



Department  
for Transport

# Using a Mobile Phone While Driving

## Government Response to Consultation

September 2021

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# Contents

## Introduction

1. Overview of responses
2. Next Steps
3. Annex – summary of responses to each question
  - a. Extending the mobile phone offence to capture standalone functions
  - b. Mobile phone functions that should be prohibited
  - c. Devices falling within the mobile phone offence
  - d. Exemption for making a contactless payment
  - e. Revised Highway Code text – standalone functions
  - f. Revised Highway Code text – payment exemption
  - g. General comments

## Introduction

It has been an offence since 2003 for drivers to use a hand-held mobile phone while driving. Offenders can face either a Fixed Penalty Notice of £200 or a fine of up to £2,500 in the magistrates' court, in addition to the imposition of six penalty points on their licence.

A High Court Judgment in 2019 clarified the existing law and held that an offence is only committed where it can be proved not only that a driver was holding the phone and using it, but also that the phone was being used to perform an interactive communication function such as making a call or sending a text rather than a "standalone" function such as recording a video.

The Government considers that all use of a hand-held mobile phone while driving is reckless and dangerous, and not just when being used for the purposes of a call or other interactive communication.

That is why we carried out a consultation exercise proposing that the offence of using a hand-held mobile phone be broadened to cover standalone use as well as interactive communication. The Government hopes this will make it easier for the police to carry out their enforcement responsibilities.

The consultation was published on 17 October 2020 and it ran to 17 January 2021. It also sought 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 document summarises the 423 responses that we received and explains how the Government intends to move forward on the main proposals, as well as on some of the more salient and constructive comments that were made by consultees.

# 1. Overview of Responses

## Number and breakdown of responses

### Overall

- The Department received 423 responses in total.

### Online survey/e-mails

- 368 respondents completed the online survey attached to the consultation.
- 55 respondents replied by e-mail.

### Individuals/organisations

- 368 responses came from individuals.
- 55 responses came from organisations.

### Organisations' main area of interest

- Road Safety interest - 16
- Enforcement/legal - 20
- Road user - 12
- Other - 7

## Summary of responses on each main issue

### Extending the mobile phone offence to capture standalone functions

80.85% of respondents agreed with the proposal that the offence of using a hand-held mobile phone while driving should be broadened to cover not just interactive communication but also “standalone” activities such as searching for music stored on the phone. There was a clear consensus amongst consultees that this was a sensible proposal which should be implemented.

15.83% of respondents disagreed with the proposal. Consultees who disagreed with the proposal broadly fell into two categories: those who objected in principle and those who had concerns about its practical effect, most notably among those believing (wrongly) that it would no longer be possible to use a mobile phone in a cradle as a satnav.

### Mobile phone functions that should be prohibited

43.02% of respondents made suggestions about hand-held mobile phone functions that should be expressly prohibited as part of the revised offence of using a hand-held mobile phone while driving.

A number of these suggested that instead of listing functions, the law should simply prohibit the act of picking up a phone; a further set of responses offered suggestions that were either already captured by existing law (such as watching videos) or that we had already mentioned in the consultation; and a third set of responses made constructive suggestions about functions that should be included in an expanded offence with the aim of capturing functions that do not involve interactive communication.

### Devices falling within the mobile phone offence

74.94% of respondents agreed with the proposal to bring within the offence of using a hand-held mobile phone while driving, any device which is capable of interactive communication, even if that capability is not enabled in the vehicle.

17.49% of respondents disagreed with this proposal. The principal arguments against the proposal were that it was too broad; it was no different to using an integral screen in a car; and the phrase “interactive communication” was too technical.

### Exemption for making a contactless payment

82.03% of respondents agreed with the proposal to include an exemption from the hand-held mobile phone offence where the driver is using the phone to pay for goods or services that would be received immediately.

12.76% of respondents disagreed with allowing such an exemption. The most common arguments against the proposal were that it dilutes the “no mobile phones while driving”

message and opens up temptation for drivers to continue using their phone once they set off after payment. Other respondents made suggestions about tweaking or improving the offence, such as “the hand-brake must be on”.

A common misconception amongst consultees was that the proposal allows drivers to make payments over the internet, whereas the proposal is confined to circumstances where a driver must tap the phone on to a card reader.

A number of individuals and organisations made suggestions for new exemptions, such as for utilities drivers and taxi drivers.

### **Revised Highway Code text – standalone functions**

73.75% of respondents agreed with the revised Highway Code text proposed in the consultation document, to explain the expanded offence of using a hand-held mobile phone while driving.

18.91% of respondents made suggestions for improving the revised text, in most cases the suggestions involved substantially expanding the Rules to cover a wider range of permitted and prohibited activities.

### **Revised Highway Code text – payment exemption**

75.65% of respondents agreed with the revised Highway Code text to explain the new exemption from the mobile phone offence to make a payment for goods or services to be received immediately.

16.07% of respondents made suggestions for improving the revised text to achieve greater clarity.

## 2. Next steps

### **Extending the mobile phone offence to capture standalone functions**

Given the substantial level of support, the Department intends to implement the change proposed in the consultation document, to amend the law so that the offence of using a hand-held mobile phone while driving captures drivers who are using their phone for “standalone” functions as well as those using interactive communication functions.

The Department proposes to implement this change at the earliest opportunity so that the police can enforce the offence in a more straightforward way.

The Department noted some of the misunderstandings and requests for clarification which were received in response to this proposal (for example relating to the use of satnavs on phones and whether the stop phase of stop-start engines allows a driver lawfully to use a hand-held mobile phone) and plans to deal with them through expanded guidance on gov.uk.

### **Mobile phone functions that should be prohibited**

The Department is grateful for the constructive suggestions made by respondents and plans to prepare legislation which includes a number of those suggestions. However, as the consultation document pointed out, the list of prohibited functions that will appear in the revised legislation will not be exhaustive, rather it will provide as comprehensive a guide as possible to the scope of the offence of using a hand-held mobile phone while driving.

Nonetheless, the list of prohibited functions to be included in the statutory instrument will take account of some of the constructive suggestions made by consultees.

### **Devices falling within the mobile phone offence**

In light of the 75% approval rating for its proposal to extend the hand-held mobile phone offence to cover all devices capable of interactive communication, whether or not that capability is enabled at the time, the Department intends to implement this change.

## Exemption for making a contactless payment

Given that 82% of respondents agreed with the proposal to allow drivers to use their mobile phones to make contactless payments for goods and services to be received immediately, the Department intends to implement this change as soon as possible.

In light of doubts raised about whether goods or services are received “immediately” if there is a ten minute or so delay between payment and receipt (eg at a drive-through restaurant), the Department will ensure that the revised law covers these circumstances.

The Department takes this opportunity to clarify that the contactless payment exemption will apply solely in the circumstances where a contactless payment is made by tapping on a card reader; the exemption will not apply where drivers simply make an internet payment whilst sitting at the wheel with the engine running. This will be clarified in the revised Highway Code text.

The Department accepts that a reasonable case was made by various consultees for other exemptions from the offence of using a hand-held mobile phone while driving; this includes those representing emergency services, utilities and taxi/PHV drivers. In addition, the Department sees some benefit in allowing drivers to show proof of purchase for tickets etc which is stored on their phone. The Department will give these suggestions further consideration. Arrangements to facilitate the function of mission-critical emergency services communications will be worked on with the Home Office.

## Highway Code revisions

The Department intends to make a slight alteration to the revised text to improve clarity and eliminate the misunderstandings that were evident from consultation responses in relation to both standalone functions and the exemption for stationary contactless payments.

Because space is limited in The Highway Code, we will supplement the advice by preparing expanded guidance on gov.uk

In accordance with section 38 of the Road Traffic Act 1988, we will lay the revised version of The Highway Code before both House of Parliament for a period of 40 days. If Parliament agrees to the proposed changes being made we will then work with the Driver and Vehicle Standards Agency (DVSA) to update The Highway Code online and to produce a new hard copy edition in time for the next print run.

## ANNEX - Responses to each consultation question

### Extending the mobile phone offence to capture standalone functions

**Q. Do you agree with the proposal to extend the hand-held mobile phone offence to cover “standalone” functions?**

Yes	80.85%
No	15.83%
Don't know	1.18%
No reply	2.12%

#### If no, why not?

- Just not necessary. Money-making scheme to penalise drivers; nanny-state; using a hand-held mobile phone is not dangerous, it is no different to tuning car radio or adjusting temperature; sufficient offences exist already to capture distraction.
- Will rule out use of satnavs on mobile phones. A number of consultees believed (wrongly) that they would no longer be able to use their mobile phone's satnav capability at all. (It will be lawful to use a phone's satnav capability when it is located in a cradle; this proposal relates solely to hand-held mobile phones.)
- Commercial drivers need to be able to use a hand-held mobile phone. A number of responses from the taxi/PHV trade and other commercial drivers thought the proposal would create problems for them because they need to use a hand-held mobile phone for their job.

- Will rule out a range of desirable functions while driving. For example: most music comes through a mobile phone these days; need to use phone to control hearing aids; need to touch phone because current voice recognition is not good enough.
- Enforcement will still be problematic. The police will still have to prove that the driving was not just holding the phone, but actually using it.

## Unintended consequences

Just over 90 respondents suggested some unintended consequences arising from the proposal. The most common consequences mentioned by around 30 respondents related to likely adverse effects for productivity and earning capability for professional drivers, principally taxi drivers and goods vehicle or delivery drivers.

- Adverse effects on taxi/PHV trade. Will stifle the development of mobile phone payment processing technology; will penalise taxi drivers at ranks who want to read a device while they wait with the engine running.
- Adverse effects on utility companies. Will prohibit some necessary functions such as drivers taking photos of inaccessible refuse collection incidents and recording the progress of maintenance work.
- Adverse effects if mobile phone satnavs can no longer be used. Road safety, poorer families and disabled drivers with older cars would all suffer if the only way to use a satnav was through an integral screen in a newer vehicle. (It will still be lawful to use a satnav on a mobile phone as long as the phone is located in a cradle and not used in the hand.)
- Adverse effects for drivers who breakdown. Drivers would be unable to use a hand-held mobile phone to communicate with breakdown services and insurance companies either through conventional phone calls or Apps.
- Unintended impacts on automated vehicles. Any changes to the mobile phone law need take account of the development of automated vehicles, in particular the recent ALKS call for evidence; and the new law must be as future-proofed as reasonably possible.

## Mobile phone functions that should be prohibited

### Q. Are there any other functions that you think should be listed in the revised offence?

182 respondents (43.02%) made suggestions for including additional functions to the list of prohibited functions set out in the consultation document.

A number of these responses suggested that it would be simpler to prohibit the act of picking up a mobile phone while driving.

### Suggestions for additional functions

The suggestions for including other functions in the revised offence were very wide ranging but fell into the following broad categories.

Holding a mobile phone in the hand and using it to:

- Access any kind of navigation apps and any other navigation or GPS function whilst holding a mobile phone. (A police officer respondent said that drivers invariably claim that they were using their hand-held phone to perform a satnav-related function in an effort to avoid sanctions.)
- Watch videos, whether saved on the phone or involving communication (eg FaceTime conversations).
- Connect a phone to headphones or to a charger; press the power on button, adjust the volume of the phone or the volume of other connected devices by using the phone; pick up the phone to use the blank screen as a mirror.
- Undertake a variety of office functions such as accessing contacts or addresses, accessing calendar or diary Apps, accessing reminders or notes, using the calculator function; preparing emails or texts to send later; editing documents or other files stored on the phone or downloaded from the internet.
- Use the torch function.
- Access a wide range of reading material.
- Access any App.
- Search for information stored on both the phone itself and on the cloud.
- Adjust settings such as triggering voice input by touching the phone; making a Bluetooth connection; deleting history; changing the device's screen wallpaper; turning the device on or off; checking the device battery level; adjusting any display or sound function (including muting the device); changing to Flight Mode/Silent

Mode; setting or turning off an alarm on the device; adjusting the settings i.e. changing the volume or screen brightness.

## Devices falling within the mobile phone offence

**Q. Do you agree with the proposal to bring within the offence any device which is capable of interactive communication, even if that capability is not enabled in the vehicle?**

Yes	74.94%
No	17.49%
Don't know	4.72%
No reply	2.83%

### If no, why not?

- It is too broad and complex, based on theoretical possibilities, overkill.
- Already have laws in place for driving without due care.
- No different than talking to someone in the car.
- Just punish those who use phones unsafely – proposal is a cash making strategy.
- Important to be able to use a phone's satnav capability.
- Enforcement will be problematic; police will have to investigate whether the device has working wi-fi capability; even if that device used to have wi-fi capability it may failed years ago.
- Using these devices is no different to using integral entertainment eg car radio  
Unfair to allow functions where devices are factory fitted but prohibit if brought into the vehicle; putting the brakes on technology.

### Suggestions for adapting the proposal:

- Using the term “interactive communication” is too technical – amendment should refer explicitly to the banned devices. (The primary legislation uses the term “interactive communication” so the Regulations must match that description.)
- Need to cover the use of other hand-held devices such as two-way radios, recording devices such as 'dictaphones' and listening devices such as miniature radios and iPods that could be hand-held.
- Taxi drivers should be allowed to use Xda's to view jobs on the go as it is sometimes impossible to find somewhere to pull over, and as a result will affect the job by causing unnecessary delay.

- Since the proposal is to retain the term “hand-held” or “hand-held device”, it is important to make sure these terms are clearly and unambiguously defined in any revised legislation.
- Need clarification on devices used by delivery drivers/professional drivers taxi drivers need devices.
- Regard needs to be had for drivers who will use automated vehicles, to ensure that drivers of such vehicles, whilst AV mode is engaged, are not inadvertently prevented from using handheld devices.

## Unintended consequences

63 respondents (14.89%) highlighted some unintended consequences arising from the proposal to bring within the offence any device capable of interactive communication even if the interactive capability is not enabled at the time of use.

The following unintended consequences were cited by respondents:

- Adverse effects for taxi/PHV drivers – seeking clarification about the status of POS terminals; taxi drivers using a device like a kindle or tablet to read a downloaded newspaper or book whilst they are on a rank with their engine running could be unduly impacted.
- Adverse effects for other commercial drivers - delivery drivers need to use hand-held devices; a lot of people who make calls will now be less likely to be efficient in their work. Planning notifying people etc will all be affected. Modern communications is important and if safely used there is no reason to ban it.
- Adverse effects for ordinary motorists – will criminalise ordinary motorists.
- Adverse effects for disabled people – those who rely on satnav and are less likely to have integral sat nav and could be deterred from driving; voice-controlled satnav enables the dyslexic to drive/work; will be deterred from driving.
- Adverse effects for disabled people other than satnav related - adjusting hearing aids eg in stationary traffic; someone who suffers from asthma may need to use a medical inhaler while driving, and these could be equipped with radio identification tags in future which would make their use illegal.
- Adverse effects for poorer people who cannot afford factory-fitted satnav.

## Exemption for making a contactless payment

**Q. Do you agree with the proposal to exempt drivers from the hand-held mobile phone offence if they are making a contactless payment for immediate goods or services while stationary?**

Yes	82.03%
No	12.76%
Don't know	2.36%
No reply	2.83%

### If no, why not?

- Proposal is wrong in principle – just don't use your phone; cars and phones don't mix; sends the wrong message; turn it off completely; dilutes the message that using a phone while driving is dangerous.
- Temptation - the exemption will open up temptation to make transactions when vehicle is not stationary; and temptation to undertake other functions if phone is in hand; open to abuse.
- Loopholes – the exemption will just create a loophole; needs to be more specific about what is permissible, precise circumstances eg cannot make payments at traffic lights, must be located at the outlet.
- Anyone with a smartphone will have a bank card so really not necessary.
- Why allow payment when stationary but not a call – doesn't make sense.
- Current law is sufficient.

### Suggestions for adapting the proposal

- Tapping a card reader - law should stipulate that the exemption is whilst using the phone as a method of payment to another physical machine, rather than just payment otherwise when stopped people will say they are paying for goods online etc.
- Ambiguity over “immediately” could lead to problems eg there could be a 10 minute gap between paying for a drive-through meal and actually collecting it at the next window.
- Stipulate various safety-related conditions to ensure the vehicle remains stationary and removes the risk of rolling or stalling due to driver inattention eg. handbrake or

parking brake must be applied; engine must be off. vehicle must be in park mode or out of gear; vehicle must not be “on the clutch”.

- Add conditions relating to the location where the exemption can apply – law must stipulate that that you are in proximity to the thing you are paying for - eg at a car park barrier.
- Restrict to circumstances where there is no reasonable alternative; eg it is possible to pre or post pay congestion charge so mobile phone should not be used.
- Clarification - be more specific as to the situations you can use a device to pay for goods and services; specifying the likes of toll plaza and drive thru would remove any ambiguity.
- Preparing the phone – it must be made clear that the exemption must not extend to the preparing of the phone while driving towards a payment booth (opening phone with PIN code and accessing relevant payment App).
- Pre-purchased tickets – mobile phones can be used as proof of purchase of tickets, eg as a QR code or an e-mail confirmation, so there should also be an exemption for holding a mobile phone to present a ticket at the entrance to a venue, or present a seasonal pass at the entrance to a car park or a drive-in cinema.
- Receipt of payment – exemption should include the receipt of payment for good and services too. Some Taxi and Private Hire (TPH) drivers in London will remove their device from the cradle while stationary to receive/take contactless payments from customers, so it is important that the exemption covers payments that are both made and received.
- Additional exemption request - if a phone rings the driver should be permitted to remove from pocket and hand to a passenger to answer.
- Additional exemption request - a further exception to allow people to unlock their phones using fingerprint before handing it to a passenger.

## Unintended consequences

36 respondents could foresee some unintended consequences arising from the proposal to allow an exemption from the mobile phone offence when paying for goods or services.

- Adverse effect on enforcement - the exemption will complicate the enforcement task as people will look for loopholes.
- Adverse safety implications - driver might not be concentrating on other road users; mixed messaging/confusing/ frustrating hold ups while driver turns phone on etc  
Open to abuse - the exemption would be open to abuse eg drivers will start to make online payment for anything while driving.

- Adverse effects for drivers who use satnav on their phone - important to be able to use the satnav capability on a phone especially if the satnav App closes to make payment and you have to re-open it while driving.
- Need clarity over locations - the law must state appropriate locations only.
- Clarity - must be made clear within the legislation that any vehicular movement, intended or otherwise, whilst the phone or device is in the driver's hand, would still constitute an offence.

## Revised Highway Code text – standalone functions

**Q. Do you agree with the proposed changes to The Highway Code to explain that the hand-held mobile phone offence will apply to standalone functions?**

Yes	73.75%
Suggestions for improvement	18.91%
Don't know	4.01%
No reply	3.30%

### Suggestions for change

Suggestions for alternative wording were made in relation to the following issues:

- The wording generally to improve clarity.
- What constitutes driving (including when stationary with the engine on).
- Parking and stopping – expanded advice about what is permissible in order to be able to use a hand-held phone.
- Use of satnavs on a mobile phone – how this can be done legally.
- The range of devices that fall within the offence so drivers can see at a glance what is prohibited.
- What “hand-held” means; some people think that using a hand to touch a phone’s screen in a cradle is hand-held.
- Using a phone in a cradle/hands-free use – advice on good practice.
- Emergencies – describe circumstances where an emergency justifies hand-held mobile phone use.
- Smartwatches – clarity on the legality of using them whilst driving.
- Supervising learner drivers.

## Revised Highway Code text – payment exemption

**Q. Do you agree with the proposed change to The Highway Code which explains the new exemption from the offence of using a hand-held mobile phone while driving to make a contactless payment using a mobile phone?**

Yes	75.65%
No	16.07%
Don't know	7.80%

### Suggestions for change

Suggestions for alternative wording were made in relation to the following issues:

- Greater clarity about the circumstances (ie must tap a card reader).
- What constitutes “stationary” (eg must the handbrake be on?).
- Examples of goods and services that can be paid for using the exemption.
- What constitutes “immediate” delivery of goods and services to qualify for the exemption.
- Clarify that driver cannot prepare the phone while in motion.
- Post-payment reminder to put phone back in cradle before moving off.

## General comments

Many of the comments in this general section related to the consultation and simply reiterated a key part of the respondent's response.

The most common themes mentioned by respondents where the topic was not directly related to the substance of the consultation document were:

- A ban on any mobile phone use, including hands-free, whilst driving. A number of these respondents highlighted that the real distraction comes not from the holding of the phone but from the distraction generated by any phone use. Some pointed to the Transport Select Committee report which recommended that the Government should undertake a study looking into the feasibility of imposing a ban on hands-free use of mobile phones while driving.
- Tougher penalties. Whilst there was some recognition amongst respondents in this category that the FPN had been increased several years ago, they pressed for even tougher penalties to act as a powerful deterrent. Suggestions included increasing the monetary value of the penalty from £200; incremental approaches to disqualification for multiple offences; aligning the penalties more closely to those for drink-driving; and imposing tougher penalties for drivers of larger vehicles.
- More rigorous enforcement. These respondents stressed the importance of effective enforcement as an integral part of any change in the law; they argued that it did not matter how the law was to be recast if there was not going to be adequate enforcement. A couple of respondents thought the objective should be camera enforcement; and another thought the police should be given powers to force drivers to unlock their phone when requested.
- Extending the offence to other road users. The most commonly mentioned user group in this category was cyclists; a number of respondents said that they had seen cyclists using a hand-held mobile phone whilst cycling and thought that the offence should be extended to cover them. Other respondents thought the offence should be extended to cover mobility scooters, e-scooters and horse-riders.
- Wider road safety suggestions. Respondents in this category made various suggestions to improve road safety more generally: cutting down on speeding; subjecting older drivers to medical checks; imposing tests on foreign drivers; mandating hands-free communications in all new vehicles; removing the exceptional hardship defence; and affording the Highway Code the force of law.