



D8/BwD

DIRECTION

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO3) REGULATIONS 2020 (No.2020/750)¹, REGULATION 4(1) Individual Premises

1. Blackburn with Darwen Borough Council (the Council) in exercise of the powers conferred by regulation 4(1) of the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020² (“the No. 3 Regulations”), gives the following direction.
2. The Authority considers that the following conditions are met—
 - a. this direction responds to a serious and imminent threat to public health;
 - b. this direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the Authority’s area; and
 - c. the prohibitions, requirements or restrictions imposed by this direction are a proportionate means of achieving that purpose.³
3. Before giving this Direction, the Authority has had regard to—
 - a. any advice given to it by its Director of Public Health; and
 - b. the need to ensure that members of the public have access to essential public services and goods (including whether the individual premises forms part of essential infrastructure).
4. The Authority has taken reasonable steps to give advance notice of this direction to a person carrying on managing a business and the owner of the premises.

¹ SI 2020/750 accessed at <https://www.legislation.gov.uk/uksi/2020/750/contents/made>; guidance on local authority powers at: <https://www.gov.uk/government/publications/local-authority-powers-to-impose-restrictions-under-coronavirus-regulations/local-authority-powers-to-impose-restrictions-health-protection-coronavirus-restrictions-england-no3-regulations-2020>

² In this Direction, any reference to a regulation is a reference to a regulation of the Health Protection (Coronavirus Restriction) (No. 3) (England) 2020 (S.I. 2020/750).

³ See regulation 2(1).

Grounds for Direction

This Direction is given on the basis that:

Blackburn with Darwen is currently one of the Boroughs in the UK with the highest Covid-19 rate, and while significant efforts are being taken by the Council and PHE the infection rate is still high. The local rate is so high that parts of the Borough continue to be classified as Intervention Areas, and subject to additional social distancing measures. The premises to which this direction relates is a popular bar which sits in an intervention area. Evidence indicates that there have been persistent breaches of social distancing at this premises, and while considerable assurances relating to covid-secure compliance have been received from the management, the level of their commitment to these measures has yet to be tested.

Consequences of not meeting the requirements of the Direction

10. If this Direction is not complied with the Authority may issue a Prohibition Notice⁵ against you or may commence criminal proceedings against you.

11. A person commits an offence if, without reasonable excuse, the person:⁶

- contravenes a direction under regulation 4(1); or
- obstructs a person carrying out a function under the No. 3 Regulations, including any local authority designated officer under regulation 12 or a constable.

Such an offence is punishable on summary conviction by an **unlimited fine**.

Appeal/representations

12. If you believe that this Direction should not have been issued, and/or it contains incorrect information, please inform the specified point of contact set out below, setting out your reason(s).

⁵ See regulation 12(2) of the No. 3 Regulations.

⁶ See regulation 13(1) of the No. 3 Regulations.

13. You have a right to appeal against this Direction to a magistrates' court by way of complaint for an order.⁷ The correct Court to appeal to for the Blackburn with Darwen area is the Lancashire Magistrates Court. The Complaint should be lodged at the Preston Magistrates Court office at Lawson Street Preston PR1 2QT or e-mail to lancsmagslisting@hmcts.gsi.gov.uk. The Council's address for the service of a summons is **Public Protection & Environmental Health, Davyfield Depot, Roman Road Industrial Estate, Blackburn BB1 2LX** or publicprotection@blackburn.gov.uk
14. There is a time limit of **up to six months from the date of issue of this Direction to appeal to the Magistrates' Court**. Note that this Direction will be reviewed by the Authority at least every seven days and at every review it will decide whether to revoke this Direction or revoke and replace it with another direction depending upon any changes in circumstances.
15. You also have the right to make representations to the Secretary of State about this Direction.⁸ The Secretary of State must consider any such representations as soon as is reasonably practicable, and decide whether it would be appropriate to exercise the Secretary of State's powers set out in regulation 3 of the No. 3 Regulations. The Secretary of State may direct the Authority to revoke this Direction, or revoke and replace this Direction. The Secretary of State must provide written reasons for the decision to the person who made the representations and to the Authority.
16. In making any representations to the Secretary of State about this Direction, the recipient of the Direction should do this via NHS Test and Trace, with representations emailed to directionnotification@dhsc.gov.uk. This should include:
- a. The name of the Authority;
 - b. The reference listed at the top of this Direction;
 - c. An explanation as to how you have been impacted by the Direction and their relationship to the premises, such as whether you are the owner, occupier or involved in managing entry into, or departure from, the Premises, as set out in Regulation 4(5) of the No.3 Regulations;
 - d. An explanation of the basis upon which the Direction should not have been made and was or is not appropriate, with reference to the conditions set out in Regulation 2(1) / paragraph 2 of this Direction;
 - e. Any evidence which supports this contention; and
 - f. What action you would like to be taken.

⁷ See regulation 4(9)(a) of the No. 3 Regulations.

⁸ See regulation 4(9)(b) of the No. 3 Regulations.

17. You are still required to comply with this direction pending the outcome of any appeal to the magistrates' court or the Secretary of State.

18. You may wish to obtain independent legal advice should you seek to pursue an appeal.

Additional powers and requirements that accompany this Direction

Publication

19. This Direction may be published in such manner as the Authority considers appropriate to bring it to the attention of other persons who may be affected by it.

Notification

20. The Authority is required to notify any local authority whose area is adjacent to the initiating authority's area of this Direction (and any revocation of the Direction) by the No. 3 Regulations⁹. Lancashire County Council, Bury and Bolton Metropolitan Borough Councils have been notified of the service of this Direction.

21. The Authority is required to notify the Secretary of State as soon as reasonably practicable after the Direction is given.

Gary Johnston, Service Lead, Public Protection & Environmental Health

Signature



Date 17th September 2020

⁹ See Regulation 11(1)(a) – (d) of the No. 3 Regulations

The Office for Product Safety and Standards was created in January 2018 by the Department for Business, Energy and Industrial Strategy, to enhance protections for consumers and the environment and drive increased productivity, growth and business confidence. <https://www.gov.uk/government/organisations/office-for-product-safety-and-standards>