

EXPLANATORY MEMORANDUM TO
THE COMPETITION APPEAL TRIBUNAL (RECORDING AND BROADCASTING)
ORDER 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument sets out the conditions under which visual and sound recording and broadcast of proceedings in the Competition Appeal Tribunal may take place and revokes the Competition Appeal Tribunal (Coronavirus) (Recording and Broadcasting) Order 2020. This Order is being made to support the Competition Appeal Tribunal’s activities as a specialist judicial body established under the Enterprise Act 2002 to continue to conduct and broadcast hearings in public to support the principle of open justice.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Justice James Cartlidge MP has made the following statement regarding Human Rights:

“In my view the provisions of the Competition Appeal Tribunal (Recording and Broadcasting) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 impose statutory prohibitions on the visual and sound recording and broadcast of court proceedings.
- 6.2 Section 32 of the Crime and Courts Act 2013 provides that the Lord Chancellor, with the concurrence of the Lord Chief Justice, may make an order to disapply these statutory prohibitions if prescribed conditions are met and thus enables the broadcasting of court and tribunal proceedings.
- 6.3 To ensure the principle of open justice could be maintained during the Coronavirus pandemic, the Competition Appeal Tribunal (Coronavirus) (Recording and Broadcasting) Order 2020 (the 2020 Order) disapplied these statutory prohibitions and

aligned the Competition Appeal Tribunal, as far as broadcasting of its proceedings is concerned, with the High Court and some other tribunals.

- 6.4 The 2020 Order contained provision for its expiry on 25 March 2022; but the temporary provisions for broadcasting have proved a success in practice, so this instrument is being introduced to enable the Competition Appeal Tribunal to continue to record and broadcast its proceedings after the expiry of the 2020 Order.
- 6.5 This instrument, like the 2020 Order, prescribes the conditions under which visual and sound recording and broadcast of proceedings in the Court of Appeal are permitted.

7. Policy background

What is being done and why?

- 7.1 Unless there is a statutory exception, the publication of video and sound recording from courts in England and Wales is prohibited by certain provisions of the Criminal Justice Act 1925 and the Contempt of Court Act 1981.
- 7.2 In March 2020, the Government advised that large gatherings of people should not take place during coronavirus pandemic. The Competition Appeal Tribunal did not at that time have statutory authorisation to record or broadcast public hearings by video or audio link and no provision was made in the Coronavirus Act for it to do so unlike the High Court and other tribunals.
- 7.3 Utilising the Crime and Courts Act 2013, the Competition Appeal Tribunal (Coronavirus) (Recording and Broadcasting) Order 2020 was introduced to ensure that the Tribunal could continue to hold its hearings in public and to align the Competition Appeal Tribunal, as far as broadcasting of its proceedings is concerned, with the High Court and some other tribunals.
- 7.4 It was envisaged that the 2020 Order would only be required for the duration of the pandemic. However, the broadcasting of Competition Appeal Tribunal proceedings has been very successful, well received, and widely utilised for certain cases. There is therefore a strong case for these provisions to be maintained permanently.
- 7.5 This instrument is being made to enable the Competition Appeal Tribunal to continue to record and broadcast its proceedings in the interests of open justice following the expiry of the 2020 Order.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 No consolidation is taking place.

10. Consultation outcome

- 10.1 This instrument has not been subject to any formal consultation as the 2020 Order (which it will replace) has been in operation for eighteen months, has been very successful and well received.
- 10.2 The 2020 Order is supporting the Tribunal's efficient management of large hearings, enables third parties to view proceedings from afar, and has attracted very large numbers of observers for some cases.

10.3 A decision to withdrawal these provisions would be difficult to reconcile with the objectives of open justice and would be difficult to justify to the Tribunal's stakeholders.

11. Guidance

11.1 This Order does not attract the need for guidance but general information about the Competition Appeal Tribunal can be found on the following website:
<https://www.gov.uk/government/organisations/competition-appeal-tribunal>.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it does not place any new burdens on businesses.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

13.2 This legislation does not impose costs on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is ongoing monitoring by the relevant policy officials and engagement with the CAT and senior judiciary to ensure that broadcasting remains in the best interests of justice.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Christopher Owens, Head of Open Justice Policy at the Ministry of Justice (christopher.owens@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Kate Gregory-Smith, Deputy Director for Courts Tribunals and Transparency Policy at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 James Cartlidge MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.