



Department
for Transport

Using a mobile phone while driving Consultation on changing the law

Moving Britain Ahead

October 2020

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Contents

Foreword	4
Executive summary	6
How to respond	7
Freedom of Information	7
Data Protection	8
Introduction	9
Broadening the mobile phone offence	10
Using a hand-held mobile phone while driving - the problem	10
Using a hand-held mobile phone while driving - the proposal	11
What devices will be covered by the revised offence?	13
Making payments using a hand-held mobile phone	16
Paying for goods and services	16
Highway Code	18
What will happen next	21
Annex A: Full list of questions	22
Annex B: Consultation principles	24

Foreword



Using a hand-held mobile phone while driving is reckless, thoughtless and, in far too many cases, fatal. The Highway Code tells drivers not to do it and our THINK! campaigns urge people not to do it. The tougher penalties we introduced three years ago show just how seriously the Government views this activity.

Reducing and, ideally, eliminating hand-held mobile phone use by drivers is a huge challenge. We live in an age where mobile phones are an essential part of our lives. A recent survey found that the average age at which children are given their first mobile phone is seven (mobilephonechecker.com survey 2019), so by the time they reach driving age, the lure of the mobile phone is a way of life.

It is important that the Government uses the tools available to it to meet this challenge. As well as educating drivers, another tool that the Government has at its disposal is legislation; the Government must ensure that the law is right. It is important that the law reflects current use of mobile phones and captures all types of use in a comprehensive way.

At the moment, we are concerned that the law is not quite right because it covers interactive communication functions but not standalone functions; that is why we are consulting on a small, but important, change to the law.

The change we are proposing will close that technical gap in the law to ensure that when a driver chooses to pick up a mobile phone while driving and uses it for any purpose, whether to send a text message or to browse through photos stored on the phone, that driver will be committing an offence. We cannot allow errant drivers to escape the full force of the tougher penalty regime for this offence by maintaining an artificial distinction in law between types of use.

A positive knock-on effect of the change we are proposing is that enforcement of this offence will be much easier for the police and prosecutors.

We would welcome your views on the change to the law that we are proposing, as well as an additional exemption from the offence and stronger advice in the Highway Code.

Nomophobia is the fear of being without your mobile phone; various surveys have suggested that around 40% the population are addicted to their mobile phone.

What we want to achieve is 100% of drivers being addicted to safe driving.

Baroness Vere of Norbiton
Parliamentary Under Secretary of State

Executive summary

This consultation seeks views on a proposal to change the law surrounding the use of hand-held mobile phones while driving. The Introduction explains some of the background to why we have a dedicated offence covering the use of hand-held mobile phones, including the risks and the nature of the existing offence.

Chapter one sets out the problems that have arisen since the mobile phone offence was initially enacted in 2003. The main problem is that the offence is restricted to functions involving interactive communication and does not capture the range of standalone functions that drivers can now perform using a hand-held mobile phone. It also sets out how the Government intends to be clearer in law about the types of devices that are covered by the offence.

Chapter two deals with a proposed new exemption from the offence of using a hand-held mobile phone while driving. It explains that the Government does not wish to thwart technological advances and wants to make provision for them where it is safe and sensible to do so. Against this background the document proposes an exemption for drivers who make a contactless payment for goods or services that they receive immediately, for example at a drive-through restaurant.

Chapter three proposes amending the advice in the Highway Code about using mobile phones while driving. It sets out a revised Rule 149 which takes account of the proposed change to the law described in Chapters one and two.

There are questions at the end of each of the three-main chapters and Annex A lists all of those questions in one place.

How to respond

The consultation period began on 17 October 2020 and will run until 17 January 2021. Please ensure that your response reaches us before the closing date. You can contact mobilephoneconsultation@dft.gov.uk if you need alternative formats (Braille, audio CD, etc.).

You can respond to this consultation in two ways:

1. Online, through a survey
2. By email, to mobilephoneconsultation@dft.gov.uk

Due to remote working for the foreseeable future, we cannot accept hard copies of responses but please let us know if you cannot respond by using the survey or by email (0300 330 3000).

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Data Protection

The Department for Transport (DfT) is carrying out this consultation to gather views on the policy governing mobile phone use while driving. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified DfT will, under data protection law, be the Controller for this information.

As part of this consultation we are asking for your name and e-mail address. This is in case we need to ask follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it we will use it only for the purpose of asking follow-up questions.

DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer.

Your information will be kept securely and destroyed within 12 months after the consultation has been completed.

Introduction

The Government regards road safety as a high priority. Road traffic collisions can change lives and they can end lives. The painful and frustrating truth is that so many of those collisions are not simply an inevitable part of driving and riding; too many of them are caused by reckless individuals believing that they can do whatever they want to do without any consequences.

One such reckless activity is using a hand-held mobile phone while driving. Many research studies have shown that hand-held mobile phone use is distracting and this distraction translates to slower reaction times to events, increased percentages of time with eyes off the road, speeding, increased number of crashes and near misses as well as increased crash injury severities (Ziakopoulos, et. al., 2016). Research has also shown that using a hand-held mobile phone while driving is riskier than drink driving (Burns et al 2002).

The offence of using a hand-held mobile phone has been in place since 2003. There is a more general road traffic offence which catches drivers who are "not in proper control of the vehicle", but the proliferation of mobile phones around the turn of the century, combined with a better understanding of the risks, prompted Parliament to establish a specific offence dedicated to this activity.

At the time when the offence was introduced, the main reason why people used a mobile phone was to communicate, either with another person or with the internet. Accordingly, the offence was couched in terms of "using" a hand-held mobile phone to perform a function that involved "interactive communication".

Seventeen years on, mobile phones are used to perform all sorts of different functions, not all of which involve "interactive communication". It is also clear that many more similar devices are available than just the mobile phone; there is a wide range of tablets and gaming equipment which have an interactive communication capability and can be equally distracting to drivers and dangerous for them to hold and use while driving. We need to ensure that the law reflects the way in which people use their mobile phones and similar interactive communication devices in 2020, and that is the reason for this consultation.

The first section of the consultation proposes closing a gap in the law so that drivers are guilty of an offence if they use their hand-held mobile phone or similar device for any purpose while driving. The consultation also proposes an exemption for drivers who use their hand-held mobile phone to pay for goods or services that they receive immediately. And, finally, the consultation seeks views on how we might strengthen the wording in the Highway Code to reflect the proposed change in the law on hand-held mobile phone use.

Broadening the mobile phone offence

Using a hand-held mobile phone while driving - the problem

The law makes it an offence to use a hand-held mobile phone while driving. This means that drivers cannot pick up a mobile phone in their hand and use it while driving. (The offence also applies to motorcycle riders who pick up and use a mobile phone; this consultation will use the word "drivers" to cover both drivers and motorcycle riders.) It is also an offence to use a hand-held mobile phone while supervising a learner driver. The law also covers "other hand-held interactive communication devices" such as tablets but until it becomes important to discuss specific types of device in any detail, this document uses the term "mobile phone" to cover those similar devices.

The law prohibiting the use of a hand-held mobile phone while driving has been in place since 2003. Drivers who use a hand-held mobile phone while driving can receive a fixed penalty notice (FPN) of £200 and six penalty points on their driving licence. If the case goes to the magistrates' court, the maximum fine is £1,000 (or £2,500 for bus and lorry drivers).

There is a problem with the offence in that it only captures certain types of use. The courts considered the nature of the offence in the case of *DPP v Ramsey Barreto* (2019 EWHC 2044 [ADMIN]). Their judgment made it clear that the dedicated hand-held mobile phone offence is only triggered when a driver is (i) holding a mobile phone in his hand; and (ii) performing a function which involves "interactive communication".

The term "interactive communication" essentially means that the driver is communicating with another person through voice calls, texting or email; or communicating with the internet (searching for, or looking at, a website).

These activities are dangerous. They carry a huge risk; they are explicitly against the law and they attract the tough penalties associated with the mobile phone offence (FPN of £200 and six penalty points on the driving licence).

It is equally dangerous for a driver to use a hand-held mobile phone to search for music stored on it; or to record video footage while driving. However, these functions do not require the internet and do not involve communicating with another person or device. They are "standalone" functions and are, therefore, not covered by the dedicated mobile phone offence.

These so-called "standalone" functions can, of course, lead to enforcement action by the police. In extreme cases they might lead to very serious charges with penalties much higher than for the mobile phone offence. However, given the difficulties in proving whether a phone was used when driving the police may opt to take action under the offence of "not in proper control" of the vehicle, rather than the dedicated offence of using of a hand-held mobile phone when driving. The "not in proper control" offence carries a lesser penalty than the dedicated mobile phone offence,

which weakens the tough stance taken by the Government on penalties for using a hand-held mobile phone while driving.

The distinction, in law, between "interactive communication" functions and "standalone" functions is, in the Government's opinion, an entirely artificial one which generates problems both in principle and in practice.

It can no longer be justified, in principle, to retain a law which imposes tough penalties on a driver who performs a function involving interactive communication whilst imposing a lesser sanction on a driver who might also be holding a phone, scrolling through the screens, tapping keys and reading information - all the time with their eyes away from the road, but doing so in "standalone" mode.

In practice, this distinction between interactive communication and standalone functions has generated a significant problem for the enforcement agencies.

The police rely heavily on a roadside presence to enforce the dedicated mobile phone offence. It is an offence that is, in many cases, easy to spot; in a line of slow moving traffic, for example, the driver's head is down and the vehicle is slow to move along with the traffic flow. However, the job of the police is much more difficult than simply seeing a driver holding and tapping away at a phone; to enforce against the mobile phone offence, the police officer must establish that the driver was performing an interactive communication function. If they cannot and the driver was using a standalone function only, the police will be unable to enforce the mobile phone offence.

The police also rely on photographic evidence from the members of the public to enforce a range of road traffic offences. It is becoming increasingly common for drivers to have dashcams in their vehicles and for cyclists to have headcams on their helmets. Under Operation Snap, drivers and cyclists are encouraged to make use of their footage of fellow road users who are breaking the law by sending it to the police. In the case of using a hand-held mobile phone, the footage might show quite clearly a driver tapping or scrolling at the wheel, but the police would then face the problem of having to establish, from the driver, what type of use they were putting the phone to. Unless the use involved an interactive communication function, the police would be unable to secure a conviction using the mobile phone offence. The distinction between interactive communication functions and standalone functions creates a huge problem for the police and undermines the objective of improving road safety.

Using a hand-held mobile phone while driving - the proposal

The Government's proposal to solve the problem described above is to broaden the existing offence of using a hand-held mobile phone while driving, so that it covers drivers who are performing standalone functions as well as drivers who are performing interactive communication functions.

This means that all use of a hand-held mobile phone will be treated in the same way. If a driver is using a hand-held mobile phone to search for music already downloaded onto the phone, the physical manipulation, the cognitive demands and the averted eyes are no different, in terms of risk, from a driver who is typing out and sending a text message. They both constitute an enormous risk and they should both be penalised in the same way. The proposal will still apply only in circumstances where a driver picks up the phone to use it while driving; any change we make to the law on the use of hand-held mobile phones arising from this consultation will not affect the

use of mobile phones which are positioned in a cradle and used while remaining in the cradle (for example as a satnav).

This will make enforcement much easier. A police officer will be able to see a driver holding and tapping and scrolling a phone, and, based on that evidence, will be able to take enforcement action under the new proposed mobile phone offence rather than having to question the driver about whether the use involved interactive communication.

Once the law has been changed in line with the proposals in this consultation document, in addition to the conventional "interactive communication" functions that are clearly within the offence now, the new offence will expressly ban any use of the phone, even picking it up to see who is calling and then rejecting that call, or picking the phone up to check the time or the weather. These actions take drivers' eyes and concentration away from the road and the Government is proposing a comprehensive ban on the use of a hand-held mobile phone while driving.

The boxes below set out the activities that fall within the hand-held mobile phone offence now; and those that will, because of these proposed changes, be brought within the offence.

Activities falling within the offence now - "interactive communication" functions

Driver holds the mobile phone or similar device in the hand to:

- Make a phone call
- Receive a phone call
- Send a text message
- Send an e-mail
- Access social media sites
- Access streaming services

Activities that will be captured under the revised offence

Driver holds the mobile phone or similar device in the hand to:

- Illuminate the screen
- Unlock the device
- Check the time
- Check notifications
- Reject a call
- Compose text messages or e-mails to save in drafts
- Take photos or videos
- Use the phone's camera as a mirror
- Search for music stored on the phone

- Search for photos or other images stored in the phone
- Dictate voice messages into the phone
- Read a book downloaded on the phone
- Play a game downloaded on the phone

Any list of activities that might, following this consultation, be included in the revised offence will not be exhaustive, so other activities, not listed, could also fall within the offence. But, taking this approach helps the police and the courts to understand the parameters of the offence and just how widely drawn it is intended to be.

Changing the law so that these activities are brought within the mobile phone offence will close a worrying gap in the legislation, and can only be beneficial for improving road safety.

What devices will be covered by the revised offence?

At present, the hand-held mobile phone offence covers mobile phones and other similar devices. However, instead of defining separately what devices are covered by the offence, the existing law conflates types of devices with types of uses, and states that the offence is triggered when a driver uses a mobile phone or similar interactive communication device to perform an interactive communication function. That is a problem given that we now want the offence to be triggered by any use of a hand-held mobile phone or similar device - regardless of whether that use is interactive communication or standalone functions.

So, the main objective in revising the law is to separate out the definition of devices and uses, and remove the reference to an "interactive communication function" being the trigger for the offence; this term will be removed from the Regulations because it will no longer be relevant.

Our new approach will be to use the term "other hand-held interactive communication devices" to describe devices that are similar to mobile phones and cannot be used while driving. This will be defined as a device capable of sending and receiving data (other than two-way radio). There will no longer be any reference to performing an interactive communication function, and examples of the types of use which are banned will be described separately.

In line with our objective to prohibit use of hand-held phones and interactive communication devices in a full and comprehensive way, we are also proposing that the offence should be triggered by the use of a hand-held interactive communication device, even if the device is not, at the time of the offence, in a mode or state of connectivity to enable the sending and receiving of data.

In practical terms, this means that use of hand-held tablets, electronic notepads, gaming equipment etc. which are capable of interactive communication will be covered by the revised offence, regardless of whether the device is connected to the internet or in flight mode or other offline mode.

The boxes below illustrate the effects of the proposed change in the law in relation to devices other than mobile phones.

Driver A uses a hand-held tablet, with a data card, to type out and send an e-mail.

- This is captured now under the existing offence - because it is a hand-held device similar to a mobile phone, and is being used to perform an interactive communication function.
- Under the proposed change, this activity will continue to be unlawful and subject to an FPN of £200 and six penalty points.

Driver B uses a hand-held tablet, with a data card, to look at some photos stored on the tablet.

- This is one of the problems with the existing law. Driver B is clearly doing something dangerous and is using a device similar to a mobile phone. But, because looking at a photo stored on the tablet does not involve interactive communication, this activity does not trigger the dedicated hand-held mobile phone offence.
- Driver B could, currently, incur enforcement action for not being in proper control of the vehicle, but that means the tough penalty for mobile phone use would not be imposed.
- Under the proposed change, this activity would clearly be unlawful and subject to an FPN of £200 and six penalty points because the device is capable of interactive communication, even though Driver B was performing a standalone function rather than an interactive communication function.

Driver C uses a hand-held, wi-fi-only, tablet to search for music stored on the tablet.

- This is a tablet which is capable of sending and receiving data while the driver is using the home or other wi-fi network. Without a data card, and assuming there is no wi-fi in the car, the device may not be enabled, at that time, to send or receive data. However, that does not alter the fact it is an interactive communication device.
- Driver C is doing something dangerous, but because the device is not performing an interactive communication function while the driver is driving, this activity would not trigger the existing offence.
- As with Driver B, this could trigger other road traffic offences, but this review is all about getting the hand-held mobile phone offence right and capturing all the devices and activities that warrant the tough £200 FPN and six penalty points.

- Under the proposed change, this activity will clearly be unlawful and subject to an FPN of £200 and six penalty points because the device is capable of sending or receiving data (i.e. when connected to wi-fi), even though that capability is not necessarily enabled while in the car, and because the driver is putting that device to a use which will be prohibited (searching for stored music).

Questions

Do you agree with the proposal to extend the hand-held mobile phone offence to cover "standalone" functions?

If no, why not?

Are there any other mobile phone functions that you think should be listed in the revised offence?

If yes, in your view what other mobile functions should be listed?

Do you foresee any unintended consequences, for example any potential impacts on particular groups, as a result of extending the offence?

If yes, what unintended consequences do you foresee?

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?

If no, why not?

Do you foresee any unintended consequences, for example any potential impacts on particular groups, as a result of amending the offence in this way?

If yes, what unintended consequences do you foresee?

Making payments using a hand-held mobile phone

Paying for goods and services

The ability to use mobile phones to pay for goods and services, has been a popular development in recent years. People quite commonly now use mobile phones to pay for coffees and groceries in restaurants and shops. The Government is keen to encourage technological developments and to avoid laws which obstruct such developments unnecessarily. That is why the law was changed in 2018 allowing an exemption from the mobile phone offence for drivers who wanted to use a device for vehicles with remote control parking capability. There are no plans to change this exemption.

The Government acknowledges there are also now some goods and services that drivers would want to be able to pay for using a hand-held mobile phone to make a contactless payment whilst stationary but with the engine running. One obvious example is at a fast food drive-through restaurant. At present, drivers who pay for a take-away meal at such an establishment by using their hand-held mobile phone are technically breaking the law as this transaction requires interactive communication. (And, even once the law is changed, this activity would still be technically unlawful.) Another example is to pay road tolls using a hand-held mobile phone.

The Government, however, considers that these are legitimate uses of a hand-held mobile phone with minimal risk attached to them and is, therefore, proposing a specific exemption for drivers who make contactless payments.

The exemption will apply solely to drivers who are using a hand-held mobile phone (or similar interactive communication device) to make a contactless payment for goods or services that will be supplied or provided immediately. This could be for drive-through restaurants, road tolls or a car-wash in a garage. The key requirements in the revised law are that the vehicle is stationary, never in motion, at the time of the payment, and the goods or service are received there and then.

Questions

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?

If no, why not?

Do you foresee any unintended consequences, for example any potential impacts on particular groups, as a result of this exemption?

If yes, what unintended consequences do you foresee?

Highway Code

The Highway Code is one of the Government's key tools for explaining to all road users what is expected of them; what laws they must obey and what advice they should follow. Accordingly, it contains a mix of both laws (you MUST do,,,; or you MUST NOT do...) and advice (you SHOULD do....; or you SHOULD NOT do.....).

If road users fail to comply with the laws and the advice in the Highway Code, they can be subject to enforcement action, ranging from warnings to educational courses, to FPNs, to penalty points, to prosecution in the courts and possibly to prison in the most extreme cases. That is why it is important for the Government to make sure that the laws are explained carefully and clearly, and that the advice is well-balanced and sensible.

This part of the consultation is intended to seek views on making the content in the Highway Code about mobile phone use stronger and more explicit to reflect the change in the law that is proposed in Chapter One of this consultation document.

The amendments to the existing text are intended to make it clear that:

- (i) the hand-held mobile phone offence also covers devices *capable* of interactive communication;
- (ii) “driving” includes sitting at traffic lights or in a traffic jam;
- (iii) “use” includes dialling a number even if the phone is then put in a cradle for the main conversation; and
- (iv) there will be a new exemption for paying for goods and services by means of contactless payment whilst stationary.

The box below shows the proposed changes **in green font**.

Mobile phones and in-vehicle technology

Rule 149

You MUST exercise proper control of your vehicle at all times. You MUST NOT use a hand-held mobile phone, or similar device **capable of interactive communication, (such as a tablet) for any purpose** when driving or when supervising a learner driver. **This ban covers all use of a hand-held interactive communication device and it applies even when the interactive communication capability is turned off or unavailable.** You cannot pick up the phone to dial a number and then put it in the cradle for the duration of the conversation. You also cannot use your hand-held device while stationary in traffic, that is still driving.

There is an exception to call 999 or 112 in a genuine emergency when it is unsafe or impractical to stop. **There is also an exception if you are using a hand-held mobile phone to make a contactless payment, while the vehicle is stationary, for goods or services that you will be receiving immediately.**

You may park your vehicle using a hand-held remote control app or device. The app or device MUST be legal, and you should not put other people in danger when you use it.

Never use a hand-held microphone when driving.

It is far safer not to use any telephone **or similar device** while you are driving or riding - find a safe place to stop first or use the voicemail facility and listen to messages later.

Laws RTA 1988 sects 2 & 3, & CUR regs 104 & 110

Questions

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?

If no, why not and what are your suggestions for improvement?

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?

If no, why not and what are your suggestions for improvement?

Any other comments

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on 17 January 2021. Paper copies will be available on request.

If you have questions about this consultation please contact:

Road User Licensing Insurance and Safety Division

Email address mobilephoneconsultation@dft.gov.uk

Annex A: Full list of questions

Do you agree with the proposal to extend the hand-held mobile phone offence to cover "standalone" functions?

If no, why not?

Are there any other mobile phone functions that you think should be listed in the revised offence?

If yes, in your view what other mobile functions should be listed?

Do you foresee any unintended consequences, for example any potential impacts on particular groups, as a result of extending the offence?

If yes, what unintended consequences do you foresee?

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?

If no, why not?

Do you foresee any unintended consequences, for example any potential impacts on particular groups, as a result of amending the offence in this way?

If yes, what unintended consequences do you foresee?

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?

If no, why not?

Do you foresee any unintended consequences, for example any potential impacts on particular groups, as a result of this exemption?

If yes, what unintended consequences do you foresee?

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?

If no, why not and what are your suggestions for improvement?

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?

If no, why not and what are your suggestions for improvement?

Any other comments?

Annex B: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Email consultation@dft.gov.uk