

Northern Ireland Department for Infrastructure

Using a mobile phone while driving:

Consultation on changing the law

A response by the Association of Personal Injury Lawyers

August 2025



Introduction

APIL welcomes the opportunity to respond to the Department for Infrastructure's consultation on changing the law concerning the offence of using a mobile phone whilst driving.

Individuals should have the right to use the roads without the risk of becoming injured. In 2023, there were 71 fatalities in road traffic collisions and 880 people seriously injured in road traffic collisions¹ in Northern Ireland. Distractions at the wheel, such as the use of a hand-held mobile phone, can significantly reduce driver awareness and be a contributing factor to collisions on the road. Mobile phone use is one of the 'fatal 5' offences prioritised by the Police Service of Northern Ireland to reduce the number of people killed in road collisions.²

Technology is changing fast. Other forms of technology not considered in the consultation have the potential to do harm by causing distractions to drivers and increasing the risk of road collisions. It is crucial that distractions are limited to ensure that our roads are as safe as possible.

We agree with the proposed change in the legislation to prohibit any use of a hand-held device while driving. However, we believe it should be clearer in the legislation that using a mobile phone whilst it is in a cradle is also an offence, given that it is also a distraction. The legislation should make it clear that it is an offence to carry out the activities outlined in the proposed changes, even if the device is in a cradle. If the driver is required to touch the screen in order to make a call or search for music, this is not technically hands-free and has the potential to be unsafe because it results in the driver losing focus on the road, which may cause a collision and potential injury. Whereas if the driver can make a voice-activated call through a phone that is in a cradle, maintaining both hands on the steering wheel, then this is hands-free.

Furthermore, we believe the list of 'devices capable of sending and receiving data' should include smart watches.

General comments

The proposed exemption regarding the use of mobile phones to pay for goods and services does not go far enough in reflecting the reality of technology and what is expected in today's society in terms of collecting goods and attending events.

¹ Northern Ireland Road Safety Strategy to 2030 Annual Statistical Report 2024, available at <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/Northern-Ireland-road-safety-strategy-to-2030-annual-statistical-report-2024.pdf>

² <https://www.psni.police.uk/safety-and-support/roads-and-driving/fatal-five>

A form of “driving mode” (similar to aeroplane mode) could be developed so that all apps, functions and notifications are disabled except for the satnav, limited music features and calls where handsfree/Bluetooth is enabled. This should be activated whilst an individual is driving to ensure that there is limited distraction. The government should be exploring the use of such technology, which could improve road safety and reduce collisions and casualties. Some mobile phones already provide this option.

We also believe that consideration should be given to front seat passengers and their actions which could distract a driver and increase the risk of an accident. Our members have experience with road traffic collision cases where the actions of front seat passengers, particularly using a mobile phone, were dangerous and distracting to the driver, resulting in catastrophic consequences for passengers, other road users, and pedestrians.

Expanding the hand-held mobile phone offence

APIL agrees with the additional activities that will be captured under the revised offence. We believe that it is useful to include a list of functions which the offence will cover, as it will provide a helpful guide to enforcement officers, prosecutors, and road users. The consultation document states that the list is non-exhaustive and that other activities not listed could also fall within the offence. We believe the legislation should clarify this position and include a statement that any activity which involves touching the phone, even when it is in a cradle, could also fall within the offence.

In addition, we agree that any device capable of interactive communication, even if the communication element is disabled, should come under the offence. This should provide for a device such as a tablet, electronic notepads, gaming equipment, etc. However, we believe the legislation should include smart watches and any other form of technology that can be distracting for drivers. Reading a text message on a wristwatch screen, for example, may be just as distracting as viewing a text message on a device in a cradle, which flashes up on the home screen of the device when received. We believe clarification of the devices covered would ensure that the offence cannot be avoided by performing standalone functions.

APIL is concerned that the amendments will result in loopholes elsewhere. For example, a driver using a mobile phone whilst it is in a cradle in the car is also distracting and dangerous whilst driving. Although scrolling through a device to locate stored music will be included within the offence where the driver is physically holding the phone, it is unclear whether locating stored music whilst the device is in a cradle will be included in the offence. Scrolling through a device that is in a cradle is also distracting because a driver’s focus would be on the device rather than on the road. APIL argues that such mobile phone use should fall under the hand-held mobile phone offence.

APIL is also concerned that the sophistication of technology could allow a driver to view notifications and communicate whilst driving without using a hand-held device, thus creating another loophole. As mentioned above, smart watches, for example, may be just as distracting as a hand-held device or a device in a cradle which flashes up on the home screen of the device when received. APIL is concerned that technology allows a driver to perform functions on their device by a flick of the wrist or one touch of the screen whilst it is in a cradle, both of which seem not to be included within the proposed amendments to the offence because the device is not hand-held. This would create another loophole, which would prove challenging for enforcement. The challenge is for the Government to decide where the line should be drawn with regard to using devices whilst driving. APIL reiterates the importance of focusing on safety and injury prevention, so touching the screen of a

phone in a cradle for reasons which are not the exceptions outlined in our suggestion of developing a “driving mode” should be an offence.

Additional exemption

In light of technological advancements and the reality of the use of such payments, APIL supports the introduction of contactless phone payments as an exemption to the offence as long as the car is stationary at the time of the transaction. However, this does not provide for presenting pre-paid tickets or confirmation emails of prior payment on entry at events or on collecting goods.

Often, tickets and confirmation emails provide QR codes to be scanned on arrival at an event carpark or collection, which would mean a driver would have to present the QR code on a device in order to obtain entry for their goods and services. This would not come under the exemption because the tickets or confirmation emails have been pre-paid sometimes a long time in advance. APIL argues that this should be included in the exemption to reflect the reality of technology and event organisation.

Amending the Highway Code

Considering that the purpose of the Highway Code is to educate road users on their responsibility to ensure they are acting safely and inform them of road traffic offences, the non-exhaustive list contained on page 14 of the consultation document regarding the functions which will fall under the proposed offence should be included. This would make it clear to the road user themselves what is an offence, as they are unlikely to look at the full legislation. The examples in the consultation document would also be helpful to inform drivers of other functions which now fall under the offence.

As previously highlighted, the offence does not provide for functions being performed on a device whilst not being physically held, which can also be a distraction to a driver. If the position on the use of a device in a cradle is not clarified under the amendments to the offence, as suggested by APIL, then there should be warnings within the Highway Code that devices which are not physically being held can also distract a driver. APIL suggests that it would be useful to include examples of ‘similar devices’ as mentioned in Rule 149 of the Highway Code. This will give road users an idea of what would be considered a ‘similar device’. For example, smart watches are capable of interactive communication and allow drivers to view notifications, compose text messages, and take calls on such devices without the requirement to physically hold them.

The amendments to the Highway Code also include an exception to Rule 149 when it is necessary to call 999 or 112. However, the amendment fails to mention GPRS emergency positioning technology. This technology requires activation and is a form of communication. It is crucial for those with illnesses or disabilities, who may not be able to make a 999 or 112 call for assistance, to be able to contact someone in the event of an emergency.