EXPLANATORY MEMORANDUM TO

THE COMPETITION COMMISSION (WATER INDUSTRY) PENALTIES ORDER 2007

2007 No. 461

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order sets the maximum penalties that the Competition Commission can apply when a person, without reasonable excuse, undermines an investigation relating to its responsibilities under the Water Industry Act 1991.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Enterprise Act 2002 gave the Secretary of State a power to set maximum penalties that the Competition Commission can impose at a fixed rate or at a daily rate (or a combination of the two) within specified maximum ceilings of £30,000 for a fixed rate and £15,000 daily rate.

4.2 The penalties in other regulated sectors and in respect of one Water Industry Act 1991 provision were set by the Secretary of State for Trade and Industry in the Competition Commission (Penalties) Order 2003 (S.I. 2003/1371) at a rate of £20,000 for fixed penalties and £5,000 for daily penalties. This Order makes the same provision in respect of the remainder of the Competition Commission's water industry responsibilities, including those in relation to mergers in this sector and those inserted by the Water Act 2003 relating to the new water supply licensing provisions, which came into force in December 2005.

5. Extent

5.1 This instrument extends to all of the United Kingdom but will apply only in England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1. The Competition Commission's powers to impose penalties are the mechanism through which it can ensure that its requests for information pursuant to its information gathering powers are complied with. For example, if witnesses fail to appear at hearings or if information requested is received late, incomplete, or is withheld entirely this can cause difficulties. Such difficulties could include inconvenience for other parties, increased costs or, in the most extreme circumstances, the Competition Commission might come to a different decision from that it would have reached had some relevant information been available to it.

7.2 The Government carried out a public consultation on new regulatory arrangements for the water industry in *Water Bill – Consultation on Draft Legislation* (Cm 4908, November 2000). The new water supply licensing provisions were developed in the light of the responses received by the Department and the Welsh Assembly Government to their joint public consultation on *Extending Opportunities for Competition in the Water Industry in England and Wales* (July 2002). The Department of Trade and Industry and Welsh Assembly Government were consulted on the draft Order, as was the Competition Commission as required by the Enterprise Act 2002. Given that there is no substantive change of policy from the existing policy on penalties, there was no wider consultation on this draft Order.

8. Impact

8.1 No regulatory impact assessment has been prepared in respect of this instrument as it has no impact on the costs of business. A regulatory impact assessment in respect of the Water Act 2003 was prepared and placed in the library of each House of Parliament during the passage of the Water Bill.

9. Contact

David S Jones at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8352 or e-mail: david.s.jones@defra.gsi.gov.uk can answer any queries regarding the instrument.