

2022 No. 1230

FIRE AND RESCUE SERVICES, ENGLAND
POLICE, ENGLAND

**The Police, Fire and Crime Commissioner for Cumbria (Fire
and Rescue Authority) Order 2022**

<i>Made</i>	- - - -	<i>24th November 2022</i>
<i>Laid before Parliament</i>		<i>28th November 2022</i>
<i>Coming into force</i>		
<i>articles 1, 2 and 11</i>		<i>1st January 2023</i>
<i>remainder</i>		<i>1st April 2023</i>

The Secretary of State makes this Order in exercise of the powers conferred by sections 4A(1), 4D(10), (13) and (14), 4G(2), 4M(2)(b) and 60(2)(b) of the Fire and Rescue Services Act 2004(a).

A proposal has been submitted to the Secretary of State in accordance with section 4A(4) of the Fire and Rescue Services Act 2004.

In accordance with section 4A(5)(a) and (6) of that Act it appears to the Secretary of State that it is in the interests of economy, efficiency and effectiveness for the Order to be made, and the Secretary of State does not think that the Order would have an adverse effect on public safety.

PART 1

General

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Police, Fire and Crime Commissioner for Cumbria (Fire and Rescue Authority) Order 2022.

(2) Articles 1, 2 and 11 of this Order come into force on 1st January 2023, and the remainder of the Order comes into force on 1st April 2023.

(3) This Order extends to England and Wales.

(4) This Order applies to England.

(a) 2004 c. 21. Sections 4A to 4M were inserted by the Policing and Crime Act 2017 (c. 3), Schedule 1, paragraphs (1) and (5).

Interpretation

2. In this Order—

“the 2004 Act” means the Fire and Rescue Services Act 2004;

“Authority” means the fire and rescue authority created by article 3;

“chief fire officer” means the person with responsibility for managing the fire and rescue service;

“DPCC” means the deputy police and crime commissioner for Cumbria;

“fire and rescue functions” means the functions of the fire and rescue authority under—

- (a) section 6 of the 2004 Act (fire safety);
- (b) section 7 of that Act (fire-fighting);
- (c) section 8 of that Act (road traffic accidents);
- (d) any order made under section 9 of that Act (emergencies);
- (e) section 2 of the Civil Contingencies Act 2004 (duty to assess, plan and advise)(a);
- (f) any other provision of an Act, or of subordinate legislation, which confers functions on a fire and rescue authority;

“fire and rescue plan” and “fire and rescue statement” have the meanings given in paragraph 1 of Schedule A2 to the 2004 Act (application of legislation relating to police and crime commissioners)(b);

“fire and rescue service” means the personnel, services and equipment secured by the Authority for the purpose of carrying out the Authority’s fire and rescue functions;

“integrated risk management plan” means a plan which—

- (a) is prepared and published by the Authority in accordance with the Fire and Rescue National Framework, and
- (b) sets out for the period covered by the document—
 - (i) an assessment of all the foreseeable fire and rescue related risks that could affect the area of the Authority, and
 - (ii) proposals, including about the allocation of resources, for the mitigation of those risks;

“member of staff of the Authority” means—

- (a) a member of staff transferred to the Authority under a transfer scheme made under section 4C of the 2004 Act (transfer of property, rights and liabilities), and
- (b) a member of staff appointed by the Authority under section 4D of that Act (further provision about authority created by section 4A order);

“member of staff of the PCC” means any of the following persons appointed by the PCC under paragraph 6 of Schedule 1 to the Police Reform and Social Responsibility Act 2011 (police and crime commissioners)(c)—

- (a) the commissioner’s chief executive;
- (b) the commissioner’s chief finance officer;
- (c) another member of staff;

“PCC” means the police and crime commissioner for Cumbria.

(a) 2004 c. 36. Section 2 was amended by S.I. 2018/644. There are other amendments not relevant to this instrument.
(b) Schedule A2 was inserted by the Policing and Crime Act 2017 (c. 3), Schedule 1, paragraphs (1) and (13).
(c) 2011 c. 13.

PART 2

Creation and functions of the fire and rescue authority

Creation and functions of the Cumbria Commissioner Fire and Rescue Authority

3.—(1) A corporation sole is created as the fire and rescue authority with fire and rescue functions for the area specified in paragraph (3).

(2) The person who is for the time being the PCC is for the time being to be that fire and rescue authority.

(3) The area specified in this paragraph is the area of the County of Cumbria^(a).

(4) The corporation sole created under paragraph (1) is to be known as the Cumbria Commissioner Fire and Rescue Authority.

PART 3

Arrangements for the exercise of functions

Arrangements for the exercise of functions

4.—(1) Subject to articles 5, 6 and 8 the Authority may make such arrangements as it considers appropriate for the delegation of its functions to—

- (a) the DPCC;
- (b) a member of staff of the Authority, or
- (c) a member of staff of the PCC.

(2) Where the Authority delegates functions to the DPCC, the DPCC may be known as the Deputy Police, Fire and Crime Commissioner for Cumbria.

Functions to be exercised only by the Authority

5.—(1) The Authority may not make arrangements under article 4(1) for the delegation of the following functions—

- (a) calculating a council tax requirement (see section 42A of the Local Government Finance Act 1992^(b));
- (b) approving the fire and rescue plan and the fire and rescue statement;
- (c) approving the integrated risk management plan;
- (d) appointing, suspending or dismissing the chief fire officer;
- (e) holding the chief fire officer to account in accordance with article 9;
- (f) approving a pay policy statement prepared for the purpose of section 38 of the Localism Act 2011 (pay policy statements);
- (g) approving arrangements to enter into a reinforcement scheme under section 13 of the 2004 Act (reinforcement schemes);
- (h) approving arrangements with other employers of fire-fighters under section 15 of the 2004 Act (arrangements with other employers of fire-fighters);
- (i) approving arrangements under section 16 of the 2004 Act (arrangements for discharge of functions by others);

(a) The County of Cumbria is abolished as a local government area on 1st April 2023, by S.I. 2022/231, and will be replaced by the Cumberland and Westmorland and Furness districts.

(b) 1992 c. 14. Section 42A was inserted by the Localism Act 2011 (c. 20), section 75 and amended by S.I. 2014/389.

- (j) approving plans, modifications to plans and additions to plans for the purpose of ensuring that—
 - (i) as far as reasonably practicable, the Authority is able to perform its fire and rescue functions if an emergency occurs, and
 - (ii) the Authority is able to perform its functions so far as is necessary or desirable for the purpose of preventing an emergency or reducing, controlling or mitigating the effects of an emergency, or taking other action in connection with it;
- (k) approving any arrangements for the co-operation of the Authority in relation to its fire and rescue functions with other Category 1 responders and Category 2 responders in respect of—
 - (i) the performance of the Authority’s duty as a fire and rescue authority under section 2 of the Civil Contingencies Act 2004 (duty to assess, plan and advise);
 - (ii) any duties under subordinate legislation made in exercise of powers under that Act.

(2) In sub-paragraph (j) “emergency” has the meaning given in section 1 of the Civil Contingencies Act 2004 (meaning of “emergency”)(a).

(3) In sub-paragraph (k) “Category 1 responder” and “Category 2 responder” have the meanings given in section 3 of the Civil Contingencies Act 2004 (section 2: supplemental)(b).

Functions that the Authority may delegate only to the DPCC

6.—(1) The Authority may not make arrangements under article 4(1) for the delegation of the following functions of the Authority to any person other than the DPCC—

- (a) determining the Authority’s priorities and objectives for the purposes of the fire and rescue plan and the fire and rescue statement;
- (b) attendance at a meeting of the Police, Fire and Crime Panel for Cumbria in compliance with a requirement of the Panel to do so;
- (c) appointing a local auditor under section 7 of the Local Audit and Accountability Act 2014 (appointment of local auditor)(c);
- (d) deciding whether to enter a liability limitation agreement under section 14 of that Act (limitation of local auditor’s liability).

(2) In paragraph (1)(b), “Police, Fire and Crime Panel for Cumbria” means the police and crime panel established and maintained in accordance with Schedule 6(d) to the Police Reform and Social Responsibility Act 2011 (police and crime panel) for the Cumbria police area.

Delegation of functions by the DPCC

7.—(1) Subject to paragraph (2), where the Authority delegates a function to the DPCC, the DPCC may delegate functions to—

- (a) a member of staff of the Authority, or
- (b) a member of staff of the PCC.

(2) The DPCC may not delegate a function that is specified in article 6 of this Order.

Functions that the Authority may delegate only to the chief fire officer

8. The Authority may not make arrangements under article 4(1) for the delegation of the function of preparing and publishing an integrated risk management plan to any person other than the chief fire officer.

(a) There are amendments to section 1 not relevant to this instrument.
 (b) Section 3 was amended by S.I. 2018/644.
 (c) 2014 c. 2.
 (d) Schedule 6 was amended by the Policing and Crime Act 2017, Schedule 1, paragraph 92.

Relationship between the Authority and the chief fire officer

- 9.** The Authority must hold the chief fire officer to account for the exercise of the functions of—
- (a) the chief fire officer, and
 - (b) persons under the direction and control of the chief fire officer.

Protection from personal liability

10.—(1) A person who is the Authority has no personal liability for an act or omission done by the person in exercise of the Authority's functions unless it is shown to have been done otherwise than in good faith.

(2) A person who is a member of staff of the Authority has no personal liability for an act or omission done by the person in the carrying out of duties as a member of staff unless it is shown to have been done otherwise than in good faith.

PART 4

Transitional provisions and modification

Shadow authority

11.—(1) The person who is for the time being the PCC is the shadow fire and rescue authority for the area specified in article 3(3), for the period beginning on 1 January 2023 and ending on 1st April 2023.

(2) The shadow fire and rescue authority has the functions of a fire and rescue authority created by an order under section 4A of the 2004 Act, for the purposes of Chapter 4 (precepts) and Chapter 4ZA (referendums relating to council tax increases) of the Local Government Finance Act 1992(a).

(3) The Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012(b) have effect, as modified by the Fire and Rescue Authority (Police and Crime Commissioner) (Application of Local Policing Provisions, Inspection, Powers to Trade and Consequential Amendments) Order 2017(c), in relation to the scrutiny of a proposed precept prepared by the shadow fire and rescue authority created under paragraph (1).

Provision for continuity in the exercise of functions

12.—(1) Anything to which paragraph (2) applies is deemed to have been done by or in relation to the Cumbria Commissioner Fire and Rescue Authority.

- (2) This paragraph applies to anything done on or before 31st March 2023 by or in relation to—
- (a) Cumbria County Council in the exercise of its functions as a fire and rescue authority, or
 - (b) the shadow fire and rescue authority referred to in article 11(1).

Modification of the Local Government Pension Scheme Regulations 2013

13.—(1) The Local Government Pension Scheme Regulations 2013(d) are modified as follows.

(2) Regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained) is to be read as if after paragraph (8) there were inserted—

(a) 1992 c. 14.

(b) S.I. 2012/2271.

(c) S.I. 2017/863.

(d) S.I. 2013/2356, amended by S.I. 2014/1012, 2014/1146, 2015/755, 2016/449, 2016/653, 2017/126, 2017/251, 2017/612, 2018/103, 2018/269, 2018/493, 2018/1133, 2019/615, 2020/123, 2020/179, 2020/893, 2021/272.

“(8A) Paragraph (8B) applies where the exiting employer is Cumbria County Council and the liabilities of the fund in respect of benefits due to that Authority’s current and former employees (or those of any predecessor authority) have been or are to be transferred to the Cumbria Commissioner Fire and Rescue Authority under a transfer scheme made under section 4C of the Fire and Rescue Services Act 2004.

(8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”

24th November 2022

Chris Philp
Minister of State
Home Office

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for a new fire and rescue authority under section 4A of the Fire and Rescue Services Act 2004 (c. 21) for the area of the County of Cumbria.

Article 3 creates the new fire and rescue authority and provides that the person who is for the time being the police and crime commissioner for Cumbria is to be for the time being that new fire and rescue authority. The new authority will be known as the Cumbria Commissioner Fire and Rescue Authority. The current fire and rescue authority for the area is Cumbria County Council, which is abolished with effect from 1st April 2023 by S.I. 2022/231.

Articles 4 to 10 set out the framework for the exercise by the Cumbria Commissioner Fire and Rescue Authority of its functions, in particular which functions may be delegated and to whom.

Article 11 provides for a shadow authority, enabling the police and crime commissioner to carry out certain functions prior to the new fire and rescue authority coming into being.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sectors or community bodies is foreseen.

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