British Agricultural and Garden Machinery Association

BAGMA Response to Call for Evidence on Equipment Theft (Prevention) Bill

Executive Summary

British Agricultural and Garden Machinery Association (BAGMA) represents 600 UK dealers in the agricultural, garden and ground care machinery industry. BAGMA supports the sentiment behind the Bill but has major concerns in the proposed delivery of the new law. These issues are summarised below.

- There are significant complexity and costs for dealerships in complying with the proposed measures.
- There are conflicts with product safety legislation covering type approval, electro-magnetic compatibility and the safety of machinery.
- The implications of complying with the legislation will be onerous on all dealerships but especially on small dealerships.
- The implementation of any regulations made under the Bill should be delayed until similar legislation has been passed, at least in Scotland (and ideally also in Northern Ireland) to avoid distortions in the market.
- There could be a potential reduction of manufacturers selling into England and Wales leading to limited choice.
- Compliance with the Bill and the potential reduction of manufacturers suppling machinery to England and Wales will almost certainly result in increase in prices.

BAGMA want Ministers to ensure that this consultation allows all the issues raised in this response to be fully examined and tested, to ensure regulations do not have unintended consequences for safety and the industry. When the amended Bill is passed, there must be an appropriate implementation period.

Introduction

British Agricultural and Garden Machinery Association (BAGMA) represents 600 UK dealers in the agricultural, garden and ground care machinery industry. Many of the dealers are small businesses supporting the land-based industry sector in the UK. Aspects of the Equipment Theft (Prevention) Bill creates onerous new responsibilities for these businesses and will not foster the right conditions for growth, productivity and competitiveness in the UK.

BAGMA and its members are fully supportive of the aims of the Bill. However, it has concerns about the implementation of the Bill, which are set out in this response to the consultation. BAGMA is working with colleagues in our sister association, the Agricultural Engineers Association (AEA), which represents the manufacturers of the machinery which BAGMA members sell, repair and service. BAGMA fully supports all the points made in the AEA's response to the call for evidence. Rather than repeat the evidence provided by the AEA, we have referred to that response, where we have nothing to add. In its response, BAGMA has focussed on the questions that are specifically relevant to the dealers that it represents to elaborate on the impact that the Bill will have on dealerships.

The Bill currently only applies to England and Wales. If the provisions did not apply in Scotland and Northern Ireland, there could be a significant distortion in the UK market, with a detrimental effect on machinery dealers in England and Wales, particularly those in northern England. Implementation of any

regulations made under the Bill should be delayed until similar legislation has been passed, at least in Scotland (and ideally also in Northern Ireland).

The Bill has significantly underestimated the complexity and cost of complying with the proposed measures. In particular, the Bill would place responsibilities on the seller of the vehicles and machines concerned that have the potential to come into conflict with product safety legislation covering type approval, electro-magnetic compatibility and the safety of machinery.

Proposal A

Question 1: Is there any further detail that needs to be added to the legal definition of an ATV as described above and at Clause 2(a) of the bill, to avoid capturing vehicles that are not intended to be covered by this legislation?
See response from the AEA.

Question 2: What are the fundamental features of an ATV that distinguish it from other types of vehicles?
See response from the AEA.

Question 3: "Mechanically propelled machinery designed or adapted primarily for use in agricultural activities; designed or adapted primarily for use other than on a road" will be required to be fitted with an immobiliser, forensically marked and registered on a database.
See response from the AEA.

Question 4: Does the definition need to specify any exemptions? For example, are there any vehicles or equipment that would meet the definition but that are not vulnerable to theft and therefore do not need to be covered?
See response from the AEA.

Question 5: Should the definition of machinery also include a Recommended Retail Price threshold, above which the legislation will apply? If yes: at what level?
See response from the AEA.

Question 6: Are you in favour of a requirement for Global Positioning Systems (GPS) used on agricultural machinery to be forensically marked and registered on a database? Please provide reasons for your answer.
See response from the AEA.

Proposal B

Question 7: Where do you think the threshold should be set to require hand-held power tools to be forensically marked and registered on a database prior to sale?
a) £250
b) £500
c) £750
d) other (please specify)
Please provide reasons for your answer.

See response from the AEA.

Proposal C

Immobilisers

Question 8: Manufacturers / dealers: does this cover the appropriate requirements for an immobiliser? If no / to some extent, please provide further detail.
See response from the AEA.

Question 9: Manufacturers / dealers: Are there any features / functions missing from the list, or any on the list that are not needed? Do these requirements in relation to immobilisers expect you to do something which will be extremely difficult or will cause an increased burden as a result?
See response from the AEA.

Potential impact on the 'type approval' of the vehicle

Question 10: Dealers / manufacturers / retailers: do you foresee that installing the immobiliser will present any problems for the type approval already granted for the vehicle? If yes, what are these and how can they be overcome?
Yes, we believe that there are fundamental conflicts between the Bill's requirement to fit immobilisers to type approved vehicles and the requirements of type approval legislation. As explained in the response from the AEA, inappropriate regulations under the Bill could effectively make it illegal for dealers to sell vehicles that are subject to type approval (which includes many ATVs and most side-by-side vehicles, tractors and telescopic handlers). Even if that was only a temporary situation, it would threaten the viability of many dealers, who rely on such sales for most of their income, either directly or through the subsequent servicing and repair of the vehicles sold.

While dealers could theoretically take on the responsibility of the manufacturer and seek type approval for a vehicle with an immobiliser fitted, the complexity and costs involve would be beyond the means of any such businesses. We understand that manufacturers typically employ sizeable teams of people to deal with the requirements of type approval. Dealers would not be able to match this, particularly since the number of vehicles of any given type sold by a business would be small, so there would be little opportunity to recover the costs involved from customers. Therefore, dealers would rely on the manufacturers supplying their type approved vehicles to comply with the requirements of the Bill.

One of the options for manufacturers to incorporate an immobiliser into their vehicles would be to require dealers to fit one. However, that would put potentially onerous requirements on the dealers involved. Any dealer involved in fitting an immobiliser to such a vehicle prior to its sale to the end user would fall within the manufacturer's Conformity of Production (CoP) processes. This would be likely to involve substantial record keeping by dealers and their staff, inspection by the manufacturer and third party random auditing. That would be a significant extra burden for any dealer business but particularly smaller ones, which make up the majority of BAGMA members. Many would not be equipped to meet the necessary requirements, which could threaten the viability of their business, if it would leave them unable to sell type approved vehicles.

Beyond the conflicts with legislation, BAGMA has concerns regarding the potential implications for claims made against manufacturer warranties and other legal liabilities. Work of this kind undertaken by dealers, even under direction of manufacturers, has the potential to lead to disputes about responsibility for claims under warranties or about legal responsibility for any defects. As such disputes can be costly and time-consuming, some dealer businesses may not be willing to take on the risk involved. Taken together, these concerns mean that many dealers may be unwilling or unable take on the new responsibilities required by any regulations made under the Bill. This limits their ability to sell machinery within scope, in turn affecting the viability of their businesses. The result would inevitably affect the supply of machines to end customers and the available options for repair and servicing of machines, which are often undertaken by dealers.

Question 11: Dealers / manufacturers / retailers: do you foresee that installing the immobiliser will present any problems for your responsibilities under the Supply of Machinery (Safety) Regulations 2008 and / or the manufacturer's responsibilities under the Electromagnetic Compatibility Regulations 2016? If yes, what are these and how can they be overcome?

Yes, we envisage substantial problems in complying with the product safety regulations referenced above. As an immobiliser would need to be fitted prior to the vehicle or machine being sold to the end user, BAGMA understand that the combination would still need to comply with the relevant legislation and the roles and responsibilities set out in the legislation would still apply. That is different from the situation when an immobiliser is fitted after the initial sale, at the request of the owner of the machine/vehicle. Further details on the legislation concerned and its interaction between the Bill and the product safety legislation can be found in the response from the AEA.

Most machinery dealers, particularly the smaller businesses, would not be able or willing to take on the responsibilities which fall to manufacturers under product legislation. Dealers would only be willing to take on the work to fit immobilisers in accordance with the regulations under the Bill if it was done according to instructions provided by the manufacturer of that machinery and with appropriate support from them, to ensure that responsibility for the product did not pass to the dealer.

The requirement to fit immobilisers would require significant additional staff training, which would need to be allowed for in the implementation period for any regulations. There could be significant negative implications for smaller dealer businesses, who might be reliant on a single trained fitter of immobilisers for any given product. Any absence of that individual could affect dealers' ability to sell vehicles. At best, it could lead to delays in the delivery of machines to the end customer but could result in small dealers losing business. Therefore, most dealers are likely to require multiple staff members to be trained, adding to the time required for implementation.

As explained under question 10, many dealers will be reluctant to fit immobilisers, even under instruction and training from manufacturers due to concerns about potential liability for warranty claims.

<u>Forensic marking</u>

Question 12: Manufacturers / dealers / retailers: does this cover the appropriate requirements / features of forensic markings?

BAGMA is fully supportive of the Bill's provisions regarding forensic marking of vehicles and equipment, recognising the benefit it can bring in terms of deterring theft. Many BAGMA members are already

experienced at fitting marking systems to vehicles and BAGMA does not foresee any difficulties in extending this to other dealer businesses, provided sufficient time is provided for training and approval of staff. However, BAGMA is concerned of the implications for smaller dealer businesses, which might be reliant on a single trained fitter of marking systems. Any prolonged absence of that individual could affect dealers' ability to sell vehicles.

BAGMA believes that the requirements listed would be sufficient to provide robust and reliable 'forensic marking'. There are several marking systems available which would comply with the requirements. BAGMA supports the AEA's view that the requirements should not give CESAR a monopoly supply situation.

Question 13: Manufacturers / dealers / retailers: Are there any features / functions missing from the list, or any on the list that are not needed?
See response from the AEA.

Question 14: Do these requirements in relation to forensic markings expect you to do something which will be extremely difficult or will cause an increased burden as a result?
BAGMA does not anticipate that there will be any great difficulty in implementing the forensic marking requirements, as there are already several systems on the market and many manufacturers and dealers are experienced at fitting them. However, the proposed regulations would involve a significant expansion of the number and range of machines requiring forensic marking, which will require the approval and training of a much larger number of fitters. It therefore needs an appropriate implementation period for the regulations to allow that process to be completed. It should also be noted that the costs involved in training and approval would, inevitably, be passed on to the customer. The estimate of £50 per machine is too low and the requirement to fit forensic marking would add more to costs than simply the price of the marking kit.

Database registration
Question 15: Manufacturers / dealers / retailers / forensic marking companies: does this include all the information that should be recorded? If no, what else do you think should be included?
See response from the AEA.

Question 16: Do you foresee any practical implications or unforeseen consequences of the legislation proposed in this call for evidence?
The Bill's geographical coverage is limited to sellers of machinery based in England and Wales. Unless similar legislation is enacted in Scotland and Northern Ireland, it will mean vehicles and machines sold from elsewhere in the UK are not covered. Dealers and other sellers based in Scotland and Northern Ireland will be at a competitive advantage relative to their counterparts in England and Wales, as they will be able to sell machines more cheaply (historically there is little evidence that customers would be willing to pay extra for immobilisers or forensic marking). Scotland and Northern Ireland already account for around 30% of UK sales of utility ATVs and for 15-20% of sales of most other types of mobile agricultural machinery. These shares would be likely to increase significantly, with a particularly detrimental effect on dealers in the North of England. Even if the legislation were to be extended to Scotland and Northern Ireland, there would still be concern about online sales by sellers based outside the United Kingdom. That is most likely to be a significant factor for hand tools but could be important

for ATVs and side-by-side vehicles if they are able to offer a substantial price discount, relative to sellers in the UK (or in England and Wales).

Most of the vehicles and machines in scope of the proposals have long lifespans. For example, around half of the agricultural tractors registered with DVLA were first registered more than 20 years ago. Fewer than one in five were less than five years old. If the fitting of an immobiliser and/or forensic marking prevents future thefts of the vehicle and machines covered by any regulations, it will be years before any substantial reduction in the number of thefts might be seen.

If suitable solutions can be found to the potential conflicts with product safety regulation, as referred to in questions 10 and 11, they are only likely to be applicable to equipment manufactured after the application date of the regulation (following suitable implementation periods). Consideration, therefore, needs to be given to how to handle equipment which were manufactured and/or placed on the market before that date.

Ideally, the regulations should only apply to equipment manufactured after the application date of the regulations. If this is not acceptable, as a minimum, sellers should be given a period of time to sell any remaining stock without the requirement to fit an immobiliser, where this would contravene product safety legislation. This 'grace period' should last for not less than one year from the application date of the regulations. Without that, dealers could be left with a substantial stock of machines/vehicles which they would be unable to sell legally. As these are high value products, the losses involved would be highly financially damaging to the businesses involved and would threaten the viability of some.

Question 17: Overall are you in favour of the proposed legislation?
No.
While BAGMA supports the aims of the Bill in principle, the many issues raised in this response must be addressed in order to avoid a significant detrimental effect on the market for the vehicles and machines involved in England and Wales. If these issues are not addressed, it is likely to mean that there will be less choice of products available to the end customer and at a higher price. In its current form, BAGMA is unable to support the legislation.

Question 18: Please indicate which sector you are from or work in (agriculture, retail, manufacturer, law enforcement etc)
British Agricultural and Garden Machinery Association (BAGMA) represents 600 UK dealers in the agricultural, garden and ground care machinery industry. Many of the dealers are small businesses supporting the land-based industry sector in the UK.