

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

Response from the City & County of Swansea Council

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

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

I am a manager of a Health Promotion Team with the responsibility of enforcing the smoke-free legislation, within the Public Protection Service Unit, of the Environment Department at the City & County of Swansea Council. I also chair a multi-disciplinary local Tobacco Control Forum in Swansea, which has members from public and voluntary sector organisations.

I welcome this opportunity to respond to the 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. I provided a response to the consultation on amending the smoke-free premises, in March 2012, a copy of which is attached as Appendix 1. I also welcome the fact that Welsh Government has requested the sub committees to reconsider this issue, and would advise that I am strongly opposed to the proposed Amendment Regulations, for the reasons outlined below.

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

I would agree with the view outlined on the Chartered Institute of Environmental Health response on this point. Wales has been the location of choice for film and television programme makers, regardless of the fact that smoking in film sets and television studios is prohibited. A few years ago the Guildhall and Brangwyn Hall in Swansea was used to film a number of episodes of Dr Who. Despite the smoking ban being in place the company were able to effectively simulate the smoking that was required for this production.

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

Whilst the wording of the exception is clear, the circumstances in which the exemption could apply will vary from production to production. The question of whether the artistic integrity of the performance requires a person to smoke will be highly subjective and could vary from one Director to another.

It is suggested in the Explanatory Memorandum to the proposed legislation, that smoking will only be allowed in the final 'take' of any film or television production. In my view it would be impossible for a director to be able to say that any one take is the final version that will be used, this could allow a considerable time for smoking to take place, consequently putting a number of people at risk of inhaling second hand smoke in a workplace situation.

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

No. As outlined in question 2, smoking could continue during a considerable time of making the television production or film. If that were the case, other performers, and production staff would be exposed to tobacco smoke. It would be the same for members of a studio audience including children, who would have no protection, other than being asked to leave.

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

As a manager of a team that enforces the smoke-free legislation, there would be very little available resource, if any, to regulate the production of film and television programmes for smoking on set.

This would mean that the television and film industry would be free to use the exemption in a largely unregulated way, which would compromise the health of people working in that area, in a way that is not permitted in any other workplace.

There is no definition given of artistic integrity, it is extremely vague and is open to interpretation. It is inappropriate to suggest that enforcement officers will be able to make a judgement on 'artistic integrity'. It is likely to lead to lack of consistency between local authorities and disagreement between enforcers and film and television producers, possibly resulting in legal challenge and action.

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

The amendment is directly contrary to the Welsh Governments' identified key theme in Our Healthy Future document, to further reduce the number of people who are exposed to second-hand smoke in Wales.

It also challenges action area four of the Welsh Governments' Tobacco Control Action Plan, with regard to reducing exposure to second hand smoke. The Welsh Government action plan fully supports promoting smoke free environments and also encourages local government to go further by adopting smoke free policies in children's playgrounds and school grounds. The amendment to the legislation undermines the support for smoke free environments that is very clear in the plan.

I strongly oppose the proposed amendment to the legislation. Not only will an exemption undermine the Welsh Government's other tobacco control initiatives; it will open the door to further challenges to the legislation from other industries who deem the law to be affecting their profits.

I would be happy to provide any further evidence or comment for the Committees, but prefer not to give oral evidence.

Chris Steele,
Health Promotion Co-ordinator,
Environment Department,

City & County of Swansea

Appendix 1

Annex D

Consultation response form

Your name: Mrs Chris Steele

Organisation (if applicable): City & County of Swansea

e-mail/telephone number:
chris.steele@swansea.gov.uk 01792 635600

Your address: Health Promotion & Trading Standards,
Environment Department, City & County of Swansea,
The Guildhall, Swansea, SA1 4PE

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? No**

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

There is no definition given of artistic integrity, it is extremely vague and is open to interpretation. It is inappropriate to suggest that enforcement officers will be able to make a judgement on 'artistic integrity'. It is likely to lead to lack of consistency between local authorities and disagreement between enforcers and film and television producers, possibly resulting in legal challenge and action.

It is suggested in the Explanatory Memorandum that smoking will not be permitted during rehearsals, only during the final performance. I would question how it is going to be possible to decide which 'take' will be the final version? There is potential for actors and crew to be put at serious risk of breathing in second hand smoke for a considerable amount of time, as I understand scenes regularly need to be taken from a number of angles before the final version is completed.

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

No. As outlined in the response to question 1 above, it will be for the director to determine if it is necessary for the 'artistic integrity' of a programme/film for the characters to smoke, therefore the degree to which film crew and other staff are exposed to second hand smoke will be regulated by him/her.

One of the main purposes of the Smoke-Free Premises etc (Wales) Regulations 2007, is to reduce exposure for workers and public to second hand smoke in substantially enclosed public places. It seems ludicrous that it is being suggested that the regulations should be weakened to allow actors and crew to be exposed to second hand smoke whilst carrying out their work.

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

No. Whilst children will not be present during the act of smoking, they could be brought into the area immediately afterwards, thus exposing them to toxic chemicals from second hand smoke that can linger in the air after cigarettes have been extinguished.

By allowing the exemption to the smoke-free regulations, using the subjective justification of 'artistic integrity', there may be an inducement to use smoking more regularly in TV and film production in Wales, therefore normalising and glamorising smoking. This is something that has been tried to be discouraged by various groups for some time, and it will not support the Welsh Government's aim of reducing smoking prevalence to 16% by 2020.

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

No. As a manager who is responsible for staff that enforces the smoke-free regulations, the amendment to the legislation would be impossible to enforce, due to the fact that 'artistic integrity of the performance' is incapable of definition. As previously mentioned the definition is vague and open to interpretation, leaving a risk of lack of consistency of enforcement between local authorities.

Unless there are extra resources to enforce the regulations, it would be left up to the industry to be self policing. It could take some considerable resource to monitor, a capacity that I do not have available within current staff numbers.

► 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')?

No. As suggested in the response to question 4, the definition of 'artistic integrity' is open to interpretation, if guidance is provided, it will be for guidance only and each case would have to be determined on its own merits. This would leave local authorities open to challenge, if the decision was disputed by a director, leading to costly court cases and using a financial resource that the council does not have.

► 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.

No. I do not agree that there is a necessity to transfer filming of programmes/films to England as suggested. Production companies through special effects are able to replicate a number of situations, car crashes, shootings etc., so it should be within their capabilities to simulate smoke. Realistic props exist, that have been used for stage performances in Wales, and computer generated effects can be added post production.

► 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. However, some groups may experience more severe negative health effects, including those who are pregnant and those with pre-existing conditions such as asthma.

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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The current smoke free legislation has been hailed as a great success by preventing thousands of people from suffering the effects of second hand smoke in the workplace and substantially enclosed public places. There is concern that by allowing this exemption, it will encourage a need for further exemptions, for example in live performance.

It would be quite easy to see an argument being made that if the artistic integrity of a play produced for television requires the performers to smoke, that same position would relate to the play if it was to be performed live in front of an audience.

I cannot agree that the only way for a character in a film or television programme to be shown smoking is to allow them to smoke, as is suggested in paragraph 1.6 of the Explanatory Memorandum. There is no suggestion that where a character is shown taking drugs intravenously or being shot, that for artistic integrity purposes they should actually be shot or inject themselves. There is no reason why smoking tobacco cannot be replicated in the same way.

Research has strongly supported the correlation between young people viewing smoking in films and TV and going on to become smokers. The Welsh Government has stated, in the Tobacco Control Delivery Plan, under Action Area One, that it will work with local government to 'consider their powers and duties arising out of the Licensing Act 2003, and to assess if they have the relevant power to reduce tobacco imagery to young people by making rulings on classifications of films containing such images'. The Welsh Government also states its intention to reduce smoking prevalence from 23% to 16% by 2020. This ambitious target will only be achievable with a strong commitment to denormalising smoking, together with working with partners on the action points within the Delivery Plan.