



department for
**culture, media
and sport**

Consultation on proposals to amend S4C's governance arrangements

1/02/2012

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Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Overview

Sianel Pedwar Cymru (“S4C”) is a public service broadcaster constituted under the Broadcasting Act 1990 and the Communications Act 2003, with a statutory obligation to provide television services of high quality for reception, wholly or mainly, by members of the public in Wales and to ensure that a substantial proportion of the programmes broadcast on S4C are in Welsh.

S4C’s current corporate governance system includes the S4C Authority and the Management Team. The S4C Authority is responsible for providing regulatory oversight and strategic direction within the framework set by the Broadcasting Acts 1990 and 1996 and the Communication Act 2003. The Management Team oversees the day-to-day running of S4C including the management, commissioning and editorial role.

S4C has been funded by the Government by a formula set out in section 61 of the Broadcasting Act 1990 which is a cumulative Retail Price Index (RPI) increase from November 1996 to November of the current year. In the context of the current fiscal climate, this funding arrangement is unsustainable. At the time of the 2010 Comprehensive Spending Review the Government therefore considered a range of options to make the funding of S4C more flexible in line with the wider spending constraints, while carefully balancing the need to ensure that S4C continues to receive sufficient funding to meet its statutory duties.

The Government wants to ensure that the channel offers the best possible Welsh Language service to its audience and feels that the best way to secure its future while delivering a better service is through a partnership with the BBC.

S4C, the BBC and the Government discussed how best to take forward the partnership arrangements with the underlying principle of ensuring that S4C retains its brand identity, editorial and managerial independence, and that the service continues to meet the needs of the audience.

In a Written Ministerial Statement on 14 October 2010, the Secretary of State for Culture, Olympics, Media and Sport announced the proposal to remove the RPI funding link for S4C.

Also in October 2010, the BBC agreed to a licence fee settlement with the Government until March 2017. The terms of the settlement amongst other things include the BBC agreeing to form a new partnership and funding model with S4C.

The change to the Broadcasting Act 1990 was taken forward in Public Bodies Act 2011 which received Royal Assent on 14 December 2011. The relevant provisions in the Act come into force on 14 February 2012.

On 15 September 2011 an agreement to amend the 2006 Framework Agreement between the BBC and the Secretary of State was laid in Parliament. This provides, among other things that from 1 April 2013 S4C services will be organised and funded as a partnership between S4C and the BBC.

The Government announced in the licence fee settlement and Comprehensive Spending Review in October 2010 that the BBC would provide funding to S4C of £76.3m in 2013/14 and £76m in 2014/15, with the Government providing funding of £6.7m in 2013/14 and £7m in 2014/15. On 24 October 2011, the BBC Trust decided that subject to agreement on governance and accountability, it would provide the further following amounts of funding from the licence fee to S4C: in 2015/16 £75.25m and in 2016/17 £74.5m.

On 25 October 2011, S4C and the BBC announced that they had reached an agreement on the future funding, governance and accountability of S4C until 2017.

The key elements agreed include¹:

- The governing body of S4C will be a reconstituted S4C Authority.
- The chair of the Authority will be appointed solely by the Secretary of State, through a public appointments process.
- The other members of the Authority shall be selected through a public appointments process including a panel that includes: the BBC Trust, S4C, DCMS and Welsh Government representation.
- The BBC Trust member for Wales may be one of the members, if the Trust wishes.
- All members of the Authority will agree to successful delivery of the S4C Operating Agreement and S4C's statutory remit as part of their terms of appointment.
- The Operating Agreement will be the key accountability document between the BBC Trust and S4C.
- The Operating Agreement will be developed collaboratively in partnership with S4C and will involve audience/public consultation.
- The S4C management board will be chaired by the S4C Chief Executive and will consist solely of S4C executives. There will be no BBC membership of the management board.

In addition, the BBC's existing statutory obligation to supply S4C with at least 10 hours of programming per week will continue. The latest arrangements were announced by S4C² and the BBC Trust³ on 11 January 2011.

DCMS welcomed this agreement. The Minister for Culture, Communications and Creative Industries said "These proposed partnership arrangements are a great outcome for Welsh language broadcasting. They not only ensure S4C's editorial and

¹ The full position is available at:

http://www.s4c.co.uk/production/downloads/S4C_governance_position_summary.pdf

² http://www.s4c.co.uk/e_press_level2.shtml?id=446

³ http://www.bbc.co.uk/bbctrust/news/press_releases/january/s4c_partnership.shtml

managerial independence, they also offer a very reassuring level of financial security for the next five years. I'm confident that this offers the stability and certainty S4C needs to go from strength to strength under its new chairman and chief executive." DCMS remains of this view and endorses strongly both the financial and governance arrangements S4C and BBC have agreed.

Annexes

Annex A sets out the position of S4C, the BBC and the Government on S4C's governance and accountability. This is published on the websites of the BBC Trust and S4C.

Annexes B & C set out details of Sections 3 and 10 of the Public Bodies Act 2011. Section 3 outlines the Power for the Minister to modify constitutional arrangements and Section 10 states that the Minister proposing to make an order under sections 1 to 5 must consult.

Scope of this consultation

Section 10 of the Public Bodies Act 2011 requires Ministers to consult on proposals for legislative changes affecting the bodies listed in schedules 1-5 and S4C is one of the public bodies listed in schedule 3. The legislative changes required to implement the new governance arrangements for S4C relate to the constitution of the Selection Panel members and operational arrangements with funding bodies. During Parliamentary debates on the Public Bodies Act 2011 and in the Government's Written Ministerial Statement of 11 July 2011, Ministers also committed to consult. This consultation taken with the BBC's planned consultation on the operating agreement with S4C meets the requirements of the Act and fulfils Ministers' commitments.

While we appreciate that respondents may wish to comment on the governance and accountability arrangements agreed between the BBC and S4C (at Annex A), it should be noted that the focus of this consultation is the legislative changes required to put these changes in place before April 2013. The consultation questions on page 9 are therefore limited to those areas listed above.

Additionally, the new funding arrangements for S4C are also outside the scope of this consultation as they were set out as part of the 2010 Comprehensive Spending Review process and have been altered by the Public Bodies Act 2011. The provisions to amend the 1990 Broadcasting Act will come into force on 14 February 2012. Similarly the funding agreed by BBC and S4C for the years 2015-16 and 2016-17 is also outside the scope of this consultation.

We suggest that responses to the consultation which offer views about S4C's and the BBC's agreed governance arrangements outside the specific issues on page 9

are addressed directly to the BBC Trust and S4C. We understand that the BBC Trust intends to consult on the new Operating Agreement for S4C in due course.

Timing

If, following this consultation, the Government remains in favour of introducing a draft order, we plan to lay the draft order before Parliament in time for it to come into force by October 2012, subject to the agreement of Parliament.

Impact Assessment

As the proposed legislative changes will have no impact on businesses or civil society, an Impact Assessment has not been prepared for this consultation.

How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. The closing date for responses is **Friday 4 May 2012**.

Please send responses by letter or email to:

S4C Governance Consultation

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London

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Fax: 020 7211 6339

Email: s4cgovernance@culture.gsi.gov.uk

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data, that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

DCMS intends to share the responses to this consultation with the BBC and S4C.

Monitoring, Evaluation & Implementation

Following the end of the consultation period, we will publish the Government's response to this consultation document as soon as possible after the close of consultation, subject to the volume of responses, but in any event no later than three months. A copy will be placed on DCMS's website.

Consultation Questions

S4C Authority

The issue under consideration is the constitution of the Selection Panel members. The Secretary of State appoints S4C Authority members based on recommendations by the Selection Panel. It is worth noting that all public appointments are regulated by the Commissioner for Public Appointments and the appointments process will have to comply with the terms of the Code of Practice as in force at the time of the appointment. As stated in the 'Overview' section above, the Government has welcomed the agreement between the BBC and S4C on new governance arrangements for S4C including the agreement that the BBC Trust Member for Wales may be one of the members of the S4C Authority. However, this does not require any legislative change.

Questions on proposed changes to S4C Authority

- 1) Selection Panels are established for each individual appointment and currently comprise: Selection Panel Chair (a senior DCMS official), S4C Chair, an Independent Public Appointments Assessor and an official from the Welsh Government. Under the BBC / S4C partnership, it has been agreed that the BBC will have a role in the selection of Authority members. Do you agree that the Selection Panel should include a representative of any body providing funding for S4C?
- 2) Are there any other issues that should be considered in relation to the proposed reconstituted S4C Authority?

Operational arrangements between S4C and person making payments

The Public Bodies Act inserted a new section 61 (2)(1) into the Broadcasting Act 1990 and empowers the Secretary of State to fund S4C either by making payments himself or entering into an agreement with another person for that person to do so (or both).

The Secretary of State has entered into an arrangement with the BBC to fund S4C for the period 2013-2017. The BBC Trust will enter into an operating agreement with S4C which will set out the scope of the service and provide for monitoring and reporting. This operating agreement will be the key accountability document between the reconstituted S4C Authority and the BBC Trust. The BBC Trust and S4C will report publicly each year on S4C's achievement against it. The operating agreement will be developed collaboratively in partnership with S4C and will involve public consultation.

Question on the operating agreement

- 3) The Public Bodies Act inserts a new section 61 (2) (1) into the Broadcasting Act 1990 and empowers the Secretary of State to fund S4C either by making payments himself or entering into an agreement with another person/s for that person to do so (or both). Do you agree that it should be a statutory requirement that any person / body with whom the Secretary of State enters into a future agreement to fund S4C must have an operating agreement with S4C?

**S4C GOVERNANCE AND ACCOUNTABILITY
SUMMARY POSITION**

For the period when S4C will be majority funded by the licence fee, we agree the following position on governance, accountability and funding. This position is subject to successful passage of the Public Bodies Bill.

Governing board: S4C Authority

- The governing body of S4C will be a reconstituted S4C Authority.
- There should be nine (9) members of the Authority, including the Chairperson.
- The chair of the Authority will be appointed solely by the Secretary of State, through a public appointments process.
- The other members of the Authority shall be selected through a public appointments process including a panel that includes: the BBC Trust, S4C, DCMS and Welsh Government representation.
- The BBC Trust member for Wales may be one of the members, if the Trust wishes.
- All members of the Authority will agree to successful delivery of the S4C Operating Agreement and S4C's statutory remit as part of their terms of appointment.
- There should be transitional arrangements agreed prior to licence fee funding being provided (e.g. for the selection of new members and appointment of BBC Trustee).

Operating Agreement

- The Operating Agreement will be the key accountability document between the BBC Trust and S4C.
- The Operating Agreement will be developed collaboratively in partnership with S4C and will involve audience/public consultation. In the unlikely event that a collaborative process does not reach mutual agreement, the BBC Trust reserves the right to set out the final provisions of the Agreement before transferring funding to S4C. The Operating Agreement will last for the period until the end of the BBC's Charter.
- The Operating Agreement will specify the scope of the service to be funded through the licence fee, incorporate a requirement and set a target for efficiencies to be achieved in S4C's operations, establish the performance targets and accountability requirements, and shall be consistent with S4C's statutory remit.
- It will ensure the editorial and managerial independence of the S4C service

⁴ This information can be found on the BBC Trust and S4C websites:

http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/s4c_governance/s4c_governance.pdf
http://www.s4c.co.uk/production/downloads/S4C_governance_position_summary.pdf

- The BBC Trust will undertake an annual performance assessment, measuring performance against the terms of the Operating Agreement, this assessment will be made public.
- If, in the reasonable opinion of the BBC Trust, the terms of the Operating Agreement are not being met there will be provisions that require the BBC Trust to allow time for S4C to rectify the issue. There will also be a dispute resolution clause that provides for discussion between the respective chairmen. There will be the ability for the BBC Trust, *in extremis*, to reduce or withdraw funding if these provisions have been exhausted without satisfactory resolution and, in the reasonable opinion of the Trust, the terms of the Operating Agreement are still not being met. Any decision to do this will be made openly and transparently.
- The existing programming provided by the BBC to S4C will continue to be governed by a separate agreement.
- The Secretary of State will not be a party to the Operating Agreement, however his duty to secure sufficient funding for S4C to provide its public service duties is set out in the Public Bodies Act.

S4C management structure

- The S4C management board will be chaired by the S4C Chief Executive and will consist solely of S4C executives. There will be no BBC membership of the management board.
- The Operating Agreement will require that there be joint quarterly meetings of the S4C management board and the BBC Wales management board to oversee progress on efficiencies, with a joint partnership board focused on delivery. The chair of this group will rotate between the S4C CEO and Director, BBC Wales.
- The joint partnership board will deliver closer collaboration between S4C and the BBC, contributing to the efficiency targets established in the Operating Agreement, as well as BBC Wales' own efficiency targets. Any savings that S4C realised from such collaboration would be reinvested in S4C content.

Funding

- The BBC Trust has confirmed that, subject to final agreement on governance and accountability as above, it will provide the following amounts of funding from the licence fee to S4C: in 2013/14, £76.3m; in 2014/15, £76m; in 2015/16 £75.25m; in 2016/17 £74.5m.
- Funding for S4C in the future will be from three sources: the licence fee, HMG grant-in-aid, and commercial income.

Accountability

- Accountability for the licence fee will be to the BBC Trust.
- Accountability for the grant-in-aid will be to Parliament.
- S4C Authority will produce a single set of annual accounts, presented first to the BBC Trust and then to the Secretary of State, who will present it to Parliament. The BBC Trust will provide a covering statement to be included within the report prior to transmission to the Secretary of State/Parliament. The report will be published.

- S4C will retain its commercial freedom and S4C's commercial activities shall continue to operate in accordance with the statutory framework.
- NAO access to the licence fee being spent on S4C service will be in the same manner that is provided to any other licence fee funded service, i.e. via the BBC Trust.
- The Trust will continue its Charter-defined role as guardian of the licence fee revenue.

AGREED BETWEEN THE BBC TRUST AND S4C AUTHORITY

25 October 2011

Annex B

Section 3 of the Public Bodies Act 2011: Power to modify constitutional arrangements

(1) A Minister may by order modify the constitutional arrangements of a body or office specified in Schedule 3.

(2) In this Act, references to the constitutional arrangements of a body include matters relating to—

- (a) the name of the body;
- (b) the chair of the body (including qualifications and procedures for appointment and functions);
- (c) members of the body (including the number of members, qualifications and procedures for appointment and functions);
- (d) employees of the body exercising functions on its behalf (including qualifications and procedures for appointment and functions);
- (e) the body's powers to employ staff;
- (f) governing procedures and arrangements (including the role and membership of committees and sub-committees);
- (g) reports and accounts;
- (h) the extent to which the body is accountable to Ministers;
- (i) the extent to which the body exercises functions on behalf of the Crown.

(3) In this Act, references to the constitutional arrangements of an office include matters relating to—

- (a) the name of the office;
- (b) appointment of the office-holder (including qualifications and procedures for appointment);
- (c) the office-holder's powers to employ staff;
- (d) reports and accounts;
- (e) the extent to which the office-holder is accountable to Ministers;
- (f) the extent to which the office-holder exercises functions on behalf of the Crown.

Annex C

Section 10 of the Public Bodies Act 2011: Consultation

- 1) A Minister proposing to make an order under sections 1 to 5 must consult—
- (a) the body or the holder of the office to which the proposal relates,
 - (b) such other persons as appear to the Minister to be representative of interests substantially affected by the proposal,
 - (c) the Scottish Ministers, if the proposal relates to any matter, so far as applying in or as regards Scotland, in relation to which the Scottish Ministers exercise functions (and where the consent of the Scottish Parliament is not required under section 9),
 - (d) a Northern Ireland department, if the proposal relates to any matter, so far as applying in or as regards Northern Ireland, in relation to which the department exercises functions (and where the consent of the Northern Ireland Assembly is not required under section 9),
 - (e) the Welsh Ministers, if the proposal relates to any matter, so far as applying in or as regards Wales, in relation to which the Welsh Ministers exercise functions (and where the consent of the National Assembly for Wales is not required under section 9),
 - (f) where the functions affected by the proposal relate to the administration of justice, the Lord Chief Justice, and
 - (g) such other persons as the Minister considers appropriate.
- (2) If, as a result of consultation under subsection (1), it appears to the Minister appropriate to change the whole or part of the proposal, the Minister must carry out such further consultation with respect to the changes as seems appropriate.
- (3) It is immaterial for the purposes of this section whether consultation is carried out before or after the commencement of this section.