

# NEW MOBILE PHONE REGULATIONS: 1 DECEMBER 2003

By

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## The New Regulations

The new mobile phone Regulations<sup>1</sup> 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

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<sup>1</sup> 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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