

Operating a mobile phone whilst driving

Operating a mobile phone while driving may reduce concentration and effectiveness, and the distraction of using a phone may contribute to the likelihood of an accident. The Government has therefore introduced new legislation.

What's the legal situation?

On 24 June 2003 the Department of Transport announced that as from 1 December 2003, driving whilst using a hand-held mobile phone will be a legal offence under the Road Vehicles (Construction and Use) Regulations 1986.

What are the penalties?

Initially, offenders will be subject to a £30 fine, which can be increased to a maximum fine of £1,000 (£2,500 for drivers of goods vehicles or those manufactured or adapted to carry nine or more passengers) if the matter goes to court.

Also, the Government is planning to legislate to make the use of hand-held mobile phones while driving an endorsable offence so that drivers will also receive three points on their licence each time they are caught holding a phone.

Does that mean it is safe to make and receive hands-free calls?

While it is not illegal to use a hands-free mobile phone while driving, hands-free calls are also distracting and drivers should be aware that they still risk prosecution for failing to have proper control of their vehicle.

Is it illegal to use a hand-held phone while stationary?

Under existing law a person may be regarded as 'driving' if the engine is running – even if the vehicle is stationary. Hand-held phones should not therefore be used at traffic lights or during short hold-ups.

What's the definition of hand-held and hands-free phones?

A hands-free phone is one that is attached to fixed speakers and does not require the operator to hold while in use. However many hand-held phones now come with kits to give them some level of hands-free use. The legislation therefore covers the way in which a mobile phone is being used whilst driving. A driver is liable for prosecution if he is holding a mobile phone to send or receive any sort of data – be it voice, text, image or Internet access.

Does the legislation only relate to mobile phones?

No, any hand-held electronic device being used to access voice, text or pictorial images is also prohibited.

Are there any exemptions?

If a driver is found to have used a hand-held device in a genuine emergency where it would have been unsafe to stop the car, he may be exempt from penalty.

Additionally the use of "press to talk" 2-way radios used by haulage drivers, taxi drivers and emergency services in contact with base stations is also exempt.

Can an employer also be prosecuted?

Yes, employers are liable for prosecution if they require employees to commit an offence (i.e. if they require them to use hand-held phones while driving). Furthermore anyone "causing or permitting" an offence to take place, such as allowing a driver to drive without proper control, is also liable for prosecution. However employers are not liable for prosecution simply by supplying a hand-held mobile phone or by phoning an employee while he or she is driving.

What should an employer advise?

Employers should not expect employees to use hand-held phones whilst driving. And in light of the new legislation, it is in everyone's interest to advise drivers of the legal situation and recommend that they never use a hand-held phone while driving.

Employers should also issue guidelines that state that the only safe way to use a mobile phone in the car is to:

- Switch the phone off while driving and let it take messages
- Or leave the phone switched on and let it go to voicemail
- Find a safe place to stop before picking up the messages and returning calls
- Ask a passenger to deal with the calls

Even when using hands-free phones drivers should:

- Limit outgoing calls to emergency use and when it is safe to do so
- Use voice activation when making outgoing calls
- Tell all incoming callers that he/she is driving and to keep the call short

For more information on how Lex can help you manage your fleet more efficiently call us on

08457 697 381