Department for Transport

Safe Use of Automated Lane Keeping System (ALKS):

Call for Evidence

A response by the Association of Personal Injury Lawyers

October 2020

Introduction

APIL welcomes the opportunity to respond to this call for evidence on the safe use of the Automated Lane Keeping System (ALKS) and recognises that this is the first step into further introduction of automation on UK roads.

APIL acknowledges and supports the fact that the automated technology will improve safety in the long-term due to the reduction in driver error. Some of the ALKS[1] regulations limit the way in which the system will operate. This could result in the system contradicting the Government's intention to improve the safety of road users and in fact make it more dangerous.

APIL are disappointed that following the Centre for Connected and Autonomous Vehicles consultation in 2016[2], the law in this area was not implemented. There is also concern regarding how vehicles that are able to use the ALKS will be insured. Currently there is no protection under the Act for partially controlled autonomous vehicles, this presents challenges to those who seek compensation for injuries that occur.

It is critical that those who have sustained injuries following a road traffic collision are able to access compensation to put them back into the position they were in prior to the accident, as far as possible. APIL is concerned that claimants may be forced to face manufacturers in challenging and costly product liability claims rather than through a personal injury claim due to the issue surrounding the driver's responsibility when the ALKS is activated. Product liability claims often result in the claimant being unsuccessful in securing compensation for their injuries due to the manufacturers' ability to fund expensive and the complicated litigation both of which create an unlevel playing field resulting in the claim being unviable for the individual claimant to pursue. This makes it challenging for claimants to be compensated for their injuries which were sustained through no fault of their own. In order to ensure injured people are able to access compensation, the ALKS must fall under the Automated and Electric Vehicles Act 2018 (AEVA).

APIL is concerned that the consultation document suggests that other activities can be performed when the ALKS is activated. Although the ALKS relieves the driver from the burden of constant steering, similar to adaptive cruise control relieving the burden of constant speed adjustment, the driver is still required to supervise the vehicle at all times. ALKS technology is already in use on UK roads. This level of technology does not does not presently enable the driver to undertake activities over and above those which any driver would be able to do. The ability to perform other activities should be reserved for fully autonomous driving (Level 5 automation), whereas ALKS is currently Level 2.

[1] Automated Lane Keeping Regulation endorsed in March 2020

[2] Centre for Connected and Autonomous Vehicles, Pathway to Driverless Cars: Proposals to support advanced driver assistance systems and automated vehicle technologies

APIL has answered the questions which are within its remit.

Do you foresee any legal barriers to accessing data for incident investigation?

Yes.

If yes, what are those barriers?

If an ALKS vehicle is involved in a collision, the police should be able to access the ALKS data (and other relevant computerised retained data) as a matter of course. This information will be critical in all potential investigations (i.e. criminal, product liability, personal injury) to show whether the system was engaged at the time of the collision or whether the driver was responsible in some way. To achieve this the time and financial pressures experienced by the police must be overcome to ensure that limitation within police resources do not prevent the obtaining and examination of the data. A specialist government agency which has specific expertise to analyse the data for investigation purposes should be set up to ease the burden on individual police forces and provide a dedicated service. This will reduce the pressure on the police to employ software technicians at a local level allowing local forces to initially capture the data and then send it to the specialist government department to interpret. It is therefore essential that the police are prohibited to withhold the data and if it is requested, the police must allow a properly interested person requesting the data to access it.

In light of the above, it is crucial that *all* the data should be accessible to anyone who is properly interested (such as someone who has suffered an injury in a collision). Where a collision has occurred and a civil claim is being contemplated, data will help to establish whether it may be necessary to join the manufacturer of the vehicle software to the proceedings in addition to the driver. The driver themselves should also be able to access the data, however it should be an offence for a driver who is responsible for a collision to destroy the data. In addition, there should be a provision within the Data Protection Act 2018 to allow third parties to access the data. This may be useful for a third party to use in their investigation and litigation if they are involved in a collision with another vehicle.

How do you think the driver should be educated and informed to understand the abilities and limitations of the system to ensure they use it safely?

Although it would be beneficial for drivers to be able to experience a form of simulation or training demonstrating/informing the driver how the ALKS operates, its limitations and the driver's responsibility when the ALKS is engaged, we question whether this is practical in a generic setting. It would be best delivered by the manufacturer to the driver in the owner's manual, and some manufacturers already provided videos for users to watch about the use of these systems.

It would be challenging to enforce initial training due to the way in which vehicles are being purchased. Vehicles with automated technology are often purchased online with no engagement with a traditional car dealership. In addition, because of the pace at which technology is developing, automated technology is being updated on almost a daily basis. Any centrally organised training offered could quickly become out of date. It would be impractical to expect drivers to retrain or receive further training every time the system is updated if this sometimes occurs multiple times per day.

Automated technology such as the ALKS has the potential to improve safety and reduce collisions, however those who choose to purchase it should be obliged to understand their responsibility to drive safely and educate themselves on how the system works. It is important that the regulatory framework should not inhibit innovation but encourage early adoption of the ALKS safety measures.

What role do you think manufacturers selling this system should play in providing this education and information?

What role do you think the Government and its agencies should play in providing this education and information?

Due to transportation developments such as the introduction of automated technology, perhaps information on autonomous systems should be introduced into driving tests to ensure that driving tests are up-to-date. The manufacturers, the Government and its agencies have a joint responsibility to provide information to educate drivers how to safely use automated technology on the roads after they have taken their initial driving test. This is crucial considering a physical training course or a form of simulation may be impractical. The information provided is essential to ensure the roads are as safe as possible and that drivers have the information required to ensure their knowledge is up-to-date on the ALKS, other automated technologies and transportation developments.

In order for APIL to fully comment on the role of the manufacturers and the Government and its agencies in providing education and information, we would require further detail on what education and information is proposed and what would be necessary to ensure that drivers are confident and proficient in understanding the limitations of the ALKS to be able to use it properly and safely.

Subject to the outcome of this call for evidence and subsequent consultation, would you have concerns about a scenario where any vehicle approved to the ALKS regulation would be automatically considered to be an automated vehicle under AEVA?

APIL supports any vehicle approved to the ALKS regulation being automatically considered as an automated vehicle under the AEVA due to the ALKS fitting the definition and interpretation of an automated vehicle under the AEVA[3]. This will ensure that the insurer will be liable under section 2(1)[4]. It will also ensure that injured claimants have access to vital compensation which will go as far as possible in putting them back into the position they were in prior to sustaining the injuries as a result of a road traffic collision with an automated vehicle.

Do you agree that the criteria set out in the Monitoring and Control Tests provide a reasonable framework for testing compliance with the AEVA definition of automation? Why?

We are concerned with how the ALKS may be able to treat other road users with ‘reasonable consideration’. We believe that this needs further deliberation by Government.

[3] Automated and Electric Vehicles Act 2018 (AEVA) pt 1 s 8(1)(a)
[4] AEVA pt 1 s 2(1)

How do you think ALKS will detect and respond to a police or other enforcement vehicle approaching from behind signalling for the vehicle to pull over?

The ALKS is currently Level 2 automation. This means that the driver must remain engaged at all times and monitor the environment due to the ALKS being only partially autonomous[5]. Given the level of automation being discussed, the driver must remain in control of the vehicle at all times. In light of this, the driver should be fully aware of the enforcement vehicle and be able to act accordingly. It is crucial that due to the level or automation, the driver is prohibited to perform other activities whilst driving, contrary to the suggestion of the consultation document, so they are not distracted from reacting to an enforcement vehicle.

Do you think that 10 seconds is fast enough in the foreseeable circumstances to comply with the rules on responding to enforcement vehicles? If not, why?

APIL has no comment.

How will ALKS detect a minor or low-energy collision, in order to come to a stop and alert the driver?

This question assumes that the driver will not be aware of a minor collision if one were to occur. APIL reiterates that the ALKS is only Level 2 automation and therefore the driver is still required to actively supervise the vehicle at all times. Level 2 autonomous vehicles already automatically disengage in such circumstances and there is also a legal requirement on a driver to come to a stop after a collision occurs.

Do you foresee any risks should ALKS vehicles not stop for low-energy impacts?

Yes.

If yes, what are these risks?

The consultation suggests that the ALKS may not disengage which is concerning because technology is already available to ensure that this can happen in these circumstances. It is important that the ALKS disengages when a low-energy impact occurs which reflects the current technology. Considering the level of automation of the ALKS, the driver will continue to actively supervise the vehicle when the ALKS is engaged and there is a legal requirement for a driver to stop after a collision has occurred.

How will manufacturers ensure that ALKS vehicles deployed in Great Britain are able to recognise signage located above the road that may be unique to Great Britain?

Rule 261 in Annex B requires drivers to abide by temporary speed limits on UK roads, therefore it is crucial that the ALKS is able to detect temporary speed limits above carriageways to ensure that the vehicle is not exceeding the speed limit. APIL has no

[5] Matt Schmitz 'Autonomous Driving Levels and What They Mean to You' 8 August 2020 https://www.cars.com/articles/autonomous-driving-levels-and-what-they-mean-to-you-424979/

specific comments on how the ALKS may do this and believes this will be more suitably answered by the manufacturers of the ALKS. However, we understand that it is already technologically possible and this should be implemented to ensure that the ALKS is suitable for UK roads.

Do you have concerns about vehicles that are registered as AVs on the DVLA database but the keeper has chosen to have the functionality disabled so they are not capable of operating as an AV?

APIL has concerns regarding the issue of liability and insurance.

If yes, what are they?

A vehicle registered as an automated vehicle on the DVLA database but the driver not using the automated technology in the vehicle may raise liability issues if an accident occurs. A driver may state that the functionality is disabled to the DVLA but may in fact still be using it. This would raise issues as to whether the driver was responsible for a collision or whether the collision occurred due to the ALKS being activated. This highlights the importance of being able to access the data of the ALKS to establish liability for investigations and litigation.

As stated in our response to the Centre for Connected and Autonomous Vehicles consultation, automated vehicles should not require additional liability insurance because automated vehicles fit into the definition of "vehicle" under section 185 of the Road Traffic Act 1988. APIL reiterates that there should be an amendment to the Road Traffic Act 1988 to make it clear that automated cars fall within the scope of section 145[6] and a claimant should be able to bring a claim against the driver of an automated vehicle using their normal policy.

APIL argues that regardless of whether the driver is in control of the vehicle or whether the ALKS is in control, an injured party should be able to bring a personal injury claim through the motor insurer and be compensated on a strict liability basis rather than having to make a product liability claim. It would then be the responsibility of the insurer to seek damages from the manufacturer of the ALKS if the collision occurred as a result of the ALKS being in control of the vehicle. A product liability claim presents many challenges to claimants attempting to obtain compensation to put them back into the position they would have been prior to sustaining injuries as a result of a collision with an automated vehicle. It is challenging to prove that a product is defective and it is also costly to pursue such a claim due to the complex nature of the claim and substantial resources required to investigate and challenge the company/manufacturer who developed the product/software. A claimant is therefore unlikely to be able to fund the litigation, never mind recover damages in a product liability claim. This adds to the already stressful and traumatic circumstances which the injured person finds themselves. It is therefore important that the insurer is automatically liable if a collision occurs when the vehicle is being driven fully autonomously as it would be when the ALKS is engaged.

[6] Road Traffic Act 1988

Do you agree that it is appropriate to exempt the driver from prosecution – if the vehicle comes to an unjustified stop when ALKS is engaged – by creating a further exception in the Motorway Traffic Regulations? If not, why?

APIL agrees that the driver should be exempt from prosecution if the vehicle comes to an unjustified stop when the ALKS is engaged. The driver should not be held responsible for a defect in the ALKS. The data stored by the system will be able to show whether it was the driver's failure to respond to a transition demand and therefore the system came to a stop, or whether the system was defective and as a result came to an unjustified stop. This is another reason why the ALKS fit into the definition of "vehicle" under section 185 of the Road Traffic Act 1988 and why an injured party should be able to bring a personal injury claim through the motor insurer and be compensated on a strict liability basis rather than have to make a product liability claim. This may however, result in the need to review the data to determine the circumstances of the incident on a case-by-case basis to establish fault.

Do you agree that amending Rule 150 is sufficient to clarify that the driver may rely on the ALKS? If not, why?

APIL is unable to comment on whether the amendment to Rule 150 is sufficient to clarify that the driver may rely on the ALKS due to the consultation document failing to propose specific wording to amend Rule 150. However, we recommend that in the proposed wording for the amendment to Rule 150, it should state that the driver must be available to take control as necessary.

Although APIL acknowledges that a driver should be able to rely on the system as it detects what vehicles are doing in advance, there seems to be various limitations including the ALKS's inability to sense temporary speed limits and enforcement vehicles which will require the driver's attention. The responsibility is on the driver to acknowledge these limitations and take control of the system to ensure that they are abiding by road traffic law. Therefore, the proposed amendment to Rule 150 to allow reliance on the system gives a bad impression of the driver's responsibility when the ALKS is engaged. APIL believes that as long as the ALKS is safe and reliable, a driver should be able to rely on the system. However, as the ALKS currently stands, it is flawed in detecting vital information to safely rely on the system.

In addition, if the driver is able to rely on the ALKS, it is crucial that the strict liability issues apply. This will ensure that if a collision occurs whilst the system is engaged, the injured party is able to access compensation for their injuries through the insurer, who will be automatically liable.

Do you agree that not changing the Motorway Traffic Regulation, except for unjustified stops, ensures the driver is suitably incentivised to take back control when requested? If not, why?

APIL agrees that the driver should be incentivised to resume control of the vehicle when requested to do so, by being liable for prosecution where they do not act accordingly. We agree that this should only apply to unjustified stops so drivers are not, for example, liable for prosecution in the event of a system failure.

Do you agree that the Highway Code should be changed so that drivers of ALKS must be alert to a transition demand? If not, why?

APIL agrees that the Highway Code should be changed so that the driver of a vehicle using ALKS must be alert to respond to a transition demand. However, the current Highway Code Review fails to include micromobility vehicles despite their existing presence on the road. Considering that e-bikes are already permitted to be used on the roads and e-scooter trials have been introduced across the country yet they are not reflected in the Highway Code, suggests that the implementation of this proposal in the Highway Code will be extremely delayed. The Highway Code should be up-to-date and even with the implementations proposed within The Highway Code Review 2020, it fails to reflect the reality of the roads as they currently stand.

The Highway Code also needs to make clear which automated vehicle it is referring to because other systems such as ADAS require full attention in comparison to the ALKS but have similar capabilities. Therefore, it would be useful to differentiate these types of automated technologies within a glossary to ensure that the driver is fully aware which Highway Code rules apply to them. Alternatively, The Highway Code could have a separate section on automated vehicles since further automated technologies will be introduced in the future.

Do you agree that the Highway Code is sufficient to communicate to drivers their responsibility? Why?

Implementing the above proposal into The Highway Code is not sufficient in informing drivers of their responsibility when using the ALKS. Education throughout individuals' lives for all road users is essential to maintain road safety and road awareness from a young age, especially in relation to new technologies such as the ALKS. Education must come from the Government and its agencies to inform drivers of instances where they are responsible, and therefore liable, if a collision occurs in addition to being aware of the limitation of the ALKS as discussed above. This will ensure that drivers can be as safe as possible when using automated technologies on UK roads and protect both themselves and other road users. In addition, often people are aware of The Highway Code and are broadly aware of the rules, however will not have physically read it. Re-education is therefore crucial when further implementations to the Highway Code are made.

With specific reference to automated vehicles, the Government and its agencies must play a part in informing drivers of their responsibilities when the ALKS is activated because manufacturers will be unlikely to provide such information in order to ensure their product sells.

Do you think the driver should be allowed to perform other activities when ALKS is activated if they must only be ready to respond to a transition demand? If not, why?

It is currently lawful for drivers to perform other activities such as having a drink, eating a snack, listening to the radio and using a hands-free phone. However, given the level of automation for ALKS technology it is essential that the driver retains control of the vehicle, unlike in the case of a fully autonomous vehicle (which is Level 5). Therefore, the driver of a vehicle which has ALKS engaged should be prohibited from performing other activities which are not currently legal for an ordinary vehicle to ensure they are available to take control of the vehicle when necessary.

APIL does not therefore agree that as the system currently stands, drivers should be able to perform other activities when the ALKS is activated due to the system limitations discussed.

What other activities do you think are safe when the ALKS is activated?

The ALKS is not sufficiently autonomous to enable the driver to perform other activities that are not legal at present. It is unsafe for a driver to use a hand-held mobile phone or other hand-held devices because the driver is required to take control whenever necessary and should remain focused on the road.

Do you think that the driver should be allowed to undertake other activities if ALKS is not listed under AEVA? If not, why?

APIL does not believe that the driver should be able to undertake other activities if the ALKS is not listed under the AEVA because it would not be classed as an automated vehicle. Therefore, if the ALKS is not classed as an automated vehicle, the driver would be responsible at all times and be liable for any collision whilst the ALKS is activated.

Do you agree that an exception should be added to enable the use of the infotainment system for activities other than driving? If not, why?

APIL reiterates that at present, the ALKS is only partially autonomous. Therefore, drivers should be prohibited to use their infotainment system for uses other than what is currently legal. For example, when the ALKS is engaged, a driver should not be able to watch or view visual content because they are required to supervise the vehicle and take control as necessary. Visual content should be reserved for vehicles which are fully autonomous.

Are there any activities you consider unsafe to perform through the infotainment system?

If yes, what are they?

We are some way off having fully autonomous driving systems that do not require some form of driver supervision/control. As vehicles become fully autonomous (level 5 automation), other activities could be performed through the infotainment system. For example, the driver could be able to look at an email through the infotainment system. However, the current technology is not sufficiently autonomous to enable a driver to perform any other activities as the driver must maintain supervision and be able to take control of the vehicle when necessary.

Do you agree with this approach? Why?

APIL agrees that the ALKS should be permitted to use speeds up to 70mph due to the restricted circumstances which are proposed within this consultation (up to 37mph on a motorway in a single lane). It is therefore critical that the safety concerns and the limitations of the system raised as part of the consultation, are dealt with prior to allowing the ALKS to reach such speeds due to the consequences of collisions at 70mph.

Do you have any other comments you'd like to make?

APIL has no further comments.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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