

25 May 2005

Recd 31/5/05

Scottish Executive Health Department
Tobacco Control Division
3 E(R)
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Attn: Mr John Glen

By post and email

Dear Sirs

Consultation: The Smoking, Health and Social Care (Scotland) Act 2005 (Prohibition of Smoking in Certain Premises) Regulations 2005: Draft

Introduction

1. I write on behalf of the Theatrical Management Association (TMA), the trade association representing the interests of those engaged in the production and presentation of medium to large-scale dramatic and lyric theatre in the UK. The TMA provides services, such as advice on legal matters and industrial relations, training courses, representation and a professional support network for the performing arts industry. Its membership is drawn from the subsidised and commercial theatre and includes repertory and producing theatres, arts centres and touring venues, major national companies and independent producers, opera and dance companies and associated individuals and businesses. Its members number around 360. Members range from the Royal National Theatre and the Royal Opera House to individual performing companies such as English National Ballet and Ballet Rambert, and the great majority of middle to large-scale producing theatres throughout the United Kingdom. It has 14 members in Scotland, including:

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The Theatrical Management Association Ltd was founded by Sir Henry Irving in 1894 and is registered in England and Wales at the above address.

Company No. 323204
VAT Registration No. 242 2801 94

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Adam Smith Theatre, Kirkcaldy
Citizens Theatre, Glasgow
Eastgate Theatre & Arts Centre, Peebles
Festival City Theatres Trust, Edinburgh
His Majesty's Theatre, Aberdeen
King's Theatre, Glasgow
MacDonald Aviemore Highland Resort, Aviemore
Motherwell Civic Theatre, Motherwell
Royal Lyceum Theatre Company, Edinburgh
Scottish Ballet, Glasgow
Scottish Opera, Glasgow
Theatre Royal, Glasgow

2. We note that the Scottish Executive's aim is to introduce legislation prohibiting smoking in certain public places and workplaces in order to protect public health and that this is a key part of its drive for health improvement.
3. Whilst, in general terms, we support the Executive's aim, we have concerns about the impact of any measure to restrict smoking in public places and workplaces on the presentation of theatrical productions. We therefore have a number of comments which arise in relation to Regulation 3 and Schedules 1 and 2. These comments are set out below. We also have a concern about the requirement to display no-smoking notices and a general concern about the introduction of measures on a piecemeal basis. These are also set out below.
4. Regulation 3 and Schedules 1 and 2: "No-smoking premises"
 - 4.1 Please note that the following comments also have a bearing on section 4 of the Smoking, Health and Social Care (Scotland) Bill (the "Bill").
 - 4.2 Our main concern is that any measure to restrict smoking in public places and workplaces should not have the effect of prohibiting smoking on stage during performances and in rehearsals. Such an outcome is something to which we would object strongly, on the basis that it would unnecessarily and unjustifiably affect the freedom of producers, directors and performers to perform fully and interpret accurately the artistic intentions of writers. Writers often cite smoking as a stage direction, as a detail of character, or smoking may in fact be part of the very subject matter or broader social theme of the work such as addiction to nicotine and/or other substances.

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- 4.3 Smoking, as for example in the plays of David Greig and John Byrne and, indeed, Chekhov and Ibsen, may also form a significant part of the social milieu or period detail of the work being performed. Or, as in the case of a historical figure such as Sir Winston Churchill or a fictional character such as Sherlock Holmes, it may also be a definitive and inseparable part of the individual's persona. Performers frequently use smoking as part of their own realisation and characterisation of a role.
- 4.4 To prohibit smoking on stage would amount to a restriction on the creative process for all professionals working in the theatre. Such a prohibition would compromise both the work of the writer and the creativity of the performer. This would compromise the artistic integrity of the work in question and could constitute a form of censorship. In certain cases it would prevent the production of some plays.
- 4.5 Although the Bill confines its prohibition to the smoking of tobacco products – thereby permitting the use of non-tobacco products such as herbal cigarettes - we do not consider this to be an acceptable solution to our concerns, particularly as such products do not provide an alternative to cigars.
- 4.6 We submit that the majority of the stages of our members' theatres are large open spaces with high ceilings such that any smoke is dissipated and the risks alleged to be associated with passive smoking simply do not apply.
- 4.7 As you will be aware, when smoking takes place on stage all appropriate agreements and safety precautions with local councils and fire authorities are put in place to minimise and avoid the risk of fire.
- 4.8 In order to meet our concern that any measure should not have the effect of prohibiting smoking on stage during performances and in rehearsals, we seek a specific exemption for smoking on stage as part of a theatrical or other artistic production and related rehearsals.

We request that such an exemption be included in the Bill itself rather than the Regulations, and would mention that we are intending to table an amendment to the Bill to reflect this. We would also like to mention that in response to our petition against parallel legislation in London (the London Local Authorities (Prohibition of Smoking in Places of Work) Bill), the promoters of that Bill have

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seen it appropriate, in principle, to provide for an exemption on the face of the Bill. We therefore ask that the Executive take a similar approach.

Without prejudice to our request that such an exemption be included in the Bill, we ask that in any event the Regulations be amended to include in Schedule 2 (Exemptions) the following class of premises (with corresponding amendments to Schedule 1):

“theatres or other similar venues or rehearsal venues where the smoking on the premises in question is by an actor or other performer taking part in the bona fide performance of a play or an organised rehearsal for a play or other production”.

5. Regulation 2: “Display of no-smoking notices”

5.1 Please note that the following comments also have a bearing on section 3 of the Bill.

5.2 We are concerned that, if the requirement to display notices means that notices would have to be displayed on a theatre set, this would detract from the artistic integrity of the set and the audience’s dramatic theatrical experience.

5.3 We therefore request an exemption from the requirement to display a “no-smoking” notice in a theatre or similar venue where the location of such a sign would detract in that way. Again, we would ask that such an exemption be included on the face of the Bill rather than the Regulations. We would also ask that a similar exemption be included in Regulation 2.

6. General

6.1 We are aware of the prohibition of smoking proposals in the White Paper applying to England, ‘Choosing Health: making healthier choices easier’ (to be carried forward in the Health Improvement and Protection Bill); the proposals set out in the paper, “A Healthier Future: A Twenty Year Vision for Health and Wellbeing in Northern Ireland 2005-2025”; and similar proposals relating to Wales, London and Liverpool. We are monitoring those proposals and will make our concerns known to the relevant parties as and when appropriate (and have already done so in relation to the Northern Ireland proposals and the Private Bills relating to Liverpool and, as mentioned above, London). We are

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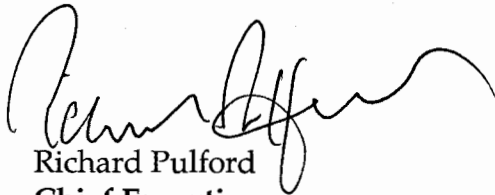
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concerned that these different proposals relating to different parts of the UK could result in the introduction of legislation or measures on a local, piecemeal, basis. Such a situation would prove confusing and would present practical difficulties for productions being toured from one area of the UK to another. We therefore urge the Executive to ensure that its anti-smoking measures are consistent with those applying to other areas of the UK.

7. Conclusion

- 7.1 We are grateful for the opportunity to respond to the consultation document. As stated above, we recognise the need to reduce smoking as part of the overall aim to improve the health of people in Scotland. However, we are very concerned about the potential impact of measures to reduce smoking, specifically in respect of the presentation of theatrical productions (and related rehearsals). If you require any further information, please do not hesitate to contact Louise Norman, the TMA's Legal Officer.

Yours faithfully



Richard Pulford
Chief Executive

cc Patricia Ferguson SMP, Minister for Tourism, Culture and Sport