

EXPLANATORY MEMORANDUM TO

THE POLICE, FIRE AND CRIME COMMISSIONER FOR CUMBRIA (FIRE AND RESCUE AUTHORITY) ORDER 2022

2022 No. 1230

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument transfers responsibility for the governance of fire and rescue services from Cumbria County Council to the Police and Crime Commissioner for Cumbria (PCC). The PCC will then be known as the Police, Fire and Crime Commissioner (PFCC) for Cumbria.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 On 18 March 2022 the Cumbria (Structural Changes) Order 2022 (S.I. 2022/331) came into force which will see Cumbria County Council dissolved from 01 April 2023 and the creation of two new unitary authorities (Cumberland Council and Westmoreland and Furness Council). Without further legislation and government action Cumbria Fire and Rescue Service, currently the responsibility of Cumbria County Council, will be divided, with each new authority automatically becoming the fire and rescue authority for its area from 01 April 2023.
- 6.2 For fire functions to be transferred to the Police and Crime Commissioner for Cumbria by an order made under the powers available in section 4A of the Fire and Rescue Services Act 2004 (the 2004 Act), as amended by the Policing and Crime Act 2017 (the 2017 Act) the Secretary of State must be satisfied that the relevant statutory tests are met in a proposal submitted by the PCC.
- 6.3 The Secretary of State can only give effect to such a proposal where it appears to be in the interests of economy, efficiency and effectiveness, and have no negative impact on

public safety (the statutory tests). The Secretary of State cannot give effect to an order if they believe it would have an adverse effect on public safety

7. Policy background

What is being done and why?

- 7.1 The Government's intention is that the fire service should continue on a county-wide basis rather than see the service divided along the lines of the two new unitary authorities being created in Cumbria. This was deemed to be neither operationally nor financially viable.
- 7.2 The government's ambition is to strengthen and improve the accountability and transparency of fire and rescue authorities through a single, elected – ideally directly elected – individual who is accountable for the service rather than governance by committee. Public awareness of FRAs and their members is not high. Our public polling as part of the review of PCCs found that the majority (89%) could not name a member of their FRA. In contrast, the awareness of PCCs (including PFCCs) is growing since the first candidates were elected in 2012. In the same polling, nearly two thirds (65%) of the public in these areas said they were either aware of their commissioner, or aware that they were responsible for policing. In addition, the 2021 PCC elections saw a significantly increased turnout, showing that the model is maturing and public awareness growing.
- 7.3 We have seen the value that PFCCs in the four areas who have responsibility for fire have provided, including strengthened local accountability, enhanced collaboration, and improvement in what their fire services provide the public.
- 7.4 Cumbria County Council lodged an objection against the PCC's business case on 18 March 2022. As a result, the Home Secretary followed the legislative process and commissioned the Chartered Institute of Public Finance and Accountancy (CIPFA) to undertake an independent assessment of the business case. The assessment was received on 01 June 2022 and CIPFA concluded, on balance, it had no reason to oppose the proposal for the creation of a PFCC. A copy of CIPFA's final report can be found here - <https://www.gov.uk/government/publications/cumbria-fire-governance-proposal-independent-assessment>.
- 7.5 Having carefully reviewed the proposal, consultation materials, the views and representations made by statutory consultees and the PCC's responses to them, and the wider context as described above, the Secretary of State found that the PCC's proposal appeared to be in the interests of economy, and of efficiency and of effectiveness, and that there would be no adverse effect on public safety. The Home Secretary's decision to approve the proposal was announced on 02 August 2022.
- 7.6 This Order will establish the PCC as a shadow FRA from 1 January 2023 and will give the FRA certain functions related to local government finance so that the PCC will be able to take on the full suite of fire governance functions from 1 April 2023, when it will come fully into force.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.7 Previously, under section 1(2)(a) of the Fire and Rescue Services Act 2004, Cumbria County Council operated as the Fire and Rescue Authority for Cumbria.

Why is it being changed?

- 7.8 The law is being changed because as part of Local Government Reform led by the Department for Levelling Up, Housing and Communities, Cumbria County Council is being abolished on 1 April 2023, and new arrangements for the FRA are required.

What will it now do?

- 7.9 Under section 4A(1)(b) the Cumbria Police and Crime Commissioner will become the Cumbria Police, Fire and Crime Commissioner and will carry out all FRA functions previously undertaken by Cumbria County Council.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 None. This instrument does not amend existing legislation.

10. Consultation outcome

- 10.1 Paragraph 3 of Schedule A1 to the 2004 Act requires a PCC to consult on their proposal before submitting it to the Secretary of State. The PCC is required to consult each relevant local authority, people in the police area, persons appearing to represent employees who may be affected and persons appearing to represent members of a police force who may be affected. They are also required to publish their response to the views expressed in response to the consultation. The way the PCC chooses to consult, and its duration, is for the PCC to determine.
- 10.2 The consultation process ran from 26 January to 21 March 2022 and engaged local stakeholders and the public. A total of 336 people responded during the consultation period. Those supportive of the PFCC stated reasons such as efficiency, closer collaboration, and clearer accountability. Those not supportive of the PFCC model cited reasons other than issues with governance such as the role of PCC and differing political preferences. Those who were against both models stated that they would prefer the County Council not to be abolished or for the services and governance to be split between the two new unitary local authorities.
- 10.3 During the consultation two out of six of the local Members of Parliament and the Mayor of Copeland responded with letters expressing their strong support for the PFCC model. The Fire Brigades Union opposed the PFCC model. In addition, four independent focus groups were held with staff from Cumbria fire and rescue service, Cumbria County Council and Cumbria Constabulary and the PCC held six briefing sessions with staff from the fire and rescue service and county council who fulfil a fire and rescue service role. Generally, the outcomes of these sessions were positive.
- 10.4 Representations were also made about the PFCC model as some viewed it as less democratic and accountable than local government models. The PCC responded that the electorate for the PFCC and unitary councils is the same and in a PFCC led fire and rescue authority the PFCC is clearly identified and accountable county wide. Whereas in a CFRA the elected members are appointed by the leaders of the councils.
- 10.5 The full summary of the PCC's consultation can be found on the Cumbria PCC website - [Consultation-Summary.pdf \(cumbria-pcc.gov.uk\)](https://www.cumbria-pcc.gov.uk/consultation-summary.pdf).

10.6 Objections raised during the public consultation and the PCC's response to them were considered carefully by the Home Secretary when making their decision. The Home Secretary was of the view that despite the representations made, the business case sufficiently demonstrated how the Police, Fire and Crime Commissioner model would be the best outcome for the fire and rescue service in Cumbria.

11. Guidance

11.1 The Order is considered to be self-explanatory and there are no plans to provide additional guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is not to put in place any formal mechanism for monitoring and reviewing this Order.

14.2 Performance of the police and fire services will be subject to inspection as part of the relevant inspection programmes under Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS).

14.3 As a directly elected individual, the Police Fire and Crime Commissioner (PFCC) will be accountable to the public for the implementation of the proposal. The relevant Police, Fire and Crime Panel will scrutinise decisions of the PFCC.

14.4 The instrument does not include a statutory review clause.

15. Contact

15.1 Stuart Harwood at the Home Office, Telephone: 07595 010983 or email: stuart.harwood@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jonny Bugg, Deputy Director Fire Strategy and Reform Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp, Minister of State (Minister for Crime, Policing and Fire) at the Home Office can confirm that this Explanatory Memorandum meets the required standard.