

## **Sub Committees on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012**

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Meeting Venue:  
**Committee Room 3 – Senedd**

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Meeting date:  
**22 January 2013**

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Meeting time:  
**09:00**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Lara Date**  
Committee Clerk  
029 2082 1821

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### Agenda

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#### **1. Introductions, apologies and substitutions (09.00)**

#### **2. The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012 – Evidence session 1 (09.00 – 10.00) (Pages 1 – 23)**

BBC Cymru Wales

SFP(4)-01-13 – Paper 1

SFP(4)-01-13 – Paper 1a

SFP(4)-01-13 – Paper 1b

- Clare Hudson – Head of BBC Cymru Wales Productions

PACT (Producers Alliance for Cinema and Television)

SFP(4)-01-13 – Paper 2

- Sue Vertue, Hartswood Films and Member of PACT

Teledwyr Annibynnol Cymru (Welsh Independent Producers)

SFP(4)-01-13 – Paper 3

SFP(4)-01-13 – Paper 3a

- Sion Clwyd Roberts, Media and IP Specialist – Capital Law and a Member of the TAC Council

#### **3. The Smoke-free Premises etc. (Wales) (Amendment) Regulations**

**2012 – Evidence Session 2 (10.00 – 11.00)** (Pages 24 – 35)

ASH Wales

SFP(4)-01-13 – Paper 4

- Felicity Waters, Press and Campaigns Manager

British Heart Foundation

SFP(4)-01-13 – Paper 5

- Delyth Lloyd, Public Affairs and Comms Manager

Cancer Research UK

SFP(4)-01-13 – Paper 6

- Dr Jean King, Director of Tobacco Control

## STATEMENT FROM BBC CYMRU WALES ON THE SMOKE-FREE PREMISES ETC. (WALES) (AMENDMENT)

The BBC operates a strict policy on smoking which holds programme-makers responsible for any portrayal of smoking. It is never justifiable to promote cigarettes and any portrayal of smoking should always have strong editorial grounds.

The BBC's practice is that during production in locations across the border in England, where there is an exemption for the filming of drama, the use of cigarettes on set is always risk assessed and carefully controlled, as is any other identified hazard. Any incident of smoking is discussed with cast well in advance to ensure that nobody is ever placed in an unfair position.

The current legislation in Wales makes it impossible to film a lit cigarette as part of a scene. This is problematic for period dramas, which often feature cigarettes as a fact of period life. It is especially difficult to truthfully capture big, emotional moments in close-up shots, where fake cigarettes and CGI don't create an honest effect.

Examples where the legislation has impacted on our decision to film across the border in Bristol include *Upstairs Downstairs* scenes at a 1930s boxing ring and a large party set in the Royal Albert Hall (though filmed in a different location). To film these large-scale scenes without showing anyone smoking cigarettes, which was such a prevalent social activity during that era, would have jeopardised the authenticity of the production.

When portraying smoking in BBC drama we never seek to glamorise it – and often we actively seek to do the reverse. In *Sherlock*, filmed mostly in Wales by Hartswood Films for the BBC, the main character has to be a smoker to remain true to Conan Doyle's iconic creation, but the narrative has included his own disapproval of the habit, and his attempts to give it up.

In *Casualty*, there were plans to use smoking as a cautionary moral tale with a smoker in a hotel room causing a blaze, which formed the central plot line of an episode. However, the existing legislation made filming the scenes too difficult to contemplate within the production budget and schedule, and a strong storyline which would have highlighted one of the hazards of smoking, had to be changed to something else.

Other productions with strong links to BBC Wales could not have been filmed in Wales under current legislation - *A Room At the Top* and *Parade's End* were both period dramas where, to be true to the era, considerable amounts of smoking had to be featured.

Before Christmas BBC Cymru Wales announced the commission of a new drama for BBC ONE. Written and created by Toby Whitehouse (*Being Human*), *The Game*, is a six part Cold War spy thriller set in the world of 1970s espionage. Filming location details are still under discussion, and due to its period and subject matter it is likely to include fictional smoking. In this case the decision on filming location is finely balanced and the existing smoking legislation in Wales may have an impact on the final decision.

We have given careful thought to how we would respond to an exemption to the smoking ban being introduced for drama and film production sets in Wales. We would like to outline the key measures we would take to ensure that smoking on set was kept to a minimum after the introduction of such an exemption.

- In the planning of any drama filming, we will commit to always look first at alternatives to actual smoking, such as the use of fake cigarettes or Computer Generated Images. In some productions, the need for total authenticity is reduced, and in these cases we can use these options.
- We will introduce a new process within BBC Cymru Wales whereby the filming of any scene involving real smoking would have to be authorised in advance by the Head of Productions, who is a member of the BBC Cymru Wales Board of Management. This authorisation would only be granted if it was felt there was strong justification for using real cigarettes.
- We would apply the above measures to any independent productions for which BBC Cymru Wales is responsible.

We want to make it clear that, in the event of the exemption being passed, we would not seek to introduce more portrayal of smoking in our dramas. The only result of such an exemption would be that scenes which involve real smoking could be filmed in Wales, rather than England.

We believe that the introduction of an exemption to the ban would help to ensure that even more of the economic benefit of Wales-based drama will flow into the Welsh economy. We are concerned that the existing ban could inadvertently dissuade BBC drama producers from making certain types of programmes in Wales. Often decisions about where to film a drama for TV are very finely balanced, and there is a risk that the ban might tip the balance in the wrong direction.

**Annex D**

## **Consultation response form**

**Your name:** Clare Hudson

**Organisation (if applicable):** Head of Productions, BBC Cymru Wales

**e-mail/telephone number:** clare.hudson@bbc.co.uk

**Your address:** BBC Cymru Wales, Ffordd Llantrisant Road, Cardiff, CF5 2YQ

**Responses should be returned by 16 March 2012 to:**

**Life Course Branch  
Welsh Government  
4<sup>th</sup> Floor  
Cathays Park 2  
Cardiff  
CF10 3NQ**

**or completed electronically and sent to:**

**e-mail: [TobaccoPolicyBranch@Wales.gsi.gov.uk](mailto:TobaccoPolicyBranch@Wales.gsi.gov.uk)**

**Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:**

## Questions

► **Question 1: Should the Smoke-Free Premises etc. (Wales) Regulations 2007 be amended to permit smoking by performers where the artistic integrity of the performance makes it appropriate for the performer to smoke? Yes / No**

**Are the proposed Regulations adequate enough to avoid misuse of the exemption?**

Yes.

Any filming of smoking would be done under the exemption conditions with adequate protection for production crew and cast. Only herbal cigarettes would ever be used on set and only for the final take.

► **Question 2: Are the conditions required by this exemption sufficient to minimise the risk of exposing others to second-hand smoke?**

Yes.

Any filming of smoking would be done under the exemption conditions with adequate protection for production crew and cast. Only herbal cigarettes would ever be used in set and only for the final take. An actor would not be forced to smoke.

► **Question 3: Are the provisions to protect children from exposure to second-hand smoke within the proposed Regulations sufficient?**

Yes. As per the proposed exemption, there would be no children present in the part of the premises where smoking was being filmed.

► **Question 4: Will the provisions in the proposed Regulations be able to be enforced effectively?**

Yes.

► **Question 5: The Welsh Government will provide Guidance to support the implementation of the proposed exemption: will this support be sufficient to assist with the interpretation of the conditions of the exemption (for example, the requirement for 'artistic integrity')?**

Yes.

BBC Cymru Wales is fully aware of the dangers and issues around glamorising smoking.

BBC Cymru Wales is dedicated to producing first class television drama and for many viewers the experience of watching something that feels authentic -- truthful -- is key to their enjoyment. For a period drama, part of creating this authenticity will involve showing people smoking -- it is an unavoidable fact of our past that it was rare *not* to smoke. To dramatise Britain's past on screen and to show a Britain where no one smoked is simply inauthentic and will be to the detriment of the final production and the audience's enjoyment.

In order to dramatise the past in period pieces, broadcasters and programme makers need to be able to show characters occasionally smoking. To exclude it as a detail altogether would be both incorrect and would mean we'd be denying character detail and atmosphere. However, this would only take place under particular circumstances and on rare occasions. Given the choice, we would always opt to show a character not smoking, unless it became a flagrant contradiction of a deeper social or historical truth, and would not seek to portray gratuitous smoking in our drama productions.

In contemporary dramas we should not be seen to promote something as undesirable as smoking. It would be extremely questionable to show a hero from a television series like *Doctor Who* or *Sherlock* smoking -- in fact in *Sherlock* drama is made from the lead character trying to kick the habit.

Where smoking does take place in productions, the BBC has an established editorial policy, namely:

5.4.41 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:

- must not be featured in content made primarily for children unless there is strong editorial justification
- must generally be avoided and must not be condoned, encouraged or glamorised in any programmes broadcast pre-watershed or on radio when children are particularly likely to be in our audience, or in online content likely to appeal to a significant proportion of children, unless there is editorial justification
- must not be condoned, encouraged or glamorised in other content likely

to be widely seen, heard or used by children and young people, unless there is editorial justification.

5.4.42 We should also:

- ensure that contributors to programmes such as studio debates or chat shows do not smoke
- deal with all aspects of illegal drug use, solvent and drug abuse, smoking and misuse of alcohol with due accuracy. Where necessary to achieve due accuracy, this should include, for example, the health implications and anti-social aspects of illegal drug use and binge drinking
- ensure the legal and social context of our coverage is clear
- avoid revealing explicit detail of how to use illegal drugs or abuse solvents, unless clearly editorially justified.

The BBC's Editorial Guidelines can be found here:

<http://www.bbc.co.uk/guidelines/editorialguidelines/>

The BBC is also obliged to observe the provisions of the Ofcom Broadcasting Code, namely:

Section 1.10

Drugs, smoking, solvents and alcohol

1.10 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;
- must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification;
- must not be condoned, encouraged or glamorised in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification.

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/protecting-under-18s/>



**► Question 6: Does the draft Regulatory Impact Assessment accurately reflect the costs and benefits of the proposed Regulations? If not, please provide additional information to support your answer.**

Yes.

In addition to the editorial reasons mentioned above and below, there is a strong business case for the proposed exemption to allow a more flexible approach to the portrayal of smoking on screen.

The Welsh Government and associated agencies and organisations have worked hard to attract productions and independent producers to the Nation. With the growth of drama in Wales – both through BBC Wales which is now a centre of excellence for drama, and the independent sector – more productions are being made here than ever before. With our new Roath Lock studios, we hope this will continue to grow.

However, the legislation as it stands makes filming any period piece in Wales a less straightforward, and therefore, a less attractive proposal. Already, productions from Wales have had to travel across the border to England where the existing exemption there allows for more flexible filming conditions. This adds not only cost and time to productions – with location filming an additional cost to filming - but also puts Wales at a distinct competitive disadvantage.

The fear is that productions will choose to film entire productions in England, rather than face the added difficulty of filming in Wales. When so much work has been done to attract independent producers to the Nation it is unfortunate they are being forced to look elsewhere.

The electronic cigarettes currently available are not a viable alternative: they are difficult to set up and don't show up well on screen. CGI is time-consuming and expensive. Neither of these alternatives is currently a sustainable nor a cost effective way of working.

**► Question 7: Do you think there would be any negative impact on individuals or communities within Wales on the grounds of: disability; race; gender or gender reassignment; age; religion and belief and non-belief; sexual orientation; pregnancy and maternity; marriage and civil partnerships; or Human Rights as a result of the proposed Regulations?**

No.

**We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

**Please enter here:**

As previously mentioned, BBC Cymru Wales fully understands and supports the need for responsibility when it comes to the portrayal of smoking on screen. Smoking is an issue which needs to be treated with absolute seriousness.

However, the main issue at stake in this consultation is the method of production. Ultimately, whether the proposed exemption comes into force or not, smoking will still be portrayed to the audience, when there is a strong historical or other mitigating context to justify its inclusion. Without an exemption, the industry in Wales will be forced to use costly alternative methods of producing those scenes – including location filming outside Wales or CGI.

The question therefore is how to film and produce such content in a way that does not undermine the cost-effectiveness of licence fee funded drama production in Wales, whilst at the same time giving due attention to very real health concerns. As a major producer of drama, which by no means seeks to glamorise smoking, BBC Cymru Wales agrees that these proposed exemptions would enable and regulate this accordingly.

Submission to the Enterprise and  
Business Sub-Committee and the Health  
and Social Care Sub-Committee on the  
Smoke-free Premises etc. (Wales)  
(Amendment) Regulations 2012

**pact.**

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January 2013

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## Executive summary

Pact strongly welcomes the draft amendment to create an exemption in the Smoke-free Premises etc. (Wales) legislation for performers where the performance is in connection with the making of a film or television programme.

There is a significant commercial need for a change to this legislation as it currently puts Wales at a disadvantage to England as a location for film and television production, given that scenes which involve smoking scenes need to be shot outside of Wales at additional expense.

The restrictions mean that in order to film a scene in which a character smokes a production company must choose to either film certain scenes outside of Wales, or use Computer Generated Imagery (CGI) to add-in the cigarette in post-production. Both of these options involve a significant amount of additional cost to the production budget. This legislation therefore acts as a barrier to inward investment in Wales, from international productions as well as those from around the UK.

We welcome the draft amendment which enables performers to smoke in scenes of television and film production if this contributes to the artistic integrity of their performance.

In addition, we support the factors which have been outlined in the draft legislation in order to protect children and members of the public from the harmful effects of smoking.

## Introduction

- 1) Pact is the trade association which represents the commercial interests of the independent production sector. The sector produces and distributes approximately half of all new UK television programmes<sup>1</sup> as well as content in digital media and feature film.
- 2) The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown from £1.3 billion in 2005 to nearly £2.4 billion in 2011.<sup>2</sup>
- 3) Wales has a strong television production sector centred primarily in world-class studio facilities in Cardiff. Many successful TV productions have been made in Wales such as Sherlock, made by Hartswood Films, Stella by Tidy Productions and Doctor Who by the BBC.
- 4) The lack of an exemption to the Smoke-free Act in Wales for the purpose of film and television production adds significant expense to a production budget as it requires producers to film scenes containing smoking in a different location. Often this means that money which would otherwise have been spent in Wales, both direct production costs and associated additional costs such as accommodation and catering services, electricians and technicians required on site, is spent elsewhere – most commonly in England where there is already an exemption for smoking in performances.
- 5) We welcome the opportunity to comment on the Welsh Assembly Enterprise and Business Sub-Committee and Health and Social Care Sub-Committee inquiry on the Smoke-free Premises etc (Wales) (Amendment) Regulations 2012.
- 6) For further information, please contact Pact's Head of Policy, Emily Davidson, at [emily@pact.co.uk](mailto:emily@pact.co.uk) or on 020 7380 8232.

<sup>1</sup> Ofcom, Communications Market Report 2010: independents produced more than 50% of qualifying network programming by hours and 46% by value

<sup>2</sup> Pact Census Independent Production Sector Financial Census and Survey 2012, by Oliver & Ohlbaum Associates Limited, August 2012

***Is there a commercial need for this amendment to exempt performers from smoke-free requirements?***

*The smoking legislation creates additional expenses for TV and film production in Wales*

- 1.1 Pact considers that there is a strong commercial need for this amendment as the existing smoking legislation acts as an economic barrier against television and film production in Wales.
- 1.2 In England, an exemption for filming in TV and film production was included in the original smoke-free legislation which is designed to protect workers from the harmful effects of secondary smoke inhalation.<sup>3</sup> The Public Health Act 2006 includes an exemption to the smoking ban for performers in public performances if the artistic integrity of the performance makes it appropriate for them to smoke. In our opinion, this is an appropriate and necessary exemption for artistic purposes which does not undermine the overall aim of the legislation.
- 1.3 Whilst Pact and our producer members understand and support the public health principles behind the smoking ban which limit the exposure of cast, crew and members of the public to tobacco fumes, we strongly support amending the legislation to allow for smoking in controlled circumstances in instances which are editorially justified.
- 1.4 Whilst alternatives such as computer generated imagery (CGI) can be used to incorporate a character smoking into the scene in post-production, this is an expensive and imperfect substitute for filming the scene with a live cigarette.
- 1.5 We agree with the Government's Regulatory Impact Assessment which states that the smoking ban has been a major issue for a number of productions that have been filmed in Wales, especially period dramas set in a time when smoking was commonplace.
- 1.6 It is difficult to produce a feature film or television programme featuring a historical character which was known to smoke, such as Winston Churchill without containing smoking scenes. This is an integral part of the character and it would therefore be editorially justified to portray this aspect of the figure on screen.

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<sup>3</sup> Section 3 (5) of the Public Health Act 2006

- 1.7 Under the existing legislation, award-winning films such as *The King's Speech* or *The Boat that Rocked* could not have been filmed entirely in Wales.
- 1.8 If a production which is being made in Wales includes a smoking scene, the production company has to incur considerable expense in order to film the relevant scenes elsewhere. These additional expenses will be a factor in the budget when a company is deciding on a location for filming. This includes not just direct expenditure on production such as sets and props, which can be very expensive, but also the money spent on hotels and catering to support the cast and crew as well as services such as electricians and technical support required on site.
- 1.9 In certain instances, computer generated images (CGI) can be used to portray a character smoking rather than filming the scene using a live prop. However, this is not always an appropriate solution in circumstances in which a principle character is to be depicted as smoking as it can affect the visual look of the scene.
- 1.10 Furthermore, this process is an expensive alternative to live filming. The cost of filming a 10 second close-up CGI shot of someone smoking can cost approximately £30,000.

*The legislation puts Wales at a disadvantage to England when looking to attract inward investment in TV and film production*

- 1.11 Pact strongly welcomes the UK Government's proposals to introduce tax relief for high-end television, animation and video games. The aims of this relief are to promote the production of cultural products and to encourage investment in the UK in a way which is fiscally sustainable.
- 1.12 However, the smoking legislation in Wales could create a barrier to big-budget international drama productions wishing to invest if the content which they are making includes smoking scenes. For example, award-winning international drama series such as *Mad Men* or *The Killing* could not be filmed entirely in Wales.
- 1.13 There is therefore a strong commercial need for the legislation to be amended to reduce costs for existing productions in Wales and to ensure that this is not a barrier to attracting inward investment in this sector.

***Will this amendment achieve its aim of supporting the television and film industry in Wales?***

- 1.14 Wales is an attractive part of the UK for television and film production. It benefits from technologically advanced studio facilities and a talent base of production staff with experience working on large-scale drama productions such as Doctor Who and Sherlock. In addition, funding is available for filming in Wales through the Film Agency for Wales scheme.
- 1.15 It is extremely important that there continues to be a thriving independent production sector outside of London, including in each of the nations and regions of the UK to ensure that there is a diversity of supply in television production.
- 1.16 At present, the Welsh, Scottish and Northern Irish production sectors are at a disadvantage to England as smoking is not permitted in any scene filmed in these nations.
- 1.17 Removing this barrier would put Wales on par with English production facilities where this is permitted in cases where it is editorially justified, thus supporting growth in the Welsh TV and film production industry.

***Is there sufficient clarity about the circumstances in which the exemption applies?***

- 1.18 In England, smoking is allowed for performance purposes provided that it forms part of the artistic integrity of the performance. This includes an exemption for smoking in a play, as well as in television and film production.
- 1.19 The draft legislation is more narrowly defined than the legislation in England as it only applies to film and television production in cases where no child is present in the part of the premises which is not smoke free and in which that person is performing and that there are no members of the public viewing the performance. Whereas the English law allows for smoking to be included in rehearsals, this is not the case in the draft legislation for Wales.
- 1.20 Pact considers this legislation to be sufficiently clear. It allows smoking to take place for the purposes of filming a scene in which it is required for the artistic integrity of the performance, but it includes measures to protect members of the public and children from the adverse effects of smoke inhalation.



***Do the conditions offer adequate protection to other performers, production staff and members of the public?***

- 1.21 Members of the public would not be affected by this change as filming smoking scenes is prohibited if members of public are present.
- 1.22 Child performers are also prohibited from witnessing a smoking scene and therefore are explicitly protected in the draft legislation.
- 1.23 We do not consider that it is necessary to outline specific protections in legislation for other adult performers or members of the production staff. Rather, this will be done on a case by case basis depending on the requirements of the production at that time.
- 1.24 Production companies take the welfare of the people they employ extremely seriously.
- 1.25 However, the requirements for different members of staff to be on set during a smoking scene will differ depending on factors such as where the scene is being filmed or how many actors are involved in it. It is therefore not possible to enshrine in legislation how other performers or production staff could be protected from the adverse effects of smoking during filming of a scene in which a character smokes. Pact considers that the necessary protections should be assessed by the relevant production company depending on the circumstances of the case.

***Might there be any unintended consequences of introducing this exemption?***

- 1.26 This exemption has been drafted in such a way as to only enable smoking on film and television sets in very limited circumstances ensuring that adequate protections are in place for children and members of the public. We therefore do not foresee that there will be any unintended consequences as a result of introducing this exemption.

***What health policy considerations are relevant to this amendment?***

- 1.27 We agree with the Regulatory Impact Assessment that the likely increase in the number of deaths or illness caused by exposure to second-hand smoke (SHS) as a result of introducing the exemption will be marginal.

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- 1.28 The draft legislation provides for an exemption to the ban on smoking in public places in a limited set of circumstances for a specific purpose.
- 1.29 Also, the legislation has been drafted in such a way as to ensure that the potential harm from smoking on set will be reduced to affect only a limited number of adult actors and crew for a limited period of time.
- 1.30 Pact understands the public health implications of the smoke-free legislation. We believe that this amendment proposes a limited exemption to the ban for editorial purposes which is a proportionate means of addressing the economic losses currently suffered by production in Wales as a result of legislation which is more restrictive than that in England.
- 1.31 The economic need for change is set to increase further over the coming years as international productions increasingly consider the UK as a base for production, supported by the new high-end television tax credits. The inability to film smoking scenes in Wales will undoubtedly be taken into consideration by foreign investors when they are considering where to base production in the UK. If additional costs are required to film in Wales in order to include smoking scenes, this could tip the balance of where to base the production in favour of English locations where additional expenses would not need to be incurred.

**TAC response to the particular questions outlined in the Enterprise and Business Sub-Committee and the Health and Social Care Sub-Committee on Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012 consultation letter dated 6 December 2012.**

**• Is there a commercial need for this amendment to exempt performers from smoke-free requirements?**

Yes, without question. On two fronts –

- (i) The threat to potential inward investment in the creative industries; both in the film and television industries - where producers will be restricted by non-editorial policies and may be reluctant to bring their production to Wales if this amendment is not implemented. This also applies to the potential opportunities arising from co-productions that could be shot here in Wales.
- (ii) The present regulations requires producers to travel across the border to England to film scenes featuring smoking, which is an additional cost that Welsh producers have to bear. This can ultimately lead to unnecessary editorial compromises that are not based on the artistic integrity of the product.

**• Will this amendment achieve its aim of supporting the television and film industry in Wales?**

Yes, without doubt, it will. There is sufficient regulation to protect the viewer in current communications legislation.

TAC's television producers, when producing programmes for S4C, or commercial broadcasters are governed by the Ofcom Broadcasting Code. Of particular relevance to this matter are two particular sections namely:

**Section One – Protecting the Under-Eighteens**

**Rule 1.10 – Drugs, smoking, solvents and alcohol**

**The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:**

- **Must not be featured in programmes made primarily for children unless there is strong editorial justification;**
- **Must generally be avoided and in any case must not be condoned, encouraged or glamorized in other programmes broadcast before the watershed (in the case of television), unless there is editorial justification;**
- **Must not be condoned, encouraged or glamorized in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification.**

**Rule 1.13 – Violence and dangerous behaviour**

**Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:**

- **Must not be featured in programmes made primarily for children unless there is strong editorial justification;**
- **Must not be broadcast before the watershed unless there is editorial justification.**

## **Section Two – Harm and Offence**

### **Rule 3.4 Violence, dangerous behaviour and suicide**

**Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorizes, dangerous, or seriously antisocial behavior and is likely to encourage others to copy such behaviour.**

In the context of Section 2 of the Code it is widely accepted that smoking is deemed to be a dangerous behaviour and, therefore, is actively governed by these provisions. Producers may not glamorize smoking in any way – indeed it is widely portrayed as an antisocial activity, often associated with characters suffering anxiety or personal stressful circumstances.

TAC member Fiction Factory is currently producing a detective drama series located in Aberystwyth, which features a sinister character who, in the plot, is evidently a smoker. Frustratingly they are unable to portray the character actually smoking. There have been other similar examples in recent years where producers have had to either compromise editorially or incur additional production expense by filming relevant scenes in England.

Contemporary drama contains very few instances of smoking – soaps such as *Pobl y Cwm* and *Rownd a Rownd* have very few characters who smoke – this is consistent with soap characters in *Eastenders*, *Coronation Street* etc. – a character would only be seen to smoke if it said something about his or her character – and never in a manner which condones or glamorizes such behaviour.

In period drama, however, the credibility of the production rests on the accurate portrayal of social mores, as well as authentic costumes, props and locations. Any production set before the 1990s will reflect a time when smoking in communities generally was prevalent and acceptable. Recent dramas such as *'Life on Mars'*, *'The Hour'* and *'Upstairs Downstairs'* have incorporated scenes featuring the principal characters smoking; TAC members would wish to film similar period dramas in Wales. *Green Bay* produced an award-winning film portraying the life of Richard Burton and his brother when they met in Richard Burton's residence in Switzerland. Both characters smoked consistently throughout the film. It was essential to reflect this reality. This film could not have been filmed in Wales.

It would be a shame not to be able to accurately portray Dylan Thomas sitting in his famous Boat House in Laugharne writing and smoking.

TAC members need also to be able to portray the harsh contemporary life in some of our disadvantaged communities where smoking is common. This was the case in the BBC Wales series *'Care'*. Producers would be editorially compromised if they were unable to reflect life in the homes of these individuals. These are important pieces which often reflect the damaging impact of smoking on our health.

## Paper 3

TAC's position is that the present situation imposes unwarranted editorial restrictions on writers and producers leading to editorial compromise or being forced to circumvent the restriction by moving a production out of Wales.

TAC members aim to produce quality drama to entertain, inform and educate the audience. As an industry we have embraced diversity and have made a significant contribution to the public perception of inclusivity. This proposed Amendment will similarly enable producers to play a part in promoting the negative perception of smoking in contemporary drama as well as creating authenticity in period drama. We believe this can be achieved with minimal risk to the health of those working in the industry from passive smoking when managed properly by strict adherence to health and safety regulations and the preparation of meaningful risk assessments (see below).

### **□ Is there sufficient clarity about the circumstances in which the exemption applies?**

TAC believes the current exemption does provide sufficient clarity about the circumstances in which the exemption applies.

### **□ Do the conditions offer adequate protection to other performers, production staff and members of the public?**

The conditions place strict limitations on when it is possible to allow smoking in the workplace – the artistic context must determine that it is editorially justified to incorporate scenes within productions. Given that the law determines that it is unlawful to smoke in the workplace, the instances of scenes where characters are actually smoking in contemporary dramas are in themselves infrequent – pubs, clubs, school staff rooms, police stations etc. are no longer smoking environments and therefore are not portrayed in contemporary drama as smoking environments. The conditions restrict producers when children are involved. The skills of the director can allow the portrayal of a scene that includes children where people are smoking, by ensuring that no children are present on set when the adult characters are actually filmed smoking.

### **□ Might there be any unintended consequences of introducing this exemption?**

Other than making a clear statement that Wales is open for business as an exceptional option for filming, and showing trust in its producers to act responsibly, in keeping with the situation in the rest of the UK, we do not see any unintended consequences of introducing this exemption. The creative industries will see it as an important gesture of support and trust by the Welsh Government and an endorsement of their value to the Welsh economy while fulfilling artistic and social purpose.

Artistically, it will enable producers to highlight again the negative perception of smoking within society and help contribute towards the Welsh Government's aim of reducing the damaging health effects of smoking.

### **□ What health policy considerations are relevant to this amendment?**

TAC member companies have an excellent record of adherence to Health and Safety guidelines. We would welcome discussions with interested parties as to the formation of industry guidelines which could apply in the event that productions require smoking in certain scenes. As

## Paper 3

outlined above, the industry regulatory provisions determine that smoking cannot be portrayed in a positive or glamorous light – it is invariably used to provide editorial credibility to period pieces or, in a contemporary situation, to portray the negative context, such as a flaw in a person's character or a statement of society's status.



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## **Smoking exemption for Film & TV.**

TAC is mindful that this is a very emotive and complex subject, and do not seek to overturn the Smoking Ban in Wales. We do however seek for a change in the law, a change that would allow an exemption for TV and Film Productions, in certain circumstances.

The law as it stands does not allow for an exemption, as it does in England. TAC feels that this has a serious economic impact on the creative Industries within Wales. These are Industries that the Welsh Government is actively supporting in various ways, and I would entreat you to continue in your invaluable support by supporting this exemption.

There are examples where revenue has been lost to Wales because of this ban on smoking. "Upstairs, Downstairs" will suffice as a clear example of this issue. The BBC, with much fanfare, has moved Productions from London to Cardiff, and has brought much needed income into the Capital. It seems at odds then, that this Production has to "up sticks", and move to Bristol to film scenes that involve smoking. Period drama will inevitably require such scenes. Should we sit back and let all TV and Film be made in England? This is not in line with Welsh Government's undoubted support for the Creative Industries.

In the case of "Ryan a Ronnie", a TV drama largely based in the 'smoky' atmosphere of a Welsh workingman's club in the 1970's (The Double Diamond, Caerffili), the Producers tried various means to adhere to the law on the prohibition of smoking on premises. They tried electronic cigarettes, which looked unrealistic, and even tasked the design team with creating fake cigarettes with cigarette paper and cotton wool, which was quickly ruled out for obvious health and safety

reasons. There is no doubt that the Producers had, while attempting to authentically portray the atmosphere of the period, great difficulties dealing with the challenging task of compromising editorially in the face of being unable to film interior scenes involving smoking. The inability to set the scene as realistically as desired contributed in part to a decision to locate certain scenes outside Wales (Liverpool) resulting in additional production costs.

It was often mentioned in the Press that the Dragon Studios in Pencoed were going to be the Welsh equivalent of Hollywood, with some getting so excited they called it "Valleywood". To date this hasn't really happened, why? Do Production Companies from England and beyond really want to come to Wales to film a period Drama, only to have to relocate the whole Production, if there is a scene that involves smoking? I think not.

TAC is committed to seeing the Creative Industries in Wales grow and prosper, not an easy task in these days of dwindling budgets. This task is being hampered by a law that is inflexible. This discussion will not come up in legislation for many years, if this exemption does not get the support from AM's, there can surely be only one outcome. The TV & Film Industry within Wales will be at a disadvantage economically and creatively by being out of step with England, which I'm sure you'll agree is something all AM's should be concerned about.

Iestyn Garlick (Chair TAC)





December 17<sup>th</sup> 2012

**Evidence from Action on Smoking and Health in Wales regarding the proposed amendment to the Smoke-Free Premises etc. (Wales) Regulations 2007**

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ASH Wales is the only public health charity whose work is dedicated to tackling the harm that tobacco causes to Welsh communities.

We are grateful for the opportunity to present evidence to the sub-committees of the Assembly's Health and Social Care Committee and the Enterprise and Business Committee on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012.

**We are strongly opposed to an exemption for the film and television industry to Wales's smoke-free legislation. We believe the exemption is wholly unnecessary and that it will open the door to challenges from other industries on 'commercial' grounds. Further, this amendment will expose a sector of the workforce to the harm of second hand smoke and create a precedent that could make other workers in Wales vulnerable in the future. Having been the first UK nation to call for a comprehensive smoking ban in public places this amendment would be a serious backward step for Wales. We urge the Committees to consider the long term ramifications of such a move and to reject this amendment outright.**

We answer the questions in the order that they have been asked and make some further comments which we hope will be of assistance to members in their consideration of this issue. We would also welcome the opportunity to give oral evidence on the points we raise.

**1. Is there a commercial need for this amendment to exempt performers from smoke-free requirements?**

No. Any need to represent smoking on set can be met using realistic fake cigarettes or computer generated technology. There is no need to change a law that is now regarded as one of the most successful public health measures ever introduced in Wales.

Actors are not required to perform real sex, drink real beer or use real bullets on set. We believe they should also not be expected to smoke a product that is highly addictive and kills one in two of its long term users.

**Actors and film crew, as with all workers in Wales, should be afforded the same health protection under the law.**

In a response to the original consultation it was said that the only current solution was for producers making films or TV shows in Wales to take smoking scenes in enclosed places to England. This is untrue. Cigarette props such as nicotine-free electronic cigarettes are realistic, cost less than £30 and are widely used in Wales by the film and television industry as well as Welsh National Opera. Special effects to simulate smoke including computer generated imagery (CGI) are also available and have been used in many productions in Wales.

**The close-up smoking scenes below from BBC Wales's *Upstairs Downstairs* and *Dr Who* were produced by a Welsh special effects company using CGI smoke and Visual FX cigars.**



While there is a slight cost for production companies as a result of the legislation, this compares favourably to the thousands of pounds companies say they have to pay to relocate to Bristol to film a smoking scene.

Commercial arguments from a variety of industries were fully considered before the implementation of the ban and ultimately rejected by the special Committee on Smoking in Public Places, which was set up by the Assembly in 2004. It was felt that while the legislation would incur some costs, public health was elevated above all other considerations.

It is worth noting the words of Dr Brian Gibbons, the Health minister who saw through the legislation in 2006 who said in response to the challenges from certain industries at the time: "If people want to continue to do business in the same old way, I suspect that their future in the industry is rather limited in any event."

## **2. Will this amendment achieve its aim of supporting the television and film industry in Wales?**

No. The Committee on Smoking in Public Places concluded that there was no credible evidence of an overall negative impact on the wider economy. Further, there is no evidence that the film industry will be boosted by offering real smoking on set.

The Wales Screen Commission estimates that film and TV companies spent more than £22m in Wales last year. Scenes from films like Harry Potter, Robin Hood, Killer Elite and Snow White and the Huntsman were all shot in Wales despite there being no exemption to allow smoking. TV productions have also moved specifically from England to Wales when there was no exemption (eg Casualty) and there is no evidence that productions have moved *out* of Wales because actors were not able to smoke.

Further It is relevant to note that in its report **'The Economic Impact of the UK Film Industry' in September 2012** produced for the British Film Industry, Oxford Economics' uses as a case study the developing film industry in Northern Ireland, where the same prohibition on smoking on film sets and television studios exists as in Wales.

Belfast has increasingly become the hub for film and television production and the report highlights increased investment, aggressive marketing and government support as being factors driving its continued growth, with return on investment of £6 for every £1 invested. There is no suggestion that the prohibition on smoking is in any way damaging to the success or prospect of continued growth.

We suggest that there is no reason to believe that the film and television industry in Wales cannot enjoy the same success with the correct support.

Wales does not, and should not need to offer smoking to be a competitive location for filming and is already proving itself as an attractive location for major films.

**We acknowledge that supporting the creative industries is a key priority for the Welsh Government. However in an age where there is a premium on innovation and impressive special effects such as 3D and computer generated imagery, we would suggest that time and resources would be better invested in the award-winning innovation that already exists in the Welsh special effects industry, rather than marketing Wales as a location which offers real smoking.**

### **3. Is there sufficient clarity about the circumstances in which the exemption applies?**

No. Firstly the term 'artistic integrity' is open to interpretation. This would mean that individual producers and directors would be free to use the exemption according to their discretion as to what is appropriate.

Secondly, the restriction that no children should be present and no members of the public allowed to watch the scene is impossible to police and enforce. This was acknowledged in the original consultation when one production company asked for *"some sort of indemnity"* for situations where the producer has done *"everything within his reasonable power to prevent members of the public from viewing the performance"*.

The Chartered Institute of Environmental Health has also raised serious concerns about the practicalities and financial burden on local authorities of policing the exemption.

The provision for the exemption only to apply for a final take is also nonsense, as which producer/director can ever predict what the final take will be?

Another producer states that it is *“unlikely yet possible that some on-set rehearsals will require the use of smoking”*, which already demonstrates an attempt to push the boundaries of the exemption. Allowing smoking on set will create a normalised environment for smoking and, in settings that will be impossible to police, we can already see how the exemption will be exploited.

#### **4. Do the conditions offer adequate protection to other performers, production staff and members of the public?**

No. In addition to the reasons stated above, in its report to the Assembly on May 25 2005 the Committee on Smoking in Public Places concluded that there was *“overwhelming evidence”* that environmental tobacco smoke is a significant health risk to non-smokers, which includes those workers who are subjected to smoky environments.

The committee based its conclusions on evidence from around the world where there are now in excess of 50 validated studies, showing a consistent causal link between environmental tobacco smoke and lung cancer and similarly between smoking and coronary heart disease.

This amendment would expose performers and crew present to the harmful effects of second hand smoke and some may experience more severe effects if they suffer from chronic illnesses such as asthma, heart disease or are pregnant. The enforcement issues listed above would also make it impossible to prevent other people from smoking in an environment that technically allows it.

Not only are there no guarantees for the health of other performers, staff and members of the public, the health of actors themselves is at risk if they are required to smoke as part of their role. And the health risks are not limited to second hand smoke if actors who are required to smoke also become addicted to smoking.

**One actor Hywel Dowsell from Ebbw Vale told us: “Once I was involved in a production where we had to smoke because it was set in the era and in an east end pub. I was scripted to have lines asking for cigarettes and it was vital to my character. I don’t smoke in the slightest, but in the name of theatre I went ahead and passionately put my all into the role. I was asked to smoke herbal ones so that no one could complain. I had an audition on the Monday afterwards and my voice was in a terrible state to sing. I disagree that smoking should be allowed on set. It puts actors who are non-smokers under pressure and it puts other actors at risk from second hand smoke. Technology is becoming more and more advance and products like the e-cigarettes do the job just as well! We need to move forward not backwards.”**

All workers should be protected under the law and not be exposed to second hand smoke because of the commercial interests of their employers.

When it examined the smoke-free premises regulations in November 2006 the WAG told the Health and Social Services Committee that:

*“Having considered the consultation responses, the Assembly Government does not intend to amend the regulations to provide an exemption for performers. The health rationale for smoke-free provision applies in all*

*enclosed settings. It is felt that provision of an exemption for performers would undermine this health message and would appear unfair to the wider public.”*

#### **5. Might there be any unintended consequences of introducing this exemption?**

This exemption is a step backwards for Wales politically and in public health terms.

Not only will an exemption on commercial grounds undermine the Welsh Government’s efforts on tobacco control and tackling ill health, it will open the floodgates to future challenges to the legislation from other industries which deem the law to be affecting their profits. If this exemption is passed on the basis of commercially supporting a specific industry, we can expect a litany of requests from other industries such as pubs, clubs and the tourism industry for exemptions due to tough economic times.

We are already seeing attempts to nibble away at smoke-free legislation across the UK. We cannot be seen to change our laws because one industry makes demands and we must tell those who wish to work here that they must abide by our rules.

The amendment will also impact other UK nations. Scotland and Northern Ireland currently have no plans to make an exemption for film and TV but an exemption in Wales will almost certainly lead to challenges of the smoke-free legislation in other parts of the UK.

Where Wales once led the UK in calling for a smoking ban, it could end up being responsible for unravelling it.

#### **6. What health policy considerations are relevant to this amendment?**

This amendment is entirely contradictory to the public health commitments of the Welsh Government. The Welsh Government’s policy objectives for improving public health are set in the Programme for Government (<http://wales.gov.uk/about/programmeforgovernment/?lang=en>) and Our Healthy Future (<http://wales.gov.uk/topics/health/ocmo/healthy/?lang=en>).

For smoking these are:

- discouraging the uptake of tobacco use, especially amongst children and young people
- reducing smoking prevalence levels by supporting smokers who want to give up, and
- reducing exposure to second-hand smoke by possibly extending the smoking ban to public places where volumes of smoke may be high.

Wales’s smoke-free premises legislation is the lynchpin for achieving the target of reducing smoking prevalence in Wales from 23% to 16% by 2020 in the Welsh Government’s own Tobacco Control Action Plan. It is arguably the most successful public health measure introduced in Wales, and we led the UK in calling for it. It is also widely supported by the public with some 80% of Welsh adults in favour.

The Welsh Government itself says it has been a key success in protecting workers and the public from the serious health risks of exposure to second-hand tobacco smoke. Research commissioned by the Welsh Government shows clear evidence of reduced exposure to environmental tobacco smoke, particularly in pubs, clubs, bars and at work. .

In its response to the committee's unanimous conclusion that there should be a comprehensive ban, the then Health Minister Brian Gibbons said: *"Much of the emphasis has been on the rights of customers or consumers to a smoke-free atmosphere, but the statement specifically mentions the rights of workers to have their working environment protected as well, which is an important strand in how we are moving forward"*

The amendment would send out the wrong message about smoking, particularly to young people and undermines one of the four key areas in the Government's Tobacco Control Action Plan, which is to reduce exposure to second hand tobacco smoke. While the Welsh Government is on the one hand running a campaign to reduce smoking in cars carrying children, on the other hand it is agreeing to give the green light to smoking to an industry that has a significant influence over children and young people.

### **Conclusion**

Tobacco smoking causes serious harm to the health of smokers and to non-smokers who are exposed to second-hand smoke. It continues to be the largest single preventable cause of ill health and premature death in Wales. Almost half of all long-term smokers will die in their middle age as a result of tobacco use. Smoking is also a main cause of health inequalities, having been identified as a leading cause for the gap in life expectancy between rich and poor.

For this reason, reducing the harm to public health caused by smoking, in particular protecting children from the harmful effects of tobacco, is a priority for the Welsh Government in its action to reduce health inequalities.

These are the Government's words, not ours.

We would urge the sub-committees to consider the words of Val Lloyd, who chaired the Committee on Smoking in Public Places, when deliberating this issue who said:

**"Simply put, this ban is about health and nothing else"**



***The Enterprise and Business Sub-Committee and the Health and Social Care Sub-Committee on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012***

Written evidence from BHF Cymru  
January 2013

British Heart Foundation (BHF) Cymru is the nation's leading heart charity. We are fighting against heart and circulatory disease – Wales' biggest killer claiming over 11,000 lives each year, around a third of all deaths.

While we welcome the opportunity to respond to the two sub-Committees' call for evidence, we are extremely concerned at the Welsh Government's proposals to exempt film and television productions from Wales' smoke-free legislation. Weakening this legislation would needlessly expose those that work in film and television production to second-hand smoke and is also wholly unnecessary.

In addition to this response, we are also supportive of the evidence provided to the Committee by ASH Wales.

**Q: What health policy considerations are relevant to this amendment?**

There is clear evidence that passive smoking increases the risk of developing Coronary Heart Disease (CHD).<sup>1</sup> A number of studies have shown an elevated risk of heart disease in people regularly exposed to passive smoke. For example, non-smokers living with smokers have a 30 per cent increased risk of developing the disease.<sup>2</sup> A study of young adults generated suggestions that non-smokers at risk of CHD should avoid all indoor environments that allow smoking.<sup>3</sup>

Further, a study published in the British Medical Journal suggests that previous studies of the effect of passive smoking on the risk of heart disease may have been underestimated. The researchers found that blood cotinine levels among non-smokers exposed to passive smoke were associated with a 50-60 per cent increase risk of heart disease.<sup>4</sup>

The successful implementation of smoke-free legislation across the UK has significantly reduced public exposure to passive smoke. The immediate health benefits of this legislation have been highlighted in the UK, with one study for example showing that between 2007

<sup>1</sup> *The health consequences of involuntary exposure to tobacco smoke: a report of the Surgeon General*. Atlanta, USA: US Department of Health and Human Services; 2009. Available at: <http://www.surgeongeneral.gov/library/secondhandsmoke/>

<sup>2</sup> Law MR, Morris JK, Wald NJ. Environmental tobacco smoke exposure and ischaemic heart disease: an evaluation of the evidence. *BMJ* 1997 Oct 18;315(7114):973-80. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/9365294>

<sup>3</sup> Pechacek TF, Babb S. Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke? *BMJ*. 2004 Apr 24;328(7446):980-3. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/15105323>

<sup>4</sup> Whincup PH, Gilg JA, Emberson JR, Jarvis MJ, Feyerabend C, Bryant A, Walker M, Cook DG. Passive smoking and risk of coronary heart disease and stroke: prospective study with cotinine measurement. *BMJ*. 2004 Jul 24;329(7459):200-5. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/15229131>

and 2008 there was a drop of 2.4 per cent in the number of emergency admissions for heart attack in England.<sup>5</sup>

Wales's smoke-free premises legislation is one of the most successful public health measures introduced in Wales to date, protecting all workers in Wales from the harms of second-hand smoke. It is also extremely popular in Wales, with 84 per cent of Welsh adults in support.<sup>6</sup> The exemption proposed would seriously undermine this legislation, and needlessly expose workers in film and television production to second-hand smoke that they are currently protected from. BHF Cymru also believes that this would set a dangerous precedent, potentially opening the door to additional efforts to undermine the Welsh Government's other tobacco control initiatives.

This legislation was introduced on health grounds in order to protect workers from exposure to second-hand smoke – it is a health issue, not a commercial one. It is also a popular measure, with the Welsh Government's consultation last year highlighting that there was little appetite to amend this – with 75 per cent of respondents opposing the proposed exemption.<sup>7</sup>

The Welsh Government has also set ambitious targets for reducing smoking prevalence in the Wales Tobacco Control Action Plan from 23 per cent to 16 per cent by 2020. Weakening the smoke-free legislation in Wales would call the Welsh Government's commitment to achieve these targets into question.

**Q: Is there a commercial need for this amendment to exempt performers from smoke-free requirements?**

The exemption suggested in this amendment is wholly unnecessary. There is no suggestion that where a character is stabbed or shot that the artistic integrity of the performance requires they should be stabbed or shot – such activities are capable of being acted using props and special effects.

The same applies to smoking – technical expertise exists in Wales to simulate smoking using special effects. These have been used in recent productions of Doctor Who and Upstairs Downstairs in Cardiff.

Wales is already a competitive location for filming. The Wales Screen Commission estimates that film and TV companies spent more than £22 million in Wales last year – it is extremely unlikely that the issue of whether production companies were able to portray smoking using a cigarette was a major issue in their decision to choose Wales as their location for production.

In addition, Northern Ireland (which similarly does not have this exemption for their smoke-free laws) was only last year highlighted by the British Film Industry as a case study for

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<sup>5</sup> Sims M, Maxwell R, Bauld L, Gilmore A. Short term impact of smoke-free legislation in England: retrospective analysis of hospital admissions for myocardial infarction. *BMJ*. 2010 Jun 8;340:c2161. doi: 10.1136/bmj.c2161. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/20530563>

<sup>6</sup> <http://wales.gov.uk/smokingbanwalessub/home/smokefreelawoutcomes/?lang=en>

<sup>7</sup> Summary of responses from the public consultation on creating an exemption for performers within The Smoke Free Premises Etc. (Wales) Regulations 2007. Welsh Government; 2012.



increased film investment.<sup>8</sup> Wales should therefore not need an exemption to this legislation in order to remain a competitive location.

**Q: Do the conditions offer adequate protection to other performers, production staff and members of the public.**

As stated above, the exemption would remove the existing protection to performers and crew present, exposing them to the harmful effects of second-hand smoke. All workers should remain protected by the current legislation from second-hand smoke.

**Q: Might there be any unintended consequences of introducing this exemption?**

Any exemption on commercial grounds would set a dangerous precedent for public health legislation in Wales. This would not only undermine the Welsh Government's efforts on tobacco control and tackling ill health, but would likely also lead to future challenges to this and other legislation on tobacco control from industries that claim they are damaging their profits.

If you would like any further information about this response please contact Delyth Lloyd, Press and Public Affairs Manager on 02920 382406 or [lloyd@bhf.org.uk](mailto:lloyd@bhf.org.uk)

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<sup>8</sup> Oxford Economics. *The Economic Impact of the UK Film Industry*. British Film Industry; 2012. Available at: <http://film.britishcouncil.org/about-us/the-economic-impact-of-the-uk-film-industry>



Committee Clerk  
Smoke-Free Premises etc. (Wales) (Amendment) Regulations Sub-Committees  
Committee Service  
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**Cancer Research UK**  
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407 St John Street  
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United Kingdom  
T 020 7242 0200  
[www.cruk.org](http://www.cruk.org)

Dear Ms Date,

I am writing in response to your consultation on amending the Smoke-Free Premises etc. (Wales) Regulations 2007 to permit smoking by performers.

The smoke-free premises legislation is one of the most successful public health measure introduced in Wales and commands high levels of public support. Cancer Research UK welcomed the publication of the Tobacco Control Delivery Plan In February 2011, and its commitment, among other important areas, to continue to reduce exposure to second hand smoke. We therefore believe that to amend this legislation would be a backwards step. The law was introduced on public health grounds to protect workers and we believe that actors should not be forced to smoke in their workplaces and other members of the film crew should not be exposed to second hand smoke.

We also believe that the vagueness of ‘artistic integrity’ as a criterion means enforcement is very difficult. While the proposed regulations may attempt to reduce the health harm caused by the change, there will still be smoke exposure at levels harmful to health.

Allowing an exemption for artistic performances means actors can be pressurised into smoking and run the risk of becoming addicted. It can make smoking part of someone’s job when there are practical alternatives. Perhaps the most important health risk is that of actors progressing to regular smoking or relapsing. Nicotine is a highly addictive substance and many people find it very hard to stop smoking. When tobacco kills half of its long-term users, it is wrong to expose workers to this risk. While ‘tobacco-free herbal cigarettes’ might be used instead, they still create tar, carbon monoxide and other toxins that are inhaled by the smoker and those around them.

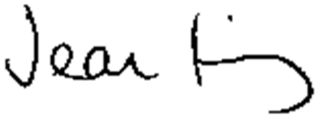
We understand that practical alternatives are available to simulate smoking on screen, and these are currently in use in Wales (and in Scotland and Northern Ireland, where this restriction is also in place). As alternatives such as CGI and special props are available, and the risks to health are clear, we urge the Welsh Government not to amend the existing regulations.

The costs of smoking related diseases are high for Wales, estimated to amount to £386 million per year<sup>i</sup> for the NHS alone, this is equivalent to £129 per head or 7% of total healthcare expenditure in Wales. Smoking is the largest single cause of avoidable ill health and early death in Wales. Smoking remains the largest preventable cause of cancer, causing one in four deaths from cancer and up to eight out of ten cases of lung cancer. Overall, 5,650 deaths are caused by tobacco each year in Wales.

There have been major achievements in tobacco control, and the Welsh Government continues to be ambitious in attempting to reduce the harm from tobacco. Not only will an exemption undermine the Welsh Government's other tobacco control initiatives, it could set a dangerous precedent for future challenges to the legislation from other industries who deem the law to be affecting their profits and wish to propose their own exemptions.

If you require any further information, please contact Vicky Crichton, Senior Public Affairs Manager, on 0131 243 2641 or [vicky.crichton@cancer.org.uk](mailto:vicky.crichton@cancer.org.uk)

Yours sincerely,



Dr Jean King  
Director of Tobacco Control

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<sup>i</sup> Phillips, C. and Bloodworth, A. 'The cost of smoking to the NHS in Wales. Available online at:  
[http://www.ashwales.org.uk/creo\\_files/upload/default/cost\\_of\\_smoking\\_to\\_the\\_nhs\\_in\\_wales.pdf](http://www.ashwales.org.uk/creo_files/upload/default/cost_of_smoking_to_the_nhs_in_wales.pdf)