

The LPHCA's Response to – a proposal for an offence of using a hand held phone while driving

Question 1- Do you agree with the proposal to introduce a specific offence to ban the use of hand-held mobile phones by drivers? YES - The LPHCA accepts that hand-held phones used by driver are dangerous, however please see our comments on what is 'hand-held' in Question 2

Question 2- Do you agree that the proposed offence should not include hands-free phones? YES

Question 3 - Do you agree that there should be no exemptions from the proposed offence? NO

Please explain your reasons (if you consider that exemptions should be permitted, please say what they are and why you think each one is necessary):

Please see our comments on 2-way radio equipment in question 5.

Question 4- Do you agree that the new offence should be subject to penalty points and discretionary disqualification when a suitable opportunity arises? YES

Question 5 - Do you have any comments on the detail of the proposed new regulation set out in Annex A?

The LPHCA does not accept that an extension should be made to hand held microphones.

The Private Hire and Taxi Industry, like the military, the fire brigade, the police and ambulance services has for many years used 2-way radios, that are usually fitted with hand held microphones.

We do not feel that a licensed taxi or private hire driver's essential communications equipment should be caught up in any regulation designed for mobile phones. The use of 2-way radios in this country is long established and licensed by government.

We do not believe that any potential regulation should embrace 2-way radios being used under licence by licensed drivers. There are probably over a million such devices in the U.K. and we know of no evidence to suggest the usage of such devices has compromised safety.

Furthermore this equipment has to be 'type approved' by The Radiocommunications Agency and should therefore not be in the scope of any potential regulations for mobile phones,

Much of this equipment designed for short, sharp, radio messages, is tried and trusted over a great period of time. The equipment is not designed to be 'hands-free' or work in that manner, and conversion of such equipment would be both financially prohibitive and technically unfeasible in many cases.

Please ensure that licensed 2-way radios are not caught up in any potential 'mobile phone' regulations.

Question 6 - Do you have any comments on the partial Regulatory Impact Assessment (Annex B)?

The risk assessment clearly outlines that there is a perceived, rather than proven risk in using 'hands-free' communication device equipment.

There is no conclusive evidence to suggest talking using a 'hands-free' phone is more distracting than a driver talking to a passenger or listening intently to a radio or C.D. player in a car.

The crux of potential regulations should focus on how a mobile phone is activated and de-activated, how it is fixed and how a driver hears and responds to the communication.

Our members have used to great effect, 'hands-free' mobile phones which at the time of writing can already be activated and answered by voice commands. Furthermore Bluetooth (wireless technology) means that headsets and microphones can be worn without restricting a vehicle driver's movements whatsoever.

Any new regulations need to be sensible, balanced and not unreasonably restrictive, furthermore potential regulations must not be a hostage to improvements in technology.

There is a great deal of evidence to support appropriate communications devices being used by operatives whilst in control of far more complex things than a motor vehicle.

An essential part of an airline pilot's work equipment is the headset and microphone used to communicate with air traffic controllers, etc. Is there any evidence to suggest that this causes a risk to passengers in planes?

This example highlights our position on mobile phone usage in motor vehicles: -

Provided they are appropriately secured and can be remotely activated, mobile phone regulations should focus on the prohibition of hand held mobile phones or more explicitly phones being used in the hands of drivers.

The regulations must provide for sensible usage of mobile phone technology in vehicles, that embraces the arrival of Bluetooth and other future wireless technologies.

Licensed two-way radio equipment should not be in scope of any potential regulations.



Question 7- Do you have any comments to make on the consultation process?

The consultation process has been worthwhile and very welcomed, however some of the questions may have been better with yes, no and other view answer boxes, not just yes / no boxes as the format of the yes / no answer boxes are a bit restrictive.

The ability to get the form from the internet and reply the same way is useful and appreciated.

We would like feedback from our comments and it would be useful to know how we can get access to others comments. The internet seems an obvious solution.

Steve Wright MBE Chairman LPHCA

The Department for Transport has given us a thoroughly considered, well set out consultation process and as a direct result of their professionalism they have produced sensible, workable and safe regulations.

At every stage of the process we have been given appropriate opportunities to comment and we have had quality feedback. In addition the consultation met the criteria set out for timescale by The Cabinet Office. The Department of Transport should be delighted by their efforts by way of consulting with the people that matter and for taking on board many of their sensible comments.

The full summary of these proposals can be seen on the DFT website at: - <http://www.dft.gov.uk/>

[Click on](#) Road Safety / [Click on](#) Consultation Papers / In the Archived section [Click on](#) Mobile phones and driving



Dear Consultee

1. I refer to the Department's consultation letter¹ issued on 20 August 2002 setting out proposals for the introduction of a new offence relating to the use of hand-held phones by drivers. The consultation period closed on 25 November and a total of 1040 responses were received.

2. All the comments received were considered carefully and a summary of the key points made is attached together with a list of those who responded. In the light of the consultation, the Department has decided to go ahead with revised proposals, as set out below, with the aim of bringing the new regulation into force from 1 December 2003.

Driving

3. The consultation document suggested that the proposed offence should apply unless the driver was parked with the engine switched off. Some respondents felt this was unreasonable and would prevent drivers using their phones while caught in a traffic jam.

4. We consider that drivers should not use hand-held phones while at traffic lights or during short hold-ups that may occur during a typical journey. However, we accept the view that it is 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. We consider this satisfactory for the purposes of this offence and will not therefore include a new definition of "driving" in the regulation.

Vehicle

5. The new offence will apply to all mechanically propelled vehicles, including motorbikes. Although some respondents suggested that it should be extended to cyclists, we do not consider this is a significant problem that justifies extending the offence to non-motorised traffic.

Cause or permit

6. A number of driving offences in the Road Vehicles (Construction and Use) Regulations 1986 make it an offence to "cause or permit" the offence to take place. Regulation 104 makes it an offence for a person to drive a motor vehicle if he cannot have proper control of the vehicle. Anyone "causing or permitting" a driver not to have proper control, such as an employer requiring an employee to drive a vehicle which they cannot properly control, is also liable for prosecution.

7. The consultation document suggested that any new regulation on mobile phones should adopt the same wording as Regulation 104 to include liability for causing or permitting someone to use a handheld mobile phone or similar device while driving. This will make it clear to employers, for example, that they cannot expect their employees to use a hand-held phone while driving. There was some concern among consultees that they may be liable if they called someone who answered while driving, and some employers suggested that they should be specifically exempt from any liability if they had given clear guidance to employees not to use a hand-held mobile phone while driving. The Department's view is that 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, we consider that employers should continue to be liable if they require employees to commit an offence.

In control

8. It was suggested by one of the driving instructor organisations that those who are in control of a vehicle include those accompanying learner drivers and that they should also be covered by the proposed offence. We agree with this suggestion and the new regulations will be drafted accordingly.

Hand-held phones

9. During the consultation, concern was expressed about the proposed definition of hand-held phones. The consultation document suggested that only those phones that had fixed speakers should be regarded as hands-free phones. However, there are numerous types of hands-free phones and kits to convert hand-held phones to provide some level of hands-free use.

10. We now consider that a more practical approach would be to prohibit the type of activity rather than to try and define different devices. The offence will therefore 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 is held in the driver's hand during at least part of the period of its operation. We do not wish to prohibit the carrying of hand-held phones in vehicles or require them to be switched off. A phone may therefore continue to be used to receive data when it is in a vehicle providing the driver is not holding it.

11. Within the context of holding a phone, pushing buttons on a phone while it is in a cradle or if it is being operated via buttons on the steering wheel or handlebars of a motorbike would not, in our view, breach the new regulation.

Hands-free phones

12. The consultation explained that while the Department considers that drivers should not use handsfree phones, it was not proposed to include these within the scope of the new regulation due to enforcement difficulties. Although some respondents considered that further action was needed against hands-free use, the Department does not consider that hands-free phones should be prohibited unless they are being held during use.

Similar devices

13. The Department consulted on the basis that devices similar to mobile phones would be included in any new offence. There are now many types of hand-held electronic devices that can be used in a similar way to a phone to text, receive and record messages, access the Internet or data held within the device, or have dual or multi-functions. We wish to avoid creating a potential loophole and therefore holding any electronic device used for accessing oral, textual or pictorial communications will also be prohibited, provided that the device must be held at some point during the course of its operation.

14. The consultation document also suggested that 2-way radio microphones should be included within the proposed ban. However, some responses requested exemption for radio systems, pointing out that these have been used over many years without giving rise to road safety concerns. Amateur radio operators, some commercial drivers such as taxi drivers and hauliers, and some of the emergency services use them to communicate with a base station. We accept that such "press to talk" devices keep conversations short and are likely to have a lower risk. Furthermore permitting their use will not open up a loophole because the vast majority of drivers are unlikely to use them as substitutes for mobile phones. They are far less convenient, generally require a dedicated frequency and permit only one-way conversations while a button is held. While the details of the extent of the exemption remain to be determined, the new offence will exempt the use of such devices.

Exemptions

15. The consultation document asked if any exemptions, eg for the emergency services, should be permitted. Many considered that there should be no exemptions, particularly as hands-free use would not be prohibited. Some suggested exemptions for emergency use. The police and representatives of 5 local ambulance services requested the need for exemption for use of 2-way radios. As noted above, it has been decided not to include 2-way radios in the new offence. It has also been decided that there should be an exemption to use a hand-held phone for a genuine emergency call to 999, if it would be unsafe for a driver to stop. However, no further exemptions will be permitted.

Penalties

16. The consultation document explained that any new offence would be subject to a fixed penalty of £30 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). Primary legislation would be required to increase the maximum penalty and views were invited on whether any new offence should be subject to penalty points and discretionary disqualification. There was a large measure of support for this. The Government announced last July that it intended to raise the penalty for Regulation 104 offences when a suitable legislative opportunity arises. We intend to do so for this new offence at the same time and consider that it should attract 3 penalty points.

Next Steps

17. The new regulation will now be prepared and laid before Parliament as soon as possible. A regulatory impact assessment will be published at that time. The regulation will be subject to the negative resolution procedure and the new offence will be brought into effect from 1 December 2003.

Yours sincerely

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