

**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.

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 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.