

## Is-bwyllgorau ar Reoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2012

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Lleoliad:  
Ystafell Bwyllgora 2 - y Senedd

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Dyddiad:  
Dydd Mawrth, 22 Ionawr 2013

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Amser:  
09:00

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch â:

**Lara Date**  
Clerc y Pwyllgor  
029 2082 1821

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### Agenda

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#### 1. Cyflwyniad, ymddiheuriadau a dirprwyon (09.00)

#### 2. Rheoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2012 - Sesiwn dystiolaeth 1 (09.00 - 10.00) (Tudalennau 1 - 23)

BBC Cymru

SFP(4)-01-13 - Papur 1

SFP(4)-01-13 - Papur 1a

- Clare Hudson - Pennaeth Cynyrchiadau BBC Cymru

PACT (Cynghrair Cynhyrchwyr Sinema a Theledu)

SFP(4)-01-13 - Papur 2

- Sue Vertue, Hartswood Films ac aelod o PACT

Teledwyr Annibynnol Cymru

SFP(4)-01-13 - Papur 3

SFP(4)-01-13 - Papur 3a

- Sion Clwyd Roberts, Arbenigwr Cyfryngau ac Eiddo Deallusol - Capital Law ac aelod o Gyngor TAC

#### 3. Rheoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2012-

## **Sesiwn Dystiolaeth 2 (10.00 – 11.00)** (Tudalennau 24 – 35)

ASH Cymru

SFP(4)-01-13 – Papur 4

- Felicity Waters, Rheolwr y Wasg ac Ymgyrchoedd

Sefydliad Prydeinig y Galon

SFP(4)-01-13 – Papur 5

- Delyth Lloyd, Rheolwr Cysylltiadau Cyhoeddus a Chyfathrebu

Cancer Research UK

SFP(4)-01-13 – Papur 6

- Dr Jean King, Cyfarwyddwr Rheoli Tybaco

## DATGANIAD GAN BBC CYMRU WALES AM REOLIADAU MANGREOEDD ETC DI-FWG (CYMRU) (DIWYGIO)

Mae gan y BBC bolisi llym ar ysmegu, sy'n dal gwneuthurwyr rhaglenni'n gyfrifol am unrhyw achos o bortreadu ysmegu. Ni ellir byth gyfiawnhau hyrwyddo sigarêts, a dylid sicrhau bob amser bod rhesymau golygyddol cryf dros bortreadu ysmegu.

Pan fydd cynyrchiadau yn cael eu gwneud mewn lleoliadau dros y ffin yn Lloegr, lle ceir eithriad ar gyfer ffilmio dramâu, bydd y BBC bob amser yn dilyn yr arfer o gynnal asesiad risg ar y defnydd o sigarêts ac yn rheoli hynny'n ofalus, fel sy'n digwydd gydag unrhyw berygl arall. Bydd unrhyw achos o ysmegu yn cael ei drafod gyda'r cast ymhell ymlaen llaw er mwyn sicrhau nad oes neb byth yn cael ei roi mewn sefyllfa annheg.

Mae'r ddeddfwriaeth bresennol yng Nghymru yn ei gwneud yn amhosibl ffilmio sigarét sydd wedi'i chynnau fel rhan o olygfa. Mae hyn yn achosi problem i ddramâu cyfnod, sy'n aml yn cynnwys sigarêts fel un o ffeithiau bywyd y cyfnod. Mae'n anodd iawn cyfleu moment emosiynol fawr yn gywir mewn siot agos, gan nad yw sigarêts ffug na CGI yn creu effaith ddilys.

Mae'r ddeddfwriaeth wedi effeithio ar ein penderfyniad i ffilmio dros y ffin, er enghraifft ym Mryste ar gyfer golygfeydd yn *Upstairs Downstairs* mewn cylch bocsiu yn y 1930au, a set parti mawr yn y Royal Albert Hall (er iddo gael ei ffilmio mewn lleoliad gwahanol). Byddai ffilmio'r golygfeydd mawr hyn heb ddangos neb yn ysmegu sigarêts, a oedd yn weithgaredd cymdeithasol mor gyffredin yn ystod y cyfnod hwnnw, wedi gwneud y cynhyrchiad yn llai credadwy.

Pan rydym yn portreadu ysmegu yn nramâu'r BBC, nid ydym byth yn ceisio 'glamoreiddio' ysmegu – ac yn aml, rydym yn ceisio gwneud y gwrthwyneb i hynny. Yn *Sherlock*, a gafodd ei ffilmio yng Nghymru yn bennaf gan Hartswood Films ar gyfer y BBC, mae'n rhaid i'r prif gymeriad fod yn ysmegwr er mwyn aros yn driw i'r cymeriad eiconig a grëwyd gan Conan Doyle, ond mae'r naratif wedi cyfeirio at y ffaith ei fod yn gwrthwynebu'r arfer, yn ogystal â'i ymdrechion i roi'r gorau iddi.

Yn *Casualty*, roedd cynlluniau i ddefnyddio ysmegu fel testun stori foesol, gydag ysmegwr mewn ystafell gwesty yn achosi tân, a dyna oedd y brif stori ym mhlot un bennod. Fodd bynnag, oherwydd y ddeddfwriaeth bresennol roedd yn rhy anodd ystyried ffilmio'r golygfeydd o fewn cyllideb ac amserlen y cynhyrchiad. Felly bu'n rhaid i stori gref, a fyddai wedi tynnu sylw at un o beryglon ysmegu, gael ei newid i ryw beth arall.

Byddai cynyrchiadau eraill sydd â chysylltiadau cryf â BBC Wales wedi methu cael eu ffilmio yng Nghymru o dan y ddeddfwriaeth bresennol. Roedd *A Room At the Top* a

*Parade's End* yn ddwy ddrama gyfnod lle'r oedd rhaid cynnwys cryn dipyn o ysmegu er mwyn aros yn driw i'r cyfnod.

Cyn y Nadolig, cyhoeddodd BBC Cymru Wales eu bod yn comisiynu drama newydd ar gyfer BBC ONE. Mae *The Game*, sydd wedi cael ei hysgrifennu a'i chreu gan Toby Whitehouse (*Being Human*), yn gyfres chwe rhan gyffrous sydd wedi'i lleoli ym myd ysbïo'r 1970au. Mae manylion y lleoliad ffilmio yn dal i gael eu trafod, ac oherwydd y cyfnod a'r pwnc dan sylw, mae'n debygol y bydd y gyfres yn cynnwys ysmegu ffuglennol. Yn yr achos hwn gallai'r penderfyniad ar leoliad y gwaith ffilmio fynd y naill ffordd neu'r llall, a gallai'r ddeddfwriaeth ysmegu bresennol yng Nghymru effeithio ar y penderfyniad terfynol.

Pe byddai eithriad i'r gwaharddiad ysmegu yn cael ei gyflwyno ar gyfer setiau cynhyrchu dramâu a ffilmiau yng Nghymru, rydym wedi meddwl yn ofalus sut y byddem yn ymateb i hynny. Hoffem amlinellu'r prif gamau y byddem yn eu cymryd i sicrhau bod ysmegu ar y set yn digwydd cyn lleied â phosibl ar ôl i eithriad o'r fath gael ei gyflwyno.

- Wrth gynllunio unrhyw waith ffilmio ar gyfer drama, byddwn bob amser yn ymrwymo i ystyried opsiynau eraill yn gyntaf yn hytrach nag ysmegu go iawn, fel defnyddio sigarêts ffug neu Ddelweddau wedi'u Cynhyrchu gan Gyfrifiadur (CGI). Mewn rhai cynyrchiadau, nid oes cymaint o angen bod yn gwbl gredadwy, a gallwn ddefnyddio'r opsiynau hyn yn yr achosion hyn.
- Byddwn yn cyflwyno proses newydd yn BBC Cymru Wales lle byddai'n rhaid i'r gwaith o ffilmio unrhyw olygfa sy'n cynnwys ysmegu go iawn gael ei awdurdodi ymlaen llaw gan y Pennaeth Cynyrchiadau, sy'n aelod o Fwrdd Rheoli BBC Cymru Wales. Ni fyddai hyn yn cael ei awdurdodi oni bai y teimlid bod cyfiawnhad cryf dros ddefnyddio sigarêts go iawn.
- Byddem yn sicrhau bod y mesurau uchod yn berthnasol i unrhyw gynyrchiadau annibynnol y mae BBC Cymru Wales yn gyfrifol amdanynt.

Rydym am ddangos yn glir, petai'r eithriad yn cael ei basio, na fyddem yn mynd ati i bortreadu mwy o ysmegu yn ein dramâu. Unig ganlyniad eithriad o'r fath fyddai y byddai modd i olygfeydd sy'n cynnwys ysmegu go iawn gael eu ffilmio yng Nghymru, yn hytrach na Lloegr.

Rydyn ni'n teimlo y byddai cyflwyno eithriad i'r gwaharddiad yn helpu i sicrhau y bydd hyd yn oed mwy o'r budd economaidd sy'n deillio o ddramâu yng Nghymru yn llifo i economi Cymru. Rydym yn pryderu y gallai'r gwaharddiad presennol gymell cynhyrchwyr dramâu'r BBC i beidio â gwneud rhai mathau o raglenni yng Nghymru. Mae penderfyniadau ynghylch ble i ffilmio drama ar gyfer y teledu yn gallu mynd y naill ffordd neu'r llall yn aml, ac mae perygl y gallai'r gwaharddiad arwain y penderfyniad i'r cyfeiriad anghywir.

Atodiad D

## Ffurflen ymateb i'r ymgynghoriad

Eich enw: Clare Hudson

Sefydliad (os yw'n berthnasol): Pennaeth Cynyrchiadau, BBC Cymru Wales

e-bost/rhif ffôn: clare.hudson@bbc.co.uk

Eich cyfeiriad: BBC Cymru Wales, Ffordd Llantrisant, Caerdydd, CF5 2YQ

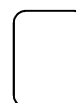
Dylid dychwelyd ymatebion erbyn 16 Mawrth 2012 i:

Cangen Cwrs Bywyd  
Llywodraeth Cymru  
4<sup>ydd</sup> Llawr  
Parc Cathays 2  
Caerdydd  
CF10 3NQ

neu gallwch lenwi'r ffurflen yn electronig a'i hanfon i:

e-bost: [TobaccoPolicyBranch@Wales.gsi.gov.uk](mailto:TobaccoPolicyBranch@Wales.gsi.gov.uk)

Mae'n bosibl y bydd ymatebion i ymgynghoriadau yn cael eu cyhoeddi – ar y rhyngwrdd neu mewn adroddiad. Pe bai'n well gennych i'ch ymateb gael ei gadw'n gyfrinachol, ticiwch yma:



## Cwestiynau

► **Cwestiwn 1: A ddylid diwygio Rheoliadau Mangreoedd etc Di-fwg (Cymru) 2007 i ganiatáu i berfformwyr ysmegu pan fo uniondeb artistig y perfformiad yn golygu ei bod yn briodol i'r perfformiwr ysmegu? Dylid / Na-ddylid**

**A yw'r Rheoliadau arfaethedig yn ddigon i sicrhau na chaiff yr eithriad ei gamdefnyddio?**

Ydyn.

Byddai unrhyw waith ffilmio mewn perthynas â golygfeydd â phobl yn ysmegu yn cael ei wneud o dan amodau'r eithriad gyda threfniadau diogelwch digonol ar gyfer criw a chast y cynhyrchiad. Dim ond sigarêts llysiuol fyddai'n cael eu defnyddio ar y set a hynny ar gyfer y gwaith ffilmio terfynol yn unig.

► **Cwestiwn 2: A yw'r amodau sy'n ofynnol gan yr eithriad hwn yn ddigon i leihau'r risg y caiff pobl eraill eu hamlygu i fwg ail-law?**

Ydyn.

Byddai unrhyw waith ffilmio mewn perthynas â golygfeydd â phobl yn ysmegu yn cael ei wneud o dan amodau'r eithriad gyda threfniadau diogelwch digonol ar gyfer criw a chast y cynhyrchiad. Dim ond sigarêts llysiuol fyddai'n cael eu defnyddio ar y set a hynny ar gyfer y gwaith ffilmio terfynol yn unig. Ni fyddai gorfodaeth ar actor i ysmegu.

► **Cwestiwn 3: A yw'r darpariaethau ar gyfer sicrhau na chaiff plant eu hamlygu i fwg ail-law yn y Rheoliadau arfaethedig yn ddigonol?**

Ydyn. Yn unol â'r eithriad arfaethedig, ni fyddai unrhyw blant yn bresennol yn y rhan o'r eiddo lle mae'r golygfeydd sy'n cynnwys ysmegu yn cael eu ffilmio.

► **Cwestiwn 4: A fydd y darpariaethau yn y Rheoliadau arfaethedig yn gallu cael eu gorfodi'n effeithiol?**

Byddant.

► **Cwestiwn 5: Bydd Llywodraeth Cymru yn darparu Canllawiau i gefnogi'r broses o roi'r eithriad arfaethedig ar waith: a fydd hyn yn ddigon i helpu i ddehongli amodau'r eithriad (er enghraifft, y gofyniad am 'uniondeb artistig')?**

Bydd.

Mae BBC Cymru Wales yn llwyr ymwybodol o'r peryglon a'r ystyriaethau sy'n gysylltiedig â 'glamoreiddio' ysmegu.

Mae BBC Cymru Wales yn ymrwymedig i gynhyrchu dramâu teledu o'r radd flaenaf, ac i lawer o wylwyr mae'r profiad o wyllo rhywbeth sy'n teimlo'n gredadwy – yn wir – yn rhan allweddol o'u mwynhad. Yn achos drama gyfnod, bydd rhan o'r broses o greu'r elfen gredadwy hon yn cynnwys dangos pobl yn ysmegu – roedd *peidio* ag ysmegu yn arfer bod yn rhywbeth prin, ac mae hynny'n ffaith o'n gorffennol nad oes modd ei hosgoi. Wrth ddramateiddio gorffennol Prydain ar y sgrin, mae dangos Prydain lle nad oedd neb yn ysmegu yn anghredadwy, a bydd yn cael effaith negyddol ar y cynhyrchiad terfynol ac ar fwynhad y gynulleidfa.

Er mwyn dramateiddio'r gorffennol mewn darnau cyfnod, mae angen i ddarlledwyr a gwneuthurwyr rhaglenni allu dangos cymeriadau'n ysmegu o bryd i'w gilydd. Byddai hepgor y manylyn hwnnw'n llwyr yn anghywir ac yn golygu na fydd modd creu awyrgylch a dangos cymeriad yn llawn. Fodd bynnag, dim ond mewn amgylchiadau penodol ac ar achlysuron prin y byddai hyn yn digwydd. O gael y cyfle, byddem bob amser yn dewis peidio â dangos cymeriad yn ysmegu, oni bai fod hynny'n amlwg yn gwrthddweud ffaith hanesyddol neu gymdeithasol ddyfnach. Ni fyddem ychwaith yn mynd ati i bortreadu ysmegu heb reswm yn ein cynyrchiadau drama.

Mewn dramâu cyfoes, ni ddylem gael ein gweld yn hyrwyddo rhywbeth mor annymunol ag ysmegu. Byddai'n ddadleuol iawn dangos arwr o gyfres deledu fel *Doctor Who* neu *Sherlock* yn ysmegu – yn wir, yn y gyfres *Sherlock*, rhoddir sylw i'r ffaith bod y prif gymeriad yn ceisio rhoi'r gorau i ysmegu.

Pan mae ysmegu'n digwydd mewn cynyrchiadau, mae gan y BBC bolisi golygyddol cadarn, sef:

5.4.41 Yn achos defnyddio cyffuriau anghyfreithlon, camddefnyddio cyffuriau, ysmegu, camddefnyddio toddyddion a chamddefnyddio alcohol:

- rhaid peidio â'i gynnwys mewn cynnwys sydd wedi'i wneud yn bennaf ar gyfer plant oni bai fod cyfiawnhad golygyddol cryf
- rhaid eu hosgoi fel arfer a rhaid peidio â'u cymeradwyo, eu hyrwyddo na'u 'glamoreiddio' mewn unrhyw raglenni eraill a ddarllendir cyn y trothwy nac ar y radio pan fo plant yn debygol iawn o fod yn rhan o'r gynulleidfa, nac mewn cynnwys ar-lein sy'n debygol o apelio at gyfran sylweddol o blant, oni bai fod cyfiawnhad golygyddol

•rhaid peidio â'u cymeradwyo, eu hyrwyddo na'u 'glamoreiddio' mewn cynnwys arall y mae'n debygol y bydd llawer o blant a phobl ifanc yn ei weld, ei glywed neu ei ddefnyddio, oni bai fod cyfiawnhad golygyddol.

#### 5.4.42 Dylem hefyd:

- sicrhau nad yw pobl sy'n cyfrannu at raglenni fel trafodaethau stiwdio neu raglenni sgwrsio yn ysmegu
- delio â phob agwedd ar ddefnyddio cyffuriau anghyfreithlon, camddefnyddio toddyddion a chyffuriau, ysmegu a chamddefnyddio alcohol gyda chywirdeb dyladwy. Pan fo'n angenrheidiol er mwyn sicrhau cywirdeb dyladwy dylai hyn gynnwys, er enghraifft, goblygiadau iechyd ac elfennau gwrthgymdeithasol defnyddio cyffuriau anghyfreithlon a goryfed mewn pyliau
- sicrhau bod cyd-destun cyfreithiol a chymdeithasol yr hyn rydym yn ei ddarlledu yn glir
- osgoi datgelu gormod o fanylion am sut mae defnyddio cyffuriau anghyfreithlon neu gamddefnyddio toddyddion, oni bai fod cyfiawnhad golygyddol clir dros wneud hynny.

Gellir gweld Canllawiau Golygyddol y BBC yma:

<http://www.bbc.co.uk/guidelines/editorialguidelines/>

Rhaid i'r BBC hefyd lynu wrth ddarpariaethau Cod Darlledu Ofcom, sef:

Adran 1.10

Cyffuriau, ysmegu, toddyddion ac alcohol

1.10 Yn achos defnyddio cyffuriau anghyfreithlon, camddefnyddio cyffuriau, ysmegu, camddefnyddio toddyddion a chamddefnyddio alcohol:

- rhaid peidio â'i gynnwys mewn rhaglenni sydd wedi'u gwneud yn bennaf ar gyfer plant oni bai fod cyfiawnhad golygyddol cryf;
- rhaid eu hosgoi fel arfer a pha un bynnag rhaid peidio â'u cymeradwyo, eu hyrwyddo na'u 'glamoreiddio' mewn rhaglenni eraill a ddarlledir cyn y trothwy (yn achos teledu), neu pan yw plant yn neilltuol o debygol o wrando (yn achos radio), oni bai fod cyfiawnhad golygyddol;
- rhaid peidio â'u cymeradwyo, eu hyrwyddo na'u 'glamoreiddio' mewn rhaglenni eraill y mae llawer o rai dan ddeunaw oed yn debygol o'u gweld neu eu clywed oni bai fod cyfiawnhad golygyddol.

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/protecting-under-18s/>



**► Cwestiwn 6: A yw'r Aseiad Effaith Reoleiddiol drafft yn adlewyrchu costau a buddiannau'r Rheoliadau arfaethedig yn gywir? Os nad yw, rhowch wybodaeth ychwanegol i ategu eich ateb.**

Ydy.

Yn ychwanegol at y rhesymau golygyddol y sonnir amdanynt uwchben ac oddi tanodd, ceir achos busnes cryf i'r eithriad arfaethedig ganiatáu agwedd fwy hyblyg wrth bortreadu ysmegu ar y sgrin.

Mae Llywodraeth Cymru a sefydliadau ac asiantaethau cysylltiedig wedi gweithio'n galed i ddenu cynyrchiadau a chynhyrchwyr annibynnol i'r wlad. Yn sgil twf y sector drama yng Nghymru – drwy BBC Cymru sydd bellach yn ganolfan rhagoriaeth ar gyfer drama, a drwy'r sector annibynnol – mae mwy o gynyrchiadau yn cael eu gwneud yma nag erioed o'r blaen. Gyda'n stiwdios newydd ym Mhorth y Rhath, rydym yn gobeithio y bydd hyn yn parhau i ddatblygu.

Fodd bynnag, mae'r ddeddfwriaeth fel y mae ar hyn o bryd yn gwneud Cymru'n opsiwn llai syml, ac felly'n opsiwn llai deniadol, ar gyfer ffilmio unrhyw ddarnau cyfnod. Mae cynyrchiadau o Gymru eisoes wedi gorfod teithio dros y ffin i Loegr, gan fod yr eithriad sy'n bodoli yno yn caniatáu amodau ffilmio mwy hyblyg. Nid yn unig y mae hyn yn ychwanegu cost ac amser at gynyrchiadau – gyda ffilmio ar leoliad yn gost ychwanegol at y broses ffilmio – mae hefyd yn rhoi Cymru o dan anfantis gystadleuol amlwg.

Y pryder yw y bydd cynyrchiadau yn dewis ffilmio cynyrchiadau cyfan yn Lloegr, yn hytrach na wynebu'r anhawster ychwanegol o ffilmio yng Nghymru. Pan fo cymaint o waith wedi cael ei wneud i ddenu cynhyrchwyr annibynnol i'r wlad, mae'n anffodus eu bod yn cael eu gorfodi i chwilio am opsiynau eraill.

Nid yw'r sigarêts electronig sydd ar gael ar hyn o bryd yn opsiwn amgen ymarferol: maent yn anodd eu gweithredu ac nid ydynt i'w gweld yn amlwg ar y sgrin. Mae'r broses CGI yn cymryd amser ac yn ddrud. Nid yw'r un o'r opsiynau amgen hyn yn ffordd gynaliadwy na chosteffeithiol o weithio ar hyn o bryd.

**► Cwestiwn 7: Yn eich barn chi, a fyddai'r Rheoliadau arfaethedig yn cael unrhyw effaith negyddol ar unigolion neu gymunedau yng Nghymru ar sail: anabledd; hil; rhyw neu ailbennu rhywedd; oedran; crefydd a chred a diffyg cred; cyfeiriadedd rhywiol; beichiogrwydd a mamolaeth; priodas a phartneriaeth sifil; neu Hawliau Dynol?**

Na fyddent.

**Rydym wedi gofyn cyfres o gwestiynau penodol. Os hoffech godi unrhyw faterion cysylltiedig, nad ydym wedi cyfeirio atynt yn benodol, gallwch ddefnyddio'r lle hwn i'w nodi:**

**Nodwch yma:**

Fel y soniwyd eisoes, mae BBC Cymru Wales yn deall ac yn cefnogi'n llwyr yr angen i fod yn gyfrifol wrth bortreadu ysmegu ar y sgrin. Mae ysmegu yn fater y mae angen delio ag ef mewn ffordd gwbl ddifrifol. Fodd bynnag, y prif fater sydd o dan ystyriaeth yn yr ymgynghoriad hwn yw'r dull cynhyrchu. Yn y pen draw, ni waeth p'un ai a ddaw'r eithriad arfaethedig i rym ai peidio, bydd ysmegu yn dal i gael ei bortreadu i'r gynulleidfa, lle bydd cyd-destun hanesyddol neu gyd-destun lliniarol arall cadarn yn cyfiawnhau ei gynnwys. Yn ddieithriad, bydd y diwydiant yng Nghymru yn cael ei orfodi i ddefnyddio dulliau eraill costus o gynhyrchu'r golygfeydd hynny – a fydd yn cynnwys ffilmio ar leoliad y tu allan i Gymru neu CGI.

Felly'r cwestiwn yw, sut y gellir ffilmio a chynhyrchu cynnwys o'r fath mewn ffordd nad yw'n tanseilio cost-effeithiolrwydd cynyrchiadau drama a ariennir gan ffi'r drwydded yng Nghymru, gan lwyddo i roi sylw dyledus i bryderon iechyd go iawn ar yr un pryd. Fel cynhyrchydd drama mawr, nad yw mewn unrhyw fodd yn ceisio 'glamoreiddio' ysmegu, mae BBC Cymru Wales yn cytuno y byddai'r eithriadau arfaethedig hyn yn galluogi hyn, ac yn ei reoleiddio'n briodol.

Submission to the Enterprise and  
Business Sub-Committee and the Health  
and Social Care Sub-Committee on the  
Smoke-free Premises etc. (Wales)  
(Amendment) Regulations 2012

**pact.**

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January 2013

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## Executive summary

Pact strongly welcomes the draft amendment to create an exemption in the Smoke-free Premises etc. (Wales) legislation for performers where the performance is in connection with the making of a film or television programme.

There is a significant commercial need for a change to this legislation as it currently puts Wales at a disadvantage to England as a location for film and television production, given that scenes which involve smoking scenes need to be shot outside of Wales at additional expense.

The restrictions mean that in order to film a scene in which a character smokes a production company must choose to either film certain scenes outside of Wales, or use Computer Generated Imagery (CGI) to add-in the cigarette in post-production. Both of these options involve a significant amount of additional cost to the production budget. This legislation therefore acts as a barrier to inward investment in Wales, from international productions as well as those from around the UK.

We welcome the draft amendment which enables performers to smoke in scenes of television and film production if this contributes to the artistic integrity of their performance.

In addition, we support the factors which have been outlined in the draft legislation in order to protect children and members of the public from the harmful effects of smoking.

## Introduction

- 1) Pact is the trade association which represents the commercial interests of the independent production sector. The sector produces and distributes approximately half of all new UK television programmes<sup>1</sup> as well as content in digital media and feature film.
- 2) The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown from £1.3 billion in 2005 to nearly £2.4 billion in 2011.<sup>2</sup>
- 3) Wales has a strong television production sector centred primarily in world-class studio facilities in Cardiff. Many successful TV productions have been made in Wales such as Sherlock, made by Hartwood Films, Stella by Tidy Productions and Doctor Who by the BBC.
- 4) The lack of an exemption to the Smoke-free Act in Wales for the purpose of film and television production adds significant expense to a production budget as it requires producers to film scenes containing smoking in a different location. Often this means that money which would otherwise have been spent in Wales, both direct production costs and associated additional costs such as accommodation and catering services, electricians and technicians required on site, is spent elsewhere – most commonly in England where there is already an exemption for smoking in performances.
- 5) We welcome the opportunity to comment on the Welsh Assembly Enterprise and Business Sub-Committee and Health and Social Care Sub-Committee inquiry on the Smoke-free Premises etc (Wales) (Amendment) Regulations 2012.
- 6) For further information, please contact Pact's Head of Policy, Emily Davidson, at [emily@pact.co.uk](mailto:emily@pact.co.uk) or on 020 7380 8232.

<sup>1</sup> Ofcom, Communications Market Report 2010: independents produced more than 50% of qualifying network programming by hours and 46% by value

<sup>2</sup> Pact Census Independent Production Sector Financial Census and Survey 2012, by Oliver & Ohlbaum Associates Limited, August 2012

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

*The smoking legislation creates additional expenses for TV and film production in Wales*

- 1.1 Pact considers that there is a strong commercial need for this amendment as the existing smoking legislation acts as an economic barrier against television and film production in Wales.
- 1.2 In England, an exemption for filming in TV and film production was included in the original smoke-free legislation which is designed to protect workers from the harmful effects of secondary smoke inhalation.<sup>3</sup> The Public Health Act 2006 includes an exemption to the smoking ban for performers in public performances if the artistic integrity of the performance makes it appropriate for them to smoke. In our opinion, this is an appropriate and necessary exemption for artistic purposes which does not undermine the overall aim of the legislation.
- 1.3 Whilst Pact and our producer members understand and support the public health principles behind the smoking ban which limit the exposure of cast, crew and members of the public to tobacco fumes, we strongly support amending the legislation to allow for smoking in controlled circumstances in instances which are editorially justified.
- 1.4 Whilst alternatives such as computer generated imagery (CGI) can be used to incorporate a character smoking into the scene in post-production, this is an expensive and imperfect substitute for filming the scene with a live cigarette.
- 1.5 We agree with the Government's Regulatory Impact Assessment which states that the smoking ban has been a major issue for a number of productions that have been filmed in Wales, especially period dramas set in a time when smoking was commonplace.
- 1.6 It is difficult to produce a feature film or television programme featuring a historical character which was known to smoke, such as Winston Churchill without containing smoking scenes. This is an integral part of the character and it would therefore be editorially justified to portray this aspect of the figure on screen.

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<sup>3</sup> Section 3 (5) of the Public Health Act 2006

- 1.7 Under the existing legislation, award-winning films such as *The King's Speech* or *The Boat that Rocked* could not have been filmed entirely in Wales.
- 1.8 If a production which is being made in Wales includes a smoking scene, the production company has to incur considerable expense in order to film the relevant scenes elsewhere. These additional expenses will be a factor in the budget when a company is deciding on a location for filming. This includes not just direct expenditure on production such as sets and props, which can be very expensive, but also the money spent on hotels and catering to support the cast and crew as well as services such as electricians and technical support required on site.
- 1.9 In certain instances, computer generated images (CGI) can be used to portray a character smoking rather than filming the scene using a live prop. However, this is not always an appropriate solution in circumstances in which a principle character is to be depicted as smoking as it can affect the visual look of the scene.
- 1.10 Furthermore, this process is an expensive alternative to live filming. The cost of filming a 10 second close-up CGI shot of someone smoking can cost approximately £30,000.

*The legislation puts Wales at a disadvantage to England when looking to attract inward investment in TV and film production*

- 1.11 Pact strongly welcomes the UK Government's proposals to introduce tax relief for high-end television, animation and video games. The aims of this relief are to promote the production of cultural products and to encourage investment in the UK in a way which is fiscally sustainable.
- 1.12 However, the smoking legislation in Wales could create a barrier to big-budget international drama productions wishing to invest if the content which they are making includes smoking scenes. For example, award-winning international drama series such as *Mad Men* or *The Killing* could not be filmed entirely in Wales.
- 1.13 There is therefore a strong commercial need for the legislation to be amended to reduce costs for existing productions in Wales and to ensure that this is not a barrier to attracting inward investment in this sector.

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

- 1.14 Wales is an attractive part of the UK for television and film production. It benefits from technologically advanced studio facilities and a talent base of production staff with experience working on large-scale drama productions such as Doctor Who and Sherlock. In addition, funding is available for filming in Wales through the Film Agency for Wales scheme.
- 1.15 It is extremely important that there continues to be a thriving independent production sector outside of London, including in each of the nations and regions of the UK to ensure that there is a diversity of supply in television production.
- 1.16 At present, the Welsh, Scottish and Northern Irish production sectors are at a disadvantage to England as smoking is not permitted in any scene filmed in these nations.
- 1.17 Removing this barrier would put Wales on par with English production facilities where this is permitted in cases where it is editorially justified, thus supporting growth in the Welsh TV and film production industry.

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

- 1.18 In England, smoking is allowed for performance purposes provided that it forms part of the artistic integrity of the performance. This includes an exemption for smoking in a play, as well as in television and film production.
- 1.19 The draft legislation is more narrowly defined than the legislation in England as it only applies to film and television production in cases where no child is present in the part of the premises which is not smoke free and in which that person is performing and that there are no members of the public viewing the performance. Whereas the English law allows for smoking to be included in rehearsals, this is not the case in the draft legislation for Wales.
- 1.20 Pact considers this legislation to be sufficiently clear. It allows smoking to take place for the purposes of filming a scene in which it is required for the artistic integrity of the performance, but it includes measures to protect members of the public and children from the adverse effects of smoke inhalation.



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

- 1.21 Members of the public would not be affected by this change as filming smoking scenes is prohibited if members of public are present.
- 1.22 Child performers are also prohibited from witnessing a smoking scene and therefore are explicitly protected in the draft legislation.
- 1.23 We do not consider that it is necessary to outline specific protections in legislation for other adult performers or members of the production staff. Rather, this will be done on a case by case basis depending on the requirements of the production at that time.
- 1.24 Production companies take the welfare of the people they employ extremely seriously.
- 1.25 However, the requirements for different members of staff to be on set during a smoking scene will differ depending on factors such as where the scene is being filmed or how many actors are involved in it. It is therefore not possible to enshrine in legislation how other performers or production staff could be protected from the adverse effects of smoking during filming of a scene in which a character smokes. Pact considers that the necessary protections should be assessed by the relevant production company depending on the circumstances of the case.

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

- 1.26 This exemption has been drafted in such a way as to only enable smoking on film and television sets in very limited circumstances ensuring that adequate protections are in place for children and members of the public. We therefore do not foresee that there will be any unintended consequences as a result of introducing this exemption.

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

- 1.27 We agree with the Regulatory Impact Assessment that the likely increase in the number of deaths or illness caused by exposure to second-hand smoke (SHS) as a result of introducing the exemption will be marginal.

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- 1.28 The draft legislation provides for an exemption to the ban on smoking in public places in a limited set of circumstances for a specific purpose.
- 1.29 Also, the legislation has been drafted in such a way as to ensure that the potential harm from smoking on set will be reduced to affect only a limited number of adult actors and crew for a limited period of time.
- 1.30 Pact understands the public health implications of the smoke-free legislation. We believe that this amendment proposes a limited exemption to the ban for editorial purposes which is a proportionate means of addressing the economic losses currently suffered by production in Wales as a result of legislation which is more restrictive than that in England.
- 1.31 The economic need for change is set to increase further over the coming years as international productions increasingly consider the UK as a base for production, supported by the new high-end television tax credits. The inability to film smoking scenes in Wales will undoubtedly be taken into consideration by foreign investors when they are considering where to base production in the UK. If additional costs are required to film in Wales in order to include smoking scenes, this could tip the balance of where to base the production in favour of English locations where additional expenses would not need to be incurred.

**Ymateb TAC i'r cwestiynau penodol a amlinellir gan Is-bwyllgor Menter a Busnes ac Is-bwyllgor Arolygiaeth Gofal Iechyd a Chymdeithaso ar safleoedd di-fwg ayyb (Cymru)(Gwelliant)Rheoliadau 2012, mewn llythyr dyddiedig 6 Rhagfyr 2012**

**A oes angen y diwygiad hwn i esemptio perfformwyr o'r gofynion di-fwg at ddibenion masnachol?**

Oes, yn ddiamheuol. Mewn dwy ffordd -

(I) y bygythiad i fuddsoddiadau mewnol i Gymru yn y diwydiannau creadigol; Yn y diwydiant ffilm yn ogystal a theledu - ble bydd cynhyrchwyr yn cael eu cyfyngu gan reolau nad ydynt yn bolisiau golygyddol a hynny'n arwain at amharodrwydd i ddod â'u cynhyrchiadau i Gymru os nad yw'r Gwelliant hwn yn cael ei dderbyn.. Mae hyn hefyd yn berthnasol i'r cyfleoedd posibl o gynhyrchu cyd-gynhyrchiadau y gellid eu ffilmio yma yng Nghymru.

(Ii) Mae'r rheoliadau presennol yn ei gwneud yn ofynnol i deithio ar draws y ffin i Loegr i ffilmio golygfeydd sy'n cynnwys ysmegu, sy'n gost ychwanegol i gynhyrchwyr Cymru. Gall hyn yn y pen draw arwain at gyfaddawdu golygyddol di-angen nad ydynt yn gyson â gofynion artistig y cynhyrchiad.

**A fydd y diwygiad hwn yn cyflawni ei nod o gefnogi'r diwydiant ffilm a theledu yng Nghymru?**

Bydd, heb amheuaeth. Mae rheoleiddio ddigonol i amddiffyn y gwylwr yn y ddeddfwriaeth gyfathrebu gyfredol.

Mae cynhyrchwyr teledu TAC, wrth gynhyrchu rhaglenni ar gyfer S4C neu ddarlledwyr masnachol yn cael eu rheoleiddio gan God Darlledu Ofcom. Mae dwy adran sy'n arbennig o berthnasol i'r mater hwn sef:

**Adran Un - Diogelu'r Rhai dan Ddeunaw Oed**

**Rheol 1.10 - Cyffuriau, ysmegu, toddyddion ac alcohol**

**Yn achos defnyddio cyffuriau anghyfreithlon, camddefnyddio cyffuriau, ysmegu, camddefnyddio toddyddion a chamddefnyddio alcohol:**

- ***rhaid peidio a'u cynnwys mewn rhaglenni sydd wedi'u gwneud yn bennaf ar gyfer plant oni bai fod cyfiawnhad golygyddol cryf;***
- ***rhaid eu hosgoi fel arfer a pha un bynnag rhaid peidio â'u cymeradwyo, eu hyrwyddo na'u 'glamoreiddio' mewn rhaglenni eraill a ddarlledir cyn y trothwy (yn achos teledu), neu pan yw plant yn neilltuol o debygol o wrando (yn achos radio), oni bai fod cyfiawnhad golygyddol;***

- ***rhaid peidio â'u cymeradwyo, eu hyrwyddo na'u 'glamoreiddio' mewn rhaglenni eraill y mae llawer o rai dan ddeunaw oed yn debygol o'u gweld neu eu clywed oni bai fod cyfiawnhad golygyddol.***

### ***Rheol 1.13 - Trais ac ymddygiad peryglus***

***Ymddygiad peryglus, neu bortreadau o ymddygiad peryglus, sy'n debygol o allu cael ei efelychu'n rhwydd gan blant mewn modd sy'n niweidiol:***

- ***rhaid peidio eu cynnwys mewn rhaglenni sydd wedi'u gwneud yn bennaf ar gyfer plant oni bai fod cyfiawnhad golygyddol cryf;***
- ***Rhaid peidio â'i ddarlledu cyn y trothwy oni bai fod cyfiawnhad golygyddol.***

### ***Adran Dau - Niwed a Sarhâd***

#### ***Rheol 3.4 Trais, ymddygiad peryglus a hunanladdiad***

***Rhaid i raglenni beidio â chynnwys deunydd (boed mewn rhaglenni unigol neu mewn rhaglenni o'u cymryd gyda'i gilydd) sydd, gan gymryd i ystyriaeth y cyd-destun, yn goddef neu wneud yn ddeniadol, ymddygiad peryglus, neu ymddygiad gwrthgymdeithasol difrifol sy'n debygol o gymell eraill i efelychu ymddygiad o'r fath.***

Yng nghyd-destun Adran 2 y Cod mae'n cael ei dderbyn yn eang bod ysmegu yn cael ei ystyried yn ymddygiad peryglus, ac felly yn cael ei reoli gan y darpariaethau hyn. Ni chaniateir i gynhyrchwyr wneud ysmegu yn ddeniadol mewn unrhyw fodd - yn wir fe'i portreadir yn eang fel gweithgaredd gwrthgymdeithasol, sy'n aml yn gysylltiedig â chymeriadau sy'n dioddef pryder neu amgylchiadau sy'n creu straen personol.

Mae Fiction Factory, un o aelodau TAC, ar hyn o bryd yn cynhyrchu cyfres ddrama dditectif wedi ei leoli yn Aberystwyth, sy'n cynnwys cymeriad sinistr sydd, yn y plot, yn amlwg yn ysmegu. Er hyn, mae'r cynhyrchydd yn rhwystredig nad ydynt yn gallu portreadu'r cymeriad yn y weithred o ysmegu. Cafwyd enghreifftiau tebyg eraill yn ystod y blynyddoedd diweddar lle mae cynhyrchwyr wedi gorfod naill ai gyfaddawdu'n olygyddol neu wynebu costau cynhyrchu ychwanegol drwy ffilmio'r golygfeydd perthnasol yn Lloegr.

Anaml iawn y gwelir cymeriadau yn ysmegu mewn drama cyfoes bellach – yn wir, o fewn operâu sebon megis Pobl y Cwm a Rownd a Rownd ychydig iawn o'r cymeriadau sy'n ysmegu - mae hyn yn gyson gyda chymeriadau sebon yn Eastenders, Coronation Street ac ati. Pe bai cymeriad yn cael ei weld yn ysmegu yna fe fyddai hynny'n olygyddol fwriadol er mwyn dweud rhywbeth am ei gymeriad

- a byth mewn modd sy'n bortread positif neu'n gwneud ymddygiad o'r fath yn ddeniadol.

Ym maes drama cyfnod, fodd bynnag, mae hygrededd cynhyrchiad yn dibynnol ar bortread cywir o arferion cymdeithasol, ynghyd â gwisgoed dilys, propiau a lleoliadau. Byddai unrhyw gynhyrchiad wedi ei osod cyn y 1990au yn adlewyrchu adeg pan oedd ysmegu mewn cymunedau yn gyffredin ac yn dderbyniol. Mae dramâu diweddar fel 'Life on Mars', 'The Hour' a 'Upstairs Downstairs' wedi ymgorffori golygfeydd yn cynnwys y prif gymeriadau'n ysmegu. Dymuniad syml aelodau TAC yw i fedru ffilmio cynhyrchiadau tebyg yma yng Nghymru. Cynhyrchodd cwmni Green Bay ffilm, sydd wedi ennill nifer o wobrau, oedd yn portreadu bywyd Richard Burton a'i frawd pan gyfarfuon nhw yng nghartref Richard Burton yn y Swistir. Mae'r ddau gymeriad yn ysmegu'n gyson drwy gydol y ffilm. Roedd hynny'n hanfodol er mwyn adlewyrchu'r realiti hwn. Ni allai'r ffilm hon fod wedi cael ei ffilmio yng Nghymru.

Byddai'n drueni pe na bai'n bosibl i greu portread cywir o Dylan Thomas, er enghraifft, yn eistedd yn y Boat House neu Brown's yn Nhalacharn yn ysgrifennu ac ysmegu yn ôl arfer ei gyfnod.

Mae aelodau TAC hefyd angen gallu portreadu bywyd cyfoes llym yn rhai o'n cymunedau difreintiedig lle mae ysmegu yn gyffredin. Roedd hyn yn wir yng nghyfres BBC Cymru 'Care'. Byddai cynhyrchwyr yn gorfod cyfaddawdu'n olygyddol pe na bai modd adlewyrchu bywyd yng nghartrefi yr unigolion hyn. Mae'r rhain yn ddarnau o waith pwysig sydd yn aml yn adlewyrchu effaith niweidiol ysmegu ar ein hiechyd.

Safbwynt TAC yw bod y sefyllfa bresennol yn gosod cyfyngiadau anghyfiawn ar ryddid golygyddol awduron a chynhyrchwyr sy'n arwain at gyfaddawdu golygyddol neu orfod osgoi'r cyfyngiad trwy symud y cynhyrchiad allan o Gymru.

Mae aelodau TAC yn anelu at gynhyrchu drama o safon i ddiddanu, rhannu gwybodaeth ac addysgu'r gynulleidfa. Fel diwydiant, rydym wedi cofleidio amrywiaeth ac wedi gwneud cyfraniad sylweddol at ganfyddiad y cyhoedd o ystyr bod yn gynhwysol. Bydd y Diwygiad arfaethedig yn yr un modd yn galluogi cynhyrchwyr i chwarae rhan wrth hyrwyddo y canfyddiad negyddol o ysmegu mewn dramâu cyfoes yn ogystal â chreu ddilysrwydd mewn dramâu cyfnod. Rydym yn credu y gellir cyflawni hyn ynghyd a chadw'r risg i iechyd y rhai sy'n gweithio yn y diwydiant mor isel a phosib o ysmegu goddefol pan gaiff ei reoli'n briodol wrth llynu'n gaeth at reoliadau iechyd a diogelwch a pharatoi asesiadau risg ystyrion (gweler isod).

**A oes digon o eglurder o ran yr amgylchiadau y mae'r esemptiad yn weithredol ynddynt?**

Crêd TAC fod yr eithriad presennol yn darparu digon o eglurder am yr amgylchiadau lle bo'r eithriad yn gymwys.

### **A yw'r amodau yn cynnig diogelwch digonol i berfformwyr eraill, staff cynhyrchu ac aelodau o'r cyhoedd?**

Mae'r amodau yn gosod cyfyngiadau llym ar yr amgylchiadau pan fydd yn bosibl i ganiatáu ysmegu yn y gweithle - rhaid i'r cyd-destun artistig amlinellu fod cyfiawnhad golygyddol dros ymgorffori golygfeydd mewn cynyrchiadau. Gan fod y gyfraith yn gyffredinol yn ei gwneud yn anghyfreithlon i ysmegu yn y gweithle, mae nifer y golygfeudd ble bydd cymeriadau mewn dramau cyfoes yn cael portreadu yn ysmegu yn llawer llai na fu yn y gorffennol. Er enghraifft, mae golygfeudd mewn tafarnau, clybiau, ystafelloedd staff yr ysgol, gorsafedd heddlu ac ati bellach yn arddaloedd di-fwg ac felly nid ydynt yn cael eu portreadu mewn dramau cyfoes fel amgylcheddau ysmegu. Hefyd, mae'r amodau yn cyfyngu ar gynhyrchwyr ffilm a theledu pan fydd plant yn cymryd rhan. Gall sgiliau y cyfarwyddwr alluogi portreadu golygfeudd sy'n cgreu'r ddelwedd fod plant yn rhan o'r olygfa, ond mewn gwirionedd, ni fyddent yn bresennol pan fydd onglau camera arbennig yn cael eu ffilmio gydag oedolion yn ysmegu.

### **A ellir creu canlyniadau anfwriadol drwy gyflwyno'r esemptiad hwn?**

Ag eithrio gwneud datganiad clir bod Cymru'n 'agored i fusnes' ar gyfer lleoli pob math o gynyrchiadau ffilm a theledu, a dangos ymddiriedaeth yn ein cynhyrchwyr i ymddwyn yn gyfrifol, yn unol â'r sefyllfa yng ngweddill y DU, nid ydym yn gweld unrhyw ganlyniadau anfwriadol o gyflwyno yr esemptiad hwn. Bydd y diwydiannau creadigol yn ei weld fel arwydd pwysig o gefnogaeth ac ymddiriedaeth gan Lywodraeth Cymru ac yn ardystiad o werth ein diwydiant i economi Cymru wrth gyflawni diben artistig, economaidd a chymdeithasol.

Yn gelfyddydol, bydd yn galluogi cynhyrchwyr i amlygu unwaith eto y canfyddiad negyddol am ysmegu yn ein cymdeithas ac yn helpu i gyfrannu tuag at nod Llywodraeth Cymru o leihau effeithiau niweidiol ysmegu.

### **Pa ystyriaethau o ran polisi iechyd sy'n berthnasol i'r diwygiad hwn?**

Mae gan y cwmnïau sy'n aelodau o TAC record ardderchog o gydymffurfiaeth â chanllawiau Iechyd a Diogelwch. Byddem yn croesawu trafodaethau gyda pharŵn sydd â diddordeb i ffurfio canllawiau i'r diwydiant allasai fod yn berthnasol pan fyddai angen i gynhyrchiad ddangos rhywun yn ysmegu mewn golygfeydd penodol.

### Papur 3

Fel yr amlinellir uchod, mae darpariaethau rheoleiddio'r diwydiant yn golygu na ellir portreadu ysmegu mewn modd bositif neu ddeniadol - mae'n cael ei ddangos yn ddieithriad i ddarparu hygredded golygyddol i ddramau cyfnod neu, mewn dramau cyfoes, i bortreadu y cyd-destun negyddol, megis faeledd yng nghymeriad person neu ddatganiad o statws cymdeithasol.



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## **Smoking exemption for Film & TV.**

TAC is mindful that this is a very emotive and complex subject, and do not seek to overturn the Smoking Ban in Wales. We do however seek for a change in the law, a change that would allow an exemption for TV and Film Productions, in certain circumstances.

The law as it stands does not allow for an exemption, as it does in England. TAC feels that this has a serious economic impact on the creative Industries within Wales. These are Industries that the Welsh Government is actively supporting in various ways, and I would entreat you to continue in your invaluable support by supporting this exemption.

There are examples where revenue has been lost to Wales because of this ban on smoking. "Upstairs, Downstairs" will suffice as a clear example of this issue. The BBC, with much fanfare, has moved Productions from London to Cardiff, and has brought much needed income into the Capital. It seems at odds then, that this Production has to "up sticks", and move to Bristol to film scenes that involve smoking. Period drama will inevitably require such scenes. Should we sit back and let all TV and Film be made in England? This is not in line with Welsh Government's undoubted support for the Creative Industries.

In the case of "Ryan a Ronnie", a TV drama largely based in the 'smoky' atmosphere of a Welsh workingman's club in the 1970's (The Double Diamond, Caerffili), the Producers tried various means to adhere to the law on the prohibition of smoking on premises. They tried electronic cigarettes, which looked unrealistic, and even tasked the design team with creating fake cigarettes with cigarette paper and cotton wool, which was quickly ruled out for obvious health and safety



reasons. There is no doubt that the Producers had, while attempting to authentically portray the atmosphere of the period, great difficulties dealing with the challenging task of compromising editorially in the face of being unable to film interior scenes involving smoking. The inability to set the scene as realistically as desired contributed in part to a decision to locate certain scenes outside Wales (Liverpool) resulting in additional production costs.

It was often mentioned in the Press that the Dragon Studios in Pencoed were going to be the Welsh equivalent of Hollywood, with some getting so excited they called it "Valleywood". To date this hasn't really happened, why? Do Production Companies from England and beyond really want to come to Wales to film a period Drama, only to have to relocate the whole Production, if there is a scene that involves smoking? I think not.

TAC is committed to seeing the Creative Industries in Wales grow and prosper, not an easy task in these days of dwindling budgets. This task is being hampered by a law that is inflexible. This discussion will not come up in legislation for many years, if this exemption does not get the support from AM's, there can surely be only one outcome. The TV & Film Industry within Wales will be at a disadvantage economically and creatively by being out of step with England, which I'm sure you'll agree is something all AM's should be concerned about.

Iestyn Garlick (Chair TAC)



December 17<sup>th</sup> 2012

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

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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"**



## ***The Enterprise and Business Sub-Committee and the Health and Social Care Sub-Committee on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012***

Written evidence from BHF Cymru  
January 2013

British Heart Foundation (BHF) Cymru is the nation's leading heart charity. We are fighting against heart and circulatory disease – Wales' biggest killer claiming over 11,000 lives each year, around a third of all deaths.

While we welcome the opportunity to respond to the two sub-Committees' call for evidence, we are extremely concerned at the Welsh Government's proposals to exempt film and television productions from Wales' smoke-free legislation. Weakening this legislation would needlessly expose those that work in film and television production to second-hand smoke and is also wholly unnecessary.

In addition to this response, we are also supportive of the evidence provided to the Committee by ASH Wales.

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

There is clear evidence that passive smoking increases the risk of developing Coronary Heart Disease (CHD).<sup>1</sup> A number of studies have shown an elevated risk of heart disease in people regularly exposed to passive smoke. For example, non-smokers living with smokers have a 30 per cent increased risk of developing the disease.<sup>2</sup> A study of young adults generated suggestions that non-smokers at risk of CHD should avoid all indoor environments that allow smoking.<sup>3</sup>

Further, a study published in the British Medical Journal suggests that previous studies of the effect of passive smoking on the risk of heart disease may have been underestimated. The researchers found that blood cotinine levels among non-smokers exposed to passive smoke were associated with a 50-60 per cent increase risk of heart disease.<sup>4</sup>

The successful implementation of smoke-free legislation across the UK has significantly reduced public exposure to passive smoke. The immediate health benefits of this legislation have been highlighted in the UK, with one study for example showing that between 2007

<sup>1</sup> *The health consequences of involuntary exposure to tobacco smoke: a report of the Surgeon General*. Atlanta, USA: US Department of Health and Human Services; 2009. Available at: <http://www.surgeongeneral.gov/library/secondhandsmoke/>

<sup>2</sup> Law MR, Morris JK, Wald NJ. Environmental tobacco smoke exposure and ischaemic heart disease: an evaluation of the evidence. *BMJ* 1997 Oct 18;315(7114):973-80. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/9365294>

<sup>3</sup> Pechacek TF, Babb S. Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke? *BMJ*. 2004 Apr 24;328(7446):980-3. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/15105323>

<sup>4</sup> Whincup PH, Gilg JA, Emberson JR, Jarvis MJ, Feyerabend C, Bryant A, Walker M, Cook DG. Passive smoking and risk of coronary heart disease and stroke: prospective study with cotinine measurement. *BMJ*. 2004 Jul 24;329(7459):200-5. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/15229131>



and 2008 there was a drop of 2.4 per cent in the number of emergency admissions for heart attack in England.<sup>5</sup>

Wales's smoke-free premises legislation is one of the most successful public health measures introduced in Wales to date, protecting all workers in Wales from the harms of second-hand smoke. It is also extremely popular in Wales, with 84 per cent of Welsh adults in support.<sup>6</sup> The exemption proposed would seriously undermine this legislation, and needlessly expose workers in film and television production to second-hand smoke that they are currently protected from. BHF Cymru also believes that this would set a dangerous precedent, potentially opening the door to additional efforts to undermine the Welsh Government's other tobacco control initiatives.

This legislation was introduced on health grounds in order to protect workers from exposure to second-hand smoke – it is a health issue, not a commercial one. It is also a popular measure, with the Welsh Government's consultation last year highlighting that there was little appetite to amend this – with 75 per cent of respondents opposing the proposed exemption.<sup>7</sup>

The Welsh Government has also set ambitious targets for reducing smoking prevalence in the Wales Tobacco Control Action Plan from 23 per cent to 16 per cent by 2020. Weakening the smoke-free legislation in Wales would call the Welsh Government's commitment to achieve these targets into question.

**Q: Is there a commercial need for this amendment to exempt performers from smoke-free requirements?**

The exemption suggested in this amendment is wholly unnecessary. There is no suggestion that where a character is stabbed or shot that the artistic integrity of the performance requires they should be stabbed or shot – such activities are capable of being acted using props and special effects.

The same applies to smoking – technical expertise exists in Wales to simulate smoking using special effects. These have been used in recent productions of Doctor Who and Upstairs Downstairs in Cardiff.

Wales is already a competitive location for filming. The Wales Screen Commission estimates that film and TV companies spent more than £22 million in Wales last year – it is extremely unlikely that the issue of whether production companies were able to portray smoking using a cigarette was a major issue in their decision to choose Wales as their location for production.

In addition, Northern Ireland (which similarly does not have this exemption for their smoke-free laws) was only last year highlighted by the British Film Industry as a case study for

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<sup>5</sup> Sims M, Maxwell R, Bauld L, Gilmore A. Short term impact of smoke-free legislation in England: retrospective analysis of hospital admissions for myocardial infarction. *BMJ*. 2010 Jun 8;340:c2161. doi: 10.1136/bmj.c2161. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/20530563>

<sup>6</sup> <http://wales.gov.uk/smokingbanwalessub/home/smokefreelawoutcomes/?lang=en>

<sup>7</sup> Summary of responses from the public consultation on creating an exemption for performers within The Smoke Free Premises Etc. (Wales) Regulations 2007. Welsh Government; 2012.

increased film investment.<sup>8</sup> Wales should therefore not need an exemption to this legislation in order to remain a competitive location.

**Q: Do the conditions offer adequate protection to other performers, production staff and members of the public.**

As stated above, the exemption would remove the existing protection to performers and crew present, exposing them to the harmful effects of second-hand smoke. All workers should remain protected by the current legislation from second-hand smoke.

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

Any exemption on commercial grounds would set a dangerous precedent for public health legislation in Wales. This would not only undermine the Welsh Government's efforts on tobacco control and tackling ill health, but would likely also lead to future challenges to this and other legislation on tobacco control from industries that claim they are damaging their profits.

If you would like any further information about this response please contact Delyth Lloyd, Press and Public Affairs Manager on 02920 382406 or [lloyd@bhf.org.uk](mailto:lloyd@bhf.org.uk)

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<sup>8</sup> Oxford Economics. *The Economic Impact of the UK Film Industry*. British Film Industry; 2012. Available at: <http://film.britishcouncil.org/about-us/the-economic-impact-of-the-uk-film-industry>



Committee Clerk  
Smoke-Free Premises etc. (Wales) (Amendment) Regulations Sub-Committees  
Committee Service  
National Assembly for Wales  
Cardiff Bay  
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**Cancer Research UK**  
Angel Building  
407 St John Street  
London EC1V 4AD  
United Kingdom  
T 020 7242 0200  
[www.cruk.org](http://www.cruk.org)

Dear Ms Date,

I am writing in response to your consultation on amending the Smoke-Free Premises etc. (Wales) Regulations 2007 to permit smoking by performers.

The smoke-free premises legislation is one of the most successful public health measure introduced in Wales and commands high levels of public support. Cancer Research UK welcomed the publication of the Tobacco Control Delivery Plan In February 2011, and its commitment, among other important areas, to continue to reduce exposure to second hand smoke. We therefore believe that to amend this legislation would be a backwards step. The law was introduced on public health grounds to protect workers and we believe that actors should not be forced to smoke in their workplaces and other members of the film crew should not be exposed to second hand smoke.

We also believe that the vagueness of 'artistic integrity' as a criterion means enforcement is very difficult. While the proposed regulations may attempt to reduce the health harm caused by the change, there will still be smoke exposure at levels harmful to health.

Allowing an exemption for artistic performances means actors can be pressurised into smoking and run the risk of becoming addicted. It can make smoking part of someone's job when there are practical alternatives. Perhaps the most important health risk is that of actors progressing to regular smoking or relapsing. Nicotine is a highly addictive substance and many people find it very hard to stop smoking. When tobacco kills half of its long-term users, it is wrong to expose workers to this risk. While 'tobacco-free herbal cigarettes' might be used instead, they still create tar, carbon monoxide and other toxins that are inhaled by the smoker and those around them.

We understand that practical alternatives are available to simulate smoking on screen, and these are currently in use in Wales (and in Scotland and Northern Ireland, where this restriction is also in place). As alternatives such as CGI and special props are available, and the risks to health are clear, we urge the Welsh Government not to amend the existing regulations.

The costs of smoking related diseases are high for Wales, estimated to amount to £386 million per year<sup>i</sup> for the NHS alone, this is equivalent to £129 per head or 7% of total healthcare expenditure in Wales. Smoking is the largest single cause of avoidable ill health and early death in Wales. Smoking remains the largest preventable cause of cancer, causing one in four deaths from cancer and up to eight out of ten cases of lung cancer. Overall, 5,650 deaths are caused by tobacco each year in Wales.



There have been major achievements in tobacco control, and the Welsh Government continues to be ambitious in attempting to reduce the harm from tobacco. Not only will an exemption undermine the Welsh Government's other tobacco control initiatives, it could set a dangerous precedent for future challenges to the legislation from other industries who deem the law to be affecting their profits and wish to propose their own exemptions.

If you require any further information, please contact Vicky Crichton, Senior Public Affairs Manager, on 0131 243 2641 or [vicky.crichton@cancer.org.uk](mailto:vicky.crichton@cancer.org.uk)

Yours sincerely,

A handwritten signature in black ink that reads 'Jean King'. The signature is written in a cursive, flowing style.

Dr Jean King  
Director of Tobacco Control



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<sup>i</sup> Phillips, C. and Bloodworth, A. 'The cost of smoking to the NHS in Wales. Available online at: [http://www.ashwales.org.uk/creo\\_files/upload/default/cost\\_of\\_smoking\\_to\\_the\\_nhs\\_in\\_wales.pdf](http://www.ashwales.org.uk/creo_files/upload/default/cost_of_smoking_to_the_nhs_in_wales.pdf)