



## BRIEFING PAPER

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# Driving and mobile phones

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## Summary

This short paper briefly summarises the introduction of a new offence in 2003 for driving whilst using a hand-held mobile phone or similar device, changes made to the penalties since then, future plans for further changes, and how effective the offence has been. It also sets out charging policy in this general area and briefly addresses the question of using a mobile phone while cycling.

Since 1 December 2003 it has been an offence to drive a motor vehicle on a road while using a hand-held mobile telephone or similar device. Since February 2007 this has been an endorsable offence, punishable with 3 penalty points on the licence and a £60 Fixed Penalty, increased to £100 in 2013. The Government plans to increase this to a £200 Fixed Penalty and 6 points.

While an offence in itself, it can also be a contributory factor in the charging of other offences such as careless and dangerous driving and, in the most serious cases where death occurs, causing death by careless or dangerous driving. As the justice system is devolved in Scotland, the information herein relating to charging policy relates to England and Wales only.

There have been concerns in recent years that the enforcement of this offence is not sufficiently robust as official figures have shown a sharp decline in the number of Fixed Penalties issued.

Separate Commons Library briefing papers are available on driving while under the influence of drugs ([SN2884](#)), drink driving ([SN788](#)) and other serious traffic offences ([SN1496](#)). Information on other roads-related issues can be found on the [Roads Topical Page](#) of the Parliament website.

# 1. Why was a new offence needed?

The wide-spread use of cars in phones is a relatively new development, though [Wikipedia](#) records that the first car phones were produced in the US by Bell and Motorola in 1946. It was not until the late 1990s, when mobile (or 'cell') phones became lighter and signal coverage became more widespread that they began to overtake car phones as the communications device of choice for the motorist. An early review of evidence by the Transport Research Laboratory (TRL) concluded that the use of hand-held mobile phones while driving was widely regarded as unsafe.<sup>1</sup>

The then Labour Government reviewed the Highway Code in 1998-99 and stopped short of banning car phones. The wording adopted in Rule 127 was as follows:

127. You MUST exercise proper control of your vehicle at all times. Never use a hand held mobile phone or microphone when driving. Using hands free equipment is also likely to distract your attention from the road. It is far safer not to use any telephone when you are driving - find a safe place to stop first.

The Government's view was that the police could and did successfully prosecute the offences of dangerous driving, careless driving or failing to exercise proper control of a vehicle that could arise from the use of a mobile phone while driving.<sup>2</sup> However, it later cautioned in its 2000 road safety White Paper that if drivers did not stop using their phones when driving, it would review the case for creating a specific offence.<sup>3</sup>

As there was no separate offence of driving while using a mobile phone, it was not possible to say how many prosecutions there had been of motorists for such an offence. Most prosecutions were likely to have been for driving without due care and attention.<sup>4</sup> A report commissioned by the Department for Transport from the Royal Society for the Prevention of Accidents (RoSPA) summarised 19 cases that had been reported in the national press between 1988 and 2001 where a death could be attributed to a driver using a mobile phone.<sup>5</sup>

Observations by TRL showed a gradual increase in the number of drivers using mobile phones while driving from 1.5 per cent in November 2000 to 2.2 per cent in April 2002.<sup>6</sup> A report by TRL for Direct Line published in March 2002 found that drivers' reaction times were, on average, 30% slower when talking on a hand-held mobile phone compared to

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<sup>1</sup> Stevens, A and Paulo, DAO, *The use of mobile phones while driving: a review* (TRL Report 318), November 1997

<sup>2</sup> [HC Deb 13 July 1998, c8W](#)

<sup>3</sup> DETR, *Tomorrow's roads: safer for everyone*, March 2000, p26

<sup>4</sup> [HC Deb 9 January 2002, c903W](#) provided figures on prosecutions for the offence of driving without due care and attention in England and Wales between 1995 and 2000

<sup>5</sup> RoSPA, *The Risk of Using a Mobile Phone While Driving*, 2002

<sup>6</sup> DfT, [Proposal for an offence of using a hand-held mobile phone while driving](#), 20 August 2002, Annex B: Partial Regulatory Impact Assessment

being drunk and nearly 50% slower than under normal driving conditions.<sup>7</sup>

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<sup>7</sup> TRL for Direct Line, *The Mobile Phone Report*, March 2002

## 2. Creating the new offence, 2002-03

By 2002-03 a significant number of countries across the world (at least 35) had introduced legislation to prohibit drivers from using mobile phones while driving.<sup>8</sup>

The Labour Government published a consultation paper in August 2002 seeking views on whether there should be a specific offence of driving whilst using a hand-held mobile phone or similar device.<sup>9</sup> The offence would cover anyone “causing or permitting” the use of a hand-held mobile phone. This would make it clear to employers that they could not expect their employees to use such a phone while driving. It would not apply to hands-free phones (thought to be unenforceable) or to phones used while the car was parked with the engine turned off. It would therefore apply at traffic lights or in a slow moving traffic jam. The ban would apply to hand-held models used with earphones and microphones.

The CBI supported the plan but was concerned at liability being passed to employers.<sup>10</sup>

The then Transport Minister, David Jamieson, announced on 24 June 2003 that the Government intended to proceed with the creation of the offence.<sup>11</sup> Specifically:

- It was unnecessary for a vehicle to be parked with the engine switched off in order to avoid prosecution. Under existing law a person may be regarded as ‘driving’ a vehicle while the engine is running and the vehicle is stationary;
- The new offence would apply to all mechanically propelled vehicles, including motorbikes. It would not extend to cyclists as the Government did “not consider this is a significant problem that justifies extending the offence to non-motorised traffic”;
- Employers would not be liable solely because they had supplied a telephone or because they phoned an employee who was driving at the time. However, they would continue to be liable if they required employees to commit an offence;
- Those who are in control of a vehicle, including those accompanying learner drivers, would also be covered by the proposed offence;
- The offence would apply 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 was held in the driver's hand during at least part of the period of its operation. Within the context of holding a phone, pushing buttons on a phone while in a cradle or

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<sup>8</sup> see, e.g. op cit., [The Risk of Using a Mobile Phone While Driving](#), pp16-18; and [HL Deb 11 October 1999, c65WA](#)

<sup>9</sup> op cit., [Proposal for an offence of using a hand-held mobile phone while driving](#)

<sup>10</sup> “Mobiles crackdown sparks red tape fear”, *Financial Times*, 21 August 2002

<sup>11</sup> [HC Deb 24 June 2003, c35-6WS](#)

being operated via buttons on the steering wheel or handlebars of a motorbike would not breach the new law;

- There would be exemptions from the offence for 2-way radios and the use of a hand-held phone for a genuine emergency call to 999, if it would be unsafe for a driver to stop; and

The offence would be subject to a Fixed Penalty of £30 and 3 penalty points or a fine on conviction of up to £1,000 (£2,500 for drivers of goods vehicles or those manufactured or adapted to carry 9 or more passengers).<sup>12</sup>

The *Road Vehicles (construction and use) (amendment) (no. 4) Regulations 2003* ([SI 2003/2695](#)) came into force on 1 December 2003. The regulations inserted new Regulation 110 into the construction and use regulations.<sup>13</sup>

## 2.1 Cycling

As indicated above, when the new offence was created it was **not** deemed appropriate to extend it to cyclists.

There is an offence of 'careless and inconsiderate cycling' in section 29 of the [Road Traffic Act 1988](#), as amended. This is defined as: "if a person rides a cycle on a road without due care and attention, or without reasonable consideration for other persons using the road, he is guilty of an offence". The maximum penalty is £1,000.

The CPS guidance for prosecuting bad driving includes using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably distracted by that use as an example of careless driving.<sup>14</sup> It may be that a court might also consider that this applies in the case of careless cycling.

The Ask the Police website states: "Using a hand held mobile phone whilst cycling is not illegal per se. However, you could commit an offence of careless cycling. It is also not advisable for the obvious safety reasons".<sup>15</sup>

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<sup>12</sup> DfT, [Mobile phones and driving: decision letter and summary of responses](#), 24 June 2003

<sup>13</sup> *Road Vehicles (Construction and Use) Regulations 1986* (SI 1986/1078); it is an offence under section 42 of the [Road Traffic Act 1988](#), as amended, to contravene these regulations.

<sup>14</sup> CPS, [Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents](#) [accessed 8 November 2016]

<sup>15</sup> Ask the Police, [Q604: Can I use a mobile phone whilst cycling?](#) [accessed 8 November 2016]

## 3. Penalties

### 3.1 Current

**As at date of publication the available Fixed Penalty for the offence of driving a motor vehicle on a road while using a hand-held mobile telephone or device is £100 and 3 penalty points.**

Originally, offenders were subject to a Fixed Penalty fine of £30. The Government subsequently legislated to make this an endorseable offence, so that drivers would receive three penalty points on their licence, and a £60 Fixed Penalty from February 2007.<sup>16</sup> The Fixed Penalty was increased to £100 from June 2013.<sup>17</sup>

The Crown Prosecution Service (CPS) policy for prosecuting cases of bad driving, published in 2007, stated that it was clear “how seriously society views the potential dangers of the use of mobile phones and other hand-held devices, while driving” and that in cases where the driver “was avoidably and dangerously distracted by that use, a charge of dangerous driving will be the starting point for our charging decisions”.<sup>18</sup>

In the revised version of the guidance, published in 2013, it listed the following as examples of circumstances that are likely to be characterised as ‘**dangerous driving**’:

- using a hand-held mobile phone or other hand-held electronic equipment whether as a phone or to compose or read text messages when the driver was avoidably and dangerously distracted by that use; *R v Browning (2001) EWCA Crim 1831*, *R v Payne [2007] EWCA Crim 157*; and
- driving whilst avoidably and dangerously distracted such as whilst reading a newspaper/map, talking to and looking at a passenger, selecting and lighting a cigarette or by adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment.<sup>19</sup>

Dangerous driving carries a maximum sentence of an unlimited fine and/or two years’ imprisonment, a 12 month disqualification and endorsement the driver’s licence with 3-11 penalty points.

The CPS guidance also lists using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably distracted by that use as an example of driving that courts would typically regard as **careless or inconsiderate**. However, it also cautions

<sup>16</sup> via section 26 of the [Road Safety Act 2006](#)

<sup>17</sup> Via Regulation 2 of the [Fixed Penalty \(Amendment\) Order 2013](#) (SI 2013/1569)

<sup>18</sup> CPS, [Policy for prosecuting cases of bad driving](#), December 2007, para 44

<sup>19</sup> op cit., [Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents](#)



that if this is the only relevant aspect of the case it is more appropriate to use the specific offence.<sup>20</sup>

Careless driving or driving without reasonable consideration carries a maximum sentence of an unlimited fine; a discretionary disqualification for any period and/or until a driving test has been passed; and obligatory endorsement of the driver's licence with 3-9 penalty points.

### 3.2 Proposed changes

In December 2015 the Government announced that the penalty points for the offence should increase from 3 to 4 and the Fixed Penalty from £100 to £150.<sup>21</sup> However, it also said that the vast majority of first time offenders would not incur a Fixed Penalty or penalty points but would instead be offered an educational course. It decided to tackle this issue on the back of research by the RAC which found that dangerous in-car mobile phone use, was one of motorists' top concerns.<sup>22</sup>

Consequently, in January 2016 the DfT issued a consultation seeking views on these proposals.<sup>23</sup>

In September 2016 *The Times* reported that the Government was planning to double the number of points that could be given for the offence from 3 to 6 and to double the Fixed Penalty from £100 to £200. It suggested that the offence could come into force in the first half of 2017.<sup>24</sup>

In November 2016 the Government confirmed its intention to double the penalty by increasing the Fixed Penalty from £100 to £200 and increasing the penalty points from 3 to 6 for all drivers. In future there would be no differentiation between cars and HGVs. It also proposed that a remedial course would not be offered to first-time offenders as an alternative to the Fixed Penalty "in order to provide a strong deterrent and change behaviour".<sup>25</sup> This means that both vocational and novice drivers could have their licences revoked after being caught committing one offence.<sup>26</sup> The Government anticipates laying legislation before Parliament to affect these changes "as soon as possible".

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<sup>20</sup> *ibid.*

<sup>21</sup> DfT press notice, "[Government unveils host of measures to further improve road safety](#)", 21 December 2015

<sup>22</sup> DfT, [Working Together to Build a Safer Road System: British Road Safety Statement](#), December 2015, p7 & RAC, [RAC Report on Motoring 2015: The speed of change](#), chapter 5

<sup>23</sup> DfT, [Consultation on changes to the Fixed Penalty notice and penalty points for the use of a hand-held mobile phone whilst driving](#), 26 January 2016

<sup>24</sup> "Automatic bans for new drivers who use mobiles at the wheel", *The Times*, 17 September 2016

<sup>25</sup> DfT, [A consultation on changes to the Fixed Penalty Notice and penalty points for the use of a hand-held mobile phone whilst driving: Response to Consultation](#), 8 November 2016, p20

<sup>26</sup> *ibid.*, p20

## 4. Enforcement and effectiveness

Official figures show that the number of Fixed Penalties issued in England and Wales for using a hand-held mobile phone while driving fell significantly, from a peak of 123,100 in 2011 to a low of 16,900 in 2015 (on the comparable data).<sup>27</sup>

The impact assessment accompanying the 2016 consultation outcome (see above) stated that:

Evidence suggests that the use of a hand-held mobile phone whilst driving was a contributory factor in 21 fatal accidents (1%) and 84 serious accidents (0.5%) in 2014 and there is a strong indication that this was underreported [...] recent surveys commissioned by DfT have found a persistent number of drivers that reportedly use a hand-held mobile phone. A campaign using unmarked Police Vehicles called Operation Tramline found evidence of ongoing widespread non-compliance with 109 of the 231 vehicles stopped were stopped for mobile phone offences.<sup>28</sup>

There is widespread concern about the enforcement of the offence, irrespective of the level of the penalty.<sup>29</sup> In their March 2016 report into roads policing, the Transport Select Committee said that future technology could be used to “fill the gap left by a reduction in specialised road traffic officers”. It also expressed concerns about the use of hands-free mobile phones distracting drivers and called on the Government to fund research into the development and effective deployment of technology to detect illegal mobile phone use while driving.<sup>30</sup>

In the November 2016 consultation response, DfT acknowledged that “detection can be difficult as mobile phones can be used surreptitiously while driving” and committed to providing “additional guidance or advice and consider[ing] new technology where it aids detection and ensure effective prosecution by the police”. The Government acknowledged that enforcement alone would “not fully address the behaviour” and said that it was:

... willing to work with industry on technology that would encourage better and safer behaviour and we want to take full advantage rapidly developing in-car technology and where it can support safe driving behaviour. However ... even with technology such as drive- safe modes it is ultimately the driver that has to take responsibility for their actions. In support of all of these measures, a THINK! campaign highlighting the dangers of using a mobile phone while driving will accompany the increased

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<sup>27</sup> Home Office, [FPN.02: Fixed penalty notices issued by offence type, England and Wales, 2001 to 2015](#) [accessed 8 November 2016]

<sup>28</sup> DfT, [Increasing Mobile Phone FPN and Penalty Points for the offence of using a Mobile Phone whilst driving: IA](#), 8 November 2016

<sup>29</sup> e.g. “[Depleted police forces 'failing to curb use of phones by drivers'](#)”, *The Guardian*, 27 October 2016; and “[Motorists take photos and videos at the wheel, says RAC](#)”, *BBC News*, 15 September 2016

<sup>30</sup> Transport Committee, [Road traffic law enforcement](#) (Second Report of Session 2015–16), HC 518, 15 March 2016, para 50

penalties in order to raise awareness of the change and to make mobile phone use while driving socially unacceptable.<sup>31</sup>

It further indicated that it is planning to conduct a roadside observational survey on mobile phone use in follow up to one previously held in 2014 in order to monitor the effectiveness of the changes.<sup>32</sup>

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<sup>31</sup> op cit., [\*A consultation on changes to the Fixed Penalty Notice and penalty points for the use of a hand-held mobile phone whilst driving: Response to Consultation\*](#), p21

<sup>32</sup> *ibid.*, p22

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