



27th October 2020

**Consultation Co-ordinator
Department for Transport
Zone 1/29
Great Minster House
London SW1P 4DR**

Dear Sirs,

Safe use of Automated Lane Keeping Systems (ALKS) – Call for Evidence

We refer to your call for evidence about the safe use of ALKS which was published on 18th August 2020. I am replying in my role as Executive Director of The British Insurance Brokers' Association (BIBA.) BIBA is the UK's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

BIBA membership includes more than 1800 regulated firms, employing more than 100,000 staff. General insurance brokers contribute 1% of GDP to the UK economy; they arrange 67% of all general insurance with a premium totalling £66.5bn and 81% of all commercial insurance business. Insurance brokers put their customers' interests first, providing advice, access to suitable insurance protection and risk management.

BIBA receives more than 600,000 enquiries per year to its Find Insurance services, online and via the telephone which are directed to member insurance broking firms.

BIBA is the voice of the sector advising members, the regulators, consumer bodies and other stakeholders on key insurance issues.

BIBA's summary position on ALKS

BIBA welcomes the advent of ALKS technology as an important step towards the goal of safe automated driving on UK roads, but we think it should be classified as 'assisted' driving technology. We think that it is premature to classify vehicles fitted with ALKS technology as 'automated' under the Automated and Electric Vehicles Act 2018. In reaching this conclusion, we have drawn on the views of Thatcham Research who contend that ALKS only satisfies 2 of their 12 principles that must be met to ensure a safe transition to automated driving for all road users. We are concerned that if a vehicle is deemed to be automated, then the new freedoms that might give the driver will lead to inattention and more accidents. We would urge Government to engage with Thatcham and the insurance industry to better understand the capabilities and limitations of ALKS and not rush to implement.

A key theme of our response is to make clear that responsibility for education around the use of ALKS needs to be shared with the motor manufacturer, and, critically, the manufacturer must assume responsibility for ensuring that software is kept up to date throughout the lifetime of the vehicle and not stop at the point of first sale.

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Another key theme is to ensure that innocent third parties who suffer injury, loss or damage as a result of ALKS failure have a clear route to compensation via the insurers of the vehicle. In other words, they are not forced down the alternative route of attempting to sue the vehicle manufacturer which could be costly, complex and protracted.

Finally, access to ALKS data by insurers/brokers to investigate accidents and handle claims is a key BIBA request.

BIBA's detailed response to the Call for Evidence Questions:

Section 2 Accident Data and Education

Question

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

Not for the Police, but yes for insurers.

Question

If yes, what are those barriers?

- We are not clear on what would happen if a vehicle is involved in an accident in the EU. Are there GDPR considerations and what about post Brexit data flow rules?
- Who owns the data? Software company, manufacturer, multiple parties and under which jurisdiction? How do GDPR/Data Protection rules apply in countries outside of the EU, such as the US, China, Korea and Japan?
- Has Government considered mandatory data release by the vehicle manufacturers so that responsibility for accidents involving ALKS can be ascertained by insurers/insurance brokers?
- We also believe there should be a responsibility to report so-called 'near misses' - especially during the early phases of this roll out of ALKS, that information is likely to be very relevant in terms of determining where collisions or incidents are likely to occur. This information should also be publicly available and would certainly be of interest to the insurance industry to ensure risk-reflective pricing.
- If the driver is injured, it is critical to know if ALKS was operational at the time and is responsible. This is crucial to whether or not the driver is entitled to compensation. This underlines the importance of the insurer/broker being able to have immediate access to data from the vehicle to determine whether ALKS was engaged at the time of any accident.

Question

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?

Our ideas here include:

- A Government test which would then result in a specific licence to allow a driver to operate a vehicle with ALKS.
- Education at the point of sale including a mandatory test drive with a skilled/qualified operative.
- Regular communications from the manufacturer/lessor and specifically notifications that software updates have been made. We think it is important that the manufacturer has sole responsibility for performing software updates and that such a critical task should not be delegated to the vehicle owner/lessee.

Question

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

Our ideas here include:

- Detailed instructional material on how ALKS works and its limitations.
- The system seems capable of recognising who is driving the vehicle. If a new driver takes control, then could the system force the driver to complete an educational module before using the vehicle. This could be of particular relevance to hire car vehicles.
- Responsibility to make sure software updates are made by the manufacturer throughout the entire lifetime of the vehicle.
- Responsibility for Cyber security so that vehicle cannot be hacked and used for an act of terrorism.

Question

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

Our ideas here include:

- Make knowledge and understanding of ALKS part of the driving test regime.
- Introduce compulsory e learning modules on ALKS and its limitations.
- A Government test which would then result in a specific licence to allow a driver to operate a vehicle with ALKS. Equally, a driver who passes their test using a vehicle fitted with ALKS would not be licensed for non-ALKS vehicles.
- Amend Highway Code so that drivers of ALKS must be alert to a transition demand.
- Ensuring Cyber security.
- Consider making ongoing functioning/updating of ALKS part of the MOT regime.

Section 3 Does ALKS = Automated Vehicle?**Question**

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

In large part our answer is 'yes' since we would place significant weight on Thatcham Research's conclusion that ALKS constitutes 'assisted' driving and not 'automated' driving.

Question

If yes, what are those concerns?

- If yes (Level 3) what freedoms would the driver have and why will these not impact safety?
- Is the technology proven? Thatcham has concerns such as its ability to detect debris on the carriageway.
- Who has responsibility for software updates? We believe this should be the manufacturer.
- Only 2 of Thatcham's 12 principles that must be met to ensure a safe transition to safe automated driving are met per their [press release](#) of 23rd October 2020.

On the other hand, there is a one important benefit of classifying a vehicle with ALKS as 'automated' under the definition of the 2018 Act since under its terms an injured party is entitled to seek all compensation from the driver's insurer directly. This avoids the injured person having to potentially

pursue a product liability type claim and attempting to sue the vehicle manufacturer which is a much more complex and costly process. If we do treat ALKS as 'assisted' driving then the question of driver negligence needs to be clarified. Will motor insurers automatically assume liability where the driver has done nothing wrong and an accident is solely attributable to failure of ALKS? Additionally, what is the position of the driver who suffers injury while the vehicle is in ALKS mode? Our view is that the insurers of the vehicle should respond to the driver's injuries in the first instance but look to subrogate against the manufacturer for any claim monies that are paid.

Question

Do you agree that the criteria in the monitoring and control tests provide a reasonable framework for testing compliance with the AEVA definition of automation? Why?

This is largely beyond BIBA's area of competence. They appear to be comprehensive but need international recognition and insurer/Thatcham Research agreement. We would also flag the need for international agreement given use of such vehicles in the EU.

Question

Do you agree with our preliminary assessment of how ALKS meets the criteria set out in Annex A? Why?

Please see our answer to the previous question.

Question

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?

Not able to answer – beyond BIBA's area of competence.

Question

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?

Not able to answer – beyond BIBA's area of competence.

Question

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

Not able to answer – beyond BIBA's area of competence.

Question

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

Yes, failing to stop for any accident is a breach of Road Traffic rule 286. Could the driver therefore risk being liable for prosecution if the vehicle fails to stop in such circumstances?

Question

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

Not able to answer – beyond BIBA's area of competence.

Question

Do manufacturers intend to offer automation as an optional package for customers at the point of purchase? Please provide details.

Not able to answer – beyond BIBA's area of competence.

Question

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?

Yes.

Question

If 'yes' what are they?

- Is it possible to delineate between cases where this has happened deliberately or because of system malfunction? This is important because the driver will only be entitled to make a claim for his/her injuries when the vehicle is using ALKS and causes an accident. Therefore, determining whether the driver or ALKS was in charge of the vehicle is critical. This underlines the importance of the insurer/broker being able to have immediate access to data from the vehicle to determine whether ALKS was engaged at the time of any accident.
- Could this constitute a breach of an insurance policy condition which might adversely affect the outcome of any subsequent claim? An insurer/broker might, for example, offer a premium discount to vehicles fitted with ALKS on the basis that the system is operational in motorway traffic.
- Would the vehicle no longer be classified as an autonomous vehicle under AEVA? Is that a problem?
- Would disablement mean that critical software updates cannot be performed, rendering the vehicle unsafe?

Section 4 Prosecution**Question**

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?

This would seem fair. However:

- Should the vehicle manufacturer be prosecuted instead?
- What if driver had failed to keep the software current which had resulted in the problem? This underlines our recommendation that the manufacturer must retain responsibility for system updates to the vehicle throughout its lifetime.
- It needs to be clear that any third party that suffers injury and or damage as a result of such incidents has recourse against the insurer of the vehicle that has come to an unjustified stop. (The insurer would then have a right to subrogate against the vehicle manufacturer for any claim payments it has made.)

Question

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

Agree, subject to seeing the wording of the amendment.

Question

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

Agree.

Question

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? Question Do you think that amending the Highway Code is sufficient to communicate to drivers their responsibility? If not, why?

Agree. See our comments above on driver education.

Section 5 – Freedom for driver to perform other activities.

Question

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? Why?

Yes, but limited to answering or making a hands-free telephone call.

Question

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

None.

Question

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

No, other than using handsfree telephony.

Question

If yes, what other activities could they safely perform?

See above.

Question

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?

No. This will cause driver distraction/inattention and inhibit ability to react quickly to a transition demand.

Question

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

Yes.

Question If yes, what are they?

- Reading/sending Emails
- Reading/sending texts messages
- Watching media

Section 6 Use of AKLS up to 70mph

Question

Do you agree with this approach? Why?

No. The system supposed to be a traffic jam chauffeur system (below 37mph.)

Question

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

The vulnerability of ALKS to cyber-attacks/terrorism needs to be careful assessed and monitored. How will ALKS function in adverse weather conditions? For example, heavy snow/rain or dense fog?

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Graeme Trudgill', with a long horizontal flourish extending to the right.

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