

Film Agency for Wales/Asiantaeth Ffilm Cymru submission to the

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

1. We would like to thank the sub-committee for this opportunity to provide a submission on the proposed amendment to the Smoke-Free Premises etc regulations, which would create an exemption from the smoke free requirements for performers in connection with the making of a film or television programme where certain specified conditions are met.
2. We have annexed our response to the previous consultation in March 2012 for ease of reference.
3. As already noted in the committee's briefing document, film and television, as with other creative industries, are growth sectors with significant economic impact. To reference an extract from HM Government's BIS publication "Best of British" ¹

"the UK is an international hub for creativity and commerce, with a sector bigger in terms of percentage of GDP than any other OECD country.... The creative industries contribute 6.2% to the UK economy, with nearly 2 million people in creative employment. NESTA estimates the creative industries will grow on average more than double the rate of the rest of the economy. These companies are competing in a worldwide market... The UK is a world leader in sales of TV formats, and is the second biggest exporter of TV programming hours. In 2008 UK films took 15% of the global box office, up 133% since 2002"

Similarly, the 2012 BFI Statistical Yearbook notes that the film industry contributed more than £3.3m billion to GDP in 2010; and that the total UK spend in 2011 of the film sector was over £1.2billion²

Wales shares in the growth potential of this sector, complimented by a UK wide commitment by the BFI to film, including developing filmmaking talent across the country, for which the Film Agency for Wales are its national partner.

¹ <http://www.bis.gov.uk/assets/biscore/corporate/docs/b/10-845-best-of-british>

² <http://www.bfi.org.uk/statisticalyearbook2012/>

4. Film in particular is a high-cost activity, with significant spend on cast, crew, facilities and services, with even lower budget films budgeted around £1m (the average budget of the 27 feature films co-financed by Film Agency for Wales is £926,290 – combined budgets in excess of £25m).
5. Films are typified by being financed through multiple financial partners, often with international partners and often with consideration given to locating some or all of the production in different countries. For example, films may make use of the international co-production treaties or the European Convention on Cinematographic Co-production³. The UK currently has treaties with nine other countries⁴, and the EU Convention enables the UK to co-produce with other European countries that don't currently have a bi-lateral treaty. By qualifying under the criteria set down by these treaties, the film production can benefit from local financial incentives, including for example the UK tax credit worth the equivalent of 20% of UK qualifying expenditure or Australia's tax credit of up to 40% of qualifying expenditure.
6. What these circumstances illustrate is that the production of feature films involves high levels of international (as well as UK) competition where any given producer – whether considering an inward investment into Wales, or whether a Welsh company considering whether to shoot in Wales or elsewhere – will inevitably be weighing up where it is most advantageous to shoot their film from a financial point of view, as well as taking into consideration local logistics, such as the availability of suitable crew, services and facilities; suitability and accessibility of locations; local rules and permits, etc.
7. If Wales does not implement the amendment to the Smoke-Free Premises etc regulations, this would be an impediment to potential feature productions in what is already a demanding and complex environment. We would contend that that factor would make it more likely that a producer would simply look to the many other alternatives, internationally as well as in the UK, rather than look first at the additional costs and inconvenience of relocating scenes that include smoking.
8. In relation to potential costs in relocating scenes – we would add to the analysis provided in the sub-committee briefing that relocation costs may vary widely and be significantly more than proposed if the scenes concerned require a reschedule of the

³ http://www.culture.gov.uk/what_we_do/creative_industries/4112.aspx

⁴ The UK currently has co-production treaties with Australia, Canada, France, India, Israel, Jamaica, New Zealand, Occupied Palestinian Territories and South Africa.

production to accommodate those scenes; if the scene includes multiple cast and crew; and/or if the scene includes (a) high paid principles, with additional travel and set-up time.

9. In terms of the scale of smoking in film it is worth considering the research conducted by the ESRC-funded UK Centre for Tobacco Control Studies (UKCTCS), which looked at representation of smoking through images of tobacco and related products in the most popular films shown in the UK between 1989 and 2008. They found that while tobacco images have declined substantially over the past 20 years... that in assessing 300 films (20% of which involved UK producers)

“Occurrence of tobacco use, implied use or appearance of smoking paraphernalia occurred in 70 per cent of all films.”⁵

That’s a significant portion of film production and allied economic benefit that Wales would potentially be excluded from should the exemption amendment not be implemented.

9. With regard to on-screen representation smoking and in particular films that are available to young people, it is worth highlighting the British Board of Film Classification is the body tasked with assessing and classifying *all* feature films in relation to their age appropriateness. Additionally of course, when films and televisions are screened by broadcasters, careful thought is given by schedulers as to the age appropriateness of content.

Submitted by Pauline Burt, Chief Executive

On behalf of The Film Agency for Wales

30th January 2013

⁵ http://www.esrc.ac.uk/impacts-andfindings/featurescasestudies/features/15356/Smoking_on_the_silver_screen.aspx

Consultation response form

Your name: Suzanne Alizart

Organisation (if applicable): Film Agency for Wales

e-mail/telephone number: 029 2046 7490

Your address: Suite 7, 33-35 West Bute Street, Cardiff
CF10 5LH

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? Yes**

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

The proposed Regulations are adequate enough to avoid misuse of the exemption: by making it a personal exemption, linked to the performance and restricting its application to adults, there seems to be little scope for misuse. However, in audiovisual production, there is frequently no clear distinction between rehearsal and performance, both of which often take place in front of the camera. If the Regulation as drafted excludes smoking in rehearsal, this is disproportionate and will hamper the work of artists in preparing their performances without any appreciable health benefits.

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

Given the nature of film and television production, the risk of accumulated smoke affecting co-workers and audiences, is minimal. The conditions proposed are more than adequate.

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

The provisions protecting children are more than sufficient: they are stringent, given that a number of period dramas would actually require children to be smoking to reflect common practices of the time.

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

Provided the responsibility for enforcement is with the production company responsible for the project being filmed, yes.

► 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')?

It may be helpful to enlist the support of the Film Agency for Wales or other film specialists to review the Guidance when drafted and help tailor it to the film and TV producers charged with implementing the exemption. It may also be helpful to work with Skillset to develop and deliver a series of workshops targeted at floor managers and production managers who will be leading that implementation.

► 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.

The Impact Assessment does provide an overview of the costs and benefits of the proposed Amendment. It does not take into account projects currently being developed by Welsh companies, with the potential for filming in Wales which would have to relocate to London should the amendment not be implemented. In other words, the impact would be on indigenous companies as well as those inward investment projects looking to film in Wales.

► 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.

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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