EXPLANATORY MEMORANDUM TO

THE CUMBRIA (STRUCTURAL CHANGES) ORDER 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order gives effect to the proposal by Allerdale and Copeland borough councils for the establishment of a single tier of local government for Cumbria from 1 April 2023 which was made in response to an invitation from the then Secretary of State to submit proposals to replace the existing two-tier system.

2.2 The existing county and district areas are to be abolished as local government areas and all seven councils in Cumbria – Cumbria County Council, and the six district councils of Allerdale, Barrow-in-Furness, Carlisle, Copeland, Eden, and South Lakeland – are to be wound up and dissolved. They will be replaced by two unitary councils, one called Cumberland, covering the former district council areas of Allerdale, Carlisle and Copeland, and another called Westmorland and Furness, covering the former district areas of Barrow-in-Furness, Eden and South Lakeland. Cumberland and Westmorland and Furness will each be the sole local authority for their respective areas.[1] There are to be appropriate arrangements for preparing transition to the new councils, including elections and the establishment of the authorities in shadow form in May 2022.

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 territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is to England only because the instrument is entirely concerned with local government areas in England.

4.3 The instrument does not have any minor or consequential effects outside England.

5. European Convention on Human Rights

5.1 Kemi Badenoch, Minister of State for Equalities and Levelling Up Communities, has made the following statement regarding Human Rights:

[1] For these purposes, 'local authority' does not include a parish council.

"In my view the provisions of the Cumbria (Structural Changes) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This memorandum describes an Order being laid before Parliament that implements the locally led proposal, submitted in December 2020 to the Secretary of State in response to his invitation of 9 October 2020 by Allerdale and Copeland borough councils, for the establishment of a single tier of local government for Cumbria.[2]

6.2 The Order is to be made under Part 1 of the Local Government and Public Involvement in Health Act 2007 ("the Act") which provides for the making of local government structural and boundary changes in England. Section 2 provides that the Secretary of State may invite any principal authority to make proposals for a single tier of local government, including for a single tier authority for the area of one or more districts which form part of a county area.

6.3 Section 7 of the Act allows the Secretary of State to implement by order a proposal, with or without modification. A section 7 order can, for example, create a new local government area or abolish an existing one; create a new council for the area or abolish an existing one and provide for a new name. An order may not be made unless the Secretary of State has consulted every authority affected by the proposal (except any authority which has made the proposal) and such other persons as he considers appropriate. In this case, the consultation started on 22 February 2021 and ended on 19 April 2021 and is described in detail in section 10 of this memorandum.

6.4 Section 14 of the Act enables the Secretary of State, by regulations of general application, to make incidental, consequential, transitional and supplementary provision to give full effect to the local government changes. A number of such regulations have been made in respect of previous reorganisations, and the Secretary of State will consider whether any further amendments or new provisions are required, in consultation with the councils concerned.

7. Policy background

What is being done and why?

7.1 The Government made a commitment in its 2017 manifesto, renewed in the then Secretary of State's Written Ministerial Statement of 22 July 2019, to support those authorities that wished to combine to serve their communities better; Government is committed to considering locally led proposals from councils that wish to reorganise.

7.2 The Government's policy is that unitarisation must be locally led and Government solutions will not be imposed on areas. The criteria which we have used to assess unitarisation proposals against are that if implemented, the proposal:

- Is likely to improve local government and service delivery across the area of the proposal, giving greater value for money, generating savings, providing stronger strategic and local leadership, and which are more sustainable structures;
- commands a good deal of local support as assessed in the round across the whole area of the proposal; and

[2] https://www.allerdale.gov.uk/en/council-and-democracy/local-government-reorganisation/

- whether the area of each unitary authority is a credible geography consisting of one or more existing local government areas with an aggregate population which is either within the range 300,000 to 600,000, or such other figure that, having regard to the circumstances of the authority, including local identity and geography, could be considered substantial.

7.3 On 9 October 2020[3] the then Secretary of State invited the principal councils in the area of the County of Cumbria to make proposals for a single tier of local government and provided guidance to which the councils must have regard, including the criteria against which any proposal would be assessed.

7.4 On 8 and 9 December 2020 four proposals were received:

- a proposal for two unitary councils (the East West proposal), the East unitary covering Barrow-in-Furness, Eden, and South Lakeland, the West unitary covering Allerdale, Carlisle and Copeland, submitted by Allerdale and Copeland borough councils;
- a proposal for two unitary councils (the North South proposal), the North unitary covering Allerdale, Carlisle and Eden, the South unitary covering Barrow-in-Furness, Copeland, and South Lakeland, submitted by Carlisle City Council and Eden District Council;
- a proposal for two unitary councils (the Bay proposal), a unitary covering Allerdale, Carlisle, Copeland, and Eden, and a unitary covering Barrow-in-Furness, Lancaster City and South Lakeland, submitted by Barrow-in-Furness and South Lakeland district councils with the support of Lancaster City Council; and
- a proposal for a single unitary council across the footprint of the existing administrative county of Cumbria (One Cumbria), submitted by Cumbria County Council.

7.5 After undertaking a statutory consultation (see section 10), on 21 July 2021 in a Written Ministerial Statement[4], the then Secretary of State announced that the East West proposal submitted by Allerdale and Copeland borough councils for two unitary councils met the criteria and, subject to Parliamentary approval, should be implemented.

7.6 The Secretary of State also announced that he had decided not to implement the proposal for a single unitary council for the whole of Cumbria. This also met all three of the criteria, however, having regard to the size and geography of Cumbria, including the geographic barriers of lakes and mountains, and the rurality of its population, he decided that it would be more appropriate to implement the East West unitary proposal, allowing for more localised decision making, which could be important given the geography of Cumbria.

7.7 The Secretary of State also announced that he had decided not to implement the North South proposal submitted by Carlisle City Council and Eden District Council for two unitary councils. He considered that this proposal did not meet the credible geography criterion.

[3] https://www.gov.uk/government/publications/invitations-to-submit-proposals-for-unitary-local-government-in-cumbria-north-yorkshire-and-somerset

[4] https://questions-statements.parliament.uk/written-statements/detail/2021-07-21/hcws234

7.8 Finally, the Secretary of State also announced that he had decided not to implement the Bay proposal submitted by Barrow-in-Furness Borough Council and South Lakeland District Council for two unitary councils. He considered that this proposal did not meet the improving local government and service delivery and credible geography criteria.

7.9 This Order implements the proposal made by Allerdale and Copeland borough councils under section 2 of the Act. The Order establishes the new local government structure and enables arrangements for a smooth transition of local government functions to the new unitary councils. It provides for a transitional period between the making of this Order and fourteen days after the May 2022 elections and a shadow period from four days after those elections until the new authorities take on their full powers in April 2023.

7.10 Part 2 of the Order establishes the new councils on the day after the Order comes into force and provides for them to take on full local government functions and powers on 1 April 2023. Part 2 also provides for:

- the abolition on 1 April 2023 that the East West proposal submitted by Allerdale and Copeland borough councils for two unitary councils met the criteria that the East West proposal submitted by Allerdale and Copeland borough councils for two unitary councils met the criteria of the local government areas of the County of Cumbria and of the districts of Allerdale, Barrow-in-Furness, Carlisle, Copeland, Eden, and South Lakeland;
- the winding up and dissolution on 1 April 2023 of all six district councils in Cumbria – Allerdale Borough Council, Barrow-in-Furness Borough Council, Carlisle City Council, Copeland Borough Council, Eden District Council, South Lakeland District Council – and of Cumbria County Council;
- the creation on 1 April 2023 of new, non-metropolitan districts and counties of Cumberland, and Westmorland and Furness, whose areas are defined for Cumberland of the preceding districts of Allerdale, Carlisle and Copeland, and for Westmorland and Furness of the preceding districts of Barrow-in-Furness, Eden and South Lakeland; and
- providing that all existing district and County councillors cease to hold office on 1 April 2023.

7.11 Part 3 provides that Cumberland Council and Westmorland and Furness Council are shadow authorities for the shadow period. The shadow period comes into operation on the fourth day after the 2022 elections and ends immediately before 1April 2023. This part then sets out the duties of the shadow authorities. The main function of each shadow authority will be to make all necessary preparations in advance of 1 April 2023, including adopting governance arrangements, a code of conduct and scheme of members' allowances, and appointing statutory officers, keeping under review an implementation plan, and setting the budget and council tax for 2023/24 the unitary councils.

7.12 The shadow authorities are therefore enabled to take all such steps as are necessary or expedient to prepare for the assumption of full local government functions and powers on 1 April 2023 and to ensure continuity of public service delivery on and after this date. Each shadow authority must appoint a Leader and Cabinet executive at its first meeting.

7.13 The Implementation Plans prepared by the Cumberland and Westmorland and Furness Joint Committees (see para 7.18 relating to Part 5) are to be reviewed and revised as necessary by the respective shadow authorities. The Order sets out, at article 17, additional transitional functions for the Cumberland and Westmorland and Furness shadow authorities during the second transitional period (i.e the shadow period), including the power to initiate community governance reviews and the power to undertake the preparatory steps for a combined authority.

7.14 Part 4 makes provisions regarding electoral matters. The Order establishes whole council elections to Cumberland and Westmorland and Furness in 2022, cancels any district or County council elections in this year and extends the term of any councillors of those councils whose term would otherwise end in that year, to 1 April 2023 when the existing district and County councils are abolished. The Order specifies the electoral cycle, with the second election in 2027 and then on a 4-year cycle. It provides that if a councillor vacancy occurs after 30 September 2022, then the existing councils will not be required to call a by-election to fill the office of the councillor. Schedule 1 to the order provides for the electoral wards and number of councillors to be elected to each ward for the new councils. Subject to parliamentary approval of this Order, the Local Government Boundary Commission for England is expected to review the wards after 1 April 2023 and in time for the 2027 elections.

7.15 Creating two new unitary authorities will, without further legislation and government action, see Cumbria Fire and Rescue Service – currently the responsibility of Cumbria County Council – divided, with each new authority automatically becoming the fire and rescue authority for its area from 1 April 2023. However, the Government's intention is that the fire service should continue on a county-wide basis.

7.16 There are two options to achieve this. The first is for fire functions to be transferred to the Police and Crime Commissioner for Cumbria by Order made under section 4A of the Fire and Rescue Services Act 2004, should the Secretary of State be satisfied that the relevant statutory tests are met. The Police and Crime Commissioner is producing a proposal which will be considered by the Secretary of State on receipt. This proposal will require local consultation. The second option is for the Secretary of State to create a new combined fire and rescue authority under section 2 of the Fire and Rescue Services Act 2004 comprising Cumberland Council and Westmorland and Furness Council. Section 2(3) of the 2004 Act allows the Secretary of State to make a scheme for the creation of a fire and rescue authority for the combined area of two or more existing fire and rescue authorities under his own initiative, but again the statutory tests must be met.

7.17 Subject to the relevant tests being met, the Government expects the required secondary legislation to give effect to one of these options to be laid before Parliament in late 2022, with it coming into force on or before 1 April 2023.

7.18 Part 5 of the Order provides functions to Cumberland Council, and to Westmorland and Furness Council, from the date this Order comes into force until after the first elections, for facilitating the transition to their respective new single tiers of local government including preparing for the transfer of the district and County councils' functions, property, rights and liabilities. This includes responsibility for drawing up and maintaining the implementation plan for transition to unitary authorities. The Order requires, from its coming into force, the County council and the district councils in the area of the future Cumberland council to establish a joint committee. The Order similarly requires the County council and the district councils in the area of

the future Westmorland and Furness council to establish a joint committee. Each joint committee will be in place until the first meetings of relevant shadow authorities, which will have responsibility to lead the implementation through the second transitional period which runs until 1 April 2023. Each joint committee will consist of three members from the corresponding area of the County Council and three members from each of the district councils in Cumberland and in Westmorland and Furness – i.e. a total of twelve members for each joint committee. The joint committees are supported by an explicit duty on the existing councils to co-operate.

7.19 This part also provides for the establishment of a single officer Implementation Team consisting of officers from the County council and from all the district councils in Cumbria.

7.20 Part 5 also makes provision for the continuation of the Lord-Lieutenant and High Sheriff for Cumbria to apply to Cumberland and Westmorland and Furness so that these important ceremonial roles are unaffected by this local government reorganisation.

7.21 The Cumbria (Changes to Years of Elections) Order 2021 (S.I. 2021/174) was made on 22 February 2021 and came into force on 18 March 2021. That Order changed the year of the scheduled elections of councillors in the Districts of Carlisle and South Lakeland and the County of Cumbria, from 2021 to 2022. These elections will not take place if those councils are wound up and dissolved on 1 April 2023 as provided for in this Order.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no requirement for consolidation as this instrument does not amend other legislation.

10. Consultation outcome

10.1 This Order relates to the implementation of a proposal that was subject to extensive consultation, as described below. In addition, the Government shared draft texts of provisions within this Order with the councils in Cumbria during its development and this Order has been prepared having regard to representations from the councils about the detailed content of the Order.

10.2 All four of the unitary proposals submitted by councils in Cumbria cited surveys of local views and engagement with stakeholders to support their case for local government reorganisation. As explained in paragraph 7.5, the Government launched a statutory consultation[5] on the four proposals for unitary local government in Cumbria on 22 February 2021. The Act requires that, before a proposal for local government reorganisation can be implemented, the Secretary of State must first consult any local authority that is affected by a proposal (but which has not submitted it), and any other persons as he considers appropriate. The Secretary of State

[5] https://www.gov.uk/government/consultations/proposals-for-locally-led-reorganisation-of-local-government-in-cumbria-north-yorkshire-and-somerset/consultation-on-proposals-for-locally-led-reorganisation-of-local-government-in-cumbria-north-yorkshire-and-somerset

consulted named consultees on all proposals he received from councils in Cumbria and additionally he welcomed views from any interested persons, including residents. A full summary of the responses, including a full list of named bodies consulted on each proposal has been published[6].

10.3 The Government's consultation was conducted online using "Citizen Space", the Department's dedicated platform for consultations, with online capture of responses and an alternative option of responding by email or post.

10.4 That consultation asked respondents questions directly related to the criteria for assessing the unitary proposals:

- whether a proposal would be likely to improve local government and service delivery across each area;
- where it is proposed that services will be delivered on a different geographic footprint to currently, or through some form of joint arrangements, whether this would be likely to improve those services;
- whether a proposal would be likely to impact local public services delivered by others, such as police, fire and rescue and health services;
- whether respondents supported a proposal; and
- whether respondents considered that the proposal had a credible geography.

10.5 A full summary of the consultation responses was published on gov.uk alongside the 21 July announcement of the Secretary of State's decision to implement the East West unitary proposal and a copy was placed in the House of Commons library. The consultation summary is available at: www.gov.uk/government/consultations/proposals-for-locally-led-reorganisation-of-local-government-in-cumbria-north-yorkshire-and-somerset/outcome/consultation-response-summary-local-government-reorganisation

10.6 The Government received a total of 3,225 responses regarding the proposals for Cumbria though not all responses chose to address all questions. The majority of responses - 2,362, 73 perc ent of total responses - were from residents living in the area affected, a further 26 from residents outside the area. 21 were from business organisations, 5 from education organisations, 43 from principal councils, 65 from parish/town councils and 19 from other local government organisations. There were 2 responses from police and 3 from fire organisations, 6 from health organisations and 98 responses who identified themselves as "other". We also received a total of 575 emails relating to a local campaign in support of the Bay proposal.

10.7 Overall, the consultation results showed that support for unitarisation was spread across the proposals received. This pattern was reflected among residents. Residents were split on whether the four proposals would improve LG services or not. Only The Bay and East West had the approval of business respondents, who answered yes at 43 per cent and 38 per cent respectively. Parish and town councils were split on their response but there was a greater preference for The Bay and One Cumbria, with 28 per cent and 25 per cent of town and parish councils who responded to the consultation respectively saying it would improve services.

[6] https://www.gov.uk/government/consultations/proposals-for-locally-led-reorganisation-of-local-government-in-cumbria-north-yorkshire-and-somerset/outcome/consultation-response-summary-local-government-reorganisation

10.8 Residents thought that The Bay and One Cumbria proposals had a credible geography but not the East West proposal nor the North South. Residents who supported The Bay proposal felt that it represented a credible geography due to historic identity and having good transport and economic connectivity. Business respondents felt that the East West and The Bay proposals had the most credible geographies at 38 per cent and 48 per cent respectively. They did not think that the North South or One Cumbria proposals had credible geographies (24 per cent and 29 per cent). In terms of improving services, those in favour of the East West proposal thought that the new authorities would be more accessible local organisations better able to respond to local needs and raised concerns with existing County Council services. Those who opposed the East West proposal felt it would be less efficient and were concerned about the disaggregation of current services. For both the East West and North South proposals, residents who supported them thought the geography was credible due to good transport connectivity and a single unitary being too large an area.

10.9 The only proposal to receive support from the majority of resident respondents was The Bay. One Cumbria had a sizeable amount of support at 30 per cent, even though those that oppose are in a greater number. Residents in favour of The Bay proposal referenced the historic identify and economic connectivity of the areas being proposed. Those who opposed it thought it would be less efficient, create more complex structures and cause disruption. Residents who supported One Cumbria felt it would provide a simplified, more efficient structure and reduce duplication. Residents who opposed it felt that Cumbria is too big and rural an area for a single unitary authority, which would make services too remote and diminish local democracy. Residents in favour of the East West proposal thought that the new authorities would be more accessible local organisations better able to respond to local needs and raised concerns with existing County Council services. Those who opposed it felt it would be less efficient and were concerned about the disaggregation of current services. Business bodies supported the East West and The Bay proposals, of the 21 responding, 9 (43 per cent) and 12 (57 per cent) respectively supporting. The East West proposal was specifically supported for its support of commercial activities. Respondents felt it would support the diverse nature of the economies better, in particular the advanced manufacturing base and supply chain around Sellafield. They felt it would improve communication and therefore confidence in business expansion. Of the four proposals, 8 (38 per cent) of business respondents felt that the East West had the most credible geographies, albeit not as many as for The Bay 10 (48 per cent).

10.10 Of those who responded, none of the proposals received majority support from parish and town councils. Parish responses included views that the East West proposal recognises differences between an ‘industrial west’ and ‘tourist east’ and had a good population balance. It follows infrastructure and travel to work patterns. As well as being seen to map to common issues of employment, economy and transport, the East West proposal was considered similar to the historic Cumberland and Westmorland counties.

10.11 Among local government organisations, there was a view that the East West proposal would have equal levels of deprivation and population density that would contribute to a balanced service delivery and that, of the multiple unitary proposals, the East West proposal had the most credible geography; conversely, they felt this would not be provided by the North South proposal owing to the county’s physical geography.

10.12 The then Secretary of State carefully considered the consultation responses, all representations received, and all the relevant information available to him in reaching his decision on which proposal to implement, subject to Parliamentary approval. The then Secretary of State concluded that the East West proposal submitted by Allerdale and Copeland borough councils for two unitary councils met the criteria and should be implemented.

10.13 The councils were then given an opportunity to make representations on a number of aspects of the Order, in particular:

- The names of the new councils;
- cancellation of the County Council elections due in May 2022 as well as district elections scheduled for that date;
- specification of postholders to be the Returning Officers for the May 2022 elections;
- giving the necessary local flexibility for the appointment of the implementation team leader from within that team;
- electoral arrangements – council size and warding pattern;
- giving the shadow authorities the powers to initiate community governance reviews for the current Borough of Barrow-in-Furness and City of Carlisle;
- making necessary amendments to the Lieutenancies Act 1997 and Sheriffs Act 1887 to ensure that the ceremonial county of Cumbria would be unchanged.

10.14 The Secretary of State considered all the representations he received in deciding on the content of the Order. He selected warding proposals submitted by the councils and confirmed that the first election to the new unitary Cumberland and Westmorland and Furness councils will be in May 2022.

11. Guidance

11.1 No guidance is necessary to accompany this instrument. The local authorities are considered to be best placed to deliver the new councils and the DLUHC will work closely with those responsible for implementing the provisions of this Order.

12. Impact

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

12.2 The impact on the public sector is a simplification to the system of local government in Cumbria, with a reduction in the number of councils from seven to one. In making their East West proposal the councils estimated annual efficiencies of between £19.1m and £31.6m per annum.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no, or 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 that the new councils will be democratically accountable for their performance to their local electorates, and subject

to the audit and accountability regimes applicable to the generality of local government.

14.2 The Order does not include a statutory review clause. Officials are working with the councils in Cumbria on taking forward implementation in line with the provisions of this Order, which give effect to changes in local government structure which are completed on 1 April 2023.

15. Contact

15.1 Jonathan Scanlan at the DLUHC Telephone: 0303 444 8940 or email: jonathan.scanlan@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell, Deputy Director for Governance Reform and Democracy, at the DLUHC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Minister of State for Equalities and Levelling Up Communities at DLUHC can confirm that this Explanatory Memorandum meets the required standard.