



The Smoke-free Premises etc. (Wales) (Amendment) Regulation 2012 Consultation Response from Cardiff and Vale University Health Board

This paper seeks to provide the Enterprise and Business Sub-Committee and the Health and Social Care Sub-Committee (NAfW) with Cardiff and Vale University Health Boards' response to their request for evidence to inform the debate on the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012. The consultation questions are addressed in the order they have been asked.

Consultation Questions

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

There is little available evidence to support the commercial need for the amendment. With the advent of special effects and realistic fake cigarettes any need to represent smoking in a production does not require smoking of real tobacco. The use of these props and effects enables the continued protection of employers and public alike. This applies to many other artistic representations, for example shootings, stabbings, operations, drinking alcohol, none of which require the actors to partake in a real event.

It is worth noting that the Special Committee on smoking (2004) in Public Places considered commercial arguments from a variety of industries and rejected them.

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

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". It must be assumed that filming in Wales is 'value for money' as Casualty relocated here in 2001 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). The

Wales Screen Commission estimates that film and TV companies spent more than £22m in Wales in 2011 – it is highly unlikely being able to smoke was a major issue in their decision to come to Wales.

It is notable that the creative industry in Scotland and Northern Ireland is continuing to expand with a total ban remaining in place.

From a public health perspective employment is very important. But there is no evidence that the ban is harming the development of the creative industry. Indeed it might wish to lead the way in continuing to innovate with special effects.

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

No. Looking at the existing evidence Cardiff and Vale University Health Board does not believe there is sufficient clarity in which the exemption might apply. The term 'artistic integrity' is open to wide interpretation.

Such variation in interpretation would make policing the proposed amendment difficult. Indeed in 2006 Local Government officers successfully argued that having to police and judge upon merits of 'artistic integrity' was beyond their competence and that of any other regulatory body¹. This was supported by the Chartered Institute of Environmental Health (CIHE)²

"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.

The ability to ensure that no children and no public watch the 'final non rehearsal take' would be very difficult.

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

No. The dangerous effects of second hand smoke have been extensively documented³. Consequently any conditions enabling smoking will not offer

¹ 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-to-set-to-ban-smoking-on-stage>

² Consultation The Smoke-Free Premises etc. (Wales) (Amendment) Regulations 2012. Available online at: <http://wales.gov.uk/consultations/healthsocialcare/smoke/?lang=en>

³ 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

adequate protection to any actor smoking. Additionally any other actors or production staff in the vicinity of the 'smoker' will suffer the same consequences of tobacco inhalation.

The Department of Health states in its review of evidence that no infant, child or adult should be exposed to second hand smoke⁴. 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 disease⁵. This exemption is in contrast to the Welsh Government's own Tobacco Control Action plan which has a core aim of promoting Smokefree environments in the workplace, the home and the car⁶.

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 smoke⁷. Exposure to second hand smoke during pregnancy can have adverse affects upon the health of the mother and child⁸. This exemption could impact upon actors or production staff who are in the early weeks pregnancy but do not know that they are pregnant.

Smoking is highly addictive⁹. 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. Indeed non-smoker may become smokers.

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

Yes. The amendment will undermine the very significant progress Wales has made in decreasing tobacco usage and tackling associated ill health. It gives mixed messages and we know that consistent messages are vital for sustained behaviour change.

⁴ Ibid

⁵ WHO, 2003. Framework Convention on Tobacco Control. Available online at: http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf

⁶ Welsh Government, Tobacco Control Action Plan for Wales, 2012. Available online at: <http://wales.gov.uk/docs/phhs/publications/120202planen.pdf>

⁷ A report on passive smoking by the 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. Available online at: <http://smokefreeengland.co.uk/files/going-smokefree.pdf>

⁸ Ibid

⁹ British Medical Journal, 2003. Treating nicotine addiction. Available online at: <http://www.bmj.com/content/327/7428/1394>

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 smoking¹⁰.

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.

6. What health policy consideration are relevant to this amendment?

Our smoke free legislation is absolutely key in reducing harm from tobacco. Currently our leadership and message in Wales is strong, clear and unambiguous. It is having its intended effect with tobacco smoking reducing in prevalence.

Reducing health inequality is also one of our key ambitions in Wales. Tobacco accounts for a significant proportion of ill health due to that health inequality.

Consistent messaging for behaviour change is critical and this amendment has the potential to weaken and set back all that has been achieved to date.

Conclusion

Smoking causes serious harm to health, it is one of the biggest causes of preventable ill health and premature death. We are making progress on reducing harm from tobacco in Wales. This amendment weakens our message, our ambition and our ability to improve the health of our population.

Cardiff and Vale University Health Board have taken considerable steps in prioritising tobacco control as one of its key action for 2012-2013. Key preventative programme include a Children and Young People's Smoking Preventative Programme which aims to ban smoking in all community based playgrounds across Cardiff and Vale of Glamorgan, targeting Communities First and areas of deprivation in the first instance. SmokeBugs! (funded by Welsh Government) has been implemented in primary schools and teacher training provided to deliver the resource. We are working with local Housing Associations and Local Authorities to reduce the danger of passive smoking in the home with Tenant Agreements and Handbooks promoting 'smoke free homes'.

¹⁰ Charlesworth A. and Glantz S. A (2005) Smoking in the Movies Increases Adolescent Smoking: A Review Paediatric

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Cardiff and Vale University Health Board aims to be a public health 'exemplar' and tobacco is a key priority for action, fundamental to improving health of the population. We are working to provide highly consistent messages to support behavioural change.

Appendix

The proposed Smoke-Free Premises etc. (Wales) (Amendment) Regulation 2012 (2nd the proposed Regulations”) will amend The Smoke-free Premises etc. (Wales) Regulation 2007 (2nd 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 member of the public viewing the making of the television programme of 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.

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 on relation to them. The exemption does not apply to persons who are present during the performance. It also does not apply to any performances given during rehearsals.

Since the Smoke-Free Regulations 2007 came into force, it is understood 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 programme have been filmed in Wales and, with the growth of the BBC Wales Drama as a centre of excellence and the opening of the new film studios, it is hoped that more programme making will come to Wales. It has been argued that in order for programme makers to portray a level of authenticity that audiences would expect, particularly in a period drama where smoking was commonplace, an exemption to the Regulations may be needed.

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 stakeholder. With respect to question (1), 75% of respondents were not in support of this exemption with only 25% (most of who were from the creative industries) supporting this. Of those respondents who opposed, most were health professionals, charities and local authorities.