

Mobile phone advice

The penalty handed to drivers caught using a mobile phone whilst driving doubled to an **obligatory 6 point endorsement** and a **minimum £200 fine**.

The act of driving on a road whilst using a hand-held mobile phone or other hand-held device has been an offence since 2003 and is punishable under section 41D of the Road Traffic Act 1988

A mobile phone or other device is deemed to be hand-held if it is actually held or it must be held at some point during the course of making or receiving a call, or of performing any other “interactive communication function”. An “interactive communication function” is not defined but it does include sending or receiving messages, pictures or accessing the internet.

- **Handheld device** – 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”.
- **Device** – “similar” to a mobile phone if it performs an interactive communication function by transmitting and receiving data.

While it’s an offence to be seen using a hand held phone, regardless of whether driving has been affected, this is not the case for hands-free phones as the device cannot be picked up, even momentarily, whilst the vehicle is moving. If you are using a touch screen whilst driving, then you will be prosecuted if the engine of the vehicle is on.

If you’re seen not to be in control of a vehicle while using a hands-free phone you can be prosecuted for that offence.

The penalties for ‘not in proper control’ are:

- **£100 fine and 3 points**, or
- **Up to £1,000** (£2,500 if you were driving a bus or a goods vehicle) if it goes to court.

The only exemption under the law applies where a driver is able to demonstrate the following:

1. the call is to an emergency service using **112** or **999**
2. the caller is acting in response to a genuine emergency
3. it is unsafe or impracticable to cease driving

Under the road traffic legislation, driving includes being stationary in a traffic jam and, as a result, drivers could still face a penalty for using a mobile phone where it is clear that the vehicle is going to be stationary for some time.

The increased sentence will be most severe for a “new driver”. The Road Traffic (New Drivers) Act 1995 established a two-year probationary period for newly qualified drivers and the accumulation of six or more penalty points during this period results in the revocation of a “new driver’s” licence and a requirement to pass another driving test in order to restore previous entitlements.

More experienced motorists can lose their licence if they receive 12 points in a three-year period; just two mobile phone incidents under the change in the law.

In particularly serious cases of using a mobile phone behind the wheel, a driver could be taken to court where the maximum fine is £2,000, and disqualification is at the Court’s discretion.

It is clear from the rise in penalties over the years that driving offences involving mobile phones are being treated ever more seriously. Driving whilst using a mobile phone is now cited as an example of careless driving and the Government is currently considering increasing the punishment where death and serious injuries are caused as a result.

Where these types of devices are provided for use in the course of employment, the onus should fall upon the company to have proper policies in place in order to comply with road risk.

Your employer may be open to prosecution:

- If they cause or permit you to drive while using a phone or to not have proper control of the vehicle.
- If they require you to make or receive calls whilst driving.
- If you drive dangerously because you’re using a phone installed by your employer.

Please note that this Law Update is guidance only and does not constitute legal advice.

