



New Legislation on Mobile Phones and Driving

All staff should be aware that the Government has revised the legislation relating to the use of mobile phones while driving. From 27th February 2007, it will be a specific offence to use a hand-held phone, or similar device, when driving. The penalty will be a £60 fixed penalty or up to £1,000 on conviction in court (£2,500 for drivers of goods vehicles, buses or coaches) plus 3 penalty points on the licence. Hand-free phone equipment is not prohibited by the new regulation, but these are still distracting and drivers still risk prosecution under existing legislation (for failure to have proper control) if they use hands-free phones when driving. If your mobile phone rings when you are driving you should let it ring and return the call when safely parked - better to switch to voicemail before starting your journey. Employers can be liable under the new legislation if they require employees to use a hand-held phone while driving. The University, therefore, cannot permit the use of hand-held phones while driving on University business.

There is an exemption for calls to 999 (or 112) in genuine emergencies when it is unsafe or impractical to stop. There is also an exemption for 2-way radios, but the same points apply here as to hands-free equipment, in that their use while driving can still be distracting.

If you need any further information - the Department for Transport has posted the answers to some 'Frequently Asked Questions' relating to the new legislation, listed below and on their website at www.dft.gov.uk.

Frequently Asked Questions

In a new regulation due to come into force on 1 December 2003, it is a specific offence to use a hand-held phone, or similar device, when driving. The penalty is a £30 fixed penalty or up to £1,000 on conviction in court (£2,500 for drivers of goods vehicles, buses or coaches). Drivers still risk prosecution (for failure to have proper control) if they use hands-free phones when driving.

Q1. What does the regulation say about hand-held phones?

The use of a hand-held phone or similar hand-held device while driving will be prohibited. A hand-held device is something that "is or must be held at some point during the course of making or receiving a call or performing any other interactive communication function".

A device is "similar" to a mobile phone if it performs an interactive communication function by transmitting and receiving data. Examples of interactive communication functions are sending and receiving spoken or written messages, sending or receiving still or moving images and providing access to the internet.

2-way radios are subject to special treatment under the regulations. See **Q14** below regarding 2-way radios for further information.

Q2. Is hands-free phone equipment allowed?

Provided that a phone can be operated without holding it, then hands-free equipment is not prohibited by the new regulation.

And pushing buttons on a phone while it is in a cradle or on the steering wheel or handlebars of a motorbike for example is not covered by the new offence, provided you don't hold the phone. However, hands-free phones are also distracting and you still risk prosecution for failing to have proper control of a vehicle under Regulation 104 of the Road Vehicles (Construction and Use) Regulations 1986 if you use a hands-free phone when driving. If there is an incident, the use of any phone or similar device might justify charges of careless or dangerous driving.

Q3. What about texting/internet access/video phones?

The use of a mobile phone or similar device for any of these activities while driving is also prohibited if the phone (or other device) has to be held in order to operate it.

Q4. Will drivers still be able to use navigation equipment or personal digital assistants (PDAs) or other computer equipment that sends or receives data (which would include GPS transmissions)?

Yes - providing that it is not a hand-held device. Use of devices other than mobile phones are only prohibited if the device performs an interactive communication function by sending and receiving data. If the device does not perform this type of function, you can use the device without breaching the regulations.

But remember the warning in the Highway Code (Rule 128) that using in-vehicle systems can be distracting. You must exercise proper control of your vehicle at all times.

Q5. Why are you not banning the use of hands-free mobile phones while driving?

Using any type of phone while driving is distracting.

Drivers should remember that the police can still use existing legislation (for failure to have proper control) if a driver is distracted by a call on a hands-free phone. If there is an incident and the driver is using any phone (hand-held or hands-free) or similar device, then there is a risk of prosecution for careless or dangerous driving.

Q6. Will mobile phones have to be switched off in vehicles?

No. Passengers may want to use them. And drivers can use them when they are safely parked.

Q7. What if the phone rings when I'm driving?

Let it ring and return the call when safely parked. (NOT on the hard shoulder of a motorway.) Better to switch to voicemail before starting.

Q8. Who do the new regulations apply to?

The new regulations apply to the drivers of all motor vehicles on the road, including cars, motorcycles, goods vehicles, buses, coaches and taxis.

They also apply to anyone supervising a learner driver, while the learner driver is driving. Anyone supervising a learner driver needs to be concentrating on what the driver is doing and should not be using a mobile phone.

Q9. Do the new mobile phone regulations apply to cyclists?

No. However, the police have powers to deal with careless or dangerous cycling.

Q10. Can I use a hand-held mobile phone when stopped in a traffic jam?

The prohibition applies when driving. Driving includes times when stopped at traffic lights or during other hold-ups that may occur during a typical journey when a vehicle can be expected to move off after a short while.

In exceptional traffic jams, such as a lengthy stoppage on a motorway, it would be clear that someone wasn't driving if the engine was off.

Q11. Are there any exemptions?

Yes. There is an exemption for calls to 999 (or 112) in genuine emergencies where it is unsafe or impractical to stop. There is also an exemption for the use of 2-way radios (see **Q14** below).

Q12. Will I be able to cradle a phone between my ear and shoulder?

No. The offence applies if a phone has to be "held" while making or receiving a call. Therefore you should not hold a phone between your ear and shoulder - or anywhere else - when driving.

Q13. Are employers guilty of an offence if their employees use a hand-held phone while driving?

The new regulations apply to "anyone who causes or permits any other person" to use a hand-held mobile phone while driving.

The Department considers that employers would not be liable just because they supplied a telephone or because they phoned an employee who was driving. However, employers would probably be liable if they required their employees to use a hand-held phone while driving and might also be liable if they failed to forbid employees to use such phones on company business.

Q14. Will 2-way radios be included in the new offence?

The use of 2-way radio equipment (unless the device can also be used as a phone) when driving is not included in the new offence but remember there is still a risk of distraction and prosecution under other powers.

If a device is a dual or multi purpose device that can be used both as a mobile phone and a 2-way radio, the use of the device while driving or supervising a provisional licence holder is prohibited. Use is prohibited whether the device is being used as a 2-way radio or as a mobile phone.

Q15. If you prohibit using mobile phones, then surely you'll have to stop people talking or tuning the radio? What powers do the police have?

We have no such intentions. There are many potential distractions while driving and it remains the driver's responsibility to drive safely at all times. Research shows that it is more distracting to talk on a mobile phone than to have a conversation with a passenger who can see what is happening.

Q16. Is the offence endorsable?

No. The offence is subject to a £30 fixed penalty or maximum fine of £1000 for conviction in court (maximum of £2,500 for drivers of goods vehicles or buses/coaches).

However, we do plan to increase the penalty for the new offence by making it subject to 3 penalty points and a £60 fixed penalty. Primary legislation will be needed for this when a suitable opportunity arises to amend Schedule 2 of the Road Traffic Offenders Act 1988. We do not have a timetable for that yet.

Remember, in some circumstances, for example if there has been an accident, a prosecution for careless or dangerous driving may be justified if a phone was in use at the time of the crash. The penalties on conviction for such offences include heavy fines, endorsement, disqualification and, in serious cases, imprisonment.

Q17. Where can I go for more information?

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You should seek independent legal advice if you are in doubt as to whether any particular action is prohibited by the regulations.

You may find the attached flowchart helpful.

The legislation is available at <http://www.legislation.hmso.gov.uk/si/si2003/20032695.htm> Look for Statutory Instrument No 2695 - The Road Vehicles (Construction and Use) (Amendment)(No 4) Regulations 2003.

Health & Safety Services
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