EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (STRUCTURAL CHANGES) (SUPPLEMENTARY PROVISION AND AMENDMENT) ORDER 2023

2023 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 His Majesty.

2. Purpose of the instrument

2.1 This Order provides for incidental, consequential, transitional, and supplementary arrangements in consequence of specific orders made by the Secretary of State under section 7 ("section 7 orders") of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). This Order makes provisions specific to the new single-tier councils of Cumberland, and Westmorland and Furness, and to the continuing authorities of North Yorkshire and Somerset, so that there is a smooth transition from the predecessor councils (the councils that will be abolished on the reorganisation date) to the successor council(s) (the new council(s) that are being created for these areas), and for continuing effective local government in the area.

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 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 Lee Rowley MP, Parliamentary Under Secretary of State for Local Government and Building Safety at the Department for Levelling up, Housing, and Communities, has made the following statement regarding Human Rights:

"In my view the provisions of The Local Government (Structural Changes) (Supplementary Provision and Amendment) Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 1 of the 2007 Act provides for the making of local government structural and boundary changes in England. Section 7 orders may make provision for re-structuring of an area in which there are two tiers of local government and the establishment of single tier local government in that area.

6.2 Legislation has been made for reorganisation of local government in Cumbria, North Yorkshire, and Somerset under section 7 orders. The Cumbria (Structural Changes) Order 2022 (SI 2022/331)[1], The North Yorkshire (Structural Changes) Order 2022 (SI 2022/328)[2] and The Somerset (Structural Changes) Order 2022 (SI 2022/329)[3], which were made on 18 March 2022, provide for the creation of a single tier of local government for Cumbria, North Yorkshire and Somerset. From 1 April 2023 these will be the sole local authorities for their respective local government areas. Those Orders put arrangements in place to prepare for the transition to the new unitary councils, which will take on the functions, responsibilities, assets, and liabilities of the dissolved councils on 1 April 2023.

6.3 The power to make an order under section 7 of the 2007 Act includes the power to make incidental, consequential, transitional, and supplementary provision (section 13(1) of the 2007 Act). Section 13(3) of the 2007 Act provides that the incidental, consequential, transitional, and supplementary provision which may be included in an order under section 7 may relate either to other provisions of the order or to a previous order under section 7.

6.4 The power under section 13(1) of the 2007 Act is to be read with section 15, which sets out the type of provision which can be made by way of incidental, consequential, transitional, and supplementary provision (section 13(2)). The type of provision referred to in section 15(1) includes: provision with respect to the transfer of pensions (15(1)(d)); and provision with respect to charter trustees (15(1)(i)). Section 15(2) provides that an order under section 7 may for any incidental, consequential, transitional, or supplementary purpose modify, exclude or apply (with or without modifications) any enactment, and repeal or revoke any enactment with or without savings. The 2007 Act also provides that an order made under that Act may make different provision for different cases (section 240(10)).

6.5 The power to make a section 7 order also includes the power to make provision for or with respect to any of the matters set out in section 11(4) of the 2007 Act. The matters listed in section 11(4) include: the name of any local authority (11(4)(b)); the establishment or membership of public bodies in any area affected by the order and the election of members of such bodies (11(4)(e)); and the abolition or establishment, or the restriction or extension, of the jurisdiction of any public body in any area affected by the order (11(4)(f)).

6.6 Section 240(6) sets out that orders under section 7 are subject to the draft affirmative procedure.

6.7 Regulations of generic application (made under Section 14 of the 2007 Act) already provide that most functions conferred on the predecessor councils are transferred to the successor councils. This Order makes area-specific provision for the councils of Cumberland, and Westmorland and Furness, and to the continuing authorities of North Yorkshire and Somerset, necessary to ensure a smooth transition to the new arrangements from 1 April 2023.

6.8 Most of the provisions necessary to ensure the smooth transition from predecessor to successor authorities will be provided for in the regulations of generic application. This Order is limited to consequential area-specific provisions for the three areas.

[1] https://www.legislation.gov.uk/uksi/2022/331/made
[2] https://www.legislation.gov.uk/uksi/2022/328/made
[3] https://www.legislation.gov.uk/uksi/2022/329/made

7. Policy background

What is being done and why?

7.1 On 9 October 2020, the then Secretary of State invited the principal councils of Cumbria, North Yorkshire, and Somerset to submit proposals for a single tier of local government for each area[4]. He considered all the proposals put forward by local councils from the three areas and assessed them on the basis of the criteria for establishing unitary councils: - which are 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; which command a good deal of local support as assessed in the round overall across the whole area of the proposal; and where 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. He took the decisions to implement one proposal for each area, and made secondary legislation, the structural changes orders, to give effect to his decisions.

7.2 The following councils will become the single principal councils for their respective local government areas from 1 April 2023:

(a) Cumberland Council covering the existing local government areas of Allerdale, Carlisle and Copeland;

(b) Westmorland and Furness Council covering the existing local government areas of Barrow-in-Furness, Eden and South Lakeland;

(c) North Yorkshire Council, a continuing authority covering the existing local government area of the county of North Yorkshire and the existing districts of Craven, Hambleton, Harrogate, Richmondshire, Ryedale, Scarborough, and Selby; and

(d) Somerset Council, a continuing authority covering the existing local government area of the County of Somerset and the districts of Mendip, Sedgemoor, Somerset West and Taunton and South Somerset.

7.3 Part 2 of the Order makes provision in relation to ceremonial matters, including the creation of Charter Trustees[5] for the unparished areas of Barrow-in-Furness and the City of Carlisle. This will ensure that any historic rights and privileges associated with those local government areas that will be abolished on 1 April 2023 can be maintained and vest in the Charter Trustees for the relevant area where there is no parish or town council. This will therefore allow Carlisle's town council to style itself as a city council.

7.4 Part 3 of the Order makes provision to transfer of pensions arrangements in the new councils of Cumberland, and Westmorland and Furness. This will ensure that the property, rights, assets, and liabilities of the Cumbria Pension Fund transfer to Westmorland and Furness Council, the new administering authority of the pension fund for the new councils of Cumberland, and Westmorland and Furness, and other

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

[5] The Charter Trustees Regulations 2009 (S.I. 2009/467) make further provision about charter trustees including provision for the transfer of historic rights and ceremonial property to charter trustees and the exercise of those rights: https://www.legislation.gov.uk/uksi/2009/467/contents/made

employers who participate in the Cumbria fund. Provisions under this Order also provide that the pension assets and liabilities relating to the former district and county council(s) of Cumbria that are to be abolished, transfer to the new unitary councils in proportions determined by Westmorland and Furness Council. This will ensure that there is clarity on who is taking over the responsibility for funding existing pensions accrued and preventing exit payments arising under the regulations which would normally be triggered where an employer leaves the scheme. In coming to a fair determination on these matters, the Order provides that Westmorland and Furness must take advice from an actuary and consult Cumberland Council.

7.5 Part 3 also makes provision in relation to exit payments for North Yorkshire and Somerset. In this instance, the Regulations do not themselves transfer the property, rights and liabilities to the North Yorkshire and Somerset Pension Funds. This happens pursuant to Regulation 7 of the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008. This ensures continuity and prevents interruption of service for the North Yorkshire and Somerset Pension Fund's scheme employers and scheme members. Amendments to Regulation 64 of the Local Government Pensions Scheme Regulations 2013 (SI 2013/2356)[6] provide that no exit payments or exit credits are due following the exit of the district councils from their respective Pension Funds when they are dissolved.

7.6 Part 4 makes provision to amend the Capital Finance Regulations (SI 2003/3146)[7] to replace references to the councils which are to be abolished on 1st April 2023 with the names of the new councils, Westmorland and Furness Council, North Yorkshire Council and Somerset Council[8], and to make provision for "assumed debt share" and "share cap" (which are used in the calculation of the proportion of housing receipts that councils are required to pay the Secretary of State) for those new councils for future years, where relevant. The new unitary areas will each have an opening figure calculated to 1 April 2023. These figures will then be subject to the 1% annual uplift in the same manner as the existing authorities[9].

7.7 Part 5 includes the following miscellaneous provisions for the areas:

(a) Fisheries and conservation - The North West Inshore Fisheries and Conservation Order 201010 is amended to provide for Cumberland and Westmorland and Furness to each make an appointment to maintain the Authority size of 30 members. The shadow authorities agreed that the current 40.94% contribution to the expense of the Authority from Cumbria County Council is divided between Cumberland Council (20.49%) and Westmorland and Furness Council (20.45%) respectively.

(b) The Sub-national Transport Body (Transport for the North) Regulations 2018[11] are amended to provide for representation from the new authorities of Cumberland and Westmorland and Furness to replace Cumbria County

[6] https://www.legislation.gov.uk/uksi/2018/930/regulation/7/made
[7] https://www.legislation.gov.uk/uksi/2003/3146/part/4/made
[8] Please note that none of the district councils in Cumberland area have housing revenue accounts and therefore receive no current housing receipts.
[9] This will reflect amendments under The Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2021: https://www.legislation.gov.uk/uksi/2021/611/made/data.xht?view=snippet&wrap=true
[10] https://www.legislation.gov.uk/uksi/2010/2200/contents/made
[11] https://www.legislation.gov.uk/uksi/2018/103/contents/made

Council. This will entail an increase in the size of this Authority by one member.

(c) This Order also amends the Workington Harbour Act 1974 to provide for Cumberland to be the Harbour Authority for the area post reorganisation; The Workington (Pilotage) Harbour Revision Order 1988[12] and the Maryport Harbour Revision Order 2007[13] are similarly amended.

(d) National Park Authorities - This Order amends the membership provisions of the National Park Authorities (England) Order 2015[14] to reflect the changes in local government arrangements while maintaining the existing balance of local representation across each Authority.

- For Exmoor National Park Authority, the new Somerset Council will appoint the 8 members currently appointed by the existing Somerset County Council and Somerset district councils;
- For the Lake District National Park Authority, the new Cumberland Council will appoint 4 members and Westmorland and Furness Council will appoint 6 members to total the 10 members currently appointed by the existing Cumbria County Council and Cumbria district councils;
- For the North York Moors National Park Authority, the new North Yorkshire Council will appoint the 9 members currently appointed by the existing North Yorkshire County Council and North Yorkshire district councils; and
- For the Yorkshire Dales National Park Authority, the new Westmorland and Furness Council will appoint the 3 members currently appointed by Cumbria County Council and the Cumbria district councils; and the new North Yorkshire Council will appoint the 10 members currently appointed by the existing North Yorkshire County Council and North Yorkshire district 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 There are no plans for consolidation.

10. Consultation outcome

10.1 There is no requirement to consult on the preparation of this Order, the provisions of which address supplementary and incidental issues where these are not addressed by existing regulations of generic application under section 14 of the 2007 Act. However, before deciding to implement the unitary proposal from the principal councils of Cumbria, North Yorkshire and Somerset, the Secretary of State ran a statutory consultation on each proposal[15]. Full details of these exercises are covered in the

[12] https://www.legislation.gov.uk/uksi/1988/1629/contents/made
[13] https://www.legislation.gov.uk/uksi/2007/3463/contents/made
[14] https://www.legislation.gov.uk/uksi/2015/770/contents
[15] 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

Explanatory Memorandums to the Cumbria[16], North Yorkshire[17] and Somerset[18] Structural Changes Orders.

10.2 Officials from the Department for Levelling Up, Housing and Communities consulted with officers from each of the existing councils and shadow authorities in the three areas and each area has confirmed and agreed the content in the Order.

10.3 Specific amendments in the order relative to other Government departments have also been confirmed from each policy area.

10.4 A further consultation was carried out with the North West Inshore Fisheries and Conservation Authority (NWIFCA) to confirm the cost share split between Cumberland and Westmorland and Furness. Both areas and the NWIFCA confirmed they were content with the new percentage split arrangements and the content in this Order.

11. Guidance

11.1 No guidance has been prepared for this instrument. The Department works with these local authorities as they implement structural and governance changes.

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 A full Impact Assessment has not been prepared for this instrument because it does not relate to the activities of businesses, charities, or voluntary bodies.

13. Regulating small business

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

14. Monitoring & review

14.1 This instrument makes incidental, consequential, transitional, and supplementary provisions for councils to enable the effective implementation of local government reorganisation. The new single-tier councils will be democratically accountable for their performance to the local electorate, and subject to the audit and accountability regimes applicable to local government. The Department works with local authorities as they implement governance changes.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Jonathan Scanlan and Michelle Murray at the Department for Levelling Up, Housing and Communities (Email: jonathan.scanlan@levellingup.gov.uk and michelle.murray@levellingup.gov.uk) can be contacted with any queries regarding the instrument.

[16] https://www.legislation.gov.uk/uksi/2022/331/memorandum/contents
[17] https://www.legislation.gov.uk/uksi/2022/331/memorandum/contents
[18] https://www.legislation.gov.uk/uksi/2022/329/memorandum/contents

15.2 Paul Rowsell, Deputy Director and Head of Governance Reform and Democracy Unit, at the Department for Levelling Up, Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lee Rowley MP, Parliamentary Under Secretary of State for Local Government and Building Safety at the Department for Levelling up, Housing, and Communities can confirm that this Explanatory Memorandum meets the required standard.