

Operating Agreement

S4C

Draft for consultation August 2012



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The BBC and S4C Partnership

The BBC and S4C believe that this partnership which we have entered into builds on the redoubtable tradition that both broadcasters have in providing Welsh language services, principally to audiences in Wales. This extended partnership will contribute to ensuring that both organisations can meet their statutory commitments to providing services in the Welsh language whilst also providing for the development of Welsh language broadcast media to provide services which truly meet the changing needs and expectations of the audience.

The BBC has believed from the outset in the importance of providing services in Welsh. The language was heard on air in 1923 in the first broadcast from Cardiff and thereafter the story of Welsh language broadcasting, including the establishment of BBC Radio Cymru in 1977, has been central to the story of the language itself.

The setting up of S4C in 1982 built on the bedrock of expertise developed by the BBC and others over more than half a century of broadcasting in Welsh, and the consequent growth of the independent production sector, together with an enhanced contribution of programmes for the new channel from the BBC, greatly expanded the offering to Welsh speaking audiences.

Under this agreement the BBC will provide funding as well as continuing to provide programmes to S4C in order to sustain a rich, freely available Welsh language television service, fit for the 21st century. Separately, the BBC provides other services in Welsh. Although the BBC is the primary funder of S4C the channel is a separate entity that receives funding from other bodies, as well as commercial income.

We believe that this enhanced partnership between the BBC and S4C is an important one for audiences in Wales which will build on the successes of the last thirty years of our partnership and take Welsh language broadcasting confidently into the future.

Lord Patten of Barnes CH
Chairman, BBC Trust

10 August 2012

Huw Jones
Chairman, S4C Authority

1. S4C Operating Agreement

Purpose

- 1.1 The S4C Operating Agreement (“the Agreement”) contains—
 - (a) governance (including accountability) arrangements, and
 - (b) operational arrangements,agreed between the BBC Trust and the S4C Authority pursuant to clause 63A of the BBC Framework Agreement.¹ It establishes the terms (in particular, as to scope, performance framework and accountability arrangements) on which licence fee revenue (see clause 4) is to be used for the provision of the S4C Services for the period from 1 April 2013 until 31 March 2017.²
- 1.2 It should be noted that the Agreement does not cover the totality of the activities undertaken by the S4C Authority (which go beyond the provision of the S4C Services) or the whole of the on-going relationship between the BBC and S4C (which includes, for example, the provision of Welsh language content to S4C³ under a separate Strategic Partnership Agreement).
- 1.3 The on-going relationship between the BBC and S4C will also include opportunities for collaboration and sharing of expertise, both in editorial and operational areas, for mutual benefit. The joint partnership board (see section 6) will be the primary forum for this collaboration.
- 1.4 The Agreement ensures the editorial and managerial independence of S4C and the S4C Services provided by it.
- 1.5 The Agreement has been finalised following the conclusion of discussions between the BBC, the S4C Authority and the Secretary of State for Culture, Olympics, Media and Sport (“the Secretary of State”). The governance arrangements have also been agreed between the BBC and the Secretary of State.⁴

¹ Agreement between the BBC and the Secretary of State for Culture, Olympics, Media and Sport of July 2006. Clause 63A was added by an amending agreement of September 2011.

² The Agreement has been developed collaboratively in partnership between the BBC Trust (as defined in clause 12 of the BBC’s Royal Charter of October 2006 (the “Royal Charter”)) and the S4C Authority (the “S4C Authority”) (as defined in section 56 of the Broadcasting Act 1990 as amended).

³ The BBC is under a statutory duty to provide the S4C Authority (free of charge) with sufficient television programmes in Welsh to occupy not less than 10 hours transmission time per week, and to do so in a way which meets the reasonable requirements of the S4C Authority. This statutory requirement is governed by a separate Strategic Partnership Agreement entered into between the BBC and the S4C Authority. These arrangements and the statutory duty shall not be affected by the provisions of this Agreement.

⁴ See the BBC Agreement, clause 63A(3) and (4).

Meaning of the "S4C Services" and other terms

- 1.6 In this Agreement—
- the "BBC" means the British Broadcasting Corporation;
 - "S4C" means the independent statutory corporation of that name established by section 56 of the Broadcasting Act 1990;
 - the "S4C Authority" means the governing body of S4C; and
 - the "S4C Services" means—
 - (a) the S4C channel, being the television channel known as S4C (but referred to in the Communications Act 2003 as "S4C Digital"), and
 - (b) any television channel or other service approved under section 205 of the Communications Act 2003 that is provided by S4C as a public service on or after 1st April 2013,
- and shall include any activities that are incidental or conducive to the carrying out of S4C's functions in relation to the provision of those services.

The BBC Trust

- 1.7 The BBC Trust is the governing body of the BBC.
- 1.8 The BBC Trust is the guardian of the licence fee revenue and has ultimate responsibility for the stewardship of the licence fee revenue.
- 1.9 The BBC Trust is also responsible for the effective promotion of the BBC's public purposes.

The S4C Authority

- 1.10 The S4C Authority is the governing body of S4C.
- 1.11 S4C has the statutory function of providing television programme services of a high quality, and this function must include the continuing provision of the S4C channel.
- 1.12 S4C has a duty to secure that the S4C Services represent a public service for the dissemination of information, education and entertainment.

Term

- 1.13 This Agreement shall be valid from 1 April 2013 until 31 March 2017.
- 1.14 The BBC's Royal Charter expires on 31 December 2016; however the BBC and the Secretary of State have agreed a funding settlement that extends until 31 March 2017. This funding settlement is subject to the grant of a new Royal Charter to the BBC. The funding to be provided by the BBC Trust for the period 1 January 2017 until 31 March 2017 as set out in clause 4 shall also be dependent upon the grant of a new Royal Charter to the BBC.

2. Remit and scope

- 2.1 This section sets out the remit and scope of the S4C Services which will be primarily funded from the licence fee, the aims and objectives of the services, and how the S4C Services contribute to the fulfilment of the BBC's public purposes.

The S4C Services

Remit

- 2.2 S4C's statutory remit requires it to provide a mixed-genre service broadcasting Welsh language content, primarily to audiences in Wales.
- 2.3 The S4C Services should offer a wide range of high quality content, including television programmes of depth and substance; should reflect the whole of Wales; and should use a range of digital platforms to distribute the content of the S4C Services.
- 2.4 The S4C Services should provide high quality Welsh language content in genres including news, current affairs, entertainment, culture, arts, children and young people, sport, factual, drama, comedy and music.
- 2.5 S4C is a commissioner broadcaster that commissions its content from a range of independent production companies. S4C also commissions certain programmes, over and above those provided under statute⁵, from the BBC. This Agreement shall not affect S4C's freedom to commission content from a range of appropriate sources.

Scope

- 2.6 The S4C channel shall be transmitted free to air for general reception wholly or mainly by members of the public in Wales on digital television in accordance with section 204 of the 2003 Act (as amended) and it may be made available on fixed and mobile internet protocol networks. It may also be made available in high definition.
- 2.7 S4C may also make the content of the S4C Services available on any digital media platforms that it reasonably believes will enhance the service being provided to its audiences.
- 2.8 S4C shall seek to ensure that the S4C Services shall provide a comprehensive broadcast schedule on each day of the week.

Budget

- 2.9 The budget for the S4C Services shall be established by the S4C Authority.
- 2.10 The S4C Authority shall ensure that the total annual amount of licence fee funding provided in accordance with clause 4 shall be allocated for the purpose of providing the S4C Services.

⁵ See paragraph 1.2 and note 3.

2.11 The S4C Authority may at its discretion allocate other resources to the provision of the S4C Services.

New services

2.12 This paragraph applies when the S4C Authority is considering providing (as a public service) a new television channel or other service, where some or all of the costs of doing so will (or could in future) be met from licence fee funding.

2.13 Before seeking the Secretary of State's approval for the new service (as required by section 205 of the Communications Act 2003) the S4C Authority must consult the BBC Trust.

2.14 On being consulted, the BBC Trust shall give its opinion (in writing) as to the impact (if any) that providing the new service could have upon the S4C Authority's overall stewardship of licence fee funding provided to S4C, and in particular upon the Authority's ability fully to deliver the remit of the S4C Services in accordance with this Agreement, within the context of the levels of licence fee funding which the BBC Trust is planning or is committed to.

2.15 The S4C Authority shall communicate the Trust's opinion to the Secretary of State when submitting its proposals.

Overview of aims and objectives for S4C Services

2.16 The S4C Services should exhibit some or all of the following characteristics: high quality, original, challenging, innovative and engaging; and they should nurture Welsh talent.

2.17 The S4C Services should deliver their remit through high-quality programmes with wide appeal across a range of genres. S4C should provide original programming across a range of genres, including news, weather, sports, live events, children's, music and entertainment, culture, arts, drama, factual programming, educational output and some comedy.

2.18 The S4C Services should provide accurate, impartial and independent news services and play a central role in reporting and scrutinising national political life as well as providing a platform where issues can be debated by experts and viewers.

2.19 The S4C Services should support Welsh music and arts, and should commission content from new and established talent. They should broadcast a wide range of music and drama.

2.20 S4C should use digital and interactive technologies to extend the availability of the S4C Services, encourage audience interaction and introduce audiences to related content and services.

The BBC's Public Purposes

- 2.21 The main object of the BBC is the promotion of its public purposes, set out in its Royal Charter.
- 2.22 The contribution of the licence fee from the BBC Trust to S4C for the provision of Welsh language programmes and services contributes to the delivery of the BBC's public purposes.
- 2.23 The BBC Trust and the S4C Authority agree that the S4C Services contribute towards the delivery and promotion of the BBC's public purposes in the following manner:

Sustaining Citizenship and Civil Society

- 2.24 The S4C Services should make a very important contribution to this purpose amongst its audience, primarily through its provision of accurate, impartial and independent news and current affairs.
- 2.25 Political coverage should focus on Welsh affairs but also cover the Westminster and European parliaments, including substantial election reporting and analysis.

Promoting Education and Learning

- 2.26 The S4C Services should make an important contribution to this purpose amongst its audience, by providing opportunities for informal learning, including learning the Welsh language, across a wide range of subjects in its feature, factual, documentary and children's' output.

Stimulating creativity and cultural excellence

- 2.27 The S4C Services should contribute to this purpose amongst its audience. The S4C Services should bring the richness of Wales's artistic and cultural life to its audience and should support Welsh music, culture, drama and arts. It should support established talent, and refresh it with new talent and contributors. It should commission independently produced output and contribute to the growth of the creative economy in Wales.

Representing the UK, its nations, regions and communities

- 2.28 The S4C Services should make a very important contribution to this purpose amongst their audience by reflecting and strengthening Welsh cultural heritage. The S4C Services should achieve these aims across all types of programming. In particular, their factual output should reflect topics of interest and relevance to communities in Wales. In addition, religious and sports programming should represent the diversity of interests within communities in Wales. They should aim to draw communities together to share sporting, cultural and musical occasions.

Bringing the UK to the world and the world to the UK

2.29 The S4C Services should play their part in this purpose amongst its audience, primarily by bringing the world to the UK, through regularly covering international events and issues in its news, current affairs and documentary output. It should endeavour to bring Wales to the world by making S4C's content available on relevant digital media platforms.

Emerging Communications

2.30 In promoting the other purposes, the S4C Services should play a role for Welsh audiences in promoting the benefits of emerging communications technologies and services in the Welsh language.

3. Performance and Review

- 3.1 The S4C Authority shall be primarily responsible for assessing the performance of the S4C Services amongst audiences in Wales and for reporting on this to stakeholders and audiences.
- 3.2 The BBC Trust shall undertake an annual performance assessment of the S4C Services funded by the licence fee.
- 3.3 The BBC Trust's annual reviews of the S4C Services shall contribute to the BBC Trust's oversight of the licence fee that is used to provide the S4C Services.
- 3.4 The BBC Trust will routinely receive reports on the performance of the S4C Services from the BBC Trust Member for Wales.

Annual Performance Assessment

- 3.5 The BBC Trust shall use the performance framework set out below to undertake its annual assessment of the S4C Services.
- 3.6 The BBC Trust's assessment shall be based principally on information provided by the S4C Authority, and the Authority shall provide the BBC Trust with all relevant information needed by the Trust to carry out its assessment, including the S4C Authority's own assessment against performance metrics adopted by it, and the framework below. The BBC Trust will also receive regular reports on performance, using this framework, from the BBC Trust Member for Wales at Trust meetings as appropriate.
- 3.7 In undertaking its assessment the BBC Trust shall consider the performance of the S4C Services as a whole. This assessment shall also take into account any relevant assessment of the programming contributed by the BBC to S4C under statute⁶.

Performance Framework

- 3.8 The BBC Trust shall assess the performance of the S4C Services based on an assessment of the following factors.

Reach

- 3.9 The S4C Services should seek to maximise their reach among target audiences.

Quality

- 3.10 Audience perceptions of the quality of the S4C Services via average AIs (audience appreciation) and other metrics.

⁶ See paragraph 1.2 and note 3.

Impact

- 3.11 Impact will be assessed qualitatively by means of a review of the main contributions of the S4C Services to the BBC's public purposes, and the performance of these services against the strategy set for them by the S4C Authority.

Value for Money

- 3.12 Value for money will be assessed by monitoring S4C Services' cost per user hour and any other relevant metrics.

Other reviews

- 3.13 If during the term of this Agreement the Secretary of State or other relevant bodies announce an intention to carry out a review of the performance of the S4C Services or the needs of the Welsh language audience, the BBC Trust and the S4C Authority shall cooperate in preparing for and, where applicable, participate in such a review with a view to safeguarding a successful future for the S4C Services.
- 3.14 The BBC Trust and the S4C Authority shall also cooperate during the term of this Agreement in participating in other relevant reviews relating to broadcasting and digital media in Wales to ensure the best possible services and value for money for audiences and licence fee payers.

4. Funding

- 4.1 This section sets out the licence fee funding to be provided from the BBC Trust to S4C for the provision of the S4C Services, as well as the efficiency targets to be met by the S4C Authority during the term of this Agreement.

Financial Contribution

- 4.2 The BBC shall contribute the following funding from the licence fee to S4C for the provision of the S4C Services.

Financial Year	Funding from the licence fee
2013 - 2014	£76.3 million
2014 – 2015	£76.0 million
2015 - 2016	£75.25 million
2016 – 2017 ⁷	£74.5 million

- 4.3 The BBC Trust shall pay to the S4C Authority the annual amounts set out in clause 4.2 in equal monthly instalments in each financial year, each payment being made on the 15th day of the month or nearest working day thereafter, and the first such payment falling due on 15th April 2013, and the last such payment falling due on 15th March 2017.

Efficiency

- 4.4 The BBC Trust is responsible for the stewardship of the licence fee and for ensuring value for money.
- 4.5 The joint objective of the BBC Trust and the S4C Authority is to ensure that the largest possible proportion of the licence fee contribution to the S4C Services is spent on providing programmes and services in the Welsh language primarily for audiences in Wales.

⁷ The BBC's Royal Charter expires on 31 December 2016 and funding beyond this date (to the end of the 2016-17 financial year) will be dependent upon the continuation of the Corporation.

- 4.6 To assist in reaching this objective, the BBC Trust has agreed with the S4C Authority to set an internal efficiency target for the provision of the S4C Services. The S4C Authority will aim to meet internal cash-releasing efficiency targets against a baseline of the S4C Authority's budget for 2012 as established in accordance with clause 2.9:
- 4.7 The S4C Authority will ensure that over the two year period 2013/14 and 2014/15 total efficiency savings and scope reductions of 10% shall be achieved in S4C's non-content costs; and subject to the continuation of direct funding of £7m per annum from DCMS during 2015-16 and 2016-17 the S4C Authority will ensure further efficiency savings and scope reductions of 1% per annum are achieved in S4C's non-content costs.
- 4.8 All savings in clause 4.7 will be made available for reinvestment by the S4C Authority in the S4C Services.
- 4.9 Achievement of the efficiency target shall not impact upon the contribution provided to the S4C Authority from the licence fee as set out in clause 4.2.

Reporting against the efficiency targets

- 4.10 The S4C Authority shall report to the BBC Trust on achievement against the agreed efficiency targets alongside the performance reporting set out in clause 4.6 above.
- 4.11 The regular BBC Trust board meetings will routinely receive reports on S4C performance from the BBC Trust Member for Wales.
- 4.12 The S4C Authority shall report publicly in its Annual Report and Statement of Accounts on achievement against the efficiency targets set out above.

5. Accountability

- 5.1 This section sets out the accountability arrangements for the provision of the licence fee funding towards the S4C Services.
- 5.2 The S4C Authority shall be accountable to the BBC Trust for expenditure of the licence fee in accordance with the requirements of this Agreement.

Annual Report and Accounts

- 5.3 The following arrangements will apply to the statement of accounts and general report of their proceedings that the S4C Authority is required to produce under paragraphs 12 and 13 of Schedule 6 to the Broadcasting Act 1990, subject to those provisions and to any directions as to the form of that statement given under paragraph 12(1).
- 5.4 The S4C Authority shall produce a single annual statement of accounts, that shall be presented first to the BBC Trust and then to the Secretary of State, who shall present it to Parliament. The BBC Trust shall provide a covering statement to be included within the report prior to transmission to the Secretary of State and to Parliament. The BBC Trust Member for Wales and the Chairman of the S4C Authority shall discuss the contents of the BBC's covering statement prior to its inclusion in the S4C Authority's annual statement of accounts. The statement of accounts shall be published.
- 5.5 The BBC shall also report on use of the licence fee for the provision of the S4C Services in its Annual Report and Accounts.

6. Operations

- 6.1 This section sets out at a high level the operational aspects of the partnership between the BBC and S4C, including how management teams from both organisations will work together to enhance the partnership.

The BBC and S4C Partnership

- 6.2 This Agreement governs the accountability and funding relationship between the BBC Trust and the S4C Authority. The partnership between the BBC and S4C however is wider than the funding and accountability arrangements, and extends to a creative partnership at all levels within both organisations.
- 6.3 The principal funding and accountability relationship shall be between the BBC Trust and the S4C Authority.
- 6.4 There shall also be a working and operational relationship between BBC Wales and S4C.

Independence

- 6.5 The status of the S4C Authority as an independent statutory corporation shall not be affected by the provisions of this Agreement.
- 6.6 S4C shall retain its editorial and managerial independence from the BBC at all times during the term of this Agreement.

Management Boards

- 6.7 The BBC Wales and S4C management boards shall meet quarterly to identify opportunities for cooperation and oversee progress on efficiencies. The chair of this group will rotate between the Director, BBC Wales and Chief Executive Officer, S4C.
- 6.8 There will be a joint partnership board tasked with delivering closer collaboration between BBC Wales and S4C, including contributing towards greater efficiency in the operation of both organisations. The Terms of Reference of the joint partnership board are in Annexe 1.

Technical Requirements

Financial and Reporting Year

- 6.9 The funding and reporting cycle shall be based on a financial year (1 April to 31 March).

Compliance with Ofcom codes

- 6.10 Nothing in this Agreement shall affect the S4C Authority's statutory duty as set out in Part 2 of Schedule 12 of the 2003 Act to ensure the compliance of the S4C Services with Ofcom's relevant requirements.

Commercial Activities

- 6.11 S4C shall retain its commercial freedom and S4C's commercial activities shall continue to operate in accordance with the relevant statutory framework.

The National Audit Office and Value for Money

- 6.12 The National Audit Office shall have access to the licence fee contribution provided to the S4C Authority for the provision of the S4C Services in the same manner that is provided to any other function funded by the licence fee.

This Agreement

Changes to the Agreement

- 6.13 During the term of this Agreement either party may propose changes to the Agreement, and the parties agree to consider in good faith any proposed amendments. Such amendments shall be discussed between the respective Chairmen of the BBC Trust and the S4C Authority and if agreed by both the BBC Trust and the S4C Authority such changes shall be incorporated in to this Agreement.
- 6.14 Significant changes may be subject to public consultation.
- 6.15 Changes to governance arrangements also require the agreement of the Secretary of State.

Compliance with the Agreement

- 6.16 If, in the reasonable opinion of the BBC Trust, the terms of this Agreement are not being met the BBC Trust shall inform the S4C Authority in writing, setting out the areas where the BBC Trust believes there has not been compliance. The BBC Trust will clearly set out a reasonable timetable within which S4C will be provided with the opportunity to rectify the issue.

Dispute resolution

- 6.17 In the event that agreement cannot be reached between the BBC Trust and the S4C Authority on the interpretation of the provisions of this Agreement or associated matters the position shall be reported to the BBC Trust and to the S4C Authority.
- 6.18 The respective Chairmen of the BBC Trust and the S4C Authority shall meet with a view to reaching a final agreement upon those matters. That meeting may, at the discretion of the Chairmen jointly, take place under independent chairmanship if, in the opinion of both Chairmen, this is likely to be conducive to reaching such agreement.
- 6.19 Where a meeting is to be held in the circumstances set out in paragraph 6.18 above, the Chairmen may consult further with and invite further proposals from their executive teams.

- 6.20 Where both Chairmen are not able to resolve any material and serious breach under the provisions of this clause the BBC Trust may in extremis reduce or withdraw funding if the provisions of this clause have been exhausted without satisfactory resolution, and in the reasonable opinion of the BBC Trust, the terms of this Agreement are still not being met. Any decision to do this shall be made openly and transparently.
- 6.21 At such time as the material and serious breach that caused any withholding or reduction is remedied to the reasonable satisfaction of the BBC Trust such sums shall be made available by the BBC Trust to the S4C Authority for the purpose of the provision of the S4C Services.

Annex 1

S4C/BBC Partnership Board

Terms of Reference

There will be a joint Partnership Board tasked with delivering closer collaboration between the BBC and S4C, including contributing towards greater efficiency in the operation of both organisations.

In addition, the BBC Wales and S4C management boards shall meet quarterly to identify opportunities for cooperation between the two organisations, oversee progress on efficiencies from joint working and set the agenda for the Partnership Board. The chair of this group will rotate between the Director, BBC Wales and Chief Executive Officer, S4C.

The Terms of Reference of the joint Partnership Board are set out below.

1. Authority

The joint Partnership Board ('the Partnership Board') oversees the development and delivery of BBC-S4C partnerships (including efficiencies through joint working).

Efficiencies identified by the Partnership Board will contribute to the efficiency targets established in the Operating Agreement, as well as BBC Wales' own efficiency targets.

The Partnership Board may from time to time develop recommendations for the consideration of the respective management teams.

The deliberations, activities and decisions of the Partnership Board shall at all times be:

- consistent with the terms of the Operating Agreement.
- consistent with the Strategic Partnership.
- subject to section 58 of the Broadcasting Act 1990 (as amended); and
- consistent with the provisions of the BBC's Charter and Agreement

2. Board Purpose and Remit

The purpose of the Partnership Board is:

- 2.1 to develop areas of strategic collaboration between S4C and the BBC

- 2.2 to identify and explore opportunities for BBC-S4C efficiencies and develop recommendations for the consideration of the respective management teams.
- 2.3 to identify how to deliver collaborative ways of working which have been identified or approved by the S4C and BBC management boards.
- 2.4 to support the work of the BBC and S4C management boards in delivering efficiencies which fall within the remit of the Partnership Board. The Partnership Board will also be informed of all initiatives that involve the BBC and S4C that may fall outside the remit of the Partnership Board. The BBC management board shall report to the BBC Trust, and the S4C management board shall report to S4C Authority, on a biannual basis on progress in delivering such efficiencies. The report received by the BBC Trust shall be shared with the S4C Authority and the report received by the S4C Authority shall be shared with the BBC Trust.
- 2.5 to share information on progress against the delivery of efficiencies and collaborative working practices which fall within the remit of the Partnership Board on the understanding that the Partnership Board be appraised and informed of all initiatives that involve the BBC and S4C that may fall outside the remit of the Partnership Board.
- 2.6 to share information on key strategic changes for either the BBC or S4C which may impact upon the other party.

3. Membership

The Partnership Board shall comprise an equal number of representatives from both organisations. BBC Wales' Chief Operating Officer and S4C's Director of Corporate and Commercial Policy shall jointly determine the number of representatives required in advance of each meeting. From time to time, additional participants may be invited to discuss areas of particular interest.

4. Frequency and organisation

The Partnership Board meetings shall be held no less than once every three months. Responsibility for the organisation and chairing of each meeting shall rotate between BBC Wales' Chief Operating Officer and S4C's Director of Corporate and Commercial Policy or their deputies (to include preparation and distribution of all relevant paperwork). An agreed agenda shall be circulated a week prior to each meeting.

5. Procedure

The Partnership Board shall ensure that full written minutes of each meeting are maintained and endorsed as accurate at each subsequent meeting.

6. Accountability

Members of the Partnership Board will be guided by the complementary public goals of both organisations whilst remaining accountable to their respective management reporting line.