

UK Competition Law: Motor Vehicle Block Exemption Regulation

ABI Response to the Competition & Markets Authority Consultation

The UK insurance and long-term savings market and the ABI

The Association of British Insurers is the voice of the UK's world-leading insurance and long-term savings industry. A productive and inclusive sector, our industry supports towns and cities across Britain in building back a balanced and innovative economy, employing over 300,000 individuals in high-skilled, lifelong careers, two-thirds of which are outside of London.

The UK insurance and long-term savings industry manages investments of over £1.9 trillion, contributes over £16 billion in taxes to the Government and supports communities across the UK by enabling trade, risk-taking, investment and innovation. We are also a global success story, the largest in Europe and the fourth largest in the world.

The ABI represents over 200 member companies, including most household names and specialist providers, giving peace of mind to customers across the UK. Please note we would be happy, and stand ready, to provide further information if this would be helpful to HM Treasury.

For the purposes of this response, 'insurers' refers to insurance, reinsurance and long-term savings companies.

Thatcham Research

Thatcham Research was established by the motor insurance industry in 1969, with the specific aim of containing or reducing the cost of motor insurance claims while maintaining safety standards.

We remain the UK's only 'not for profit' insurer funded research centre, and hold a unique position thanks to our involvement and engagement with vehicle manufacturers, regulators, law enforcement organisations, automotive bodies and insurers to provide a holistic view of the benefits or shortcomings of vehicle technologies. Our research is at the forefront of vehicle safety, security and repair.

Executive summary

1. The UK is proud to have a robust independent vehicle repair network which gives consumers freedom of choice in aftermarket vehicle care, allows insurers to maintain competitive motor insurance premiums, and which employs a significant number of people within the motor industry. Vehicle block exemptions are critical to the operation of this independent repair network, and we must ensure that the retained Motor Vehicle Block Exemption Regulations (MVER)



are not allowed to lapse without replacement.

2. The cost of vehicle repair has already been increasing quite significantly over recent years as vehicles become more sophisticated. These cost pressures have been exacerbated by various geopolitical and macroeconomic challenges of recent years including, but not limited to, the semiconductor shortage, the Covid-19 pandemic, changes in the labour market, and the crisis in Ukraine. These challenges are already adding significant time and cost into the repair process and the situation would be markedly worse without the provisions set out in the retained block exemption regulations.
3. If the MMBER were to be replaced with UK Motor Vehicle Block Exemption Order (MVBEO), there is room to adapt block exemption to better support the domestic market. Chiefly, this includes stipulations to ensure that vehicle parts and technical and vehicle information is shared with the independent aftermarket. This is of increasing importance as modern vehicles are more sophisticated and connected and increasingly rely on vehicle information to be safely maintained and repaired. MVBEO will also be critical in ensuring that the robust independent repair network is able to support the transition to an electrified car parc.

Question 1: Do you agree with the CMA's proposed recommendation to the Secretary of State to make a Block Exemption Order to replace the retained MMBER with a MVBEO, rather than letting it lapse without replacement or renewing without varying the retained MMBER?

4. We agree with this recommendation.
5. Block exemption regulations have helped to create a thriving and independent after-sales environment which benefits consumers and allows insurers to maintain competitive premium pricing. Allowing the MMBER to lapse without a replacement could undermine this.

Question 2: Relative to current arrangements, if the retained MMBER were allowed to expire, how would the absence of legal certainty and clarity affect your business or those that you represent? Please describe the scale of any legal or expert advice needed (eg time spent with consultants).

6. There are concerns that competition is already being eroded in certain parts of the vehicle repair industry and the impacts are especially marked for independent aftermarket providers. This has been driven by ongoing technical advancement and the importance of access to vehicle information for maintenance and repair; these concerns have also been exacerbated by geopolitical and macroeconomic challenges of recent years. An amended MVBEO will help future-proof the ability of the independent aftermarket to repair vehicles and maintain a competitive environment. There is a risk that competition will be further eroded if motor vehicle block exemptions are not renewed.
7. If manufacturers did not release parts or information to the aftermarket repair network, this would significantly hinder or compromise the quality and standard of repair. The cost of repair would certainly increase which would not be in the interest of the consumer and it is already a major cost pressure for motor insurers. The market may be less resilient to shock as the number of repairers would be constrained and there would also likely be an increase in repair time. This could potentially result in additional burden for the consumer if they were to require a replacement vehicle for a longer period as well.
8. Looking forward, block exemptions are also critical to developing a sustainably large repair market, both in breadth and in depth, required to support the transition to alternative fuel vehicles. The Institute of the Motor Industry has already warned about the potential lack of supply of technicians trained to work on electric vehicles. Their recent study found that: "TechSafe TM qualified technicians required by 2030 is 90,000. As of 2020 there were 15,400 qualified, and using current forecast trends, by 2030 there could be a shortfall of 35,700 qualified technicians, risking the safety of technicians and undermining confidence that electric vehicles can be serviced,

maintained, and repaired by a garage with the right skills. The forecast also indicates that the gap could materialise as soon as 2026 thus risking the government's 2030 green ambitions." This issue would be further exacerbated if block exemption were to lapse without replacement.

Question 3: Relative to current arrangements, if the retained MBER were allowed to expire, how would the absence of legal certainty and clarity impact consumers?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) **Significant negative impact**

Question 4: Do you agree with the CMA's position to limit the scope of the block exemption to three and four-wheeled vehicles? If not, what are the reasons and evidence that warrant an extension of the scope of the block exemption?


- 9. We do not agree with this position. We believe that the scope of the block exemption should be expanded to cover two-wheeled vehicles as well.
- 10. Two-wheeled vehicles are becoming increasingly complex with more sophisticated and expensive parts. Furthermore, we are seeing an increase in the number of 'city' type vehicles – these are three- or four-wheeled vehicles that may share more components and parts with a two-wheeled vehicle. We want to ensure that independent operators have adequate access to parts in order to work on more sophisticated two-wheeled vehicle and these 'city' vehicles as they become more prevalent.

Question 5: Do you agree with the CMA's proposed recommendation not to amend the definition of 'motor vehicle' unless it proposes to recommend a change to the material scope of the MVBEQ?

- 11. For consistency, the definition of 'motor vehicle' should be amended to emulate the Road Traffic Act definition of "a mechanically propelled vehicle, intended or adapted for use on roads" with the understanding that this definition, too, could change given the Government's intention to create new vehicle classes.

Question 6: Do you agree with the CMA's position that the definition of 'spare parts' may need some updating to improve clarity and to reflect technological developments? If so, which aspects need modification? Are there any other changes that you consider should be made?

- 12. We agree with the CMA's position. The current definition states that 'spare parts' are "goods which are to be installed in or upon a motor vehicle so as to replace components of that vehicle, including goods such as lubricants which are necessary for the use of a motor vehicle". This definition is slightly misleading given that lubricant is not a component but a consumable good.
- 13. The definition should be clearer on external items such as charging cables for electric vehicles which are not necessarily "installed in or upon a motor vehicle".
- 14. The definition should also specifically reference 'green parts' and allow for their use in repairs. This would have the benefit of easing some of the supply constraints we are currently experiencing and it is also a more sustainable approach to vehicle repair.
- 15. The definition of 'spare parts' should not be limited to goods that are designed to "replace" components and should also include parts and aftermarket parts that are ancillary to the functioning of a motor vehicle such as cosmetic vehicle parts.

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16. The definition of a 'spare part' should be updated to a sufficient extent and with sufficient clarity to cover all technological developments which are necessary for repairs to the emerging vehicle parc. This definition should be inclusive of traditional components as well as account for more modern facets of vehicle maintenance and repair (e.g. QR codes, OEM-produced diagnostic tools and specific vehicle compatible software that are required to connect and then help repair vehicles).
 17. There is now much more scope for personal risk or harm if the repair information is not made adequately available. Historically, the risk has mostly been associated with repairing a car incorrectly, thereby placing the consumer or other road user at direct risk. Now, with the advent of complex electric vehicles, the technicians and other employees operating in the repair facility (mechanical or body repair) will potentially be at risk, especially from electrical shock, as are others in the supply chain, including the emergency services and any recovery agents if inadequate information is being used in those repairs because it is not openly available.

Question 7: Do you agree that there should be a definition of 'technical and vehicle information' either in the MVBEQ or in the CMAMVBEQ Guidance depending on what recommendation the CMA makes about access to such information?

18. We agree that there should be a definition of 'technical and vehicle information' because this data could be considered an essential input for the repair and maintenance of vehicles and access to which, if denied, could significantly hinder the operations of independent repair networks.

Question 8: Do you agree that the definitions of 'agency agreement' and 'subcontractor agreements' should be considered by the CMA in any future CMAMVBEQ Guidance?

19. We agree with this in order to provide greater legal certainty.

Question 9: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBEQ impact your business's operations or the operations of those you represent? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

20. The proposed changes recommended by the CMA with regards to the definitions would result in a moderate positive impact as an updated definition of 'spare parts' could reflect the changing vehicle car parc. Vehicle repair represents a significant variable cost for motor insurers and those costs continue to rise with the adoption of automated, connected, and electric vehicles. A wider definition for 'spare parts' could potentially help reduce those costs as independent providers will receive certain protections.

Question 10: How would the proposed changes recommended by the CMA with regards to the definitions included in any MVBEQ impact consumers? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

21. Similar to the above answer, customers could be shielded from the impact of various cost pressures as well.

Question 11: How would retaining the current scope of the retained MVBBER in the proposed MVBEO (as opposed to extending it to two-wheeled vehicles) impact your business's operations or the operations of those you represent? Please provide the reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact**
- e) Significant negative impact

22. Retaining the current scope of the retained MVBBER in the proposed MVBEO as opposed to extending it to two-wheeled vehicles would have a moderate negative impact on the operations of businesses that we represent. The cost of two-wheeled vehicles and two-wheeled vehicle parts are experiencing the same inflationary pressures as other vehicle types and protections should be put in place to support competition in the market.

Question 12: Do you agree with the CMA's proposed recommendation to retain the current market share threshold in the proposed MVBEO? If not, what are the reasons and evidence that warrant a change to the market share threshold in the proposed MVBEO?

- 23. We agree with the view that market share alone may not be reflective of the actual influence certain industry segments can have on a market. This is especially relevant for companies that may have direct and immediate access to vehicle data.
- 24. For example, with the rise of connected vehicles, vehicle manufacturers may know of a vehicle collision immediately after it occurs. The vehicle manufacturer can then arrange for their preferred repairer or supplier to contact the registered owner before any other party can be involved in the process, thereby reducing competition in the market. This could potentially impact the overall customer journey because if the customer does not claim with the insurer, they may not be entitled to benefit from coverage linked to other costs, e.g. medical costs, child seats, etc.

Question 13: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was increased?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact**
- e) Significant negative impact

Question 14: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was decreased?

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 15: Do you agree with the CMA's recommendation to retain the current hardcore restrictions in the retained MVBBER in any MVBEO? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?

- 25. We agree with the CMA's recommendations.

Question 16: Do you agree with the CMA's recommendation to maintain the current hardcore restrictions relating to spare parts and consider, in due course, whether further guidance is needed to address residual and novel issues reported by some

stakeholders? If not, what changes to the MVBEQ would be necessary in order to address the issues? Please provide the reasoning behind your response.

26. It has become increasingly difficult for independent repairers to obtain and use spare parts for repairs, which should be addressed. Some OEMs are restricting access to both spare parts and repair information by charging a fee to independent operations, a cost which does not exist for the approved networks. We believe that this issue should be addressed via changes to the MVBEQ as opposed to the CMAMVBEQ Guidance.

Question 17: What would be the likely impact on your business's operations or the operations of those you represent if novel and residual issues relating to spare parts were addressed in any CMAMVBEQ Guidance, rather than in direct changes to the proposed MVBEQ itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact**
- e) Significant negative impact

Question 18: What would be the likely impact on your business's operations or the operations of those you represent if the definition of spare parts were to be updated to reflect technological developments and to clearly capture all relevant goods necessary for the use of the motor vehicle?

- a) Significant positive impact**
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 19: What would be the likely impact on your business's operations or the operations of those you represent if the current hardcore restrictions were retained in any MVBEQ?

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 20: Please provide a short explanation highlighting your reasoning for your answer above.

27. The current hardcore restrictions help facilitate competition in the market. Guidance can be used to help maintain that level of competition as the industry changes.

Question 21: How would retaining the current hardcore restrictions used in the retained MVBEP in the proposed MVBEQ impact consumers?

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 22: Do you agree with the CMA's recommendation that the current list of excluded restrictions in Article 10(2) of the VABEQ be maintained? If not, what are the reasons and evidence that would warrant a change to the current list of excluded restrictions?

28. We support the CMA's recommendations.

Question 23: What would be the likely impact on your business's operations or the operations of those you represent if the current excluded restrictions in Article 10(2) of the VABEO were retained? Please provide the evidence and reasoning behind your answer.

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 24: Please provide a short explanation highlighting your reasoning for your answer above.

29. The current excluded restrictions help facilitate competition in the market. We welcome the proposal to have additional restrictions for 'technical and vehicle information'.

Question 25: How would retaining the current excluded restrictions used in the retained MVBEO in the proposed MVBEO impact consumers?

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 26: Do you have any views on whether restrictions on access to technical information should be treated as excluded restrictions in the MVBEO or whether this issue is best addressed by way of guidance coupled with the mechanism for removal of the benefit of the block exemption in individual cases?

- 30. We believe that restrictions on access to technical information should be managed using a hardcore restriction.
- 31. There is concern over making access to technical and vehicle information an 'excluded restriction' – i.e., it will not therefore be automatically prohibited (like a hardcore restriction) but will not receive the benefit of the block exemption and so requires a case-by-case analysis. The type of information discussed includes (a) Remote prognostics and diagnostics; (b) Accident and breakdown insurance; (c) Navigation; (d) Fleet management; (e) Leasing and car-sharing; (f) Traffic management; (g) Usage-based insurance; (h) Infotainment. Insurers and their repair networks have experienced material restricted access to these materials and information types in the past. If this were to continue, it could represent an increased risk in terms of how damaged vehicles are properly repaired.
- 32. Reasonable access to remote diagnostic information is essential in order that a repair is carried out properly and safely. As a result, we think a system whereby if restrictions are imposed on accessing this type of information in the market, this ought to be a hardcore restriction similar to the regime that's in place for physical spare parts and this is the right time to remove this excluded restriction.

Question 27: Are there any other mechanisms which the CMA should consider in order to address the issues identified?

- 33. While we recommend the use of hardcore restrictions to address this issue above, we also recognise the CMA's reluctance given the complexity of the issue. In that case, we would strongly support the use of "excluded restrictions" over MVBEO Guidance. In addition, if the CMA were to include technical information as an "excluded restriction," then any restriction on access should require a clear rationale as to why the removal of access will not hinder competition and this onus of proof should rest with those restricting access, and not with those requesting access.

Question 28: Should the CMA define ‘technical and vehicle information’ by reference to the relevant definitions in the EU Supplementary Guidelines and in Regulations (EU) 2018/858 of 30 May 2018, (EC) No 715/2007 and (EC) No 595/2009? If not, how should this be defined in order to capture information and other inputs which amount to an essential input for independent providers?


34. The criticality of information is changing with the increased connectivity of vehicles. The speed at which this information is accessed is imperative to the functioning of the aftermarket. There is concern about a tendency for vehicle manufacturers to require proprietary devices to access vehicle information or diagnostics tools and this practice should be ceased to make sure independent providers are allowed to offer their services.
35. Furthermore, with the more widespread adoption of over-the-air updates, it is important that the definition of ‘technical and vehicle information’ incorporates the changeable nature of this data and should be flexible enough to account for those changes.
36. Data flows should also not only be restricted to when they are needed to actualise a physical repair as it would still leave the independent market at a disadvantage to offer maintenance and regular upkeep of a vehicle. Data flows should be used to proactively monitor the health and stake of a vehicle and this should be not be limited to official networks.

Question 29: Do you agree that the treatment of access to technical and vehicle information as an essential input should extend to other essential inputs such as availability of tools and training to independent operators? Are there any other essential inputs which the CMA should consider?

37. Yes, we agree. There are many instances where limited access impedes competition. In some cases, vehicle manufacturers are removing OBD ports from vehicles and forcing more and more servicing and repair through their proprietary networks and back-end systems, excluding choice and independent repair.
38. There are also some instances where repairers have to plug a car into the manufacturer’s database to carry out minor repairs. For example, on a certain vehicle model, you have to use the manufacturer’s software in order to bleed a radiator.
39. In addition, some headlamps and steering racks now have to be coded into the car for them to work, which will prevent the use of non-original equipment parts. In light of both the supply shortage of parts and the environmental impact, the CMA should ensure a system that allows for the use of green parts in repairs.
40. We also want to stress that information should be transparently shared with customers, so they are able to make the best decisions for themselves. The current process for parts replacement using aftermarket parts and the potential to nullify warranties can lead customers to opt for factory repairs if other options are not readily presented.
41. However, the wording should reiterate that access is for repair, servicing, and maintenance so as not to open up the possibility of misuse of systems for other purposes such as key and security related functions.

Question 30: Does the definition of ‘independent operator’ in the EU Supplementary Guidelines need to be updated to take account of new players who may require access to information as an essential input?

42. The current definition of ‘independent operator’ includes “independent repairers, spare parts manufacturers and distributors, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.”

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43. We believe that this definition should, in some cases, include owners and operators of fleets of vehicles as they may play a role in the repair and maintenance of vehicles.
44. It is important to differentiate between types of information suitable for each of the independent operators. Some guidance which protects against unintended consequences is important.

Question 31: What would be the likely impact on your business's operations or the operations of those you represent if restrictions on access to technical information were treated as excluded restrictions in any MVBEQ?

- a) Significant positive impact
- b) Moderate positive impact**
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact

Question 32: Please provide a short explanation highlighting your reasoning for your answer above.

45. Many of the increasingly restrictive practices demonstrated by OEMs which impact independent repairers accessing information would be easier to challenge if technical information were available on an equal basis.

Question 33: What would be the likely impact on your business's operations or the operations of those you represent if restrictions on access to technical and vehicle information were addressed solely in any CMAMVBEQ Guidance?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact
- e) Significant negative impact**

Question 34: Please provide a short explanation highlighting your reasoning for your answer above.

46. Although guidance would be helpful, its effects are unlikely to manifest in change of behaviour – especially in the event that the European MBER does not change its guidance to match. There is little impetus for an OEM who is already restricting free market access to technical and vehicle information vital to repair to change its current stance if the restrictions are not excluded.

Question 35: Which types of vehicle collected data would offer the most benefits to your business operations if it were an excluded restriction in any UKMVBEQ? Please provide reasoning for your answer.

47. This is a complicated and ever-changing topic as technology in vehicles becomes more advanced. Some examples would be the ability to access diagnostic information, perform appropriate diagnostic procedures and obtain confirmation of successful application of repair.

Question 36: Do you agree with the CMA's proposed recommendation to provide updated guidance in any CMAMVBEQ Guidance on the issue of warranty restrictions?

48. We agree with the CMA's recommendations but believe that the guidance should be extended to account for practices that are becoming more prevalent in the market that have the potential to erode competitiveness. For example, some OEMs void warranties if 'green parts' are used in a repair. This issue is especially important to address given the ongoing vehicle parts supply issues and to help facilitate a more sustainable ecosystem for vehicle repair. Similarly, some OEMs refuse to repair a vehicle under warranty unless a service history from OEM workshops is provided.

Question 37: What would be the likely impact on your business's operations or the operations of those you represent if issues in this area were addressed in any CMA/MVBEO Guidance, rather than in direct changes to the proposed MVBEO itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact
- d) Moderate negative impact**
- e) Significant negative impact

Question 38: Do you have any views on whether limits on the number of authorized repairers within a brand pose a competition issue in the UK? Do you agree with the CMA proposed recommendation of providing further guidance on this issue instead of introducing changes to the block exemption itself?

- 49. We should make an assessment of the total number of both authorised and independent repairers to understand the availability of services in the market. There should also be consideration for artificial limits imposed on independent repairers.

Question 39: What would be the likely impact on your business's operations or the operations of those you represent if issues in this area were addressed in any CMA/MVBEO Guidance, rather than in direct changes to the proposed MVBEO itself?

- a) Significant positive impact
- b) Moderate positive impact
- c) Negligible impact**
- d) Moderate negative impact
- e) Significant negative impact

Question 40: Please provide a short explanation highlighting your reasoning for your answer above.

- 50. Enabling more repairers to have access to networks should improve outcomes for consumers and we believe the issuance of Guidance here would be proportionate.

Question 41: The CMA invites views from interested stakeholders on the proposed six-year duration of the MVBEO.

- 51. Given the pace of the technological changes we have seen in terms of vehicle connectivity, the rise of automated driving technologies, and the electrification of the vehicle car parc, we would be in favour of a shorter timeline for review. We believe that a six-year duration is preferable over the current ten-year period.

Question 42: The CMA invites views on the above proposed recommendations in respect of the other provisions in the MVBEO.

- 52. No further comments.

**The Association of British Insurers and Thatcham Research
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