PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT BENCHMARKS (AMENDMENT AND TRANSITIONAL PROVISION) (EU EXIT) REGULATIONS 2019

Tuesday 19 February 2019

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Saturday 23 February 2019

The Committee consisted of the following Members:

Chair: James Gray

† Allan, Lucy *(Telford)* (Con)
† Cooper, Rosie *(West Lancashire)* (Lab)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Eagle, Ms Angela *(Wallasey)* (Lab)
† Garnier, Mark *(Wyre Forest)* (Con)
† Glen, John *(Economic Secretary to the Treasury)*
† Hughes, Eddie *(Walsall North)* (Con)
† Jones, Mr Marcus *(Nuneaton)* (Con)
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Monaghan, Carol *(Glasgow North West)* (SNP)
† Morris, Grahame *(Easington)* (Lab)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Murray, Ian *(Edinburgh South)* (Lab)
† Peacock, Stephanie *(Barnsley East)* (Lab)
† Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Peter Stam, *Committee Clerk*

† attended the Committee

Eighth Delegated Legislation Committee

Tuesday 19 February 2019

[James Gray *in the Chair*]

Draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019

8.55 am

The Economic Secretary to the Treasury (John Glen): I beg to move,

That the Committee has considered the draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

May I start by saying what a pleasure it is to serve under your chairmanship, Mr Gray?

As the Committee will be aware, the Treasury has been undertaking a programme of legislation to ensure that, if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. The Treasury is laying statutory instruments under the European Union (Withdrawal) Act 2018 to deliver that, and a large number of debates on the SIs have already been undertaken in this place and in the House of Lords. The SI being debated today is part of that programme and was debated and approved by the House of Lords on 18 January.

The SI will fix deficiencies in UK law relating to the regulation of financial benchmarks, to ensure that it continues to operate effectively post-exit. This legislation is important for the regulation and integrity of financial markets in the UK. The approach taken aligns with that of other SIs being laid under the European Union (Withdrawal) Act, providing continuity by maintaining existing legislation at the point of exit, but amending where necessary to ensure that it works effectively in a no-deal context. The benchmarks SI makes amendments to retained EU law on financial benchmarks, known as the EU benchmarks regulation—the BMR—and ensures that the UK continues to have an effective framework to regulate financial benchmarks.

Benchmarks are publicly available indices used in a wide range of markets to help set prices, measure the performance of investment funds or work out amounts payable under financial contracts. They play a key role in the financial system's core functions of allocating capital and risk, and impact huge volumes of credit products and derivatives. The EU BMR sets requirements on benchmark methodology, transparency and governance.

Benchmarks must be approved in order to be used in the EU after the conclusion of the EU BMR's transitional period at the end of 2019. To provide benchmarks for use in the EU after that, benchmark administrators located in the EU may apply for authorisation or registration. Third-country administrators or benchmarks may be approved through equivalence, recognition or endorsement. Approved administrators and benchmarks are placed on to the public register maintained by the European Securities and Markets Authority: ESMA.

In a no-deal scenario, the UK would be outside the European economic area and the EU's legal, supervisory and financial regulatory framework. The UK legislation implementing the BMR and related legislation therefore needs to be updated to reflect that and ensure that the UK's benchmarks regulation operates properly in a no-deal scenario.

The draft regulations therefore make the necessary amendments to the retained EU legislation to ensure that the regimes are operable in a wholly domestic context. First, this instrument amends the scope of the BMR to apply to the UK only. From exit day, benchmarks and administrators outside the UK will be subject to the onshored third-country regime, and must be approved via recognition, endorsement or equivalence for use in the UK.

Ms Angela Eagle (Wallasey) (Lab): Could the Minister give the Committee an idea of how many people will have to be put through the system, which interacts with our very large financial sector? How many are involved in what he is talking about now? Will it be a big issue for the Financial Conduct Authority or will it be a tick-box exercise? How many countries and organisations are involved?

John Glen: Since 2015, the FCA has allocated £16 million to its Brexit onshoring exercise, which has ramped up to 158 full-time staff since March last year, when it had only 28. Following scrutiny from the Secondary Legislation Scrutiny Committee and further dialogue with the FCA, we in the Treasury are convinced that the FCA has the resources to continue to do that work. Publicly available machine-to-machine software onshores those approved through European national competent authorities to the FCA so that they are completely up to date. We foresee no difficulties in that process, but resources have been added. The hon. Lady asks about the number of countries involved. I cannot give her that information now—I do not have it available to me—but I will be able to write to her with it.

Secondly, the instrument establishes a requirement for the Financial Conduct Authority to create a UK benchmarks register, which it will maintain from exit day. Following the transitional window in the BMR, supervised entities may use a benchmark in the UK only if either the relevant administrator or the benchmark is on the FCA register. The instrument will ensure that benchmark administrators that the FCA has already authorised or registered ahead of exit day are automatically migrated from the ESMA register to the FCA register on exit day. It will do the same for third-country benchmarks or administrators that the FCA has already recognised or UK firms have endorsed.

Thirdly, the instrument includes a new transitional provision that takes EU and third-country administrators and benchmarks that appear on the ESMA register at exit day as the result of an approval under the BMR outside of the UK, and temporarily migrates them on to the FCA register for 24 months, beginning with exit day. That will enable continued use of those benchmarks in the UK for a 24-month period, unless and until an application for approval in the UK is refused, or unless they are removed from the ESMA register during that time. That will provide continuity for administrators and users, and minimise market disruption. Administrators

and benchmarks subject to that transitional provision must become approved by the FCA under the third-country regime to enable their continued use in new contracts in the UK after that period.

Additionally, the SI removes obligations in retained EU law for the FCA to co-operate and share information with EU regulators as, with no guarantee of reciprocity, those obligations would not be appropriate as of exit day. However, the FCA will still be able to co-operate with EU regulators through the existing framework in the Financial Services and Markets Act 2000, as it is currently able to with all other third countries.

Furthermore, certain regulatory functions under the BMR are currently carried out by EU authorities—primarily the European Commission and the European supervisory authorities, including ESMA. Once the UK leaves the EU, EU bodies will no longer have a mandate to carry out those functions. Therefore, the SI transfers the functions of the Commission to the Treasury, including the power to adopt delegated Acts based on the underlying legislation. The SI also transfers to the FCA the functions of ESMA, such as the function to maintain a register of benchmarks and the power to make binding technical standards. That delegation is in line with the way we have conducted similar SIs across the board.

Finally, the SI makes further minor amendments to retained EU legislation to ensure that the UK's benchmarks regime operates effectively once it leaves the EU. Taken together, these measures will ensure that the UK retains an effective framework to regulate financial benchmarks. The Treasury worked very closely with the Financial Conduct Authority in drafting the instrument. It has also engaged the financial services industry on the SI, and it will continue to do so. On 8 January, the Treasury published the instrument in draft along with an explanatory policy note, to maximise transparency to Parliament and industry.

In conclusion, the Government believe that the changes made by the instrument are necessary to ensure that the UK has an effective regime for regulating benchmarks and that legislation functions appropriately if the UK leaves the EU without a deal or an implementation period. That is not the Government's expectation or desire, but it is consistent with the preparation we are doing. I hope Members will be able to support the draft regulations, which I commend to the Committee.

9.4 am

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve on the Committee with you in the Chair, Mr Gray. I am grateful to the Minister for his explanatory remarks.

Once again, the Minister and I are here to discuss a statutory instrument that makes provision for a regulatory framework after Brexit in the event that we crash out without a deal. On each of those occasions, I and my Labour Front Bench colleagues have spelled out our objections to the Government's approach to secondary legislation. The volume of EU exit secondary legislation is deeply concerning for accountability and proper scrutiny. The Government have assured the Opposition that no policy decisions are being taken. However, establishing a regulatory framework inevitably involves matters of judgment and raises questions about resourcing and capacity.

Secondary legislation ought to be used only for technical, non-partisan, non-controversial changes because of the limited accountability it allows. Instead, the Government continue to push through far-reaching financial legislation via such vehicles. As legislators, we have to get it right. The regulations could represent real and substantive changes to the statute book and they need proper in-depth scrutiny. In that light, the Opposition would like to put on the record our deepest concerns that the process regarding the regulations is not as accessible and transparent as it should be.

I will now pose four questions to the Minister that I hope he will respond to in his later remarks. My first question concerns timing and the relationship between this SI and the legislation recently passed on in-flight financial services legislation. As the Minister referenced in his remarks, we are currently within a transitional period for the benchmarks regulation, with its coming fully into force only from the start of next year. Only after that point will there be an outlawing of benchmarks that have not been approved for use by one of the routes set out in the EU regulation. Why was the regulation not included within the in-flight process? It has clearly been agreed at EU level, but formally speaking is not yet implemented. I thought that such measures were covered by the in-flight process; hopefully, the Minister can illuminate me if I am wrong.

Secondly, I want to press the Minister on a detail related to the transitional period. The regulation, as with other SIs laid by the Government, provides for a system of deemed equivalence for the transitional period. Effectively, it suggests that EU27-approved benchmarks can be used in the UK and will be assumed to be equivalent, as if they had been examined by the UK's regulator. However, there is a strange aspect to the regulation in relation to the process if an EU27 national competent authority decides to remove a benchmark or if an administrator is removed from the register, or if that is undertaken by the college of regulators that assesses critical benchmarks. This regulation states that even if such a benchmark, or a benchmark administrator, is removed in the EU27, it can still be maintained on the UK list during the transition period if

> "the FCA considers that doing so would not be compatible with the FCA's strategic objective or would have a material adverse effect on the advancement of the FCA's operational objectives."

That appears to be beyond the scope of the withdrawal agreement's empowerments, because continued placement on a benchmark register, or a register for benchmark administrators, is not dependent on whether national competent authorities believe that is compatible with their objectives as regulators—it surely depends only on what is in the benchmark regulation that set out the criteria for the benchmarks to be approved. I do not really understand why such language has slipped into the UK regulation. Will the Minister explain?

Thirdly, I want to question the empowerments for the FCA within the regulation. It gives the FCA, with Treasury oversight, exclusive powers over critical benchmarks—a change that I will go on to talk about in a moment—but that is on top of all the other empowerments within the regulation that the Minister rightly referred to. The FCA will have to keep a register of benchmarks and benchmark administrators, develop a code of conduct and so on.

[Anneliese Dodds]

As I am sure Members are aware, there have already been questions about the FCA's role in the enforcement of benchmark regulations. In 2017, the complaints commissioner partially upheld cases against the FCA brought by two former UBS traders caught up in the LIBOR-rigging scandal. The commissioner criticised the FCA for serious errors. Indeed, it has been commented that in some cases the junior traders have been the ones who face prosecution rather than those further up the food chain, who were well aware of what was going on. In that context, surely it is important for the FCA's role to be properly scrutinised.

I want to focus on the arrangements for critical benchmarks, which, as I said, under EU law are undertaken by a college of national regulators under the overall overview of ESMA. This SI removes the UK from such arrangements, and places determinations on criticality entirely under the purview of the FCA, albeit it with reporting obligations to the Treasury. When making those determinations, the FCA must consider whether the benchmarks concerned pass certain thresholds of use. Will the Minister explain a little more about how that process would work? Will the FCA be able, within the time provided, to determine those benchmarks, given that the SI refers to the FCA's having to review thresholds

"in the light of market, price and regulatory developments and the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds"?

We heard in relation to the markets in financial instruments directive and no-deal regulations that calculating thresholds would require up to four years. That came after a suggestion from Her Majesty's Treasury that all that was needed for those no-deal preparations was a simple shift in roles and responsibilities from EU to UK actors. A number of us were sceptical about that claim, and we were proved right. Of course, the determination of thresholds for a relatively small set of benchmarks will be much less onerous than that for hundreds upon hundreds of commodities contracts, but some indication of the FCA's view of the difficulty of the process, or otherwise, would be helpful.

There is likely to be a major shift in the use of critical benchmarks. Members will be aware of the LIBOR scandal, and arrangements for the reporting of interbank rates are changing. The Bank of England will not require banks to submit those rates beyond 2021, and it will therefore not be possible to calculate LIBOR anymore. A whole proliferation of critical benchmarks appear to be on the way, from the eurozone's euro short-term rate, ESTER, to the UK's reformed version of the sterling overnight index average, SONIA—they all have interesting acronyms—and some are obviously being developed by the US, Switzerland and Japan. That suggests that the process of assessing different benchmarks, especially critical benchmarks, could become quite onerous for the FCA, with a greater plurality of widely used benchmarks beyond LIBOR. It would be helpful to hear how and whether the FCA is prepared for such an eventuality.

On the point made by my hon. Friend the Member for Wallasey, the use of such benchmarks is incredibly widespread in terms of the people it would affect and the impact it might have on markets. Estimates of the use just of LIBOR vary from between $200 trillion to $370 trillion of financial contracts across the world, particularly with interest rates swap contracts, and the benchmarks are enormously important.

Finally, in regulation 5(9) the statutory instrument provides a definition of "commodity". The definition seems fine, but I do not believe that it is in the EU benchmark circulation and it would be helpful to know why it has been provided. Is that because there is not the same inter-relationship with other pieces of no-deal legislation as there is with existing EU legislation? It would be helpful to know about that, and it is fine for the Minister to write to me on that point of detail.

9.14 am

Ms Eagle: It is a pleasure to serve under your chairmanship, Mr Gray—I think for the first time. It is important for us to do a little translation of this highly technical set of instruments that are before us in the event of no deal; I presume that when he replies to the debate, the Minister will confirm that these changes will automatically become defunct if there is a deal.

What we are really talking about with benchmarking is the price of particular assets and contracts being swapped, traded or changed. As my hon. Friend the Member for Oxford East so pointedly observed, this is about trillions of pounds swilling through various international markets in—

John Glen: Pensions.

Ms Eagle: In assets, cash, pensions, contracts, swaps and all the things that currently make up our global trade in such issues. As the Minister points out from a sedentary position, many people's future retirement plans are crucially dependent on getting this right.

These kind of EU regulations came into being in the first place because of the LIBOR scandal and the evidence of significant cheating in creating the prices of these benchmarks for these trades to happen. Until the LIBOR scandal, nobody had really looked at how international benchmarks such as LIBOR were generated. Everybody thought it simply happened according to market mechanisms, and that absolutely nothing nefarious was going on.

However, we then discovered that a great deal of nefariosity—I do not know whether that is a word—was going on, and that people's rewards for indulging in that nefariosity were colossal. That is why all these regulations had to be immediately generated. That is the first thing. This is about a hugely important area of potential market manipulation and cheating, the risks of which, until we became aware the LIBOR scandal, were tiny and the rewards from which, if one indulged in it and got away with it, were colossal.

We also need to think not only about the individual market manipulation that might happen if we get this wrong, but about financial stability itself. If 2008 taught us anything, it was that these very complex and increasingly complicated global money and asset markets, for which these benchmarks effectively represent what is meant to be a market-generated price, are the weakest and least-regulated points across the world. The regime that is the

most hands-off becomes the weakest, and—at the same time, paradoxically—the strongest defence against manipulation and disaster.

We know disasters such as the global financial crash affect real people's lives across the globe. The draft regulations might look like very dry, boring, technical changes that the Minister has brought before us, but they are actually crucial. They are about real issues of financial stability, potential market manipulation and cheating. If we do not get this right, we will become the weakest link.

It is therefore absolutely and utterly crucial that, if we are to establish this kind of regime, we had better be sure that we are doing it correctly, that we have the time to do it correctly and that we have enough people in the FCA with enough sophistication to do it correctly. I worry about the size of our market—£130 billion in gross value, according to the Minister's own figures. With the sudden ramping up from a mere 28 employees at the FCA to 158 full-time staff, which the Minister talked about, they are going to have to be some of the most sophisticated people on this earth. I hope he is paying them properly—*[Interruption.]* Not him personally, but the Government, of whom he is the representative in Committee. They had better be good at their jobs. I want the Minister to reassure us about that.

Is the FCA up to it? I do not mean to be horrible, but the Minister is suddenly giving it a lot of responsibility, with new staff: if we get it wrong and there is regulatory arbitrage to be exploited in the way the system works, we know that it will be. That might include leaving loopholes for huge market manipulation and enrichment at the expense of customers, pensioners and the people who are investing in the instruments, who will be traders. If the Minister does not get it right, the consequences will be huge.

How big is the risk? The impact assessment does not really talk about how big it is or the likely costs of the changes. I congratulate the Minister on being one of the few Ministers who has managed to produce an assessment to put before one of these statutory instrument Committees, which we are attending in great numbers at the moment. Large numbers of his ministerial colleagues have not been able to do that, which is a disgrace. That is the way in which the Government are dealing with the situation we find ourselves in.

The costs that the Minister puts before us are described as "unknown: likely significant" or "significant". There is an inability to quantify the cost to business and to those who are in the market of the sudden change and the no-deal scenario. At a macro level, it is significant but unknowable, but at a micro level, in annex A, the Treasury has come up with a ridiculous little formula for the familiarisation costs for individual companies—as an ex-Treasury Minister, I am familiar with that kind of thing.

The Treasury has decided that the familiarisation cost of a statutory instrument for one firm is the number of words in the statutory instrument divided by the number of words that one can read in a minute—as if being able to read the statutory instrument means that one automatically understands it. In one of the most complex areas of regulation and statutory authority, that is the best that HMRC can come up with.

By the way, that figure has to be multiplied by one over 60 and by the hourly wage rate, which is £330 for a solicitor or legal executive with more than four years' experience. What a joke! Is the Minister really suggesting that if one could read the statutory instrument at so many words per minute, one would automatically understand what it meant? I have been in the House for 27 years, and I can read quite a few words a minute, but I must confess that I have never come across a statutory instrument that I can automatically understand just because of that, especially in such a complex area.

Carol Monaghan (Glasgow North West) (SNP): As a qualified maths and physics teacher, I think that the formula is frankly ridiculous. The number of words read per minute is what we could call a variable, because it can vary greatly. We might find plenty of lawyers who, in an attempt to increase their fees, become extremely slow readers.

Ms Eagle: I agree, but what worries me more about the formula than the variable that the hon. Lady talks about is the idea that somehow reading equals full comprehension of technical subjects. The Minister ought to go back and have a closer look at that, and the Treasury officials who are accompanying him certainly ought to come up with a more sophisticated formula for trying to see what the costs will be.

To sum up, we do not know what these things will cost. My hon. Friend the Member for Oxford East has posed some very important questions about how all of them mesh together and whether there have actually been changes in definitions—sneaky little changes that have gone beyond what the withdrawal Act allows in terms of just transposing issues from EU law into UK law. We would like to know the answers.

I would also like the Minister to tell us a little about the risks that he thinks this regime poses if the FCA really cannot get through to organising these benchmarks and transposing them in practical terms into UK law in the appropriate time scale, in what is a very changing situation—regulating an industry that we know will exploit every tiny bit of regulatory arbitrage that it can come across for its own profit.

9.26 am

John Glen: I am grateful to the hon. Members for Oxford East and for Wallasey for their scrutiny of this measure, and I shall endeavour to answer the points made.

On the general opening remarks of the hon. Member for Oxford East, all I can say to her is that the Government are not taking any powers beyond those that exist within the withdrawal Act. To the points made by the hon. Member for Wallasey, I say that there has been an attempt at every juncture to be thorough in the way that we have examined the optimal way to transition and onshore these powers, that we have engaged with industry and the regulator, and that we have done that with their consent and allowed scrutiny through that process, even in a condensed period.

I will now address the four points that the hon. Member for Oxford East raised. The first one was around the issue of the relationship with the in-flight files and the fact that there are ongoing challenges to this regulation, which is in the process, essentially, of being fully adopted.

[John Glen]

There is a European supervisory authorities review file in the in-flight files Bill, but that is separate and additional to this onshoring process; the regulation is in force already, but it is in a transitional phase. Many requirements in the regulation already apply. It is simply the case that some benchmark administrators are not required to apply for authorisation until 2020. However, on the broader issue, if subsequently the ESA file that is in-flight then makes an EU-wide update, then—in a no-deal scenario—we would have to make that decision at a future point.

The second point that the hon. Lady raised was about deemed equivalence of the EU27. I responded to the hon. Member for Wallasey earlier with respect to the publicly available machine-to-machine software, to ensure that at the point of a no-deal moment—not what the Government expect—at the end of March, we would be completely up to date with decisions made across national competent authorities across the EU at that point.

The hon. Member for Oxford East referred in her remarks to a transition period. Well, we would not have that transition period in a no-deal situation, so it would not apply. I sense that she wants to intervene and I am very happy to give way.

Anneliese Dodds: I appreciate the Minister's sincerity in trying to respond to my comments, and I apologise: I do not think I expressed myself clearly. I was referring to the fact that there could be a divergence between the benchmarks still approved in the UK during the 24-month period—I probably used the wrong language to describe that—and what applies in the EU27, because this regulation says that a benchmark can be retained in the UK even if it is not in the EU27, if the FCA considers that taking it off would not be compatible with its strategic objective and so on.

John Glen: On the maintenance of benchmarks if they have been dropped from the ESMA register, I was going on to say that this SI enables the FCA to exercise judgment. It does not have to follow ESMA decisions. The FCA objectives are in place to protect UK markets and consumers. In a no-deal situation, that is a function that the FCA would have to take on.

I have set out the transition mechanism for decisions that have already been made, but in a no-deal situation we would absolutely face a very challenging environment. I am sympathetic to the comments of the hon. Member for Wallasey about the resourcing of the FCA in that situation; it would be significant. In this corpus of 53 SIs, I am concerned about making the transition process clear. There would be a lot of legislation to pass and work to be done in a no-deal situation subsequent to this process.

Anneliese Dodds: I know that the Minister and his officials are doing the best they possibly can in the extremely difficult situation that they should not have been put in, but I want to press him on this. These regulations are described as putting into practice the EU benchmark regulation; they are not described as dealing with any eventualities that could come out of no deal. In that situation, surely if we are just following the EU benchmark regulation, we should use the criteria that ESMA uses on benchmarks, not other criteria for the FCA's objectives. That falls outside the scope of these regulations.

John Glen: I think, with the greatest respect, that the hon. Lady is getting two things muddled up. At this point, we are onshoring what already exists. We have a 24-month transition period during which, in a no-deal situation, there would be considerable engagement with industry and regulators about how we would adopt the criteria as a national body independent of the European supervisory authorities. If we were in that situation, we would clearly need to develop a new framework altogether for regulation. How we would harmonise with other bodies outside the UK would depend on the basis of that no deal. If the hon. Lady is asking me whether I am setting out in this SI a comprehensive regime for an independent verification of benchmarks over the next two years in a no-deal situation, I should say that no, I am not.

Ms Eagle: It is difficult to think of scenarios that we hope will not happen. We all hope that at some stage sense will break out and there will be time to do this disentangling. Will the Minister reassure me that if there is no deal, the regime that these changes will put in place will be in place the day after no deal, and that there will not be large numbers of loopholes through which very rapid trading, which can be instantaneous, can occur, leading to huge profiteering?

Anneliese Dodds *rose—*

John Glen: I am happy to give way to the hon. Lady.

Anneliese Dodds: The Minister is being enormously generous in giving way. I appreciate his comments, but I would like this put on the record. What I take from his remarks is that these regulations are hybrid. They are not just about onshoring the existing regime, because if they were they would not include the reference to the FCA deciding on these matters because of its strategic objectives. Rather, they are partially about the creation of a new regime. As such, they depart from what is allegedly the template for these regulations.

John Glen: I am grateful for both points. I will first respond to the hon. Member for Wallasey. I assure her that the regulation will onshore and will not create any cliff-edge risks around the loopholes that she refers to. We have worked very closely with the FCA, which provides the technical expertise. I will address her point about the resourcing of the FCA in a moment.

For the record, I do not accept the characterisation of hon. Member for Oxford East of the regulations as hybrid. In a no-deal situation, there would need to be a lot of extra work to create a new permanent regime. In terms of the divergence between the UK and the EU27, the FCA will not necessarily know why a benchmark has been removed from the ESMA register after exit. It is therefore prudent to give the FCA the discretion to make its own assessment so it is able to protect UK markets and consumers. In a no-deal situation, we would be in a world very different from the one we are used to and we take the view that the provision fixes a deficiency caused by our withdrawal.

The hon. Member for Wallasey raised the importance of the benchmarks being regulated, and I absolutely agree. The SI will ensure that the regulatory regime in the UK will operate effectively in a no-deal scenario. I reassure her that the SIs in the programme have passed through the usual quality control procedures and we have engaged extensively with the FCA in drafting them.

Based on my earlier comments about the additional full-time equivalents that the FCA has had this year in preparing effectively to manage the programme, I am confident that it has adequate resources. Regarding the future pressure, the FCA is not funded by the Government but by a levy on industry, so it will be up to the authority to bring that forward in its plan, which it will do shortly for 2019-20.

I note the observations about the familiarisation costs and the mechanism to calculate them. To be clear, the SI has been assessed to result in an estimated one-off familiarisation cost of £8,300, which, shared between the 16 UK benchmark administrators authorised under the regulations, is £518 each.

Ms Eagle: The hon. Gentleman may be a turbo-charged understander and reader of things, which perhaps I am not, but is he really telling the Committee that if one has read a statutory instrument as technical as this, one automatically understands it at so many words a minute?

John Glen: The hon. Lady will know, from her two years as Exchequer Secretary between 2007 and 2009, that in this sort of context it is unrealistic for me to read out the rationale behind the familiarisation costs methodology—

Ms Eagle: It is rubbish!

John Glen: I will, however, write to her to explain how we have used it. I acknowledge her scepticism about the situation.

The hon. Member for Oxford East raised a point about the definition of "commodity" not being in the EU regulation. As I cannot respond here and now, I am grateful for her graciousness in allowing me to write to her.

On the LIBOR points that the hon. Member for Wallasey raised, the UK did have eight domestic benchmarks but they were superseded by the EU's more comprehensive range. The regime we are now part of is more thorough than it was 10 years ago.

The hon. Member for Oxford East asked whether it was appropriate for the FCA to assess the critical benchmarks. Just to contextualise that for the benefit of the Committee, I should say that the FCA carries out its assessment against the conditions relating to critical benchmarks set out in the benchmarks regulation. The FCA will present its conclusions to the Treasury. The Treasury must make regulations designating a benchmark as critical if the FCA makes a recommendation in accordance with the requirements of the amended provisions. The FCA is the appropriate body to carry out that assessment due to its technical expertise. That is consistent with the current split of functions between the Commission and ESMA, and it has been onshored appropriately.

The hon. Member for Wallasey asked about the wider impacts. I acknowledge her recognition of a green impact assessment, published on 8 February. Impact assessments for the SIs focus narrowly on the changes that the instruments make and on how businesses will need to respond. I concede that they do not deal with the broader economic impact of leaving the EU. There is considerable debate about what that would mean in a no-deal scenario and my judgment is that there would be a significant impact, in the short term particularly.

The impact assessment of the European Union (Withdrawal) Act 2018 deals with the impact of the parent Acts, and the Government have also published analysis, as the hon. Lady will know, of the potential economic impact of a range of scenarios. I must stress that the SI mitigates the impact of leaving the EU without a deal, and if it were not in place industry would face greater disruption and cost.

In conclusion, the changes are needed to ensure that the UK has an effective regime for regulating benchmarks and that the legislation functions appropriately if the UK leaves the EU without a deal or an implementation period. I believe that I have dealt with Opposition Members' points. I hope that the Committee has found the sitting informative and will now join me in supporting the regulations.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019.

9.40 am

Committee rose.