

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 Hartswood 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.