



Ref: D9-BwD

## DIRECTION

### THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO3) REGULATIONS 2020 (No.2020/750)<sup>1</sup>, 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 2020<sup>2</sup> (“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.<sup>3</sup>
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.

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<sup>1</sup> 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>

<sup>2</sup> 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).

<sup>3</sup> See regulation 2(1).

## DIRECTION

### Person and premises

5. This Direction is given to \_\_\_\_\_, and \_\_\_\_\_ who are the owners of the business.
6. This Direction is given in respect of **Cube, 32 Darwen Street, Blackburn BB2 2BY** (“the Premises”).

### Directed actions

7. This Direction requires the following:<sup>4</sup>

The premises must close for business.

No person other than \_\_\_\_\_ and \_\_\_\_\_ shall enter the premises unless 12 hours prior notice has been given to [publicprotection@blackburn.gov.uk](mailto:publicprotection@blackburn.gov.uk) (this does not apply in the event of an emergency).

### Timing and duration of direction

8. Any actions required to put into effect the restrictions set out in paragraph 7 must be undertaken by - **20.00 on 11<sup>th</sup> November 2020**. The restrictions set out in paragraph 7 have effect until – **20.00 on 11<sup>th</sup> January 2021**.
9. In accordance with Regulation 2(2)(b) of the No. 3 Regulations, the Authority will review this Direction at least **once every seven days, the first being on 18<sup>th</sup> November 2020**. If the Authority considers that one or more of the conditions in regulation 2(1) are no longer met in relation to the Direction, it will either be revoked without replacement or revoked and replaced with another direction.

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<sup>4</sup> As per regulation 4(2), a direction may only be given for the purposes of (a) closing the premises; (b) restricting entry into the premises; or (c) securing restrictions in relation to the location of persons in the premises.

## **Grounds for Direction**

This Direction is given on the basis that:

10. On the night of 7<sup>th</sup> November 2020 the police received intelligence that a gathering was taking place in Cube. Despite the premise being closed the police gained entry and found 23 persons on site. There was evidence of shisha smoking and eating in an upstairs room too small for effective social isolation to take place.

The escalating rate of covid-19 spread nationally has led to the introduction of the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020. These require cafes to serve food for consumption off the premises only, and to serve food only by click and collect between 10pm and 5am. These are the rules which apply to shisha houses at present.

The main mechanisms for controlling covid-19 are effective social distancing and sanitising, and maintaining covid-secure measures in businesses. Where these precautions are not followed there is a significant risk of spread.

The BAME community is known to be particularly vulnerable to the risks associated with Covid-19, so significant work has gone into advising businesses associated with the BAME community, including shisha houses.

Businesses (particularly hospitality businesses) have a legal and moral duty to protect their customers, and where a business demonstrates that it is not prepared to satisfy these duties, it is necessary for the Council to intervene using its statutory powers.

**See Annex A for additional details.**

## **Consequences of not meeting the requirements of the Direction**

11. If this Direction is not complied with the Authority may issue a Prohibition Notice<sup>5</sup> against you or may commence criminal proceedings against you.
12. A person commits an offence if, without reasonable excuse, the person:<sup>6</sup>
- 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**

13. 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).
14. You have a right to appeal against this Direction to a magistrates' court by way of complaint for an order.<sup>7</sup> 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](mailto: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](mailto:publicprotection@blackburn.gov.uk)
15. 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.

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<sup>5</sup> See regulation 12(2) of the No. 3 Regulations.

<sup>6</sup> See regulation 13(1) of the No. 3 Regulations.

<sup>7</sup> See regulation 4(9)(a) of the No. 3 Regulations.

16. You also have the right to make representations to the Secretary of State about this Direction.<sup>8</sup> 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.
17. 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](mailto: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.
18. **You are still required to comply with this direction pending the outcome of any appeal to the magistrates' court or the Secretary of State.**
19. You may wish to obtain independent legal advice should you seek to pursue an appeal.

## **Additional powers and requirements that accompany this Direction**

### **Publication**

20. 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.

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<sup>8</sup> See regulation 4(9)(b) of the No. 3 Regulations.

## Notification

21. 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 Regulations<sup>9</sup>. Lancashire County Council, Bury and Bolton Metropolitan Borough Councils have been notified of the service of this Direction.
22. The Authority is required to notify the Secretary of State as soon as reasonably practicable after the Direction is given.

**Martin Eden**, Director of Environment & Operations

Signature 

Date 11<sup>th</sup> November 2020

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<sup>9</sup> 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>