

Ref: HPCR/6/LB3

Date: 16th September 2020

DIRECTION (INDIVIDUAL PREMISES)

THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS) (ENGLAND) (NO. 3) REGULATIONS 2020 (No.2020/750)¹, REGULATION 4(1)

HPCR/6/LB3

1. The Council of the City of Sunderland (“the Authority”), 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 Northumbria Police; and

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, Restrictions) (England) (No. 3) Regulations 2020

³ See regulation 2(1).

- 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 from the premises to which the direction relates.

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Person and premises

5. This Direction is given to;
 - (1) Stan Johnson of 20 Vine Place, Sunderland, Tyne and Wear SR1 3NA who is involved in managing entry into, or departure from, the premises or location of persons in the premises to which this Direction relates in that he owns and manages the business; and
 - (2) Anna Jacques of 20 Vine Place, Sunderland, Tyne and Wear SR1 3NA who is involved in managing entry into, or departure from, the premises or location of persons in the premises to which this Direction relates in that she is the Designated Premises Supervisor under The Licensing Act 2003; and
 - (3) John Kerr of 20 Vine Place, Sunderland, Tyne and Wear SR1 3NA who is involved in managing entry into, or departure from, the premises or location of persons in the premises to which this Direction relates in that he is the joint Premises Licence Holder under The Licensing Act 2003; and
 - (4) Paul Rowe of 20 Vine Place, Sunderland, Tyne and Wear SR1 3NA who is involved in managing entry into, or departure from, the premises or location of persons in the premises to which this Direction relates in that he is the joint Premises Licence Holder under The Licensing Act 2003.
6. This Direction is given in respect of the business known as Jungle Bar at 20 Vine Place, Sunderland, Tyne and Wear, SR1 3NA ("the Premises").

Directed actions

7. This Direction requires the following requirements and restrictions in relation to persons in the Premises as follows:

- (a) Customers arriving must be seated in groups of no more than six people and must remain seated within that group, unless when using the toilets, using the smoking area, or when leaving the premises;
- (b) The movement of customers between groups is not allowed;
- (c) Orders for drinks and other refreshments must be by table service only;
- (d) The tables and chairs accommodating each group of no more than six people must be properly spaced at all times to ensure adequate social distancing between groups;
- (e) Tables and chairs that cannot be safely accommodated must be removed;
- (f) Clear signage must be displayed indicating the number of people the smoking area can safely accommodate to allow social distancing between each person;
- (g) There must be adequate supervision of the smoking area to ensure compliance with social distancing;
- (h) Any customer not complying with social distancing requirements must be asked to comply, failing which they must be told to leave the premises or the queue to enter the premises (as appropriate).
- (i) Staff must supervise the provision and collation of customer track and trace data

Timing and duration of direction

- 8. Any actions required to put into effect the requirements and restrictions set out in Paragraph 7 must be undertaken by 18.00 on 17 September 2020 when the restrictions and requirements come into effect. The restrictions and requirements set out in Paragraph 7 have effect until 18:00 on 17th October 2020 on which they will end.
- 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. 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.

Grounds for Direction

10. This Direction is given on the basis that Sunderland City Council is currently one of the Authorities in the UK with the highest Covid-19 infection rate, having been placed on the Government's "watch list" on the 11th September 2020. Significant efforts have been taken by the Authority to inform and assist hospitality businesses to operate in a manner which mitigates against the virus spreading, and whilst the majority of business are operating safely, the premises to which this Direction relates are not. Data from the Authority's Public Health Team indicate an increase in the number of infections in the Sunderland area which significantly exceeds average infection rates seen across the country.
11. As a consequence of continuing concerns, visits to the Premises on the 11th and 12th September have revealed that social distancing advice is not being followed. Customers are being allowed to stand drinking with free movement around the premises. Tables and chairs in the premises for customer use are too close together and is most likely because there are too many. The smoking area in the premises was also found to be very busy with too many people to enable social distancing. The system in place for provision of customer tracking data is unsupervised by staff and was found to be largely unused. Risk assessment of the premises to make them covid secure has been raised with the business operators on several occasions and this Direction is considered necessary as a formal means of seeking compliance.

Consequences of not meeting the requirements of the Direction

12. There may be consequences if this Direction is not complied with. For example, the Authority may issue a Prohibition Notice⁴ or Fixed Penalty Notice⁵ against you or may commence criminal proceedings against you.
13. 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

⁴ See regulation 12(2) of the No. 3 Regulations.

⁵ See regulation 14(1) of the No. 3 Regulations

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

14. 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).
15. 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 Sunderland area is the Sunderland Magistrates' Court. The complaint should be lodged at the Sunderland Magistrates' Court Office at Gillbridge Avenue, Sunderland, Tyne and Wear, SR1 3AP, or by email to NO-Listings@Justice.gov.uk . The Authority's address for the service of a summons is Public Protection and Regulatory Services, Neighbourhoods Directorate, Jack Crawford House, Commercial Road, Sunderland SR2 8QR or public.health@sunderland.gov.uk. There is a time limit of **up to six months from the date of issue of this Direction to appeal to the Magistrates' Court**. However, bear in mind that this Direction will be reviewed by the Authority at least every seven days and it will decide whether to revoke this Direction or revoke and replace it with another Direction.⁸
16. You also have the right to make representations to the Secretary of State about this Direction.⁹ 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. 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 your 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;

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

⁸ If this direction was made pursuant to a direction of the Secretary of State under regulation 3 of the No 3 Regulations, a summons is to be issued to both the Secretary of State and the local authority.

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

- 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 also 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

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 Regulations¹⁰. South Tyneside Council, Gateshead Council and Durham County Council 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.



Fiona Brown
Executive Director Neighbourhoods

¹⁰ See Regulation 11(1)(a) – (d) of the No. 3 Regulations