



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

**Cyfarfod ar yr un Pryd o Is-bwyllgorau'r Pwyllgor
Menter a Busnes a'r Pwyllgor Iechyd a Gofal
Cymdeithasol ar Reoliadau Mangreoedd etc Di-fwg
(Cymru) (Diwygio) 2012**

**Concurrent Meeting of the Sub-committees of the
Enterprise and Business Committee and the Health
and Social Care Committee on the Smoke-free
Premises etc (Wales) (Amendment) Regulations 2012**

Dydd Mawrth, 19 Chwefror 2013
Tuesday, 19 February 2013

Cynnwys
Contents

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

Rheoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2012—Sesiwn Dystiolaeth 5
The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012—Evidence Session 5

Rheoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2012: Sesiwn Dystiolaeth 6
The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012: Evidence Session 6

Rheoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2012—Sesiwn Dystiolaeth 7
The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012—Evidence Session 7

Cynnig Gweithdrefnol
Procedural Motion

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r Is-bwyllgor Menter a Busnes yn bresennol
Enterprise and Business Sub-committee members in attendance

Alun Ffred Jones	Plaid Cymru The Party of Wales
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Nick Ramsay	Ceidwadwyr Cymreig (Cadeirydd yr Is-bwyllgor) Welsh Conservatives (Sub-committee Chair)
David Rees	Llafur Labour
Kenneth Skates	Llafur Labour

Aelodau'r Is-bwyllgor Iechyd a Gwasanaethau Cymdeithasol yn bresennol
Health and Social Care Sub-committee members in attendance

Mark Drakeford	Llafur (Cadeirydd yr Is-bwyllgor) Labour (Sub-committee Chair)
Vaughan Gething	Llafur Labour
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Lynne Neagle	Llafur Labour

Eraill yn bresennol
Others in attendance

Julie Barratt	Sefydliad Siartedig Iechyd yr Amgylchedd Chartered Institute for Environmental Health
Pauline Burt	Prif Weithredwr, Asiantaeth Ffilm Cymru Chief Executive, Film Agency Wales
Dr Tony Calland	Cadeirydd Adran Foeseg y BMA Chair of BMA Ethics Department
Bethan Jones	Cymdeithas Llywodraeth Leol Cymru Welsh Local Government Association
Dr Keir Lewis FRCP	Meddyg Ymgynghorol ym maes Meddygaeth Anadlu Consultant in Respiratory Medicine

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Lara Date	Clerc Clerk
Sarah Bartlett	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Philippa Watkins

Ymchwilydd
Researcher

Dechreuodd y cyfarfod am 9.02 a.m.

The meeting began at 9.02 a.m.

Nid oes recordiad ar gael o ddechrau'r cyfarfod tan 9.03 a.m.

No recording is available from the beginning of the meeting until 9.03 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions

[1] **Nick Ramsay:**—please follow directions from the ushers. We have received no apologies and there are no substitutions.

9.03 a.m.

Rheoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2012—Sesiwn Dystiolaeth 5 The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012— Evidence Session 5

[2] **Nick Ramsay:** I welcome our witnesses to today's meeting—thank you so much for being with us. Please give your names and job titles for the record.

[3] **Dr Calland:** I am Dr Tony Calland, chairman of the British Medical Association's medical ethics committee.

[4] **Dr Lewis:** I am Dr Kier Lewis, a reader in respiratory medicine and a consultant chest physician.

[5] **Nick Ramsay:** Thank you. As this is a panel session, I remind Members to be specific about who you are asking your questions to. I suggest that we get straight into our questions rather than having any opening statements, as we do have a number of questions for you.

[6] We have had an amount of evidence so far from either side, but, on the issue of short-term exposure to cigarette smoke, do you believe acute effects might be seen from this, and how long-lasting are the acute effects of short-term smoking? That is to Dr Calland.

[7] **Dr Calland:** Even short-term exposure to tobacco smoke can have an effect on people. It has been clearly shown at a number of places around the world where a smoking ban has been brought in that there has been a very quick reduction in the number of cases of acute coronary syndrome and also of acute asthma attacks. It strikes me that if an amendment were passed to allow smoking, susceptible individuals—and they may not know that they are susceptible—could be precipitated into an acute coronary syndrome or an asthmatic attack, because of the smoke. Obviously, the asthmatics would know that they were asthmatic, but it is not just long-term exposure that matters; short-term exposure also makes a big difference.

[8] **Dr Lewis:** I concur exactly. If you look at the background of the medical literature on this, it goes back to the early 1990s. This was pre-bans and the research was originally from California, but there is also research on Scottish bar workers. This was the background and the prelude to the UK bans, where they did studies of many people working in the hospitality industry. The main evidence suggests that you get an immediate increase in what we call

airway resistance, where the small tubes of the lungs narrow down. Even in healthy people, there are detectable differences in peak flow rates, so that people might feel breathless; but even if they do not, there are physiological changes, even in healthy people. These changes are magnified in those people who are exposed to passive or environmental smoke if they happen to be asthmatic as well. So, if you look at the measures of background air pollution—little molecules less than 50 microns in diameter, which is classical of tobacco smoke—then you do see changes, in healthy people and particularly in people with known lung disease, or lung disease that is not known. These changes happen within about 30 seconds and persist for at least five minutes after that tobacco smoke exposure.

[9] On the longitudinal changes in these bar workers, the research looked at people's symptoms, and they can persist up to two to four hours later. Some people will then develop possible long-term asthmatic symptoms, or, over five to six days, changes in airway resistance and symptom scores. These symptoms include runny eyes, runny noses, rhinitis, but also coughs and breathlessness. These studies were published in journals like *The Journal of the American Medical Association*—big, well-respected journals—and suggested that there was evidence for promoting this ban in bar workers. Then you have the longitudinal changes—for example, cardiovascular changes—and ultimately the evidence, as suggested by Dr Calland, is that there are changes in the incidence and severity of acute coronary syndromes and myocardial infarctions.

[10] **Nick Ramsay:** I apologise for the noise like a dentist's drill that is coming from some parts of the building. We are trying to locate where that is at the moment. I will bring Dave Rees in now, but just for clarification I will ask both of you, but Dr Tony Calland mainly: are you saying that the effects are worse for some people than others? Are you saying that if some people, of a certain constitution, have just one cigarette, there will be long-term effects from that, or, for some people, is it safe to smoke for a very short length of time?

[11] **Dr Calland:** To be absolutely unequivocal: it is never safe to smoke. Never, at any time. I cannot over-emphasise that point. Obviously, we know about the long-term effects of tobacco smoke, where lung cancer is one of the major effects, and heart disease is another. However, what I am referring to, and what Dr Lewis has been referring to, is that if you have a susceptible individual—and by that I mean somebody whose coronary arteries might well be compromised unbeknownst to them—and you expose them to even a short term of tobacco smoke, the evidence suggests that the tobacco smoke can act in such a way that it might precipitate this compromised individual into an attack of acute coronary syndrome, which is an acute shortage of blood going through the coronary arteries to the heart, which might or might not develop into damage from a heart attack.

[12] **Nick Ramsay:** So, it is bad for everyone, but in some cases it is particularly harmful.

[13] **David Rees:** I just want to ask Dr Lewis for clarification. On the American journal that you talked about, it was very interesting that you mentioned the hospitality industry and then you mentioned bars, and I want to clarify whether it is hospitality generically, where there are larger premises, or bars, because American bars tend to be small premises with a lot of smoke in them.

[14] **Dr Lewis:** What they did in these papers was a dose response. They looked at the actual particulate matter, and in bigger rooms you would have less particulate matter per area of what you inhale. They were finding similar changes in all areas, even in open areas, but obviously, in larger, well-ventilated areas there was less exposure and fewer symptoms. However, if you have an asthmatic in a bigger room, then they would suffer in the same way as someone who is not asthmatic in a smaller room. So, to account for that, you have to account for the individual's susceptibility. Unless you did a genetic test and an airway test on everybody exposed, you would never work out the actual true risk. You asked me about the

immediate changes in lung function and those would depend on the amount of particulate matter, which depends on many factors, including ventilation.

[15] **David Rees:** Did they look at that?

[16] **Dr Lewis:** Yes, they did and they accounted for that in their studies and they still found very high, significant changes.

[17] **Kenneth Skates:** On the people you talk about who may have unidentified health issues, could they be equally affected by exhaust fumes, being in close proximity to second-hand smoking outdoors or perhaps by open fires indoors?

[18] **Dr Lewis:** Yes.

[19] **Nick Ramsay:** Some evidence given to us has centred on the concern that actors who may not have smoked before and are now smoking for a particular part might themselves become addicted, even from one or two cigarettes. Similarly, there are concerns that an actor who has tried to give up might relapse because of the experience of that one cigarette. Is that a genuine risk, Dr Tony Calland?

[20] **Dr Calland:** I am not sure that one cigarette is going to create a lifelong addict. One issue around this is the imagery that smoking on film and television creates. We all know that there are susceptible individuals in terms of their being impressionable, for example, young adults and teenagers who think that smoking is cool. Due to the work that has already been done by this Government to get us to where we are, smoking has become less cool in image, but it is still there and there is still an unfortunate number of young people taking up smoking because of a degree of peer pressure, but also because it appears to be cool. Any increase in smoking on television or in film will only enhance that imagery. That is why governments in the past got rid of tobacco advertising—that powerful image link. So, it is too simplistic to just look at this narrowly and say, ‘One cigarette might create an addiction problem’. You have to look wider than that and expand it into the imagery and the message that is being sent out.

[21] **Nick Ramsay:** So, you are more concerned about the image than the actual effect on the performer?

[22] **Dr Calland:** I cannot, in all honesty, put my hand up and say that smoking one cigarette will create a lifelong addict; that would be incorrect.

[23] **Nick Ramsay:** Okay, thank you. There are a number of questions for you; we will first go to Mark Drakeford.

[24] **Mark Drakeford:** Dr Lewis, in the evidence from the Royal College of Physicians, you provide a very interesting still photograph from a *Gavin & Stacey* episode. Film makers have consistently told us in evidence that they take extraordinary steps to ensure that they do not glamorise smoking and indeed that their concerns are almost entirely with having to portray historical periods when smoking is prevalent rather than contemporary life, but this is a clear example of a contemporary scene and it is a clear example of product placement. Why is product placement important?

[25] **Dr Lewis:** The BBC has a policy on product placement that it does not believe in it, but there are many organisations around the world that monitor what the tobacco industry is doing and there has been, for example, an increase in product placement in the top 10 grossing films of 2011-12. The top 10 films in America all had cigarettes in them. You need only look at films like *Avatar*, the computer-animated film, where the first thing that the

marine does when he wakes up on the planet in a human body is to have a cigarette—that is portraying the macho image. There are many studies looking at the effect of product placement on younger people in particular, but also on all ages, showing that it works and that is how the industry may or may not infiltrate film making. I believe that there are strict standards, but you can see yourself that those standards are sometimes broken—unintentionally, hopefully—but they are broken.

9.15 a.m.

[26] We need an automatic and complete ban, whether it is for artistic reasons or not. Product placement is crucial to many advertisers, and it does work. I think product placement, where it is a generic cigarette, is bad enough, but when you have named cigarettes, it is even worse. We all know the image and the colours of cigarette packets and when they are used in films it is another way of branding. Therefore, it is important, and it does work.

[27] May I also comment on something else that Dr Calland talked about? Whether an individual actor may or may not become addicted is an important question. There is evidence from animal studies, and possibly human studies, that neuro-biological changes occur in the brain after the fourth cigarette. Therefore, there are probably no changes after the first cigarette, but there are some results from PET scans and MRI scans regarding how nicotine receptors in your brain increase. Therefore, the more cigarettes that you smoke, the more nicotine receptors go up in your brain, if you compare the scans of smokers and non-smokers. That is why smokers often need to smoke more and more and more, in order to get the same hit; most smokers will increase their smoking. Therefore, those changes usually occur, certainly in animals and laboratory rats, after minimal exposure, and in humans, it is possibly after about the fourth cigarette.

[28] If you interview children who smoke, it is usually the fourth or the fifth or the sixth cigarette that they start enjoying. The first three or four cigarettes they find unpleasant, and they will smoke to impress their boyfriend or girlfriend. However, after about four or five cigarettes, there are genuine changes in behaviour, and probable neuro-biological changes. Therefore, if you ask an actor to do four takes, and have four cigarettes in that one film, you could well be exposing them to long-term neuro-biological changes. We do not know, but they occur earlier than we think.

[29] **Nick Ramsay:** That is interesting. I believe that that is the first time that, when we have asked for the number of cigarettes to be quantified, we have received a figure.

[30] **Dr Lewis:** It is anecdotal, and it is from small numbers, but there are changes that you can measure, functionally in human beings, and histopathologically in the brains of animals.

[31] **Nick Ramsay:** Thank you. Ken Skates has the next questions, followed by Vaughan Gething.

[32] **Kenneth Skates:** Before we leave the issue of the normalising of smoking, or the imagery of smoking, on film, can you give us any case examples of tobacco companies paying for the generic product placement of cigarettes, rather than specific branded cigarettes? Secondly, we have had evidence that suggests that 70% of films made between 1989 and 2008 have carried smoking in scenes. Do you believe that maintaining the ban will have a significant impact on the amount of smoking that people in Wales will see on the cinema screen?

[33] **Dr Calland:** Just because something wrong has continued to happen does not mean to say that the rules should therefore be relaxed to allow it to happen even more frequently. In

my view, any imagery on film about smoking is not good. Even when the storyline is a negative one about smoking, I still think that it is not good. We have got to a point now where many people in the population do not think about smoking. Smoking is almost getting like drink-driving or all sorts of other things—it is becoming socially unacceptable. I believe that any change in the law—particularly in this country—would raise questions about what the Government was trying to do, because I can see no benefit to the citizen from this. There is no health benefit to the citizen. If you, as our representatives, are there to protect our health and to give us the best opportunity of health, by loosening in any way the smoking legislation that you have worked hard to create, I think that you would not be doing the best service for the people you represent.

[34] **Kenneth Skates:** Just to be clear on that, you think therefore that, if we maintain the ban, potential scenes involving smoking will not be filmed: they will not simply move elsewhere; they will just not be filmed.

[35] **Dr Calland:** I do not think that they will be. I think that it would be most unlikely that they would be filmed, and the fact that they may be filmed in England, rather than in Wales, does not make it right either.

[36] **Dr Lewis:** Again, I agree entirely. This is a wonderful piece of legislation that Wales led on. As stewards of health, if you have the argument about health versus wealth, I would go for health in any way we can. If we consider the argument about wealth, the evidence suggests that the film-making industry in Wales is one of the best that has ever been. There are increasing numbers of companies asking to come to Wales.

[37] There was a worrying article in the *American Journal of Preventive Medicine* about three months ago referring to cigarettes in films. According to that article, there was, for the first time in 10 years, an increase in smoking scenes. People are not sure why and how that is happening and who is behind it. It may be because of the cutbacks in advertising. I cannot comment on the exact percentages and how 70% of that would significantly impact on public health. I imagine that it would; it makes sense that it would. There are researchers at the University of Bath who are looking at this. They are looking at what advertising the tobacco industry is undertaking. There is an excellent university group in Stirling, in Scotland, which has set whole PhD teams on this. Their evidence could be available to you, and the colleges would look at that for you.

[38] **Ken Skates:** The first question I asked was about product placement. Do you have any evidence at all of that?

[39] **Dr Lewis:** I cannot tell you, but I know a man called Professor Gerard Hastings at the University of Stirling who could probably get that information for you.

[40] **Vaughan Gething:** I want to move past the imagery point, because we are not talking about changing the way that smoking is depicted. That is not what the regulations are going to do. It is really about the choice between weighing up the health impacts—all the evidence says that there is an impact from smoking and second-hand smoke, and accepting that there will be a potential adverse impact on workers in the tv and film industry—against a potential economic benefit of allowing an exemption. So, I want to ask you two questions. First, are either of you aware of any measurable health impact on tv and film workers in England, where there is an exemption and a wider one than is proposed here, because, of course, you can smoke in theatres with the exemption in England?

[41] My second point is about herbal cigarettes. The BBC suggested that it would only use herbal cigarettes, but we have been told, in various parts of evidence, that herbal cigarettes are not safe. So, I guess it is about how unsafe they are in comparison with tobacco and what sort

of health impact they would or would not have. The corollary point of that is that herbal cigarettes are still covered as smoking. I do not think that we are in a position to change the definition of smoking because that comes from primary legislation. I am interested in how you see us getting agreement on those particular points, namely, the impact, if there is one, on workers in Wales, where there is not a total exemption, and then on the points about herbal cigarettes.

[42] **Dr Lewis:** There have been no studies, to my knowledge, on smoking actors in England, specifically. I have looked for them but I cannot find any. I do not think the studies have been done. I think there are anecdotal reports. One or two actors may have said that they have become addicted to cigarette smoking because of their exposure in films. If we look at short-term effects, we are extrapolating the data from workers in the hospitality industry. If we look at actors in theatres or on film sets, I do not know of any studies. If you follow the natural history of physiology and pharmacology, it would make sense. They would suffer the same kind of detrimental effects that have been suffered by hospitality workers, whether it is passive smoking or inhaling directly.

[43] Turning to herbal cigarettes, we know, for example, that menthol cigarettes are particularly dangerous in many ways, because, with a cigarette with menthol in it, we believe that smokers might take deeper drags because the menthol stops some of the irritation in their throat. So, they smoke differently. If you use herbal cigarettes in a film, actors are still exposed to this fine particulate matter—these PM50 molecules—which can cause changes in airway function. Even though they do not have some of the carcinogens in them, they are still likely to cause some of the acute changes in lung function because of breathing in what is the same as exhaust fumes. So, there is smoke of some sort. Also, if you look at the bigger picture, smoking herbal cigarettes means that you are not denormalising what is, really, cigarette smoking. So, you are pretending that one type of cigarette is another.

[44] You have the acute argument that there is a risk. In terms of carcinogens, long-term risks and myocardial infarctions, if you are smoking things without tobacco and all the other carcinogens, it is hard to know. We are still studying e-cigarettes in medical literature. There is an argument about harm reduction where we can get people onto e-cigarettes as opposed to real cigarettes. There are still a lot of unanswered questions about those, which are being answered quickly. Then you have your long-term and your public health reasons about image placement. I think that I agree with Dr Calland that if we denormalise smoking as much as possible, starting from 2006 onwards, which would lead to a better and healthy society, there would not be this argument for artistic reasons in 10 to 20 years' time because it would not affect the arts.

[45] **Vaughan Gething:** Is there any evidence that smoking cessation is less effective in England, where they do not have the exemption?

[46] **Dr Lewis:** Smoking cessation is a completely different argument.

[47] **Vaughan Gething:** Part of the argument that health officials and bodies make is that any lessening or altering in where we are now sends out the wrong message and will actually be detrimental to the message that the Welsh Government and public health authorities have: that smoking is a bad thing and that they want to see a reduction. Given that there is no such exemption in England, is there any evidence that that contributes to a less effective campaign to stop people from smoking or to not take it up in the first place?

[48] **Dr Lewis:** So, you are talking about smoking prevention rather than smoking cessation.

[49] **Vaughan Gething:** Yes; sorry.

[50] **Dr Lewis:** In terms of smoking prevention, there is evidence, mainly from California and some from Australia, that having strong primary legislation on the reduction of imagery in films—it is multifaceted legislation for smoking prevention—is an important part. We are extrapolating from those countries where they are hitting smoking prevalence of 15%, for example. There is evidence from England that the national prevalence is about 20%, whereas in Wales we are hitting 22%, which is high. We are starting at a high point, so I think that we need to be even more careful and bring in this multifaceted approach with the Welsh tobacco control plan. I am sure that you are all aware of the working group that exists. One third of that tobacco plan is all about prevention, and it includes multiple things from schools to smoke-free parks. Some of you may have been at the launch here a few weeks ago. Part of it, I think, is product placement, and another part is advertising and control on point-of-sale tobacco displays. So, it is multifaceted, and teasing out one aspect of that, I think, would be too difficult. I think that you have to set a general aim of doing as much as possible on everything and of not allowing any chinks at all in any of the legislation, rather than trying to tease out which part is more important than other parts.

[51] **Dr Calland:** There are a couple of points that arise from your question, and I am broadening it just slightly. If this amendment is passed, it sends out a message that poisoning a small number of people for a short period of time is okay, but that poisoning lots of people a lot of the time is not okay. That is a daft message to send out. The driver behind this amendment, I suspect—and I think that someone alluded to it—is about commercialism, money, jobs and wealth. As soon as any government allows a commercial-based argument on smoking to modify its legislation, it will be a nanosecond before the drinks industry and the tobacco industry are banging on your door saying, ‘You have broken the principle. You have lost the principle of health over commercialism. You have allowed a little bit of commercialism here. So, the principle is not one of health over commercialism any longer; it is a bit of a balance’.

[52] **Nick Ramsay:** Is there any evidence that that has happened in England where this exemption has been in place since the original smoking ban?

[53] **Dr Calland:** Just because it has happened in England does not mean that it is right. The BMA position was that we did not agree with the exemption in England either.

[54] **Nick Ramsay:** I was not asking whether it was right; I was asking whether there was any evidence of what you just said about this effectively being the thin end of the wedge and other industries wanting to come in with their own anti-health arguments.

[55] **Dr Calland:** There is no evidence yet because it has not actually happened. The English legislation was set up as was, but I suspect—and I may be wrong, but I would be very surprised if I was—that it would not be long before extremely powerful, clever, subtle, well-funded lobby groups were banging on your door with another reason as to why you should salami-slice your legislation a little bit further. You have done a brilliant job with the legislation so far; do not let it go.

9.30 a.m.

[56] **Nick Ramsay:** Mark Drakeford has been waiting some time to ask his question.

[57] **Mark Drakeford:** I want to go back to the question I asked Dr Lewis earlier, and I will put it to Dr Calland this time. You have both suggested that the industry understands very well the powerful effect that the imagery it deploys has on those who watch the programmes that it creates. That is why the product placement argument is important. Dr Calland, as well as representing the BMA in ethical issues, you were a south Wales GP for many years. In

your experience, does smoking among the Welsh population have a strong class gradient to it?

[58] **Dr Calland:** It is irrefutable from the evidence that the more disadvantaged classes smoke more.

[59] **Mark Drakeford:** Is it generally true that the health status of people in that position is already more compromised than it is across the population as a whole?

[60] **Dr Calland:** Lots of work has been done, not least by Professor Michael Marmot, on the social determinants of health, which makes it very clear that the more disadvantaged and less wealthy you are, and the more difficult you find your life, the more likely you are to have medically related problems from smoking, drinking, obesity or from eating poor food et cetera. Anything that can prevent that situation or improve it must be good. If we go back to the imagery arguments and the very subtle advertising arguments that we have already put forward, you will find that it is quite possible that many people who find smoking a comfort, or a coping strategy, will feel that they do not have to try so hard to give up because there it is on television, or the Government has now made it easier to smoke. You must look at how this is going to be reported. Look what happened when it was proposed that cannabis was going to be downgraded. Lots of teenagers said, 'Oh it's safe now; we can carry on smoking cannabis'. This will be misinterpreted by those sections of the population that do not understand the sophisticated arguments we may have in this building.

[61] **Mark Drakeford:** If that were to be the case, and an amendment were to dilute the message that the Government has hitherto provided in relation to the dangers of smoking, is it fair to conclude that as well as damaging the smoking side of Welsh Government policy, it would have more generally a detrimental effect in relation to health inequalities?

[62] **Dr Calland:** It certainly will not help and it could produce exactly the effect you suggest.

[63] **Dr Lewis:** There is huge epidemiological evidence from comparing socioeconomic groupings from 1 to 5: you are hitting 11% in the professional managerial group who smoke, compared with up to 44% of people in manual jobs or who are unemployed who smoke. That is a fourfold difference in smoking prevalence. Not only that, you have all the other confounders—the 1997 White Paper stated that smoking was the biggest preventable cause of ill health in the UK; that was put in the White Paper above obesity. That was in 1997, when we knew that smoking and obesity were the biggest causes of inequalities in health. As a Government and as stewards of our population, we should really look to address those inequalities.

[64] I agree that not only is the prevalence of smoking higher, but as someone who deals with these people coming in through the hospital doors and through my respiratory clinics, the quit rates are much lower in the lower socioeconomic groups. So, they may attend for smoking cessation, but the success rate, with the pharmacotherapies and behavioural support, in relation to an addict who has a manual job or who is unemployed, is much lower than it is in the case of people who are professionals or are highly educated. The inequalities not only start higher, but get worse over time and the chronic diseases will kill them quicker.

[65] **Nick Ramsay:** We are entering the last couple of minutes now, so if Members could be succinct, that would be helpful.

[66] **Darren Millar:** We have talked a lot this morning about the potential impact of first-hand or second-hand smoking on people with lung disease or coronary problems. What about pregnant women? Is there a potential additional risk to a pregnant woman who is exposed to

second-hand smoke, and who may not know that she is a pregnant because she is in the very early phases of pregnancy?

[67] **Dr Lewis:** Absolutely. Theoretically, in the early stages of pregnancy we know that not only mutagenics cause increased problems for organ formation and increased birth deformities, but that even throughout the pregnancy they are strongly associated with intrauterine growth retardation, which results in small babies. A lot of young thin women have said that they smoke so that they can have small babies—this is the mentality that we are treating—to cause less trauma to their bodies as they deliver. We know that quit rates during pregnancy are remarkably low, and the Public Health Wales NHS Trust has specific policy groups, including the Welsh tobacco control action plan, which are looking at engaging more with pregnant women. The best treatment that we currently have is nicotine replacement, but the long-term and short-term effects of first-hand and second-hand smoke on pregnant women are highly significant.

[68] **Nick Ramsay:** I will stop you there because we are slightly moving off the subject of this committee, and we are in the last minutes of this session.

[69] **Kenneth Skates:** Are the Royal College of Physicians or the British Medical Association carrying out any lobbying work in England to introduce a ban on smoking during filming in England?

[70] **Dr Lewis:** There is an RCP tobacco advisory group that looks at a whole range of issues. I will find out if it is involved in this particular issue, but there is an active group in London headed by John Britten.

[71] **Dr Calland:** I think that we have moved on to fizzy drinks, rather than working on changing the legislation on smoking in England at the moment, although BMA policy would be supportive of that. However, we are not lobbying on that issue.

[72] **Darren Millar:** On the question about pregnant women, pregnant women can be present on set. Can short-term exposure on set have an impact on a pregnant woman?

[73] **Dr Lewis:** There is some anecdotal evidence and small studies that suggest that short-term exposure to cigarette smoke can affect placental blood flow.

[74] **Nick Ramsay:** It was a highly relevant question. I thank Dr Tony Calland, chair of the BMA ethics department, and Dr Keir Lewis, consultant in respiratory medicine, for being with us today. It has been a really helpful evidence session, and we will take your evidence on board when we come to form our conclusions.

9.38 a.m.

**Rheoliadau Mangroedd etc. Di-fwg (Cymru) (Diwygio) 2012: Sesiwn
Dystiolaeth 6
The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012: Evidence
Session 6**

[75] **Nick Ramsay:** I welcome our witness. Would you like to give your name, position and organisation for the Record of Proceedings?

[76] **Ms Burt:** I am Pauline Burt, chief executive of Film Agency Wales.

[77] **Nick Ramsay:** Thank you for being with us today. This was originally intended to be

a panel session including the Producers Alliance for Cinema and Television, but, unfortunately, Pact has found it difficult to find a witness who is able to attend today's meeting. The organisation will provide written evidence instead.

[78] We have a number of questions for you, so I suggest that we get straight into those. I will ask the first one. Could you outline some of the factors that have contributed to the growth of the film industry in Wales?

[79] **Ms Burt:** Film is quite a complex arena, so it is about having a range of support for the local talent in terms of the production that comes out of Wales. Seven or eight years ago, there were very few producers or film makers in Wales who were actively making films in a recurring way. One or two were making very low budget films—for around £1 million or less—then we reached a period about four years ago when seven films were in production. We now have between 10 and 15 producers who are active in Wales, specifically producing feature films, and who have a desire to forge their careers in that way.

[80] The growth is related to the amount of funding that is available. So, getting development funding can be a very protracted process; it usually takes in excess of two years to develop any particular feature. Having the skillset to raise finance from multiple sources—it is usually raised from international sources—is something that Skillset Cymru and Film Agency Wales have done considerable work on recently. The other factor, in terms of the amount of production going on, is inward investment, which the Wales Screen Commission has been very engaged with. The creative industry support unit within Welsh Government is very much about promoting locations, cast, crew and the logistics of where you are shooting. You want to show that there is ease of production to attract inward investment.

[81] **Nick Ramsay:** In terms of barriers to future growth, would you see having a smoking exemption here as a barrier or not?

[82] **Ms Burt:** Yes, I would, absolutely. A film is a very complex thing to put together. Producers, to put it bluntly, have enough challenges, so, in my experience of production, they will not go through an exercise that is time consuming and costly. For example, they will not compare locations or look to relocate some scenes to England, which has been proposed in some of the papers; they will just look at alternatives for the shoot as a whole. I have been involved in the financing of more than 70 films—I have not counted them, but it is definitely more than 70, but fewer than 100—and that is my experience of producers. They will try to make sure that they do not take on additional challenges.

[83] **Vaughan Gething:** Going to the heart of this, you say that there is an economic benefit to having the exemption, but there is also pretty clear evidence that smoking and second-hand smoking affects the health of workers. I am interested in your proposal that this is a definite and definable risk to the tv and film industry. Could you comment on why you think Northern Ireland, where there is a complete ban, has been successful in recent years, with several films coming out in the last year? It is in competition with the republic, and has to compete on different grounds in terms of financing films, for example, different tax policies. I am interested in how that stacks up with the size of the risk that you say exists here in Wales.

[84] **Ms Burt:** First, you have to look at the proportionality of the risk. I am not a medical expert, so I would not make any medical claims one way or the other. However, looking at the production process, you are not required to use smoke during rehearsals. You could use alternatives during rehearsals—an e-cigarette or a pencil. You do not have to use a physical cigarette during that preparatory time. When you shoot an independent film, the average physical production time is about five weeks, and a lot of that time is spent setting up. A lot of actors are only in a small proportion of the scenes, so you are talking about hours or days for

most actors in terms of the physical time that they are performing when they might be exposed to cigarette smoke. It is worth thinking about the proportionality of that exposure to smoke. I raise a question there, because I do not know at what point that becomes a medical problem. You have been taking evidence on that.

[85] There are a lot of factors in terms of the relative attractiveness of different locations around the world. Northern Ireland has been quite aggressive in the way in which it has marketed its services internationally. It has particularly promoted inward investment and it has put quite a lot of money into doing that. This relates back to the Irish tax credits days—and I am talking about the *Braveheart* days, so some 15 to 20 years ago—when, on an international stage, aggressive tax credits were associated with that part of the world, and there were also funds linking Ireland and Northern Ireland so that both pots of money could be accessed. You really can develop an infrastructure off the back of that funding to continue to promote the relationships that you have with film makers.

9.45 a.m.

[86] **Vaughan Gething:** Part of the problem is that all of the medical evidence that we have had says that there is no safe limit, so the proportionality question is very clear. The evidence says, ‘If you do this, there is an impact.’ What I still do not understand is how big the risk is to the tv and film industry in Wales, given that there are other parts of the UK that do not have an exemption. What is the real scale is of the future risk, given that the tv and film industry has been relatively successful? That is not just because of Roath Lock; people are actively coming to Wales now to film in other locations. It is difficult to balance that and understand how much of a risk you are saying this represents, and yet you urge us to make the exemption nevertheless.

[87] **Ms Burt:** First, there are risks in life. Nobody is being forced to smoke here. When we look at the artistic integrity question that is framed in the proposal here, that is taken up between the director, writer—less so once you get on to the set, where it depends on the status of the writer—but particularly the director, producer and actors concerned. If an actor does not want to take on a particular job, they do not have to. You cannot imagine somebody who did not want to smoke being in *Mad Men*, for example. Let us put that as a blunt example. However, nobody is forcing them to take that job. There is a choice as to whether or not you do that job. Equally, for crew members and other people, if you have a particular issue and you do not want to be exposed to smoke, then you do not need to take that job.

[88] In terms of the proportionality of it, people are exposed to smoke in their daily life anyway. We walk down the street and people are smoking. You go into public places—not interior public places, but external ones—and people are smoking. It is a fact of life. It is also a fact of life when you think about representation; documentaries, for example, become very problematic to shoot if you are going to say that you cannot have on-screen representation of smoking, because you are then intervening, and no longer observing. It is a practical position, I suppose, that I am taking here, in that it is an extremely prevalent activity. I have provided evidence here that research conducted by the UK Centre for Tobacco Control Studies showed that 70% of films over a 20-year period from 1989 to 2008 had some sort of appearance of smoking. That research looked at 300 films. What I am really presenting to you is the scale of economic impact that you might have if you did not put an exemption in. That is an awful lot of film and television.

[89] **Nick Ramsay:** I have a number of speakers with questions. Mark Drakeford is first.

[90] **Mark Drakeford:** Let me put it to you first of all that your argument that they do not need to take the job if they are worried about this is the slogan of rogue employers in every industry that you can think of. When people on building sites are asked to do things that are

dangerous, if they are not willing to take the job, the employer says, ‘Well, they don’t have to work here, do they?’ Is it not an argument that is a slur on the reputation of the industry?

[91] **Ms Burt:** No. People make decisions about the sort of creative material that they want to engage with. We are looking specifically at smoking here, but you could look at sex, violence, drug taking—they are all factors of our world where the media, and film as part of that media, engages with that subject matter. Sometimes there are representations to say that smoking on screen is always sexed up, and always appealing, but that is not always the case. Quite often smoking on screen is used in a negative way to show a character who is not attractive, or it might be something that is quite mystical—think of Gandalf, for example, in *The Lord of the Rings*. Cruella de Vil in *101 Dalmatians* is not an attractive character—she is seen smoking, and it is quite prevalent. You might have characters like those in *Mr. Nice*, which is particularly apt as a Welsh example in which drug-taking and the smoking of dope are prevalent. Film and media explore issues of life, but that does not necessarily mean that they are out there trying to promote this like some enormous form of advertisement.

[92] **Nick Ramsay:** Pauline, in reference to Mark’s original question, are you therefore saying that artistic integrity means that the sort of issues facing an actor when they take a job would make that different from any other type of job that someone might be looking for, with reference to the building site analogy?

[93] **Ms Burt:** I am saying that film explores issues of life, and smoking is a factor of life, and people—actors—make choices as artistic individuals as to how they want to explore those issues. Personally, I do not smoke. In my family, my father smoked all the time I was growing up. I do not find it an attractive habit, and I would not personally particularly want to take a job where smoking was involved. I can foresee certain artistic instances where it would be extremely difficult to take on the subject matter without smoking being an element of it. It is really about whether you are deciding to cut out a whole area of filming or not, and those are decisions that creative individuals, whether they are directors, producers or writers, are making.

[94] **Mark Drakeford:** I really think your answer fundamentally misunderstands the nature of the discussion that we are having, because we are not talking about whether smoking should be represented in films. You said earlier in your answer that actors are often asked to portray other sorts of dangerous behaviour involving sex or violence or drugs. We have no proposition before the Assembly that actors should be required to take real drugs or get involved in actual violence; we take it that they are capable of acting those parts, so that those things can be represented on the screen without having to do them for real. Why is smoking so entirely different? Why is it not possible to act smoking, as it is so clearly possible to act all those other things that you mentioned?

[95] **Ms Burt:** Sometimes you can, and I think that some of the evidence and propositions have looked at alternatives, such as herbal cigarettes, for example, and there has been the development of e-cigarettes recently. I have not done camera tests on this, but I would expect that, if you were using close-ups, you would probably need to do some digital work if you want to use e-cigarettes without it appearing that that is what they were—that might raise some artistic questions. There are real risks that people sometimes get asked to take in a creative environment. There are the stunt drivers, for example. You have risks on the set.

[96] This is more reflective of society in general, but it has been noted in the evidence that I have supplied that there has been a general trend towards less smoking being seen on screen. Generally, it is reflective of life, as we tend to smoke less, as smoking has been restricted in public places, and we are now much more aware of secondary smoke and the effects on children, and not wanting to have bad influences of that sort. It is not my experience that smoking is used in a gratuitous way. To producers and filmmakers, if anything, it can be a bit

of a nuisance to have smoking in a film—you can imagine the continuity issues, for example, that it might raise. If you are smoking and you have to keep doing the scenes, you have to figure out where you are in the smoking process, what you were doing with the cigarette and whether it is going to match the shot, for example. So, that is something that people tend to do for a very particular reason. As I said, it can be a historical issue if you are doing a period piece, or it could be something like *Mr. Nice*, where drug-taking is central to that subject matter and that is what they portray and explore in the film.

[97] **David Rees:** To take that point a little further, I understand the risks that you raised about stunt driving and so on, but most legislation attempts to reduce risk and not increase it, and here we are talking about increasing a risk.

[98] You also mentioned actors having choices, which I also understand, and a more experienced and established actor will probably exercise that choice. However, have you come across a situation where a young actor or actress has said, ‘No’ to a job such as *Mad Men* when their agent says that that part will undoubtedly get them recognised? Do you have knowledge of someone saying, ‘No, I do not want to do that because it is not a good choice’?

[99] **Ms Burt:** No, not that I am aware of.

[100] **David Rees:** So, the situation of choice is dependent on individual circumstances and maybe their standing within their profession.

[101] **Ms Burt:** The exemption proposed excludes children, so in terms of—

[102] **David Rees:** An 18-year-old is not a child, but could be a young person who is trying to get on the ladder.

[103] **Ms Burt:** I do not know whether I have been particularly privileged in the various films that I have been involved in, but I have no experience of a producer or director coercing people into such a situation. I cannot think of an example of what you described.

[104] **David Rees:** It is not about coercion, but about someone thinking about their opportunities and being persuaded by an agent, for example, who is not a producer, to take a particular project because it will get them recognised.

[105] **Ms Burt:** With the exception of *Mad Men*, which is obviously shot in the US, I cannot think of an example of a film that might—

[106] **David Rees:** But you cannot think of an example of someone who said, ‘No’.

[107] **Ms Burt:** No, I have not come across that.

[108] **David Rees:** I have two further points. You said that around 70% of the films that you looked at included smoking—

[109] **Ms Burt:** That is not what I looked at, but the evidence.

[110] **David Rees:** No, I understand. Was there an indication as to what periods those films covered? We have been talking about the 1900s and 1980s including more smoking, but a film like *Da Vinci's Demons*, which is coming out shortly and was filmed in my constituency, as it happens, includes no smoking. So, what percentage of films cover a period in which smoking was prevalent? Will that trend continue? Will films look at different eras in the future? Therefore, perhaps, in 10 years’ time, we will not be watching films set in the 1960s, but at those set in medieval times or before then. Figures can reflect things, but what are they

really telling us?

[111] **Ms Burt:** Those statistics relate to the period between 1989 and 2008. I could provide them in full, because they have been lifted out of a particular paragraph here, but if the committee would find it useful, I could provide the full report. From memory, they took the top-10 films of the year, so they did not look at a particular period of representation.

[112] **David Rees:** I have one further question. In your evidence, and this is just to clarify a point, you talk about the potential growth of the industry and sector. You quote the following figure: '3.3m billion'. Is that 3.3 million or 3.3 billion GDP in 2010? I ask because the next figure of '1.2 billion' is for 2011. To me, that is a 60% drop and not a 60% growth. Therefore, is there actual growth or is there a reduction?

[113] **Ms Burt:** It would be 'billion' and not 'million'.

[114] **David Rees:** So, there is therefore a reduction of 60%.

[115] **Ms Burt:** Not necessarily, because they are from different sources, are they not, if I remember rightly? One is from a Department for Business, Innovation and Skills report and one is from—

[116] **David Rees:** They are both quoted from the *Statistical Yearbook*, according to your paper.

[117] **Ms Burt:** That is from the British Film Institute.

[118] **David Rees:** Yes. I just want to know where the growth is, if there has been a 60% drop.

[119] **Nick Ramsay:** While you look through your notes, perhaps Ken Skates could ask his supplementary question.

[120] **Kenneth Skates:** The 3.3 billion GDP in 2010 may represent the amount that was taken at the box office, whereas the £1.2 billion is the actual production costs.

[121] **Ms Burt:** Yes; it is the spend.

[122] **David Rees:** So you need to provide more comparable figures than those.

10.00 a.m.

[123] **Kenneth Skates:** Yes, because they are not comparable.

[124] David Rees made an important point earlier. Essentially, we are being asked to offer an exemption to television and film producers, primarily for the production of historical drama, whereas with dramas that are set in the present time, or in the future, scriptwriters are able to accommodate non-smoking. Therefore, I have two questions. First, do you believe that the ban in Wales has contributed to fewer scenes involving smoking in *Dr Who*, which is produced here? Equally, would you agree with Equity, which states that, had *Sherlock* been a historical drama rather than a contemporary one—because, in the contemporary drama, Sherlock is trying to give up smoking, so he does not need to smoke—it would not have been produced in Wales, because he would have been smoking a pipe in virtually every scene?

[125] **Ms Burt:** I believe that that is a danger, and a real risk. Our expectations, if you like, of the past are to see more representations of smoking. However, I do not believe that it is

necessarily true that, just because something is historical, you suddenly have more smoking in it. Artistic integrity is more to do with the fact that you may be showing something that might be a particular character trait, where smoking might be used to reflect a state of anxiety, for example, or it might be something that is factual. Regarding the drug-taking that we reflected on before, if that is being taken in the smoking way, that is a sort of factual representation of something that has happened. That might be contemporary, if people are smoking marijuana—it does not have to be historical. However, regarding the *Sherlock* example, there is a risk that, if it had been a historical drama rather than a contemporary one, it might not have come here.

[126] **Kenneth Skates:** What about *Doctor Who*? Do you believe that it has contributed to fewer scenes involving smoking?

[127] **Ms Burt:** I am not directly involved in that series, in any way, shape or form, so that would be speculation on my part. However, my experience generally is that, if there is an additional challenge to a production that requires time and money to address it, that is likely to be a deterrent to your shooting in that area.

[128] **Kenneth Skates:** Okay. There is a path that I am trying to lead you down here. Would it be an acceptable compromise for the industry if there was an exemption for historical drama, but not for drama that is set in the future or in the present?

[129] **Ms Burt:** That would be a helpful and constructive step. Reflecting generally, and when I think of films that have smoking in them, such as *The Edge of Love* or *Mr. Nice*, you would need to define ‘historical’ carefully, or how far back becomes ‘historical’. As I said, you would also need to think carefully about documentaries and factual situations outside drama.

[130] **Nick Ramsay:** Would that not depend on where the TARDIS landed as well? [*Laughter.*] That is a good answer, given the shortness of that interesting question from Ken Skates. [*Laughter.*] Darren Millar has the next questions.

[131] **Darren Millar:** I wish to explore once again this assertion that 70% of the top-300 films featured some smoking. In terms of the prevalence, much of the evidence that we have received has suggested that there are fewer smoking scenes now in films. Therefore, the first decade of the twenty-first century will have had a higher prevalence, and the second decade may have had a much lower prevalence. Would that be fair to assume?

[132] **Ms Burt:** Yes, quite possibly. That report notes that there has been a reduction over a 20-year period.

[133] **Darren Millar:** Do we know where the current trend is at, as far as you are concerned?

[134] **Ms Burt:** I would expect that it is still falling. However, it is like many things—you can get trends where people get interested in a particular era, and then you might start seeing period productions around a particular era, which might give you a blip. However, generally, films’ trends would follow what is happening in society.

[135] **Darren Millar:** These are the top-10 films each year; they would be multi-million pound, or dollar, productions, would they not?

[136] **Ms Burt:** Yes. In these data, and, as I say, they are not my data—they are from a study that was looking at the representation of smoking on screen, where they were lobbying to reduce smoking—my expectation would be that there would be quite a heavy prevalence of

US films. As we all know, the US is the dominant market in terms of the exhibition of films.

[137] **Darren Millar:** Do you have any idea of the costs of the digital imagery for covering a five-minute scene in a film, for example? We are being told that significant issues might arise as a result of additional costs, but, if someone is spending a few million pounds on a film production, the cost of £10,000 here or there is going to be rather insignificant, is it not?

[138] **Ms Burt:** I do not have the immediate cost, but I think that you have some projections in your evidence already. It is rather different for a big budget film than for lower and medium-budget films. The vast majority of productions that are indigenous to the UK are lower and medium-budget films for which doing special effects, including clean-up work, can be cost-prohibitive. In terms of inward investment, it would not necessarily be overly problematic if it was not extensive and you are looking at a few scenes. It then becomes a question of how prevalent the use of cigarettes is and how many scenes would have to be done.

[139] **Darren Millar:** So, it is not likely to deter inward investment, is that what you are saying? Or it is less likely to—

[140] **Ms Burt:** It depends on the scale of the production.

[141] **Darren Millar:** So, what you are saying is that the situation is less likely to deter inward investment, but it could, potentially, hinder the indigenous growth of the industry. I think that you cited a figure of £1 million per lower-budget film on average in Wales from the sample that you looked at.

[142] **Ms Burt:** You then have to start to get specific about your territories, because I am talking very much about US larger-scale productions, of which we do not necessarily get a constant flow in Wales anyway. Other inward investment would be coming from elsewhere in Europe, in particular where we co-produce a lot, and, indeed, from Australia and further afield. For them, again, it tends to be lower and mid-budget films—well, more mid-budget films for international co-productions. So, I am really talking about the big US incoming productions. If smoking appears only occasionally in a film then the cost would be marginal.

[143] **Darren Millar:** I have just one final question on this. In terms of productions that this has affected in the past, perhaps, can you specify productions that have not been filmed in Wales as a result of the ban that we have currently in place?

[144] **Ms Burt:** I am not aware of those data. The Wales Screen Commission would be a better organisation to ask that question, because it looks at all the inward investment projects, which we do not. We are very much about supporting indigenous productions and talent. I cannot cite any examples that have been lost to Wales, but then an awful lot of our productions do not necessarily shoot in Wales to start off with either—for example, films like *Mugabe and the White African*—if they are creatively set elsewhere or they are international co-productions where they are shooting elsewhere. I would advise you to seek the data on that from the Wales Screen Commission.

[145] **David Rees:** You talk about the creative setting of the film. For a producer, are having the skills required in the location, the creative setting of the film—and, obviously, the costs involved are a major issue—the predominant issues? There are 27 films that you have co-produced. Have any of those gone out of Wales because of smoking?

[146] **Ms Burt:** Not that I am aware of to date with the films that we have been involved in.

[147] **David Rees:** So, most producers that come here are doing so because of the skills that

we currently have or the locations that we have.

[148] **Ms Burt:** I would say that location is probably the primary issue. As long as you have a sufficient workforce to service the productions coming in and it is reasonably skilled—and we have that—and, as I said, the relative amount of funding, productions will come here. Those are the three top influences, I would say.

[149] **Vaughan Gething:** I would like to go on to a different topic, which is the workability of the regulations. Do you think there is a way in which artistic integrity can be defined so that you and the industry understand it, and the people in local government who would have to enforce this legislation would equally understand it, so that you would not get a situation in which a director says, ‘I certify that this requires smoking in this scene, so we will have our exemption, thank you very much’? Are these regulations at all workable, or is this not just a licence to have smoking whenever a director or producer wishes to have it?

[150] **Ms Burt:** No example springs to mind, from the 70-plus films that I have been involved in, where I am aware of a creative process where they have particularly pushed for smoking, if you like, outwith of it being integral to the work. By that, I mean that it is either already part of what you are shooting in a documentary sort of sense—it is physically happening in front of you and you are capturing something in an observational way—or it is something that is factually representative of the drama that you are shooting, in the way that we were talking about *Mr. Nice* as an example, where people were smoking marijuana and it is being represented on screen. The area where it becomes more interpretive, I would say, is where it is being used in a more psychological sense. So, you are talking about artistic influence in terms of, say, it being used to show anxiety, and therefore it is more of an actor’s tool in terms of their performance; you might be showing a character that you are trying to portray as not being very attractive; or it is being used in a kind of the *Mad Men* way, in a historical sense, where perhaps it was perceived at that time to be sexy and everyone seemed to do it and it was what people did socially. It then becomes a more creative, interpretive arena. So, there are very distinct areas in which smoking comes into play.

[151] **Vaughan Gething:** The problem is this: if we expect people to enforce these regulations, if we were to make them and have the exemption, how on earth could any enforcement officer go in and say, ‘The artistic integrity does not require smoking, therefore you have broken the law and we are taking enforcement action’? Does this not open up an area where television and film producers can self-certify when it is required, and no-one else can do anything about it in reality, given the range of circumstances that you have just outlined where it might be required?

[152] **Ms Burt:** Well, most issues of artistic integrity are not regulated, and they are issues that are discussed and agreed between the core team. I am not aware of any example where a coercive arrangement or a non-agreement has been reached. What is difficult in these sort of regulation areas is the question of who would regulate, at what point they would get involved in the process, the scale of activity that they would therefore need to take, the kind of guidelines that they would be following, and also the kind of educational framework, if you like, that goes around that so that the people that are coming in understand that framework and can weigh that up when they are making decisions about the film.

[153] **Nick Ramsay:** Your answer leads us very neatly into our next set of witnesses. We are completely out of time for this session, but I thank Pauline Burt for being with us today. It has been really helpful and we will take your answers on board in coming to our conclusions. Well done for holding the fort on your own, too.

[154] **Elin Jones:** Chair, does the legislation require that a film company register that it wants to trigger the exemption? There is no request in the legislation to do that, is there?

[155] **Nick Ramsay:** I believe that it is just an exemption.

[156] **Elin Jones:** They just do it. Okay.

[157] **Nick Ramsay:** The exemption being suggested in Wales is different from the exemption in England. There are greater restrictions.

[158] **Elin Jones:** Yes. I know that. But there is no trigger. Okay.

10.14 a.m.

**Rheoliadau Mangroedd etc. Di-fwg (Cymru) (Diwygio) 2012—Sesiwn
Dystiolaeth 7
The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012—
Evidence Session 7**

[159] **Nick Ramsay:** I welcome our next set of witnesses. Thank you for being with us today. Please give your name, position and organisation for the record.

[160] **Ms Barratt:** I am Julie Barratt. I am the director of the Chartered Institute of Environmental Health in Wales.

[161] **Ms Jones:** I am Bethan Jones, and I am the operational manager for public protection at Cardiff Council.

10.15 a.m.

[162] **Nick Ramsay:** This is a panel session, so it would be helpful if Members could be clear as to who they are directing their questions to. Thank you for being with us. I will ask the first question. In terms of the potential difficulties for local authorities in interpreting and enforcing an exemption for performers, do you think there are ways in which those could be overcome, or do you have reservations about how you might implement the guidance?

[163] **Ms Barratt:** I will take that question, if I may. I was advised that you would probably want to ask that question, so I have spoken to colleagues who are enforcement officers in various locations in England, where the exemption is in place. I asked them about the practical difficulties that they might be having. You will appreciate that there are certain difficulties in identifying those local authorities, because I would open a hole for people to walk through if I did that, but I can tell you what they said. The first point is the point that was made earlier: it is impossible for an enforcement officer who is a public health officer to say whether smoking is necessary for the artistic integrity of a production. Basically, if a director or producer says that, in their opinion, it is necessary, then the public protection department of the local authority will have to contradict that with some evidence in order to dispute it, and those officials are not experts in that evidence.

[164] The next problem that arises is that, if the local authority takes a view that smoking is not necessary for the artistic integrity of the production, it will have to bring a prosecution and the matter will have to go before magistrates, and, with the greatest respect to magistrates, they do not have that expertise either. So, local authorities are concerned that, if a producer says, in his opinion, smoking is necessary and it meets the artistic integrity requirement for the production, there is nowhere for them to go. They do not have the ability to dispute that, and neither is there a forum in which that ability exists.

[165] **Nick Ramsay:** So, are you saying that that ability does not exist anywhere?

[166] **Ms Barratt:** No, it does not. Our great concern is that we will see—I hesitate to use the word ‘circus’, but it becomes a circus, whereby you have opposing expert witnesses who will turn up at every prosecution, one saying that smoking is necessary for the artistic integrity of the programme, and one saying that it is not, at great expense to both parties. The concern for local authorities is that, even if experts were available, such is the financial clout of film companies, the authorities could not afford to take them on in any event.

[167] **Nick Ramsay:** Is that a problem, from your knowledge, that has happened with the exemption in England?

[168] **Ms Barratt:** It has certainly happened in England, yes. I have spoken to colleagues in England who have said—and two local authorities have reported—that they have gone along to film studios and asked whether smoking is necessary and the director has said, ‘Yes, in my view, it is’, and that is how it is. That is an enormous issue, because they do not have the expertise to refute that.

[169] **Mark Drakeford:** Setting aside for one moment the issue of artistic integrity, and assuming that that case is made, we have been told consistently by the industry that the amount of actual smoking that would happen on set would be tiny. It would be confined to the very last part of a production process. It would not be used in rehearsals. It would not be used in the lead up. It is only when you would come to do the very last part of the scene, in which, for reasons of artistic integrity, it is apparently necessary to smoke, that smoking would happen. In your view, is that a realistic account of the amount of smoking that would need to go on?

[170] **Ms Barratt:** Again, that is a question I asked my colleagues in England. They said that that is not the case. Their experience is that it is not possible to say what the final take is. Very often, the final take is the one that was done first. When producers look at the rushes afterwards, they may say that they are happier with the first take than the last. The fact that it is the last take to be filmed does not necessarily mean that it will be the one used. Another point that was made is that it is not just about one lot of filming of an individual from a particular angle. I am sure that Members are aware that, if you are being filmed for television, the same piece may be filmed several times from several different angles, because that gives the producer an opportunity to show the same shot from a number of different places. So, the same shot is repeated over and over and it can take quite some time to do. It is done several times so that the producer has the option of picking the one he wants to use. Another point that was made is that a lot of back-up cigarettes are smoked for continuity purposes. If filming has had to stop, and the character has to be given another cigarette, it has to be smoked to the same point that it was when filming stopped. Therefore, there are other cigarettes being smoked off set ready to be moved on set.

[171] **Mark Drakeford:** So, from the evidence that you have of the way that this happens in England, the idea that this is a tiny amount of smoking that is only happening in a very controlled set of circumstances is not actually the case on the ground.

[172] **Ms Barratt:** That is not the experience of the enforcing officers to whom I have spoken.

[173] **Mark Drakeford:** Interestingly, the BBC’s latest written evidence casts a bit of helpful light on this. It refers to a scene in which it was able to use imagery, rather than actual smoking, and said that that very fraught scene required 30 different shots involving two actors. Does that bear out your point that in order to produce a small amount of on-screen smoking time, quite a lot of smoking is involved? If that is the case, in terms of the impact on

individuals' health—we heard evidence earlier that it takes a very small number of cigarettes being smoked for it to begin to have very real physiological effects—is the amount of smoke that you imagine will be produced were this amendment were to be agreed, likely to go on to have a health effect on those who are either directly involved or in close proximity to it, in your experience?

[174] **Ms Barratt:** The medical evidence would suggest that there is no safe level of tobacco smoke. We are talking about individuals who are in a fairly confined space and all are being exposed to a considerable amount of tobacco smoke. So, we would refer back to the evidence that we used when the ban on smoking in public places was first introduced; we said that there is no safe level of smoke.

[175] **Elin Jones:** I want to ask Cardiff Council, in terms of resources for the enforcement of this legislation if it was passed, do you have any additional comments to those that you provided in writing, about how, at a practical level, you would see the enforcement of this legislation happening in a county area, such as Cardiff, where there are a large number of studio areas? Do you think that it would be more manageable for you, as an enforcement authority, if there was a requirement in the legislation for the film or television production to register with you if it was intending to use the exemption, rather than you having to trawl the studios of Cardiff looking for smoking on set?

[176] **Ms Jones:** At the moment, the resources that we have in Cardiff to deal with the smoking ban are minimal. Luckily, because of the success of the smoking ban as it exists at the moment, compliance is really good, so we do not have to do a great deal of enforcement. We probably have less than a quarter of a full-time equivalent dedicated to this area of activity at the moment, and we rely on complaints coming into the organisation in order for us to direct our enforcement. My big concern here is that we will not get any complaints from people working within the film industry that the intention within the law is perhaps not being followed and, as such, it will require more enforcement activity to be directed at it. There is no doubt that if there was a need to register and notify us of filming activities where smoking was going to be taking place, that would help us to direct our resources, but clearly that would require a far greater level of resource than we have for the current system.

[177] **Alun Ffred Jones:** My apologies, Chair, for being late.

[178] If there was a change in the law and it was flouted by the industry, why do you think that there would be no complaints from staff who have been subjected to excessive amounts of smoke from irresponsible directors, producers, floor managers et cetera? Why do you think that staff who surely have some care for their own health would not complain?

[179] **Ms Jones:** Reflecting on the legislation as it currently exists, a lot of the complaints that we have are from members of the public and that is what makes it effective. Those people have nothing to lose by complaining. They are not necessarily complaining about their employer. For example, if there was a complaint in a pub, it would be a member of the public complaining about smoking rather than a staff member. In this particular case, you are asking staff members and people who are part of a small crew team to complain about their own employer. Consequently, you are going to be at risk in terms of job security, or that is how they will feel.

[180] **Alun Ffred Jones:** On what do you base that assumption?

[181] **Ms Jones:** I base it on lots of experience of different enforcement regimes. Another part of my work area involves housing conditions, for example, and tenants are very reluctant to complain about poor housing conditions because of their security of tenure. The same kind of principle applies, in my view. That is not to say that you will never get complaints from

people who work in a company, but there will be far less than you would have—

[182] **Alun Ffred Jones:** So, are health and safety rules and regulations being flouted by the industry in the same way in order to gain some sort of monetary advantage?

[183] **Ms Jones:** There are examples where employers do not follow health and safety rules.

[184] **Alun Ffred Jones:** I am talking about this particular industry. Is there any evidence that those are being flouted? Presumably, you do not go around checking everything.

[185] **Ms Jones:** Yes. We do take prosecutions for—

[186] **Alun Ffred Jones:** Is there any evidence that health and safety regulations are being flouted by this industry because of lack of oversight?

[187] **Ms Jones:** I do not have that evidence.

[188] **Eluned Parrott:** Following on from that, do you regularly patrol film and tv sets for breaches in health and safety? Obviously, a tv or film set is a very hazardous working environment: there is heavy equipment, equipment that gets very hot, and a fire risk. There are huge numbers of potential risks to the health and safety of actors and crew members. How often do you interact with the film and tv industry?

[189] **Ms Jones:** Obviously, the health and safety legislation does apply to this industry, as to any other industry. We have a small team of health and safety officers in Cardiff—we have four officers altogether—and our activities are based on risk, which relate to any recorded accidents. We investigate recorded accidents and we also then have a look at the evidence where accidents have taken place and plan our proactive activity, if you like, on the basis of statistical information. I cannot recall undertaking any work over the last few years in the film industry.

[190] **Eluned Parrott:** Is that because they do not have a history of accidents or a history of breaching the law?

[191] **Ms Jones:** Not since I have been in post in Cardiff, which has been over the last three years.

[192] **Eluned Parrott:** I see. Thank you very much.

[193] How are you normally alerted to breaches, or potential breaches in health and safety? Generally speaking, across industries, is it usually the case that a whistleblower will come to you, or do you usually turn things up as a result of proactive work?

[194] **Ms Jones:** All workplaces have a duty to report accidents if they are serious accidents. Those are the ones that we would look at and consider for investigation.

[195] **Eluned Parrott:** How significant is the number of people who come to you, across all industries, and say, 'I am worried about my employer because I do not think that this is safe; there has been no accident, but I am worried that this is not a safe procedure'? Is that a frequent occurrence?

[196] **Ms Jones:** No. Small numbers of complaints come from industry in general about health and safety.

[197] **Eluned Parrott:** Okay. Thank you very much.

[198] **Lynne Neagle:** On Alun Ffred's point about whether people working in the film industry would be willing to report any breaches of the regulations, presumably if somebody contacts the council to complain that smoking is taking place in a public place, there is no obligation for you to reveal the name of the person who has made the complaint, is there? You can just go in and investigate. Is that how it would work?

[199] **Ms Jones:** Yes; however, if we needed to take action, we would need to have witnesses. In order to compile evidence for a case, certainly a prosecution case, if you are not able to use that information or gather the information from elsewhere, it is very difficult to take a case forward.

10.30 a.m.

[200] **Lynne Neagle:** So, would it be possible for someone in the film industry to report to you anonymously and for you to go in and keep an eye on that particular industry for a while? Might that be a feasible possibility, without jeopardising the employment of that person?

[201] **Ms Jones:** Yes, what often happens is that we get a tip-off that things are not as they should be, and so we go into that particular business, we review all their systems, processes and procedures to ensure that they are all correct and in place, and maybe then we will do spot checks from time to time. However, unfortunately, there are cases, and they happen fairly often, because we have accidents, where all the right kinds of documentation are in place and, theoretically, the organisation complies with what is required of it, but those systems and procedures are not followed for one reason or another. If you do not know when filming is taking place or the location of that filming, it is difficult to continue to monitor that situation without having that regular information coming from the staff group in the main.

[202] **Nick Ramsay:** To broaden this out slightly, we have had evidence from some representatives of the film and tv industry who have made the case or tried to make the case that it will make Wales uncompetitive if we do not have the exemption that they have in England, and that there would be a negative impact on the economy. I know that this is not specifically your area, but do you think that they are right and that there would be a negative impact, in any way, from not having this exemption? If there is an impact, do you think that that is outweighed by, as you said, the problems of trying to enforce it and the health impacts?

[203] **Ms Barratt:** If I may, I point you to a report that was produced by the film industry, which I think we referenced in our evidence to you: it looks at a case study of film production in Northern Ireland where the same ban is in place for smoking in film and television studios. There is no suggestion in the case study about Northern Ireland that it is having a detrimental impact on the film industry; in fact, it is quite the reverse. The report says that the big issues for improving the film industry are Government support and the skills base that exists in the country; it is not detrimentally affected by the smoking ban. I have copied the relevant page of the report and it is referenced in our response. I am quite happy to leave that with the sub-committees. There is quite a degree of coterminousity between what we have in Wales and what they have in Northern Ireland, and the film industries are broadly the same. The only difference in Northern Ireland is that the exemption also does not apply in the Republic of Ireland, so there is no opportunity for film tourism, to go down to the Republic and film something where the ban is not in place.

[204] **Nick Ramsay:** So, they can hop over the border to do the scenes with cigarettes—

[205] **Ms Barratt:** No, they cannot do that in the Republic, but you could obviously do that in England from Wales.

[206] **Nick Ramsay:** We have a couple more questions. I call on Ken Skates.

[207] **Kenneth Skates:** Following on from the Chair's question, if we are to believe the television and film producers, if there is one area of Wales that stands to benefit the most from this, it is Cardiff. What talks have you had, particularly with the small independent sector, and do you accept its argument? Everything that we have heard from the sector suggests that the exemption is needed.

[208] **Ms Jones:** I had contact with one producer in November 2011, when I was asked about whether an exemption existed. We spoke about three programmes at the time: *Upstairs Downstairs*, *Sherlock* and *Doctor Who*. Obviously, the answer was, 'No, there isn't an exemption and alternative arrangements have to be made'. However, they were clearly concerned back at that time.

[209] **Kenneth Skates:** Has your economic development department had any talks whatsoever with the independent sector about its needs with regard to this?

[210] **Ms Jones:** Yes, there have been discussions, but I do not have that information personally.

[211] **Mark Drakeford:** I want to return to what I think is an important point as far as our discussions are concerned. Let us assume for a moment that the Assembly were to agree to an exemption, as set out in front of us. This is a question for the chartered institute. We would be relying on your members to enforce the regulations that the Assembly would then have put on the statute book. In your evidence, your advice to us, from your professional perspective, is that, in practice, the regulations would provide a virtual *carte blanche* for smoking during filming. Will you confirm that that is the advice that you are providing to us?

[212] **Ms Barratt:** Yes, that is the advice we are providing, on a speculative basis, if it were to happen in Wales, and it is the advice that is supported by the comments from my enforcement colleagues in England, where they are finding it enormously difficult to enforce these regulations. The artistic integrity point is a major one, and the other point that they make is that there is no precedent that even if you accept that artistic integrity requires smoking in one film, there is no guarantee that another director in the same circumstances would take the same view. So, every case has to be looked at afresh and requires some form of enforcement input. As Bethan said, Cardiff being the biggest local authority in this area has a quarter of one full-time equivalent, so there is an enormous enforcement requirement.

[213] **Mark Drakeford:** So, in effect, to echo what Vaughan Gething said earlier, this would in practice be a self-certification scheme; the industry says it is necessary and there is no way of challenging what it says.

[214] **Ms Barratt:** That is right, yes.

[215] **Nick Ramsay:** Did you want to comment on that, Bethan?

[216] **Ms Jones:** I just wanted to say that it seems to me that this is an absolute exemption, and there is no requirement really on the industry to consider what is reasonably practicable. So, if we were to refer back to health and safety legislation for example, where businesses are required to consider safety issues, in those circumstances, they are also required to consider if there is a best way of dealing with things. In my view, it would be sensible, if this exemption were to exist, for there also to be a duty that would require consideration of alternatives.

[217] **Alun Ffred Jones:** My question is to Julie Barratt. You say that you have been

speaking to colleagues in England. What evidence is there that this has been flouted in England and that there is wholesale smoking on sets?

[218] **Ms Barratt:** It has not been flouted in England because there is no exemption in England; they are allowed to smoke on sets in England and that is what is happening. From speaking to enforcement colleagues in England, where the ban exists in public places but not in film studios, the point that they are making is that there is enormous difficulty where, for instance, you have the public interfacing with the production. So, for example, if a programme is being filmed before a live audience, smoking is allowed, and that is an enormous difficulty for enforcement purposes.

[219] **Alun Ffred Jones:** Smoking is allowed in studios.

[220] **Ms Barratt:** Smoking is allowed on film sets in England where members of the public are there, but not in Wales.

[221] **Alun Ffred Jones:** The public would not be present in a film studio.

[222] **Ms Barratt:** The public would be present in film studios where a television programme is filmed in front of a live audience.

[223] **Nick Ramsay:** In terms of what is being proposed for the Welsh exemption, that is not—

[224] **Ms Barratt:** I am not aware that that is proposed in Wales, no, but it is certainly the position in England that live audiences watch recordings of television programmes.

[225] **Nick Ramsay:** So, you are saying that there is a very wide-reaching exemption in England.

[226] **Ms Barratt:** Absolutely, yes.

[227] **David Rees:** You just touched on this issue. Do production companies have discussions with your colleagues prior to commencing a production to establish the ground rules, effectively, or do they get on with it and you come along and do the checks?

[228] **Ms Barratt:** As far as I am aware, they just get on with it. We would have an interface for instance with food vehicles that are there and we would go along and inspect the food vans. If there is a health and safety incident, we would get involved, and sometimes we would get involved in live filming if, for instance, it is an outdoor event where there are a lot of health and safety implications. However, if people are just filming in a studio, it is very much a closed process and they go ahead with it in the same way as every other business goes ahead with running a business.

[229] **Vaughan Gething:** I just want to go back to definitions and how workable the regulations are. An important point was made that if there were to be an exemption, should there be a duty to take steps that are reasonably practical to minimise risk. I am interested in the definition of ‘film’ and ‘filming’. In some of the evidence supplied, there is a concern that as well as not being able to define ‘artistic integrity’ in any meaningful way, what is and is not ‘film’ and ‘filming’ can cover a range of sins. Do you have a view on that that you would like to share with us? Is there a way in which we could narrow down the definition of ‘film’ and ‘filming’ as regards where the exemption would apply, if it were granted?

[230] **Ms Jones:** The example that springs to mind where you might be concerned would be university students or educational establishments that may be filming as part of a college

course, or whatever. I do not think that there is an easy solution, other than to make it an exemption that is inappropriate for educational establishments, and to think about other opportunities where filming might occur and not apply the exemption in those circumstances as well.

[231] **Ms Barratt:** I am struggling to think of a workable exemption. Smoking outdoors is allowed in any event. I cannot think off the top of my head of a way of doing it.

[232] **Vaughan Gething:** Okay, that is fine.

[233] **Nick Ramsay:** Are there any further questions for our witnesses? I see not. I thank Bethan Jones, operational manager in public protection and private sector housing, and Julie Barratt from the Chartered Institute for Environmental Health for being with us today. Thank you for your evidence, which has been very helpful to the committee's deliberations.

10.41 a.m.

Cynnig Gweithdrefnol Procedural Motion

[234] **Nick Ramsay:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(ix).

[235] I see that the committee is in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.42 a.m.
The public part of the meeting ended at 10.42 a.m.*