

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

Response from Ceredigion County Council

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

Response to the Welsh Government Enterprise and Business Sub Committee and the Health and Social Care Sub Committee

Ceredigion County Council welcomes this consultation by the Enterprise and Business Sub Committee and the Health and Social Care Sub Committee on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012.

This authority is continually striving to improve the health and wellbeing of our population through means of enforcement of relevant legislation as well as implement health promotion activities for staff of Ceredigion County Council, other employees, residents and visitors to the county and as such we are strongly opposed to the proposed amendment. We are of the opinion that there should be no exemption and the current smoke free legislation should remain in place for the film and television industry.

We answer the questions asked in the order raised and thereafter make further comments which we trust will be of assistance to both committees in their consideration of this issue.

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

No. Wales continues to be used as a location for filming despite the current smoke free legislation. There is no suggestion the film industry has been deterred from filming in this Country as a result of this legislation. There is no evidence that the film industry will be boosted by allowing 'real' smoking on set.

Any perceived benefits from the proposed amendment would be minimal and that there is no necessity or reason therefore, for Wales to compromise its health ambitions in support of such unproven claims.

The longer term implications of permitting smoking through this legislative change needs to be taken into account, not only for the industry but the individuals which this amendment will affect. Individuals **will** be subjected to the exposure of carcinogens – no other vocation would actively permit this to occur and encouraging smoking of a highly addictive substance in an attempt to gain ‘artistic value’ as part of a performance. Similarly, you would not actually expect an actor to actually inject themselves with drugs to in attempt to achieve a ‘realistic’ effect for purposes of artistic integrity’.

We have to acknowledge that smoking kills one in two of its long term users. Knowing that cancers and other long term illnesses which will be attributed to smoking in this industry will no doubt in years to come, allow individuals to be able to attribute blame to the film and television industry and Wales for their illnesses. Wales should not therefore be in the position that would be considered accountable for allowing this to be undertaken. Surely by allowing this amendment to progress, it is not supporting the television and film industry but will actually be responsible for making individuals ill, affecting them, their families and increasing the costs to our health service. This could even be considered as a means of ‘forcing and pressurizing’ individuals who work in a highly competitive business to smoke highly addictive substances and inhale carcinogens as part of their performance.

Wales must continue to lead the way in protecting the health of those who decide to visit, reside and work in the Country and not consider economic matters over the health of our population by allowing this amendment to be implemented.

Ceredigion County Council are of the opinion that smoking can be realistically portrayed through the use of award winning special effects technology, which is already used within Wales rather than allow individuals to become ill and lead to individuals potentially becoming addicted to a drug.

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

No. What is considered as ‘artistic integrity’ varies and is open to (mis)interpretation. Artistic integrity where a performance requires a person to smoke is highly subjective, varying from Director to Director or producer to producer.

To suggest that smoking will only be allowed in the final ‘take’ of any film or television production is difficult to enforce upon as there is no way of determining with any degree of confidence that any one take is the final version that will be used. Similarly, a smoking scene may be shot from a number of angles and as such a relatively short piece of footage may take a long time to film and for continuity purposes smoking would have to be consistent throughout the whole of the filming.

Clarity as to when filming needs to be reported to a local authority needs also to be sought, as of course ‘filming’ will apply whether it be for a large budget film or as part of a media studies course, the legislation should still apply. For purposes of clarity therefore, the legislation should remain, thus ensuring there is no misinterpretation of the legal position and avoid possible circumstance where the exemption could be exploited.

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

No. There is overwhelming evidence to support the fact that environmental tobacco smoke poses a significant risk to non-smokers as well as smokers. Ceredigion County Council believes that smoking could potentially continue throughout the making of a film or television production, exposing individuals (whether they be production staff or actors) to tobacco smoke. They are not afforded any protection other than in the case of audience members leaving the vicinity of filming, thus still leaving some individuals no choice but to be exposed to environmental tobacco smoke.

Consideration also needs to be given to residual highly toxic particulate contamination from tobacco smoke including carcinogens and heavy metals, such as arsenic, lead, and cyanide, which will remain in the area for some time remain on clothes, upholstery, carpets and furniture once the smoking scene has ceased.

From a longer-term perspective, the damaging effects of viewer's modelling their behaviour on favourite actors through smoking and the fact that seeing smoking on film tend to glamorise smoking needs to be considered.

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

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

Ceredigion County Council is of the opinion that there are a number of potential unintended consequences, some of which could potentially have considerable financial implications.

Enforcement of the legislation lies with local authorities. Given the highly subjective nature of decisions as to whether smoking is necessary for the artistic integrity of a performance it will be impossible to build up any guidance as to the circumstances in which smoking is permitted, and where there is a dispute between the enforcing authority and the producer of production it will be for the Magistrates Court to determine whether the smoking was a lawful or unlawful activity. There is also potential that this may lead to lack of consistency between local authorities and disagreement between enforcers and film and television producers, possibly resulting in legal challenge and action and unfortunately, film companies will be in a significantly stronger position financially than local authorities which may have the

effect of discouraging enforcement and thereby putting the health of performers, production crew and audiences at risk.

It is also the case that Magistrates will have no expertise as to whether a performance is such that smoking is required and will have to rely on expert evidence. This will be expensive and time consuming and given that each production is different and each Producer will have his/her own ideas will not even contribute to establishing a series of precedents which enforcers and producers could look to for guidance in future productions.

All of the foregoing presupposes that local authorities would have the available resource to police the production of television and films productions for smoking on set, which in the current economic climate we suggest is unlikely. This would mean that the television and film industry would be free to use the exemption in a largely unregulated way, and in doing so would compromise the health of people working in the industry in a way that is not permitted in any other industry.

By introducing such an exemption it will allow an opportunity for other sectors of business to insist on a review of the legislation on commercial grounds as the smoke free legislation has had a commercial impact on their business.

This exemption will undermine the Welsh Government's efforts on tobacco control and tackling ill health. There should not be amendments to this legislation on the basis that demands are being made by one particular industry, in so doing could allow other industries to request amendment as the legislation has also affected their sector of business.

Wales should not be seen to be taking a backwards step in public health protection, Wales was once seen as the lead in smoke free legislation and should this amendment be permitted to the Regulations it would seriously compromise the stance which Wales has historically had on protecting the health of its residents and those employed within the country.

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

Welsh Government notes that smoking is the greatest preventable cause of illness, disability and premature death in Wales; it accounts for over 5,600 fatalities every year and costs the Welsh NHS more than £1 million a day.

The Welsh Government is investing in measures to discourage children from starting smoking, is supportive of the Smoke Free Homes scheme and is committed to providing help and support for smokers who want to quit and reduce exposure to second hand smoke.

By making amendment to this legislation, it would not be in support of the Welsh Governments' key theme in 'Our Healthy Future' and undermines key areas in the All Wales Tobacco Control Action Plan. Thus Welsh Government could be seen to be running campaigns to prevent smoking and reduce exposure to second hand smoke, yet also be seen to be agreeing to allow smoking to one industry which has the

potential to have significant influence over children, young people and other sectors of the population.

This is also contradictory to the Local Strategic Public Health Frameworks, Ceredigion's local Tobacco Control Action plan and in the development of Ceredigion's Single Integrated Plan.

Ceredigion County Council is concerned that smoking in film and television productions has the effect of normalising smoking and making it socially acceptable, and therefore objects to its depiction onscreen. This amendment would send out the wrong message about smoking.

Smoking can be simulated through using props or computer simulation both of which can be done without compromising the health of those surrounding the 'smoker'.

These proposed amendments are strongly opposed. They would be unnecessary, disproportionate and impossible to enforce. We urge both Welsh Government committees to recommend that the amendment be withdrawn or to recommend that it be opposed.

We would be happy to provide further evidence or comment as the Committees would consider helpful