

# Expanding the offence of using a hand-held mobile phone while driving to include non-connected mobile application actions

RoSPA's response to the Department for Transport's consultation

January 2021



Response to Department for Transport's consultation: Expanding the offence of using a hand-held mobile phone while driving to include non-connected mobile application actions

## Introduction

This is the response of The Royal Society for the Prevention of Accidents (RoSPA) to the Department for Transport's consultation on expanding the offence of using a hand-held mobile phone while driving to include non-connected mobile application actions. It has been produced following consultation with RoSPA's National Road Safety Committee, although the response does not necessarily reflect the views of all committee members.

The Department for Transport proposes broadening the offence of using a hand-held mobile phone while driving so that it captures standalone mode functions as well as the existing interactive communication functions. It has also been proposed that a new exemption to the using a hand-held mobile phone while driving offence is introduced to allow drivers to make contactless payments using a mobile phone at appropriate locations, for example at drive through food outlets. These changes, if implemented, will need to be reflected in [The Highway Code](#).



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## Your details

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**Are you responding as an individual or on behalf of an organisation?**

On behalf of an organisation.

**What is the name of your organisation?**

The Royal Society for the Prevention of Accidents (RoSPA).

**Of the following, what is your organisation's main area of interest: road safety, enforcement, road user, local authority or other?**

Other, accident prevention.

**How many people does your organisation represent?**

101 to 500 people.



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## Standalone functions proposal

The existing offence of using a hand-held mobile phone while driving is triggered when a driver is holding a phone and using it to perform an interactive communication function (calls, texts and so on).

This consultation proposes that the offence should be broadened so that it applies also when drivers are using a hand-held mobile phone to perform standalone functions (such as scrolling for music stored on the phones).

## Do you agree with the proposal to extend the hand-held mobile phone offence to cover "standalone" functions?

### RoSPA response

Yes.

## Revised offence

We propose a list of the sorts of mobile phone functions that would be prohibited under the broader offence of using a hand-held mobile phone while driving. These functions are to:

- illuminate the screen
- unlock the device
- check the time
- check notifications
- reject a call
- compose text messages or e-mails to save in drafts



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- take photos or videos
- use the phone's camera as a mirror
- search for music stored on the phone
- search for photos or other images stored in the phone
- dictate voice messages into the phone
- read a book downloaded on the phone
- play a game downloaded on the phone

This is in addition to the existing activities which are already captured by the offence of:

- making a phone call
- receiving a phone call
- sending a text message
- sending an e-mail
- accessing social media sites



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- accessing streaming services

**Are there any other mobile phone functions that you think should be listed in the revised offence?**

**RoSPA response**

No.

**Do you foresee any unintended consequences, for example any potential impact on particular groups, as a result of extending the offence?**

**RoSPA response**

No.



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## **Interactive communication proposal**

We propose that the offence of using a hand-held mobile phone while driving should apply to devices that are capable of interactive communication, even if that capability is not enabled in the vehicle.

**Do you agree with the proposal to bring within the offence any device which is capable of interactive communication, even if that capability is not enabled in the vehicle?**

### **RoSPA response**

Yes, although RoSPA seeks clarification on whether devices such as smartwatches, which could pose as a distraction to the driver, would be covered under the proposed legislation.

**Do you foresee any unintended consequences, for example any potential impact on particular groups, as a result of amending the offence in this way?**

### **RoSPA response**

No.



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## Hand-held mobile phone offence exemption

We propose a new exemption to the offence of using a hand-held mobile phone while driving.

The exemption would apply if the driver is holding a mobile phone and using it to make a contactless payment for:

- goods
- services

to be received immediately and the vehicle must be stationary at the time of making the contactless payment.

**Do you agree with the proposal to exempt drivers from the hand-held mobile phone offence if they are making a contactless payment for immediate goods or services while stationary?**

### RoSPA response

Yes.

**Do you foresee any unintended consequences, for example any potential impact on particular groups, as a result of this exemption?**

### RoSPA response

No.





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## Highway code alteration

We propose 2 changes to The Highway Code to:

1. explain that the hand-held mobile phone offence will apply to standalone functions
2. describe the new exemption from the offence of using a hand-held mobile phone while driving to make a contactless payment using a mobile phone

The current text of rule 149 of The Highway Code states:

"Rule 149

You MUST exercise proper control of your vehicle at all times. You MUST NOT use a hand-held mobile phone, or similar device, when driving or when supervising a learner driver, except to call 999 or 112 in a genuine emergency when it is unsafe or impractical to stop. Never use a hand-held microphone when driving. Using hands-free equipment is also likely to distract your attention from the road. It is far safer not to use any telephone while you are driving or riding - find a safe place to stop first or use the voicemail facility and listen to messages later.

You may park your vehicle using a hand-held remote control app or device. The app or device MUST be legal, and you should not put other people in danger when you use it.

Laws RTA 1988 sects 2 & 3, & CUR regs 104 & 110"

Our proposed text including changes is:

"You MUST exercise proper control of your vehicle at all times. You MUST NOT use a hand-held mobile phone, or similar device **capable of interactive communication, (such as a tablet) for any purpose** when driving or when supervising a learner driver. **This ban covers all use of a hand-held interactive communication device and it applies even when the interactive communication capability is turned off or unavailable. You cannot pick up the phone to dial a number and then put it in the cradle for the duration of the conversation. You also cannot use your hand-held device while stationary in traffic, that is still driving.**

**There is an exception to call 999 or 112 in a genuine emergency when it is unsafe or impractical to stop. There is also an exception if you are using a hand-held mobile phone to make a contactless payment, while the vehicle is stationary, for goods or services that you will be receiving immediately.**

You may park your vehicle using a hand-held remote control app or device. The app or device MUST be legal, and you should not put other people in danger when you use it.

Never use a hand-held microphone when driving.



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It is far safer not to use any telephone **or similar device** while you are driving or riding - find a safe place to stop first or use the voicemail facility and listen to messages later.

Laws RTA 1988 sects 2 & 3, & CUR regs 104 & 110"

**Do you agree with the proposed changes to The Highway Code to explain that the hand-held mobile phone offence will apply to standalone functions?**

**RoSPA response**

Yes.

**Do you agree with the proposed change to The Highway Code which explains the new exemption from the offence of using a hand-held mobile phone while driving to make a contactless payment using a mobile phone?**

**RoSPA response**

Yes.



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## Final comments

### Any other comments?

### RoSPA response

RoSPA welcomes the changes outlined in these proposals, which will allow a technical gap in the law to be closed. It is extremely dangerous for drivers to use hand-held mobile phones for interactive communication purposes, but it is equally dangerous for a driver to use a hand-held mobile phone to search for music stored on it; or to record video footage while driving. RoSPA is pleased that use of a mobile phone or similar for standalone functions will be covered in future legislation, should these proposals go ahead.

Unfortunately, in RoSPA's view, this law does not ban the use of hands-free mobile phones. This is despite evidence suggesting that increasing the demands on a driver's attention by means of a telephone conversation can impair driving performance, including decreased hazard perception, longer reaction times for 'critical events', poor lane discipline and an increased risk of being involved in a collision.

RoSPA has no further comments to make on the consultation process, other than to thank the Department for the opportunity to comment. We have no objection to our response being reproduced or attributed.

