

NEW MOBILE PHONE REGULATIONS: 1 DECEMBER 2003

By

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The New Regulations

The new mobile phone Regulations¹ came into effect on 1 December 2003. The Regulations created a specific offence of driving using a hand-held mobile phone or similar device. The use of a hand-held device while driving is prohibited. Drivers that do not have proper controls when using hands-free phones are also at risk. The penalty if caught driving with a hand-held device is £30 fixed penalty and up to £1000 if the offender goes to court. The fine increases up to £2500 for drivers of goods vehicles, coaches or buses. There is an additional offence created under the Regulations of causing or permitting a driver to use a hand-held phone while driving (see below).

Who is Liable?

The offence applies to all motor vehicles, motorcycles but not pedal cycles. Anyone instructing a learner driver and using a mobile phone will be caught by the Regulations.

Under the Regulations:

- § **Hand-held device** - A mobile telephone or other device which must be **held** at some point during the course of making or receiving a call or performing

any other interactive communication function.

- **Interactive communication** includes:
 - Sending or receiving oral or text messages
 - Sending or receiving facsimile documents
 - Sending or receiving still or moving images; and
 - Providing access to the Internet.
- § **Driving** - A person is “driving” even if the vehicle is stationary but the engine is running. This applies to drivers stopped at traffic lights or held up in traffic. A driver can only use a hand-held device whilst safely parked.
- § **Exemption** – A driver using a two-way “press to talk” radio (the sort of radios used by the emergency service and taxi drivers), or a hand held phone to call 999 or 112 in a genuine emergency where it is unsafe or impractical to stop, is exempt.

Hands Free Mobile Phones

There is not an absolute ban on the use of hands-free phones. However, if it can be shown that a driver involved in an accident was using a hands-free phone or similar

¹ The Road Vehicles (Construction and Use) (Amendment) (no 4) Regulations 2003 (“the Regulations”)

device whilst driving, then the driver may be charged with careless or dangerous driving under existing regulations.

What are the risks to Employers?

The offence applies to “anyone who causes or permits any other person” to use a hand-held phone while driving. Employers should note that they might be found guilty of such an offence if they require or permit their staff to use hand-held mobile phones while driving. Employers must ensure that their employees’ vehicles are fitted with

hands-free kits although there is still the risk of an employer falling foul of the Health and Safety Regulations. Under these regulations, they are under a duty to manage the risks faced by their employees. Employers should prohibit the use of hand-held phones by all employees and provide a clear written policy to employees on the use of mobile phones.

Further Penalties

The government is planning to increase the penalty by making it subject to 3 penalty points and a £60 fixed penalty.

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