

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

Response from Cardiff Council

### **Scrutiny of the Smoke Free Premises etc. (Wales)(Amendment) Regulations 2012.**

Thank you for the opportunity to contribute to the consultation on the above proposed amendment.

Cardiff Council's Public Protection Service 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.

Public Protection comprises three sections: Food Safety Enforcement, Health and Safety Enforcement and Health Protection (Communicable Disease Control and Health Improvement). The majority of officers working within Public Protection are Environmental Health Officers with a small number of specialist technical officers. Officers are authorised and actively enforce smoke free legislation.

As noted below Public Protection is strongly opposed to the proposed amendment.

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

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

Wales has been the location of choice for film and television programme makers, notwithstanding the fact that smoking in film sets and television studios is prohibited.

It is relevant to note that in its report 'The Economic Impact of the UK Film Industry' in September 2012 produced for the British Film Industry Oxford Economics' uses as a case study the developing film industry in Northern Ireland, where the same prohibition on smoking on film sets and television studios exists as is in Wales. The report highlights increased investment, aggressive marketing and government support as being factors that are seeing driving continued growth, with return on investment of £6 for every £1 invested, but does not suggest that the prohibition on smoking is in any way damaging to the success or prospect of continued growth. We suggest that there is no reason to believe that the film and television industry in Wales

**PLEASE REPLY TO:** Regulatory and Supporting Services, Public Protection, City Hall, Cardiff. CF10 3ND. Tel: (029) 20 871127 Fax: (029) 20877043

cannot enjoy the same success in the same circumstances and that the proposed amendment is not necessary to secure it.

Any perceived benefits from the proposed amendment we feel are minimal; neither would it be proportional for Wales to compromise its health ambitions in support of such unproven claims.

This amendment needs to look very carefully at the longer term implications of permitting smoking through this legislative change not only at the industry but the individuals which this amendment will affect. Actors, actresses, film crews and other relevant staff will be subjected to the exposure of carcinogens – no other vocation would actively permit this to occur and be in a situation which in effect positively encourages these individuals to smoke in order to gain 'artistic value' as part of their performance. The health of these individuals need to be taken account and is of course paramount.

Knowing the health effects, Wales should continue to lead the way in protecting the health of those who decide to visit, reside and work in the Country. A more appropriate solution should be to retain the smoking restrictions and invest in seeking and using lifelike alternatives.

It is possible 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. WG should not therefore be in the position that would be considered accountable for allowing this to happen.

Allowing this amendment, would in our view directly impact on the health of individuals, their families and 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 and inhale highly addictive carcinogens as part of their performance.

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

'Artistic integrity', will vary depending on the circumstances and is therefore open to misinterpretation. The question of whether the artistic integrity of the performance requires a person to smoke will be highly subjective and may vary from Director to Director. Would you expect an actor to inject drugs for 'artistic integrity'?

It is proposed that smoking will only be allowed in the final 'take' of any film or television production. However there is no way of determining with any degree of confidence that anyone take is the final version. The Film Director / Producer may only make that decision after viewing a number of takes of the same scene in which case smoking would have to take place in all of the takes.

It is also the case that the same scene has to be shot from a number of different angles, such that 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.

In our view

- ✚ there is insufficient clarity about the circumstances in which the exemption would apply,
- ✚ it would be easy to circumvent the protection that is claimed in the Explanatory Memorandum and that
- ✚ The subjective nature of decisions around artistic integrity and the appropriateness or otherwise of smoking in a performance would have the effect of meaning that the exemption would be a virtual *carte blanche* for smoking during filming.

In these instances, there is no specification as to the purpose of the film or the need to register that filming is taking place. Filming is a more and more regular occurrence, through structured university performances through to the recording of footage for internet use.

If legislation is to be effective in its purpose it has to be clearly understood with limited opportunity for abuse. The success of the current legislation so far is partly because the public fully understand it and themselves enforce it. Adding this complexity will remove this clarity and will make it more difficult to enforce. It will inevitably place an additional burden in time taken to visit and monitor compliance.

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

No. For the reasons outlined above we believe that smoking could continue throughout the making of a film or television production. That being the case any other performers, production staff, members of studio audience including children would be exposed to tobacco smoke and are afforded no protection other than in the case of audience members, where they could leave.

Not only is there a concern that smoking would potentially continue throughout filming but the fact that once the smoking scene has ceased both smoke and residual highly toxic particulate contamination from tobacco smoke including carcinogens and heavy metals, such as arsenic, lead, and cyanide will remain in the area for some time.

A study published in February 2010 by the Proceedings of the National Academy of Sciences entitled, 'Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential third hand smoke hazards' found that smoke remaining following smoking has ceased causes the formation of carcinogens. The nicotine in tobacco smoke reacts with nitrous acid - a common component of indoor air - to form the hazardous carcinogens. Nicotine remains on surfaces for days and weeks, so the carcinogens continue to be created over time, which are then inhaled, absorbed or ingested.

All therefore need to be aware of the health risks of exposure to these chemicals once smoking has ceased in the area and recognize that

eliminating smoking is the only way to protect against tobacco's smoke contamination and the consequences of exposure to chemical toxins.

Our view is that all employees should be protected under the law.

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

We believe that there are a number of potential unintended consequences, some of which 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. 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.

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. We can foresee a circus of 'experts' in theatre and television performances springing up and being used in the courts to argue the question of necessity. This will be expensive and time consuming and given that each production is different and each Producer will have his 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.

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

This amendment is directly contrary to the Welsh Governments' identified key theme in Our Healthy Future to further reduce the number of people who are exposed to second-hand smoke in Wales. It also undermines one of the 4 key areas in the Tobacco Control Action Plan, being to reduce exposure to second hand tobacco smoke.

Other key planks of the Tobacco Control Action Plan for Wales 2012 are to reduce uptake of smoking particularly among young people and children and to reduce the number of people who smoke. We have argued, and continue

to argue that depiction of smoking in film and television productions has the effect of normalising smoking and making it socially acceptable, and therefore object to its depiction onscreen.

We recognize however that this is not an argument against the proposed amendment since it is possible to effectively simulate smoking using props or computer simulation both of which can be done without compromising the health of those surrounding the 'smoker'.

Finally, some general points, Welsh Government promotes smoke free homes, this presents a conflict of interest and presents a mixed message to the Public. By amending this proposed legislation Wales will be taking a backward step in terms of enforcement and public health protection.

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

If you require any further information please contact Mrs Bethan Jones, Operational Manager, Public Protection, on 02920 871127. I understand she will be attending Committee on the 19<sup>th</sup> February to provide oral evidence.

Yours sincerely,

**Dave Holland**  
**Head of Regulatory Services**