

The Department for Transport (DfT) is carrying out this consultation to gather evidence on the regulation of Automated Lane Keeping System (ALKS). This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.

As part of this consultation, we're asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only for the purpose of asking follow-up questions.

We have contracted the Law Commission to analyse the responses we receive to the consultation. If you provide your contact details, we will share this information with the Law Commission in case they need to contact you regarding your consultation response.

Your information will be kept securely within DfT and destroyed within 12 months after the call for evidence has closed. More information about DfT's privacy policy can be found at: <https://www.gov.uk/government/organisations/department-fortransport>

Your details

1. Your (used for contact only):

Name	Abi Jennings
Email	Abi.jennings@apil.org.uk

2. Are you responding:

	As an individual?
X	On behalf of an organisation?

Organisation details

3. Your organisation's name is?

Association of Personal Injury Lawyers (APIL)

4. Your organisation's work is?

	Academics
	Disability groups
	Vehicle manufacturer

	Emergency services and police
	Legal
	Local government
	Highway authorities
	Local representative groups
	Public sector
	Research, consultancy and professional organisations
	Safety and road user groups
	Insurance
	Component supplier or technology developer
	Vehicle operator
x	Another area: Campaigning

5. Your organisation is in:

X Our registered office	England
	Wales
	Scotland
	Northern Ireland
	Another country

Individual details

6. You live in:

	England
	Wales
	Scotland
	Northern Ireland
	Another country

7. We ask whether respondents are satisfied that the proposed wording below achieves the outcomes articulated above for The Highway Code? And if not, why?

APIL welcomes the opportunity to respond to this consultation following our response to the Safe use of Automated Lane Keeping System (ALKS) call for evidence (ALKS call for evidence), submitted in October 2020. APIL supports the introduction of a separate section to The Highway Code to solely deal with rules and information relating to automated vehicles (AVs), rather than amending Rule 150 as suggested in the ALKS

call for evidence. However, there are some concerns regarding the wording of this section and what it suggests to a driver of a vehicle which is capable of driving itself.

In considering the introduction of partially automated vehicles and the need to educate drivers of their responsibility when using AVs, the proposed wording is very brief and limited. More detail is required regarding transition demands, potential limitations, driver responsibility and liability if a collision were to occur. The proposed wording does not go far enough in educating drivers. APIL acknowledges that the DfT will be working with Government agencies, industry and manufacturers to ensure that sufficient information is available to educate road users on AVs, however more needs to be done within The Highway Code to outline at least basic information on different types of AVs, including the ALKS.

Although the proposed wording differentiates between an AV that is capable of driving itself and assisted driving features, it fails to specifically mention the ALKS by name and highlight some of the system features. For example, the wording fails to discuss the importance of the requirement to respond to a transition demand to take back control of the vehicle. Due to the introduction of the ALKS, The Highway Code should include as much information as possible to allow an individual to educate themselves of the main features of the ALKS and recognise the limitations of the system. This will ensure that the ALKS is being used as safely as possible. In APIL's response to the ALKS call for evidence, we suggested using a glossary to differentiate between AVs so that a driver can identify the information relevant to them and the system which they have. This does not seem to have been implemented and the simple wording proposed may confuse a reader on whether they need to remain in control of the vehicle or not.

The wording 'while an automated vehicle is driving itself, you are not responsible for how it drives, and you do not need to pay attention to the road' gives a bad impression of the driver's responsibility when the ALKS is engaged. Due to the current limitations of the system, in addition to the level of automation of the ALKS, APIL does not agree that a driver using the ALKS does not have to focus on the road whilst it is engaged. APIL acknowledges that the DfT have stated in the outcome document for the ALKS call for evidence that all three of the limitations discussed can be dealt with and the technology must be fitted with the ALKS to deal with these limitations in order to be approved. However, the driver must be aware of their surroundings in order to safely take control of the vehicle when the system makes a transition demand. This suggested wording discourages the driver to remain focused on the road. This may be unsafe for resuming control of the vehicle. This also contradicts the later wording, namely; 'you MUST remain in a position to be able to take control' and that a driver 'should not be so distracted that you cannot take back control when prompted'. APIL thinks that if this section is to be introduced, clarification is required to ensure that those using the ALKS remain focused on the road and the surroundings to ensure they are in a position to safely take control of the vehicle as a response to a transition demand.

The ALKS systems already being used on the roads require the driver to apply some slight turning force to the wheel every 15 seconds to establish that the driver is paying attention to the road and is available to take control where necessary. Other ALKS systems have cameras in the vehicle to monitor the driver to ensure they are paying attention. If this force is not applied or the driver is seen to not be paying attention, then the ALKS will disengage and the car will come to a stop. These checks are required under the UNECE regulations. Manufacturers of such systems emphasise that a driver must pay attention at all times and continuously supervise the vehicle when the ALKS is engaged. This clearly demonstrates the requirement for a driver to remain focused on the road.

APIL believes that this Highway Code section contradicts reality and the advice from manufacturers on how to safely use the ALKS. This section is therefore inappropriate for the safe use of the ALKS. Ultimately, these changes should be introduced when vehicles have the capability to drive fully autonomously without driver supervision. This is not possible in light of the current state of the technology, yet the Highway Code wording within this consultation suggests otherwise. The wording creates confusion and a potential false sense of security as it gives the impression that the ALKS does not require supervision. This could ultimately lead to unsafe use of the ALKS and force the ALKS to disengage and stop in a lane on a motorway.

8. Do you have concerns about the impacts of the proposed changes to The Highway Code? Why?

APIL welcomes the fact that the Government expects that vehicles fitted with ALKS will be classified as an AV under the Automated and Electric Vehicles Act 2018 (AEVA). This will make the motor insurer of a vehicle fitted with the ALKS automatically liable under section 2 AEVA, ensuring that a claimant injured by a vehicle fitted with the ALKS will have access to vital compensation. APIL is therefore concerned that the DfT state within this consultation that appropriate actions will be determined depending on whether the vehicle was driving itself at the time of an incident, contrary to the outcome of the ALKS call for evidence.

APIL has reiterated the need for strict liability in relation to road traffic collisions involving vehicles *capable* of driving themselves in its responses to the ALKS call for evidence and the Joint Law Commissions' papers on AVs. We reiterate again strict liability should not only apply to fully automated vehicles. If a vehicle is capable of driving itself, then the motor insurer should be automatically liable for any civil claim involving a partially automated vehicle, or automated vehicles not being driven autonomously such as the ALKS. It is critical that injured people are able to access compensation to put them back into a position they would have been in if they had not sustained injuries as a result of a collision. Without strict liability, injured claimants would be denied access to compensation, being forced to pursue complex and costly product liability claims against

well-resourced manufacturers. These claims are inviable for individual claimants and therefore unjust.

APIL is also concerned that it is unclear how the ALKS will be regulated. Checks to ensure that the driver is paying attention are required under UNECE regulations but not strictly required under the US system of regulation. The proposed wording makes no mention of such checks and the requirement to focus on the road, suggesting that the UK will adopt regulation similar to the US. It is crucial to clarify which regulations the UK will be adopting in order to ensure the Highway Code is worded appropriately to educate users of the ALKS.

In addition, APIL is concerned that the circumstances in which the ALKS can be used, namely in a single lane of a motorway at speeds up to 37mph, is not particularly safe. The lateral force limit imposed by UNECE regulations means that the ALKS cannot be used safely on a motorway-type road below 37mph. The aim of automated vehicle technology is to reduce human error and reduce the number of collisions, thus making roads safer. However, using the ALKS may actually reduce safety when it is engaged because it is unable to operate safely in the environment that it is permitted to operate in.