

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

Response from Caerphilly County Borough Council

### **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.

This is the response on behalf of the Public Protection Services at Caerphilly County Borough Council (CCBC) . Service areas within Public Protection at CCBC include Environmental Health, Health Improvement, Community Safety and Trading Standards & Licensing, all of who have a vested interest in the Smoke Free legislation in Wales. We therefore welcome 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.

CCBC has collated this response to the positive step that Welsh Government has taken in reconsidering proposed Amendment Regulations on this issue.

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.

This exemption is a personal exemption afforded to the individual performer. It makes the part of the premises where the performance is taking place not smoke free in relation to them, Therefore, it does not apply to persons present during the performance, nor does it apply to rehearsal performances.

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

Firstly, we would like to provide some background to the issue for the County Borough of Caerphilly and highlight some of the preventative and work undertaken with relation to reducing smoking prevalence in the county borough supporting our disagreement with the proposed changes.

Caerphilly county borough has a population of 170,000 and smoking prevalence, and smoking-related disease and mortality is higher than the Welsh average. The health of the population is affected by individuals' lifestyle choices, which in turn are influenced by the physical, economic and social environment in which we live.

Smoking has long been accepted as the single largest avoidable cause of disease and premature death. The three main diseases associated with smoking cigarettes are cancer, chronic obstructive lung disease and coronary heart disease.

23% - almost a quarter – of adults in the county borough smoke (Welsh Health Survey 2010/11). Nearly one third – 31% - of all adults in Caerphilly county borough report having a long term limiting illness – the modifiable illnesses are wide ranging, however, there are common underlying health behaviours which impact on these illnesses with smoking the biggest contributor.

In order to reach the Welsh Government's ambitious target of reducing smoking prevalence in Wales to 16% by 2020, we will need almost 11,000 smokers to give up, expand considerably our current interventions to stop young people from starting to smoke as well as establish measures to prevent exposure to second hand smoke. This also includes continuing activity on illegal sales, counterfeit cigarettes and the like.

Of serious concern is the inequality gap which shows that the gap in life expectancy in males between the most and least deprived of our communities is 8.5 years and for healthy life expectancy. The gap is a staggering 18.5 years (Public Health Wales data, 2011-12).

The Smoke Free Premises etc (Wales) regulation 2007 have been very successful in delivering on the public health agenda, providing an opportunity to shift public attitude about smoking, that it is increasingly seen as the norm not to smoke. The Tobacco Control Action Plan for Wales is extremely strong in the stance it has taken towards tobacco and this has enabled us , at a local level, to target and focus activity on achieving smoke free targets through all of the work delivered by Public Protection. There is potential for this proposed amendment to deliver mixed messages to the public.

### **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 the film industry was deterred from doing so or that its ambitions will be in anyway curtailed by the ban on smoking on the 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 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 that 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 the individuals which this amendment will affect. Actors, actresses, film crews and other relevant staff will be subjected to the exposure of 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 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 which 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 and Wales for their illnesses. Wales should not therefore be in the position that would be considered accountable for allowing this to be undertaken. 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 pressurizing’ 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 is 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 that will be used, 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 and that 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 avoid possible circumstance 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 and as such we believe that smoking could continue throughout the making of a film or television production. That being the case, any other performers, production staff, members of studio audience including children would be exposed to tobacco smoke and are afforded no protection other than in the case of audience members they 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 on clothes, upholstery, carpets and furniture for some time after the performance has ended.

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 following 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's 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 of production 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 and action and unfortunately, 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 own ideas will not even contribute to establishing a series of precedents which enforcers and producers could look to for guidance in future productions.

By introducing such an exemption it will allow an opportunity for other sectors of business to insist on a review of the legislation on commercial grounds as the smoke free legislation has had a 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, in so doing could allow other industries to request amendment as 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 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 note 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.

The Welsh Government is investing in measures to discourage children from starting smoking, are fully supportive of the Smoke Free Homes scheme and are 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 contradictory to the Local Strategic Public Health Frameworks and therefore the currently in development Single Integrated Plans.

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.

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