

Use of mobile phones whilst driving

Briefing note

From the 25th March 2022 the law changed on driving whilst using a mobile phone to incorporate almost all uses of the device, this will have effect in England, Scotland and Wales. This briefing note examines the changes, exemptions and explains the offences and penalties for drivers and employers. It also offers guidance for employers to help draw up a policy on the use of mobile phones in company vehicles.

Background

A consultation was published on the 17th October 2020 which ran up until the 17th January 2021 to clarify views on creating a new exemption to the offence of using a hand-held mobile phone while driving, to enable drivers to use a hand-held mobile phone to pay for goods or services that they would be receiving immediately. This has come to light from a High Court judgement in 2019 where existing law did not cover the broad use of using a mobile phone from 'standalone' to 'interactive' communication functions.

Statistics released by the Department of Transport in 2020 highlighted the need for the change in legislation as 17 people had died, 114 people were seriously injured and 385 suffered minor injuries in road traffic accidents across Great Britain due to using a mobile phone whilst driving.

Amendments to The Road Vehicles (Construction and Use) Regulations

The Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2022 will ratify these changes, amending the original 1986 Regulations so ultimately an offence will be triggered whenever a driver holds and uses their device, whether online or offline.

Within the Statutory Instrument it divulges into what is 'using' a mobile phone, this covers:

- Illuminating the screen.
- Checking the time.
- Checking notifications.
- Unlocking the device.
- Making, receiving, or rejecting a telephone or internet-based call.

- Sending, receiving, or uploading oral or written content.
- Sending, receiving, or uploading a photo or video.
- Utilising camera, video, or sound recording.
- Drafting any text.
- Accessing any stored data such as documents, books, audio files, photos, videos, films, playlists, notes or messages.
- Accessing an app.
- Accessing the internet.

As a result of this change, the highway code has also been updated; see Mobile phones and in-vehicle technology, Rule 149

Exemptions

The only exemption to this law was if you need to call 999 or 112 in an emergency and it's unsafe or impractical to stop. However, this has now been expanded to make a contactless payment at a payment terminal for goods or services. The vehicle would have to be stationary, and the item being paid for must be provided at the same time or after the contactless payment is made; for example, at a drive-thru restaurant. Other exemptions are:

- If you are safely parked (see The Highway Code, waiting and parking 238 to 252 for definition).
- You're using the device to park your vehicle remotely.

Penalties

Government penalties for using hand-held mobile phones whilst driving will be a **£200 fine and receiving six penalty points** on their driving licence. If the driver or enforcement officer chooses to take the matter to court, the driver faces a **maximum fine of £2,500** for goods or passenger vehicles with more than eight passenger seats, or **£1,000** in any other case, **six penalty points**,

and the possibility of being disqualified from driving. The conviction could also lead to the suspension or revocation of the driver/supervisor's vocational driving licence by the Traffic Commissioner.

In addition, a driver will be liable to prosecution for the more serious offences of careless driving or dangerous driving where it can be shown that a collision or poor driving was caused by failure to have proper control of the vehicle because of some distracting activity, such as reading a map, eating a sandwich, or taking or receiving a phone call, even if via a hands-free phone. Research has shown that drivers' reaction times when using any type of mobile phone (hand-held or hands-free) whilst driving can be worse than those of someone driving under the influence of alcohol (*Direct Line Mobile Phone Report 2002*). The penalties for careless or dangerous driving are substantially higher than for the specific offence of using a hand-held mobile phone whilst driving.

Furthermore, it has been suggested that employers could also face prosecution for causing or permitting these offences by providing hands-free phone kits in company cars for staff to use if safe use policies and practices are not put in place. Even those who make calls to drivers may be liable. Health and safety legislation may also be invoked when looking at work related incidents.

Offence of proper control – hands-free and other equipment

It is an offence to drive a vehicle in a position which does not give proper control of the vehicle or a full view of the road and traffic ahead. This long-standing offence covers a multitude of situations, including being distracted and not having proper control of the vehicle whilst:

- Having a conversation on a hands-free phone.
- Pressing the screen on a hands-free phone.
- Eating or drinking at the wheel.
- Smoking (including electronic cigarettes) and vaping.
- Talking to passengers in the vehicle.
- Map reading.
- Using satellite navigation systems (includes mobile phone apps).
- Using a two-way radio.
- Changing a radio station or audio source.

The above offence also requires a full view of the road ahead. A driver may not have a full view ahead if:

- A satellite navigation system or mobile device is poorly placed, interfering with the driver's view to the front.
- There is ice or mist on the windscreen blocking the view ahead.
- There are furry dice, Christmas lights or stickers crowding the windscreen.

The penalties for non-compliance are a fixed penalty of six penalty points and a fine of £200. If the driver or enforcement officer chooses to take the matter to court, the driver faces a maximum fine of £2,500 for goods or passenger vehicles with more than eight passenger seats, or £1,000 in any other case, six penalty points, and the possibility of being disqualified from driving. The conviction could also lead to the suspension or revocation of the driver's vocational driving licence by a Traffic Commissioner.

More serious offences – careless or dangerous driving and manslaughter

The Road Traffic Act contains other more serious offences of careless driving, dangerous driving and causing death by careless driving and causing death by dangerous driving. To be dangerous the driving must fall 'far below' the required standard of a careful and competent driver, to be careless it need only fall 'below' the standard. In its Policy for prosecuting cases of bad driving the Crown Prosecution Service (CPS) lists 'using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use' as an example of dangerous driving and states that in such cases a charge of dangerous driving will be the starting point for charging decisions.

The policy also lists 'using a hand-held mobile phone or other hand-held electronic equipment where the driver was distracted by that use' as an example of careless driving. Where a driver is found guilty of dangerous driving or a court decides a death is caused by either careless or dangerous driving, the penalties include fines, disqualification, and prison sentences of up to 14 years. It is also possible where the standard of driving falls so far below the required standard that there is a serious and obvious risk of death and that the conduct of the defendant in all circumstances is so reprehensible as to amount to gross negligence, the prosecution may apply a charge of gross negligence manslaughter. This offence carries a maximum sentence of life imprisonment.

Offences and penalties for those other than drivers

Employers, managers, colleagues, and callers may also be legally implicated where a driver uses a mobile phone whilst driving. Causing or permitting the specific driver infringements is itself an offence, as is aiding and abetting more serious offences. For work-related driving there are also risks under health and safety legislation.

'Cause' or 'permit'

It is an offence for anyone to cause or permit another person to drive a vehicle whilst:

- Using hand-held equipment.
- In a position which does not give proper control of the vehicle or a full view of the road ahead.

The offence of causing unlawful use requires proof of a guilty mind in knowledge of the facts which make the driver unlawful or a positive act by the person causing the offence. If a limited company, rather than an individual, is charged with causing an offence, someone exercising a directing mind over the company's affairs must have such guilty knowledge. Causing involves an express or positive mandate from the person or company, who has some degree of control or direction over the driver. To 'permit' someone to commit an offence is a vaguer term than that of to 'cause' one. Permission can be general or inferred, rather than a positive mandate. Although proof of a guilty mind in knowledge of the facts can be necessary for a conviction for permitting an offence, this could consist of the person or company concerned wilfully shutting their eyes to the obvious or deliberately refraining from making proper inquiry.

To prosecute successfully for permitting, it must be proved that the defendant knew of the facts constituting the offence or was wilfully blind to them. Employers and managers of drivers who

drive whilst using a hand-held phone or without proper control of the vehicle could be charged with causing or permitting the offence. In addition, callers speaking to drivers whilst they are driving could also be implicated.

The penalties for causing or permitting someone else to breach the rules are a fixed penalty of **six penalty points and a fine of £200**. If the accused or enforcement officer chooses to take the matter to court, the defendant faces a **maximum fine of £2,500** for goods or passenger vehicles with more than eight passenger seats, or **£1,000** in any other case, **six penalty points, and the possibility of being disqualified from driving**. The conviction could also lead to the suspension or revocation of their vocational driving licence together with action taken against the organisation's operator's licence by a Traffic Commissioner.

More serious offences

Where a driver is found guilty of the other generally more serious offences of careless driving, dangerous driving and causing death by careless or dangerous driving, a person who aids, abets, counsels, or procures its commission, commits the same offence.

The Health and Safety at Work Act 1974 requires employers to, as far as is reasonably practicable, ensure the health, safety, and welfare of their employees at work. Under the Management of Health and Safety at Work Regulations 1999, every employer and self-employed person must make a suitable and sufficient risk assessment of the health and safety risks to employees (and others not in their employment to which the undertakings give rise), and to put into place control measures to deal with those risks.

Breaches of health and safety law can lead to both criminal and civil liability. In other words, an employer who breaks the rules leading to personal injury and/or property damage can be both prosecuted and sued.

Corporate manslaughter legislation, introduced on 6 April 2008, holds organisations to account if the way in which activities are managed or organised by its senior management cause a person's death that amounts to a gross breach of a relevant duty of care.

Penalties include unlimited fines, remedial orders, and a requirement to publicise the offence and conviction. Individuals cannot be held accountable for corporate manslaughter, but the offence is in addition to existing health and safety/ manslaughter liabilities.

In its Policy for prosecuting cases of bad driving the CPS states it will ensure that cases involving bad driving in the workplace are reviewed not only to establish whether the driver should be prosecuted, but also the driver's employer and in cases of work-related deaths, their prosecutors will liaise with the police and the Health and Safety Executive. Serious convictions must be

reported to the Traffic Commissioner who could also take action against the organisation's operator's licence.

Guidance to employers

The risks

The physical distraction of holding a telephone whilst driving is obvious. Drivers have to hold the phone and therefore have less control of the vehicle. Conversations on hands-free phones are less physically distracting than hand-held phones, but there is significant physical distraction when the driver looks at the phone to make and receive calls, when they take their eyes off the road. This is even more of a problem when using the phone to receive or send text messages.

Drivers using both hand-held and hands-free equipment are also distracted from the task of driving in other ways. The driver must concentrate on a conversation with someone whom they cannot see, which can be made more difficult because the sound quality of the conversation can vary greatly as reception becomes stronger or weaker. A passenger in the car would allow the conversation to lapse to enable the driver to negotiate potential hazards as they arise. Somebody who is not present, and therefore is unaware of those hazards, will continue to talk.

Therefore, rather than performing one task well, they are performing two tasks poorly giving rise to an increased risk of driver error. Where a road incident occurs, mobile phone records will quickly provide evidence to enforcement officers if the driver was using their phone at the time. Clearly, the potential risks to employers, drivers, and other road users in relation to the use of mobile phones whilst driving are extremely serious.

Action for employers

Initially, employers should carry out a full risk assessment within their own organisation and consider whether it is essential for drivers to receive and make calls whilst driving. There is no doubt that the distraction of using a mobile phone (even on handsfree) whilst the vehicle is in motion increases the risk of having an accident.

Where the use of a mobile phone whilst driving is essential, employers should issue a clear policy on the use of mobile phones and ensure that employees understand and follow it. Employees should sign to confirm that they have received and understood their employer's guidelines. As with all guidelines it is not just a matter of issuing them and doing no more. The introduction, use and application should be carefully monitored and reviewed to ensure that they are effective and achieving their aim to reduce risk.

Model guidelines to employees

An example of employee guidelines is shown overleaf, but employers should base their own policy on the findings of their risk assessments.

GUIDELINES ON THE USE OF MOBILE PHONES WHILST DRIVING

When you are driving any vehicle you must never use a hand-held mobile phone or other device and must always be in proper control of the vehicle. There are severe penalties if you fail to comply with the law – you could face heavy fines, lose your driving licence, or even go to prison.

Even if you are a careful driver, it is easy to be distracted by a phone call or text message and that split second lapse in concentration could result in a crash. The purpose of this document is to give advice to drivers and an interpretation of what your employer expects of you, with regard to the use of the phone and your health and safety.

Initially we must consider if indeed you need to use a mobile phone whilst driving and if so then the following will apply.

- You must never use a hand-held phone or other hand-held communication device whilst driving.
- This is illegal and may result in disciplinary action.
- You must have proper control of the vehicle at all times whilst driving.
- When driving you should use voicemail, a message service or call diversion to pick up messages later.
- It is safer to only use your hands-free phone after you have stopped in a safe place. But never stop on the hard shoulder of a motorway unless it is an emergency.
- Avoid taking calls even on a hands-free phone whilst driving.
- Never try to accept information that requires notes to be taken such as telephone numbers, dates etc. If you urgently need the information, the caller should call again and you should let the phone switch to messaging. The caller can then leave the details as a recorded message for you to pick up when you have reached a safe stopping place.
- Avoid making calls even on a hands-free phone whilst driving. If you must then the numbers should be pre-programmed into the phone before setting off and speed dialling used.
- All employees making calls to any mobile phone number (07xxx) should establish at the beginning of the call whether the recipient is driving and whether it is safe and legal to continue with the telephone call. Recipients of calls are under no obligation to take a call, even from a line manager, whilst driving and may make arrangements to take or return the call at another time.
- **THINK – is it really necessary to make or receive calls on your journey? If not SWITCH OFF and use messaging.**

If you require any assistance with using the call divert, messaging or other facilities of your phone then speak to the IT department who will be pleased to assist you.

We will be ensuring this policy is effective by carefully monitoring any breaches found. The intention is to ensure you understand this policy and any comments or suggestions for improvement should be forwarded to your Health and Safety or HR departments. This policy will be regularly reviewed.

Please sign the slip below and return it to the Health and Safety Department.

A N Other

Head of Health and Safety Date

To: Head of Health and Safety

From:

I have read and understood the policy guidelines on the use of mobile phones whilst driving

Signed:

Date:.....