

Paper 4



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

Consultation Response

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Purpose and Summary of Document:

The Enterprise and Business Sub-Committee and the Health and Social Care Sub-Committee (NAfW) requested evidence to support a discussion relating to making an amendment c

A previous consultation (2012) invited comments on the proposed Regulations to amend the Smoke- Free Premises etc. (Wales) Regulations 2007.

This is the second consultation relating to this Amendment to the Regulations.

Public Health Wales concerns include

1. The impact that role models (actors not characters) who smoke in films will have on 'normalising' smoking amongst young people.
2. The potential negative impact that this amendment will have on people who are trying to quit
3. The harmful effects of second hand smoke in enclosed/semi

enclosed premises.

Work Plan reference: Smoking Prevention and Cessation PLA 2012/13

1 Introduction

This paper aims to provide the Enterprise and Business Sub-Committee and the Health and Social Care Sub-Committee (NAfW) with Public Health Wales' response to their request to evidence to inform an agreement on the content of a joint report to lay before the Assembly, to inform the debate on the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012.

1.1 Background

The proposed Smoke-Free Premises etc. (Wales) (Amendment) Regulations 2012 ("the proposed Regulations") will amend The Smoke-free Premises etc. (Wales) Regulations 2007 ("the Smoke-Free Regulations 2007") by creating an exemption from the smoke-free requirements for performers provided certain conditions are satisfied. This exemption will apply only where i) the performance is given in connection with the making of a film or television programme; ii) the artistic integrity of the performance makes it appropriate for the performer to smoke; iii) there are no members of the public viewing the making of the television programme or film; and, iv) no children are present in the part of the premises which are not smoke-free and in which the performer would be smoking.¹

The exemption is a personal exemption afforded to the individual performer. It makes the part of the premises in which they are performing not smoke-free in relation to them. The exemption does not apply to persons who are present during the performance. It also does not apply to performances given during rehearsals.

Since the Smoke-Free Regulations 2007 came into force, it seems that Welsh Government has received an increasing number of representations from the creative industries calling for an exemption to the smoke-free requirements for performers. Several successful TV programmes have been filmed in Wales and, with the growth of BBC Wales Drama as a centre of

¹Welsh Government (2012) Explanatory Memorandum to THE SMOKE-FREE PREMISES ETC. (WALES) (AMENDMENT) REGULATIONS 2012

excellence and the opening of the new Roath Lock Studios, it is hoped that more programme making will come to Wales. It appears however that certain productions have run into difficulties due to being unable to film actors smoking. The programme makers wish to portray a level of authenticity that audiences would expect, and many period dramas are set in times when smoking was commonplace.¹

The Welsh Government conducted a shortened 6 week consultation on the draft Regulations from 3rd February 2012. The consultation asked a number of specific questions on the regulatory proposal presented and also asked for feedback from stakeholders on the consultation-stage impact assessments that were published as part of the consultation document

A total of 48 responses were received to the consultation from a wide variety of stakeholders. With respect to question (1), 25% of respondents were in favour of an exemption most of who were from the creative industries. Of those respondents who opposed, most were health professionals, charities and local authorities

This is the second consultation.

1.2 Purpose

The paper will aim to provide comprehensive answers, where evidence is available, to questions outlined in consultation correspondence. Questions are as follows;

- Is there a commercial need for this amendment to exempt performers from smoke-free requirements?
- Will this amendment achieve its aim of supporting the television and film industry in Wales?
- Is there 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?
- Might there be any unintended consequences of introducing this exemption?
- What health policy considerations are relevant to this amendment?

1.3 Consultation Questions

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

There appears to be little available evidence to support the commercial need for the amendment.

The Health Act 2006 which applies to England and Wales ("the Act"); Section 2 of the Act prohibits smoking in enclosed and substantially enclosed premises open to the public and/or used as a place of work, thus making those premises "smoke-free". The policy aim of the legislation is to protect the public and workers from exposure to the harmful effects of second-hand smoke. Smoking is not banned in film making, just smoking in enclosed premises.

Since the ban in 2007 Wales has been successful in attracting several long running dramas. Casualty is one example. Prior to relocating the drama to Cardiff the BBC announced "The new location for Casualty is dependent on further value for money evaluations, ensuring maximum benefit for licence payers"² It must be assumed that filming in Wales is 'value for money' as Casualty relocated here in 2011 although the economic evaluation is not readily available.

Welsh Government have also reported growth in Creative Industries in Wales between 2005-9 (Smoke Free legislation introduced 2nd April 2007)

There is also an argument that the advantages of filming in Wales outweigh the perceived disadvantage of not being permitted to smoke in enclosed or partially enclosed premises. It appears that the facilities in Cardiff make the production a lot easier³

A systematic review (2005) on the nature and effect of smoking in the movies on adolescents and others concluded that there is a consistent chain of evidence that smoking in the movies leads adolescents to hold more pro-tobacco attitudes and beliefs, which is consistent with the observed dose-response relationship between exposure to smoking in the movies and initiation of adolescent smoking.⁴

²BBC News (2009) <http://news.bbc.co.uk/1/hi/wales/>

³Wales Online (2012) <http://www.walesonline.co.uk/showbiz-and-lifestyle/showbiz/2012/07/07/casualtyffar-easier-to-film-in-wales-says-show-producer-91466-31346980/#ixzz2HDeVMBvo>

⁴ Charlesworth A. and Glantz S. A (2005) Smoking in the Movies Increases Adolescent Smoking: A Review Pediatric

There is also an argument that the film industry's perception of the audience expectation regarding authenticity may be flawed. It is impossible to argue the business case for the exemption without knowing the impact of not televising individuals smoking has on the business. Whilst there is stark differences between the Hospitality Industry and Performing Arts one could argue that prior to the ban in the Republic of Ireland in 2004, that the Irish 'audience' expected smoke filled pubs to be part and parcel of authentic Irish Pub life, however the ban did not have the negative impact on business that was expected. In a study (pre and post ban) that evaluated the impact the ban had on staffing levels, customer numbers and smoking rates in a sample of 38 public houses in Dublin, There was a decrease (8.82%) in average staff levels while customer numbers increased by 11% and there was a dramatic reduction in numbers smoking on a visit to a pub (77.8%)⁵.

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

Welsh Government consultation documents state "The Wales Screen Commission estimate that the value to the Welsh economy of the productions that have been filmed in Wales is around £15-20 million per year. The creation of an exemption for performers within the 2007 Smoke-Free Regulations **could** therefore benefit the Welsh economy by **possibly** bringing more productions to Wales."

Should public health be compromised for an argument founded on 'could' and 'possibly'?

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

Looking at the existing evidence Public Health Wales does not believe there is sufficient clarity in which the exemption might apply. The term 'artistic integrity' is vague and, it could be argued, open to interpretation and possibly abuse.

⁵ **World Health Organisation (2006) Business as usual for smoke-free places** Bulletin of the World Health Organization 84(12) 921-1000

In 2006 Local Government officers successfully argued that having to police and judge upon the merits of 'artistic integrity' was beyond their competence and that of any other regulatory body⁶

In 2012, in response to public consultation about the proposed exemption, The Chartered Institute of Environmental Health (CIEH) Wales put forward the argument that 'artistic integrity' is a subjective judgement which could be a cause of disagreement between enforcement officers and film and television producers and that such disagreements could lead to legal challenge and action⁷.

"The exemption does not apply to performers during rehearsals". TV and film may take several 'takes' of a scene which would not be classed as rehearsals. The exposure to second hand smoke would therefore be greater than the duration of the completed scene, thus creating greater exposure to second hand smoke for performers and production staff than the amendment suggests.

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

The dangerous effects of second hand smoke have been extensively documented.⁸ Consequently it is difficult to argue that any conditions offer adequate protection because any actor smoking due to 'artistic integrity' will suffer the consequences of tobacco smoke inhalation. Additionally any other actor or production staff in the vicinity of the 'smoker' will suffer the same consequences of tobacco smoke inhalation.

The Department of Health states in its review of evidence that no infant, child or adult should be exposed to second hand smoke⁹. Any relaxation of the Smokefree law in Wales would contradict this guidance. The comprehensive review also states that second hand smoke represents a substantial health hazard and therefore if this exemption is granted actors and production staff would be exposed. Inhalation of second hand smoke can cause a direct increase in risk of both lung cancer and heart disease.¹⁰ This exemption is in contrast to the Welsh Government's own Tobacco

⁶ The Stage News, (2006). Wales set to ban smoking on the stage. Available online at: <http://www.thestage.co.uk/news/newsstory.php/15143/wales-set-to-ban-smoking-on-stage>

⁷ Consultation The Smoke-Free Premises etc. (Wales) (Amendment) Regulations 2012 Available online at:

<http://wales.gov.uk/consultations/healthsocialcare/smoke/?lang=en>

⁸ Department of Health, 2004. Scientific Committee on Tobacco and Health (SCOTH): Secondhand smoke: Review of evidence since 1998. Available online at: http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4101475.pdf

⁹ Ibid.

¹⁰ WHO, 2003. Framework Convention on Tobacco Control. Available online at: http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf

Control Action plan which has a core aim of promoting Smokefree environments in the workplace, the home and the car.¹¹ⁱ

Whilst the conditions state that smoking will not take place when children are present, existing evidence states that dangerous chemicals can linger in the area where tobacco has been smoked and that no ventilation system is adequate to remove the risk associated with inhaling second hand smoke.¹² Exposure to second hand smoke during pregnancy can have adverse affects upon the health of the mother and child¹³. This exemption could impact upon actors or production staff who are in the early weeks of pregnancy **but do not yet know** that they are pregnant.

Smoking is highly addictive¹⁴. By including this exemption ex-smoking actors face the possibility of relapse if 'artistic integrity' states that the production they are involved in should portray smoking.

Might there be any unintended consequences of introducing this exemption?

Individual actors who need work may feel co-erced to smoke cigarettes for the sake of 'actors' integrity' – especially young or less famous actors. A role that involves smoking could be their initiation into a lifelong smoking habit.

1.4 Conclusion

Public Health Wales welcomed the ban on smoking in public places (2007) and any amendment to enable exemptions is viewed as being unhelpful to reaching Welsh Government's ambitious target of reducing smoking prevalence in Wales to 16% by 2020. Public Health Wales concerns primarily focus on 1) the impact role models could have on young people. The evidence tells us that smoking in films is associated with increased pro-tobacco attitudes and beliefs amongst adolescents and others⁴. 2) The harmful effects of second hand smoke are also well documented, as is the cost to the NHS. 3) It is also of concern that images of individuals smoking in films may have a negative impact on individuals who are trying to quit.

¹¹ Welsh Government, Tobacco Control Action Plan for Wales, 2012. Available online at: <http://wales.gov.uk/docs/phhs/publications/120202planen.pdf>

¹² Tobacco Advisory Group of the Royal College of Physicians, July 2005. Going smoke-free: The medical case for clean air in the home, at work and in public places. A report on passive smoking by the. Available online at: <http://www.smokefreeengland.co.uk/files/going-smokefree.pdf>

¹³ Ibid

¹⁴ British Medical Journal, 2003. Treating nicotine addiction. Available online at: <http://www.bmj.com/content/327/7428/1394>

Public Health Wales does not support the proposal an amendment to the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012.