

SFP – 41

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

Response from The Wales Heads of Environmental Health Group (WWhoEHG)

### **The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012**

Response to the Welsh Government Enterprise and Business Sub Committee and the Health and Social Care Sub Committee

The Wales Heads of Environmental Health Group (WWhoEHG) Technical Panel - Public Health Protection and Health Improvement welcomes this consultation by the Enterprise and Business Sub Committee and the Health and Social Care Sub Committee on The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012.

This group consists of leaders of Environmental Health, Local Authority Health Protection and Health Improvement Officers and have collated a response to the positive step that Welsh Government has taken in reconsidering proposed Amendment Regulations on this issue.

As noted below we are strongly opposed to the proposed amendment and are of the opinion that the smoke free legislation should remain in place for the film and television industry. There should be no exemption for this business sector.

We answer the questions asked in the order raised and thereafter make further comments which we trust will be of assistance to both committees in their consideration of this issue.

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

No. Wales has been the location of choice for film and television programme makers, notwithstanding the fact that smoking in film sets and television studios is prohibited. There is no suggestion that the film industry was deterred from doing so or that its ambitions will be in anyway curtailed by the ban on smoking on film and television sets. There is no evidence that the film industry will be boosted by allowing 'real' smoking on set.

It is relevant to note that in the report 'The Economic Impact of the UK Film Industry' produced for the British Film Industry by 'Oxford Economics' in September 2012 reference was made to a case study on the developing film industry in Northern Ireland, where the same prohibition on smoking on film sets and television studios exists as is in Wales. The report highlights increased investment, aggressive marketing and government support as being factors that are seeing continued growth, with return on investment of £6 for every £1 invested, but does not suggest 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 in the same circumstances and that the proposed amendment is not necessary to secure it. Any perceived benefits from the proposed amendment would be minimal and there is no necessity or reason therefore, for Wales to compromise its health ambitions in support of such unproven claims.

This amendment needs to look very carefully at the longer term implications of permitting smoking through this legislative change, not only for the industry but also the individuals which this amendment will affect. Actors, actresses, film crews and other relevant staff will be subjected to exposure from carcinogens – no other vocation would actively permit this to occur and be in a situation which in effect positively encourages these individuals to smoke in order to gain 'artistic value' as part of their performance. Similarly, you would not actually expect an actor to actually inject themselves with drugs to in attempt to achieve a 'realistic' effect for purposes of artistic integrity.

The health of these individuals needs to be taken account and is of course paramount. Knowing that this is a highly addictive substance which kills one in two of its long term users as well as being the cause of other debilitating health

conditions, Wales must continue to lead the way in this instance, protecting the health of those who decide to visit, reside and work in the Country. Surely a more appropriate solution would be to retain the smoking restrictions and invest in simulating smoke through special effects technology; not only would this be a more appropriate course of action but should be the only and correct way forward.

Knowing that cancers and other long term illnesses will be attributed to smoking in this industry will no doubt in years to come, allow individuals to be able to attribute blame to the film and television industry in Wales for their illnesses. Wales should not therefore be in the position that would be considered as responsible for allowing this to take place. Surely by allowing this amendment to progress, it is not supporting the television and film industry but will actually be responsible for making individuals ill, affecting them, their families and increasing the costs to our health service. This could even be considered as a means of 'forcing and pressurising' individuals who work in a highly competitive business to smoke highly addictive substances and inhale carcinogens as part of their performance.

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

No. What is considered as 'artistic integrity', varies and could be dependent on circumstances and is thus open to (mis)interpretation. The question as to whether the artistic integrity of the performance requires a person to smoke will be highly subjective and may vary from director to director or producer to producer.

It also suggests that smoking will only be allowed in the final 'take' of any film or television production, however there is no way of determining with any degree of confidence that any one take is the final version, and he or she may only make that decision after viewing a number of takes of the same scene in which case smoking would have to take place in all of the takes. It is also the case that the same scene has to be shot from a number of different angles, such that a relatively short piece of footage may take a long time to film, and for continuity purposes smoking would have to be consistent throughout the whole of the filming.

There is insufficient clarity about the circumstances in which the exemption would apply, so potentially it would be easy to circumvent the protection that is claimed in the Explanatory Memorandum. The subjective nature of decisions around artistic integrity and the appropriateness or otherwise of smoking in a performance would have the effect of meaning that the exemption would be a virtual carte blanche for smoking during filming. In these instances, there is no specification as to purposes of the film or the need to register that filming is taking place.

Filming is a more and more regular occurrence, for example, from the recording of structured university performances through to the recording of footage for internet use and as such, enforcement officers would experience great difficulty in determining and discussing the instances where smoking will and will not be permitted. For purposes of clarity, therefore, the legislation should remain, thus

ensuring there is no misinterpretation of the legal position and avoiding possible circumstances where the exemption could be exploited.

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

No. For the reasons outlined above and by the very fact that there is overwhelming evidence to support the argument that environmental tobacco smoke poses a significant risk to non-smokers as well as smokers, we believe that smoking could continue throughout the making of a film or television production. That being the case, any other performers, production staff, and members of studio audiences including children would be exposed to tobacco smoke and are afforded no protection other than in the case of audience members who could leave.

Not only is there a concern that smoking would potentially continue throughout filming but the fact that once the smoking scene has ceased, both smoke and residual highly toxic particulate contamination from tobacco smoke including carcinogens and heavy metals, such as arsenic, lead, and cyanide, will remain in the area for some time on clothes, upholstery, carpets and furniture.

A study published in February 2010 by the Proceedings of the National Academy of Sciences entitled, 'Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential third hand (environmental) smoke hazards' found that smoke remaining after smoking has ceased causes the formation of carcinogens. The nicotine in tobacco smoke reacts with nitrous acid - a common component of indoor air - to form the hazardous carcinogens. Nicotine remains on surfaces for days and weeks, so the carcinogens continue to be created over time, which are then inhaled, absorbed or ingested.

From a longer-term perspective, the damaging effects of viewer's modelling their behaviour on favourite actors through smoking, and the fact that seeing smoking on film tend to glamorise smoking, needs to be considered.

All therefore need to be aware of the health risks of exposure to these chemicals once smoking has ceased in the area and recognize that eliminating smoking is the only way to protect against tobacco smoke contamination and the consequences of exposure to chemical toxins.

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

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

We consider that there are a number of potential unintended consequences, some of which could potentially have considerable financial implications.

Enforcement of the legislation lies with local authorities. Given the highly subjective nature of decisions as to whether smoking is necessary for the artistic integrity of a performance, it will be impossible to build up any guidance as to the circumstances in which smoking is permitted, and where there is a dispute between the enforcing authority and the producer, it will be for the Magistrates Court to determine whether the smoking was a lawful or unlawful activity. There is also potential that this may lead to lack of consistency between local authorities and disagreement between enforcers and film and television producers, possibly resulting in legal challenge. Film companies will be in a significantly stronger position financially than local authorities which may have the effect of discouraging enforcement and thereby putting the health of performers, production crew and audiences at risk.

It is also the case that Magistrates will have no expertise as to whether a performance is such that smoking is required and will have to rely on expert evidence. We can foresee a circus of 'experts' in theatre and television performances springing up and being used in the courts to argue the question of necessity. This will be expensive and time consuming and given that each production is different and each producer will have his/her own ideas, the outcome will not contribute to establishing a series of precedents which enforcers and producers could look to for guidance in future productions.

All of the foregoing presupposes that local authorities would have the available resource to police television and film productions for smoking on set, which in the current economic climate, we suggest, is unlikely. This would mean that the television and film industry would be free to use the exemption in a largely unregulated way, and in doing so would compromise the health of people working in the industry in a way that is not permitted in any other industry.

Introducing such an exemption will afford an opportunity for other sectors of business to insist on a review of the legislation on commercial grounds as they may claim that the smoke free legislation has had a negative commercial impact on their business.

This exemption will undermine the Welsh Government's efforts on tobacco control and tackling ill health. There should not be amendments to this legislation on the basis that demands are being made by one particular industry, for in so doing it could allow other industries to request amendment upon the basis that the legislation has also affected their sector of business.

Wales should not be seen to be taking a backwards step in public health protection.

Wales was once seen as in the lead in smoke free legislation and should this amendment be permitted to the Regulations, it would seriously compromise the stance which Wales has historically had on protecting the health of its residents and those employed within the country.

#### **5. What health policy considerations are relevant to this amendment?**

Welsh Government acknowledges that smoking is the greatest preventable cause of illness, disability and premature death in Wales. It accounts for over 5,600 fatalities every year and costs the Welsh NHS more than £1 million a day.

Welsh Government is investing in measures to discourage children from starting smoking, is fully supportive of the Smoke Free Homes scheme and is committed to providing help and support for smokers who want to quit and reduce exposure to second hand smoke. By making amendment to this legislation and introducing an exemption, it would be directly contrary to the Welsh Governments' identified key theme in 'Our Healthy Future' and it will affect the aim of reducing the number of people who are exposed to second-hand smoke in Wales. It also undermines one of the four key areas in the Tobacco Control Action Plan, being to reduce exposure to second hand tobacco smoke. Thus Welsh Government could be seen to be running campaigns to prevent smoking and reduce exposure to second hand smoke, yet also be seen to be agreeing to allow smoking to one industry which has the potential to have significant influence over children, young people and other sectors of the population.

This is also contrary to the Local Strategic Public Health Frameworks and the Single Integrated Plans which are currently in development.

We have argued, and continue to argue that depiction of smoking in film and television productions had the effect of normalising smoking and making it socially acceptable, and therefore object to its depiction onscreen. This amendment would send out the wrong message about smoking.

We recognise however that this is not an argument against the proposed amendment since it is possible to effectively simulate smoking using props or computer simulation both of which can be done without compromising the health of those surrounding the 'smoker'.

These proposed amendments are strongly opposed. They would be unnecessary, disproportionate and impossible to enforce. We urge both Welsh Government committees to recommend that the amendment be withdrawn or to recommend that it be opposed.

We would be happy to provide further evidence or comment as the Committees would consider helpful