

Annex D

Consultation response form

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Responses should be returned by 16 March 2012 to:

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

or completed electronically and sent to:

e-mail: 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:

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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.