

SFP – 02

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

Response from ASH Wales

December 17th 2012

Evidence from Action on Smoking and Health in Wales regarding the proposed amendment to the Smoke-Free Premises etc. (Wales) Regulations 2007

ASH Wales is the only public health charity whose work is dedicated to tackling the harm that tobacco causes to Welsh communities.

We are grateful for the opportunity to present evidence to the sub-committees of the Assembly's Health and Social Care Committee and the Enterprise and Business Committee on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012.

We are strongly opposed to an exemption for the film and television industry to Wales's smoke-free legislation. We believe the exemption is wholly unnecessary and that it will open the door to challenges from other industries on 'commercial' grounds. Further, this amendment will expose a sector of the workforce to the harm of second hand smoke and create a precedent that could make other workers in Wales vulnerable in the future. Having been the first UK nation to call for a comprehensive smoking ban in public places this amendment would be a serious backward step for Wales. We urge the Committees to consider the long term ramifications of such a move and to reject this amendment outright.

We answer the questions in the order that they have been asked and make some further comments which we hope will be of assistance to members in their consideration of this issue. We would also welcome the opportunity to give oral evidence on the points we raise.

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

No. Any need to represent smoking on set can be met using realistic fake cigarettes or computer generated technology. There is no need to change a law that is now regarded as one of the most successful public health measures ever introduced in Wales.

Actors are not required to perform real sex, drink real beer or use real bullets on set. We believe they should also not be expected to smoke a product that is highly addictive and kills one in two of its long term users.

Actors and film crew, as with all workers in Wales, should be afforded the same health protection under the law.

In a response to the original consultation it was said that the only current solution was for producers making films or TV shows in Wales to take smoking scenes in enclosed places to England. This is untrue. Cigarette props such as nicotine-free electronic cigarettes are realistic, cost less than £30 and are widely used in Wales by the film and television industry as well as Welsh National Opera. Special effects to simulate smoke including computer generated imagery (CGI) are also available and have been used in many productions in Wales.

The close-up smoking scenes below from BBC Wales's *Upstairs Downstairs* and *Dr Who* were produced by a Welsh special effects company using CGI smoke and Visual FX cigars.



While there is a slight cost for production companies as a result of the legislation, this compares favourably to the thousands of pounds companies say they have to pay to relocate to Bristol to film a smoking scene.

Commercial arguments from a variety of industries were fully considered before the implementation of the ban and ultimately rejected by the special Committee on Smoking in Public Places, which was set up by the Assembly in 2004. It was felt that while the legislation would incur some costs, public health was elevated above all other considerations.

It is worth noting the words of Dr Brian Gibbons, the Health minister who saw through the legislation in 2006 who said in response to the challenges from certain industries at the time: "If people want to continue to do business in the same old way, I suspect that their future in the industry is rather limited in any event."

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

No. The Committee on Smoking in Public Places concluded that there was no credible evidence of an overall negative impact on the wider economy. Further, there is no evidence that the film industry will be boosted by offering real smoking on set.

The Wales Screen Commission estimates that film and TV companies spent more than £22m in Wales last year. Scenes from films like Harry Potter, Robin Hood, Killer Elite and Snow White and the Huntsman were all shot in Wales despite there being no exemption to allow smoking. TV productions have also moved specifically from England to Wales when there was no exemption (eg Casualty) and there is no evidence that productions have moved *out* of Wales because actors were not able to smoke.

Further 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 in Wales.

Belfast has increasingly become the hub for film and television production and the report highlights increased investment, aggressive marketing and government support as being factors driving its continued growth, with return on investment of £6 for every £1 invested. There is no suggestion 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 cannot enjoy the same success with the correct support.

Wales does not, and should not need to offer smoking to be a competitive location for filming and is already proving itself as an attractive location for major films.

We acknowledge that supporting the creative industries is a key priority for the Welsh Government. However in an age where there is a premium on innovation and impressive special effects such as 3D and computer generated imagery, we would suggest that time and resources would be better invested in the award-winning innovation that already exists in the Welsh special effects industry, rather than marketing Wales as a location which offers real smoking.

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

No. Firstly the term 'artistic integrity' is open to interpretation. This would mean that individual producers and directors would be free to use the exemption according to their discretion as to what is appropriate.

Secondly, the restriction that no children should be present and no members of the public allowed to watch the scene is impossible to police and enforce. This was acknowledged in the original consultation when one production company asked for "*some sort of indemnity*" for situations where the producer has done "*everything within his reasonable power to prevent members of the public from viewing the performance*".

The Chartered Institute of Environmental Health has also raised serious concerns about the practicalities and financial burden on local authorities of policing the exemption.

The provision for the exemption only to apply for a final take is also nonsense, as which producer/director can ever predict what the final take will be?

Another producer states that it is *“unlikely yet possible that some on-set rehearsals will require the use of smoking”*, which already demonstrates an attempt to push the boundaries of the exemption. Allowing smoking on set will create a normalised environment for smoking and, in settings that will be impossible to police, we can already see how the exemption will be exploited.

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

No. In addition to the reasons stated above, in its report to the Assembly on May 25 2005 the Committee on Smoking in Public Places concluded that there was *“overwhelming evidence”* that environmental tobacco smoke is a significant health risk to non-smokers, which includes those workers who are subjected to smoky environments.

The committee based its conclusions on evidence from around the world where there are now in excess of 50 validated studies, showing a consistent causal link between environmental tobacco smoke and lung cancer and similarly between smoking and coronary heart disease.

This amendment would expose performers and crew present to the harmful effects of second hand smoke and some may experience more severe effects if they suffer from chronic illnesses such as asthma, heart disease or are pregnant. The enforcement issues listed above would also make it impossible to prevent other people from smoking in an environment that technically allows it.

Not only are there no guarantees for the health of other performers, staff and members of the public, the health of actors themselves is at risk if they are required to smoke as part of their role. And the health risks are not limited to second hand smoke if actors who are required to smoke also become addicted to smoking.

One actor Hywel Dowsell from Ebbw Vale told us: “Once I was involved in a production where we had to smoke because it was set in the era and in an east end pub. I was scripted to have lines asking for cigarettes and it was vital to my character. I don’t smoke in the slightest, but in the name of theatre I went ahead and passionately put my all into the role. I was asked to smoke herbal ones so that no one could complain. I had an audition on the Monday afterwards and my voice was in a terrible state to sing. I disagree that smoking should be allowed on set. It puts actors who are non-smokers under pressure and it puts other actors at risk from second hand smoke. Technology is becoming more and more advance and products like the e-cigarettes do the job just as well! We need to move forward not backwards.”

All workers should be protected under the law and not be exposed to second hand smoke because of the commercial interests of their employers.

When it examined the smoke-free premises regulations in November 2006 the WAG told the Health and Social Services Committee that:

“Having considered the consultation responses, the Assembly Government does not intend to amend the regulations to provide an exemption for performers. The health rationale for smoke-free provision applies in all enclosed settings. It is felt that provision of an exemption for performers would undermine this health message and would appear unfair to the wider public.”

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

This exemption is a step backwards for Wales politically and in public health terms.

Not only will an exemption on commercial grounds undermine the Welsh Government’s efforts on tobacco control and tackling ill health, it will open the floodgates to future challenges to the legislation from other industries which deem the law to be affecting their profits. If this exemption is passed on the basis of commercially supporting a specific industry, we can expect a litany of requests from other industries such as pubs, clubs and the tourism industry for exemptions due to tough economic times.

We are already seeing attempts to nibble away at smoke-free legislation across the UK. We cannot be seen to change our laws because one industry makes demands and we must tell those who wish to work here that they must abide by our rules.

The amendment will also impact other UK nations. Scotland and Northern Ireland currently have no plans to make an exemption for film and TV but an exemption in Wales will almost certainly lead to challenges of the smoke-free legislation in other parts of the UK.

Where Wales once led the UK in calling for a smoking ban, it could end up being responsible for unravelling it.

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

This amendment is entirely contradictory to the public health commitments of the Welsh Government. The Welsh Government’s policy objectives for improving public health are set in the Programme for Government (<http://wales.gov.uk/about/programmeforgovernment/?lang=en>) and Our Healthy Future (<http://wales.gov.uk/topics/health/ocmo/healthy/?lang=en>).

For smoking these are:

- discouraging the uptake of tobacco use, especially amongst children and young people
- reducing smoking prevalence levels by supporting smokers who want to give up, and
- reducing exposure to second-hand smoke by possibly extending the smoking ban to public places where volumes of smoke may be high.

Wales's smoke-free premises legislation is the lynchpin for achieving the target of reducing smoking prevalence in Wales from 23% to 16% by 2020 in the Welsh Government's own Tobacco Control Action Plan. It is arguably the most successful public health measure introduced in Wales, and we led the UK in calling for it. It is also widely supported by the public with some 80% of Welsh adults in favour.

The Welsh Government itself says it has been a key success in protecting workers and the public from the serious health risks of exposure to second-hand tobacco smoke. Research commissioned by the Welsh Government shows clear evidence of reduced exposure to environmental tobacco smoke, particularly in pubs, clubs, bars and at work. .

In its response to the committee's unanimous conclusion that there should be a comprehensive ban, the then Health Minister Brian Gibbons said: *"Much of the emphasis has been on the rights of customers or consumers to a smoke-free atmosphere, but the statement specifically mentions the rights of workers to have their working environment protected as well, which is an important strand in how we are moving forward"*

The amendment would send out the wrong message about smoking, particularly to young people and undermines one of the four key areas in the Government's Tobacco Control Action Plan, which is to reduce exposure to second hand tobacco smoke. While the Welsh Government is on the one hand running a campaign to reduce smoking in cars carrying children, on the other hand it is agreeing to give the green light to smoking to an industry that has a significant influence over children and young people.

Conclusion

Tobacco smoking causes serious harm to the health of smokers and to non-smokers who are exposed to second-hand smoke. It continues to be the largest single preventable cause of ill health and premature death in Wales. Almost half of all long-term smokers will die in their middle age as a result of tobacco use. Smoking is also a main cause of health inequalities, having been identified as a leading cause for the gap in life expectancy between rich and poor.

For this reason, reducing the harm to public health caused by smoking, in particular protecting children from the harmful effects of tobacco, is a priority for the Welsh Government in its action to reduce health inequalities.

These are the Government's words, not ours.

We would urge the sub-committees to consider the words of Val Lloyd, who chaired the Committee on Smoking in Public Places, when deliberating this issue who said:

"Simply put, this ban is about health and nothing else"