

Using a Mobile Phone Whilst Driving

Business Impact

Information regarding using your mobile phone whilst driving.

Background

Department for Transport (DfT) in 2002 consulted on their proposals to introduce a new offence relating to the use of hand held mobile phones while driving. The BVRLA responded by highlighting the difficulty of introducing a specific ban and the patent unfairness of holding the employer directly responsible for the action of the driver, who may be negligent or even reckless, in using the phone.

Regulations

It is an offence to use a hand-held mobile phone or other similar device while driving.

Offenders will be liable to a £60 fixed fine rising to a maximum £1000, if the matter goes to court. Offenders will also receive three points on their licence. The maximum fine for drivers of goods vehicles (which includes vans) buses and coaches is £2,500. It is also an offence to 'cause or permit' a driver to use a hand held mobile phone while driving.

Key Definitions

Driving – A person is regarded as driving even when a vehicle is stationary and the engine is running.

Vehicle – Any mechanically propelled vehicles

Hand-held devices – Any electronic device used for accessing oral, textual or pictorial communication will be prohibited if the device is or must be held at some point during the course of its operation.

Frequently asked Questions

Is hands-free phone equipment allowed?

Provided that a phone can be operated **without** holding it, then the hands-free equipment will not be prohibited.

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, DfT has stressed that 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.

What about texting/internet access/video phones?

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

The offence applies to drivers speaking or listening to a phone call, using a device interactively for accessing any sort of data, which would include the internet, sending or receiving text messages or other images if it is held in the driver's hand during at least part of the period of its operation. A phone may therefore continue to be used to receive

Fact Sheet – 543

data when it is in a vehicle providing the driver is not holding it.

Are drivers 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 is 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, then you can use the device without breaching the regulation.

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

Do 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.

What if the phone rings whilst the driver is driving?

DfT advises that the driver should let it ring and return the call when safely parked. It is recommended that the driver switch to voicemail before starting to drive.

Are drivers able to use a hand-held mobile phone when stopped in a traffic jam?

Driving, as defined above 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 DfT has stated that it would be clear that someone wasn't driving if the engine was off.

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.

Is the driver able to cradle a phone between their 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.

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

The Government has stated that the regulations apply to "anyone who causes or permits any other person" to use a hand-held mobile phone or other similar device while driving.

DfT considers that employers are not liable just because they supplied a telephone or because they phoned an employee who was driving. However, employers are liable if they require 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.

Guidance to Members

Rental

Rental Members that rent mobile phones with vehicles need to consider whether:

- to provide hands free kits with every phone
- to provide a cradle for the phone in the vehicle
- to provide a information sheet on the safe use of a mobile phone

We have received confirmation from DfT that rental companies renting mobile phones will not be found guilty of the 'cause and permit' offence if the hirer uses the phone illegally.

Leasing

Fact Sheet – 543

Leasing Members' need to ensure that for their employees, who have company provided mobile phones, they are provided with an adequate hands free system together with a clear policy about the use of mobile phones while driving.

Leasing Members may also wish to provide an information sheet to their customers to help raise awareness and provide details of the offence.

Additional Information

It should be noted that it is the Police and the Crown Prosecution Service that ultimately decide whether to prosecute in any particular case and ultimately for the courts to interpret the law. This fact sheet should therefore be regarded as guidance only.

The BVRLA has worked closely with DfT in the preparation of this fact sheet. While DfT does not, and can not, formally approve this fact sheet, we have nonetheless ensured this fact sheet reflects their guidance and views.

For further information contact: Jay Parmar on 01494 434747
--