAT@Justice.gov.uk) (England & Wales) or [edinburgheat@justice.gov.uk](mailto:edinburgheat@justice.gov.uk) (Scotland). You do not need to copy your application to the parties.
6. Applications will be dealt with in the order in which they are received. The EAT will try to facilitate consideration of all applications, but those made outside the timeframes stipulated above will not, generally, be able to be considered unless there are compelling reasons why the application was not made sooner.

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

7. In order to be able to grant an application to observe remotely, the Registrar or judge must be satisfied of the following (regulation 3 of the RORR 2022):
  - (i) That it would be in the interests of justice to allow remote observation of the particular hearing; and
  - (ii) That there is the capacity and technological capability to enable transmission; and
  - (iii) That giving effect to a direction for remote observation would not create an unreasonable burden on the administration.
8. In your application you should provide information which will assist the Registrar or judge in considering whether your application meets these criteria.
9. In addition, when the Registrar or judge considers your application, they are required to take into account a list of other (non-exhaustive) considerations (regulation 4 of the RORR 2022). There may also be further relevant considerations in a particular case which they will take into account. You will be asked to provide information to enable the Registrar or judge to take account of those considerations and any other relevant matters, when deciding whether or not to grant your application.

**The list of considerations in regulation 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 the administration of justice to be, as far as possible, open and transparent.
2. The timing of any remote-access request and its impact on the business of the EAT.

3. The extent to which the resources necessary to enable effective remote observation are or can be made available.
  4. Any statutory limitation on those entitled to be present.
  5. Any issues that might flow from observation being permitted by people outside the UK.
  6. Any impact which making or withholding a direction for remote observation, or its terms, might have upon:
    - (i) The content and quality of the evidence;
    - (ii) Public understanding of the law and the administration of justice;
    - (iii) The ability of the public, including the media, to observe and scrutinise the proceedings; and
    - (iv) The safety and right to privacy of any person involved with the proceedings.
10. When you provide the EAT with the information requested, you only need to set out what is relevant to the application in your particular case. Other background is not required. You may be asked about, or wish to focus on:
- (i) Why you wish to observe the hearing remotely;
  - (ii) Where you will attend from (i.e., the nature of the premises and their geographical location). Although the regulations make express reference to issues that might arise if someone wishes to observe from 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.

**D. What happens if a large number of people wish to observe remotely?**

11. Remote observation should not be allowed to jeopardise the administration of justice in the case concerned or any other case before the EAT. If a large number of people wish to observe remotely this may cause administrative or technological problems.
12. In some instances, where there is a risk that that may occur, a limit on the number of remote observers may be imposed.

**E. What happens if my application is granted?**

13. 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.

14. In advance of the hearing, a member of the EAT administrative staff will provide you with a link and instructions for joining.
15. 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 need to make sure that you know how to do this.

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

16. If your application is refused, you can apply in writing for that decision to be revoked or varied. 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 within that time frame, it is unlikely to be considered. This is because consideration of applications made outside the set time scales is likely to impede the work undertaken by the EAT.
17. Your application will need to explain clearly why you consider the direction was wrong and should be revoked or varied. Your application may then be considered by a judge of the EAT on the papers or, exceptionally, if the judge so decides, at a hearing, which may take place shortly before the hearing which you wish to observe remotely.

**G. What if there are problems with technology?**

18. Where remote observation has been allowed, the EAT will make all reasonable efforts to ensure that it proves possible. In some cases, however, for reasons beyond either the EAT's or the observer's control, problems with the technology may mean that remote observation cannot be established or maintained.
19. 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 presiding at the hearing may direct that the hearing should proceed, even if observers who had been permitted to observe remotely cannot, or cannot any longer, do so.

**H. Standard directions for those observing remotely**

20. Where remote observation of any hearing before the EAT has been allowed, directions will be given which will lay down the rules that you must follow. The standard directions that will usually be given for those observing remotely are as follows.
21. You will be required to identify yourself by providing your full name and email address to the EAT at least 3 days before the hearing.

22. You must mute your microphone and turn off your camera when asked to do so, whether by the administrative staff or the judge presiding at the hearing. You must make sure in advance of the hearing that you know how to do this.
23. 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. If the judge considers that your conduct, or permitting continued remote observation by you, is at any stage impeding, or likely to impede, the administration of justice, your authorisation to observe remotely may be revoked.
- 24. 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.**
25. Only those persons who have been authorised by name by 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.
26. Individuals wishing to join may be asked to demonstrate their authorisation to observe remotely and/or to provide proof of identity. They must provide that information when requested by a judge or member of the administrative staff. You must identify, if asked, either by the judge or the administration, any other individuals who are present with you and who are able to hear or see the proceedings, as only those have been authorised by name are permitted to do so.
27. You should be in an appropriate location, which is private and quiet, and is suitable for the observation of a formal court hearing. You should ensure that the proceedings cannot be overheard by others who have not been authorised to observe remotely. It is your responsibility to ensure that you are waiting in the online lobby, or otherwise contactable, at the right time, so that you can be permitted to join the hearing.
28. You must abide by any reporting restrictions that may be in place, or directed during the course of, or following, the hearing. Nothing in this guidance otherwise precludes the ordinary fair reporting of proceedings.
29. Persons aged 14 or under will generally not be allowed to observe EAT proceedings either in person or remotely.

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