

# CAERPHILLY COUNTY BOROUGH COUNCIL

## DRAFT MOBILE PHONES AND DRIVING

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## NOTE

Wherever the designation “manager” is used throughout this policy, it is taken to mean Head of Service, Head Teacher, Line Manager, Supervisor and the Officer in charge or anyone who has responsibilities for employees in the course of their work.

## INTRODUCTION

- 1.1. This policy sets out the Authority's and Governing Body's position of the use of mobile phones or other similar device such as a personal digital assistant (PDA) or other navigation aid whilst driving.
- 1.2. This policy is cross referenced with the following:
  - Health and Safety Policy Statement
  - Personnel Policies

## 2. POLICY STATEMENT

- 2.1. Caerphilly County Borough Council and the Governing Body recognizes its responsibilities under the Road Vehicle (Construction and Use) (Amendment) (number 4) Regulations 2003 concerning the use of hand held devices and mobile phones in motor vehicles whilst driving and its responsibilities under the Health and Safety at Work Act 1974 to ensure so far as is reasonably practicable the health, safety and welfare of its employees and those who may be affected by its activities.

## 3. SCOPE

- 3.1. This policy has been agreed with the Trade Unions. The policy will apply to all Council employees and will be recommended to Governing Bodies for adoption. Support in managing the non-statutory elements of this policy will only be offered to schools where the LEA/Council recommended policy has been adopted. Governing Bodies will need to be aware that failure to adopt and implement this policy may ultimately lead to serious penalties being awarded against governors as a group or as individuals.
- 3.2. This policy will be reviewed at least annually to ensure it is in line with current legislation.
- 3.3. The effective date of this policy is.....

## 4. DEFINITIONS

- 4.1. Hands free kit consists of equipment that does not need to be held during operation.
- 4.2. The term "holding" (a mobile phone) means holding with any part of the body, including clamping the phone between the head and shoulder.

## 5. LEGISLATION

5.1. The Health and Safety at Work Act, 1974

5.2. The Management of Health and Safety at Work Regulations 1999

5.3. Road Vehicle (Construction and Use) (Amendment) (number 4) Regulations 2003

## 6. RESPONSIBILITIES

NB Please note that all employees have a legal responsibility to comply with health and safety law and the provisions of this policy. Failure to do so could result in personal and / or Corporate liability.

### 6.1. The Chief Executive Officer will:

- Be ultimately responsible for ensuring compliance with this policy within Caerphilly County Borough Council.

### 6.2. Directors and the Governing Body will:

- Be responsible for ensuring the effective implementation of corporate and associated directorate arrangements within their service areas.
- Ensure that appropriate resources are made available for the effective operation of this policy.

### 6.3. Managers with responsibilities for employees will:

- Undertake a suitable and sufficient risk assessment on the risks facing their employees who drive on Authority and/or school business.
- Ensure that employees are instructed that they should never make or receive calls on a mobile phone or similar device whilst driving.

#### **Unless:**

- It is to dial 999/112 in emergency situations where it would be unsafe or impractical to stop driving.
- A risk assessment carried out by a competent person has established that a totally hands free kit may be installed into the vehicle and the driver considers it safe to use this hands free kit at the time of the call. Drivers must have control of their vehicles at all times and can be prosecuted for careless, inconsiderate or dangerous driving, if using a phone or other device (even if hands-free) causes them to drive this way.

- Ensure that in cases where a totally hands free kit has been installed that it is suitable for the job, the driver is fully trained in how to use it and that the driver understands that they could still be prosecuted under other road safety legislation if enforcing authorities deem it necessary even if a hands free kit is being used.
- Instruct staff to contact an employee/driver via mobile phone only if a matter of urgency and to keep the length of the call as short as possible.
- Understand that anyone who "cause[s] or permit[s]" another person to drive and use a mobile phone or similar device will also be breaking the law. I.e. If a manager expects his / her staff to answer calls whilst driving and a hands-free kit is not installed.
- Monitor staff to ensure the policy is being followed and investigate situations where is not complied with.

#### **6.4. Each employee of the Authority will:**

- Ensure that if they use a mobile phone for work purposes that they do so in accordance with this policy.
- Only use a hands free kit when safe to do so, as they can be distracting, to contact an employee/driver via mobile phone only if a matter of urgency and to keep the length of the call as short as possible.
- Understand that they must have control of their vehicles at all times and can be prosecuted for careless, inconsiderate or dangerous driving, if using a phone or other device (even if hands-free) causes them to drive this way. Penalties for these offences include £30 fixed penalty or up to £1,000 on conviction in court (£2,500 for drivers of goods vehicles, buses or coaches). Drivers still risk prosecution (for failure to have proper control) if they use hands-free phones when driving.

#### **6.5. The Corporate Health and Safety Unit will:**

- Ensure that this policy is reviewed at least annually to ensure it is in line with current legislation.
- Provide advice and information on legislation or guidance relating to the use of mobile phones and driving.
- Audit compliance with this policy.

## **6.6. Directorate Health and Safety Officers will:**

- Ensure that any necessary Directorate arrangements are developed in accordance with the Corporate Policy on Mobile Phones and Driving.
- Ensure the communication of the Corporate Policy and Directorate arrangements to all relevant employees.
- Monitor the effective implementation of the Corporate Policy and Directorate Arrangements.

## **7. ARRANGEMENTS**

### **7.1. Accidents:**

7.1.1 All managers must arrange for accidents to be investigated and reported in line with the Authorities policy relating to Accident Reporting and Investigating.

### **7.2. Risk Assessments:**

7.2.1. Risk assessment is a line management responsibility and managers must make a suitable and sufficient assessment of the risks facing their employees and ensure that adequate controls are put in place to eliminate or control these risks.

7.2.2. Risk assessment should identify the risks associated with driving and using a mobile phone and in most cases these can be eliminated by instructing the following:

- Before starting a journey switch the mobile phone off.
- If the phone needs to be on for GPS (global positioning satellite) signals then the phone should be switched to voicemail.
- If a call needs to be made the driver must park in a safe place before making the call (nb – the engine must be switched off, not on hard shoulder etc.).

7.2.3. If it is determined that the driver must be able to make and receive calls whilst driving then to minimise risk the following should be implemented:

- Full hands free kit installed that is suitable for the vehicle and the job.
- Full instruction given in the use of the equipment undertaken.

- It should be made clear to the driver that hands-free phones are also distracting and they still risk prosecution for failing to have proper control of a vehicle under Regulation 104 of the Road Vehicles (Construction and Use) Regulations 1986 if a hands-free phone is used when driving. If there is an incident, the use of any phone or similar device might justify charges of careless or dangerous driving. Therefore, the driver should only use it when he/she considers it safe to do so.

Appendix 1 is a list of frequently asked questions taken from the department for transport web site.

## 8. SUPPORTING DOCUMENTS

8.1. Royal Society for the Prevention of Accidents Document Company Mobile Phones and Driving Draft Policy

8.2. Department for Transport Frequently Asked Questions guidance.

## **APPENDIX 1 – FREQUENTLY ASKED QUESTIONS**

## Appendix 1 (Taken from Department for Transport website)

### **Q1. What does the regulation say about hand-held phones?**

The use of a hand-held phone or similar hand-held device while driving is now prohibited. A hand-held device is something that "is or must be held at some point during the course of making or receiving a call or performing any other interactive communication function".

A device is "similar" to a mobile phone if it performs an interactive communication function by transmitting and receiving data. Examples of interactive communication functions are sending and receiving spoken or written messages, sending or receiving still or moving images and providing access to the internet.

2-way radios are subject to special treatment under the regulations. See **Q14** below regarding 2-way radios for further information.

### **Q2. Is hands-free phone equipment allowed?**

Provided that a phone can be operated without holding it, then hands-free equipment is not prohibited by the new regulation.

And pushing buttons on a phone while it is in a cradle or on the steering wheel or handlebars of a motorbike for example is not covered by the new offence, provided you don't hold the phone.

However, hands-free phones are also distracting and you still risk prosecution for failing to have proper control of a vehicle under Regulation 104 of the Road Vehicles (Construction and Use) Regulations 1986 if you use a hands-free phone when driving. If there is an incident, the use of any phone or similar device might justify charges of careless or dangerous driving.

### **Q3. What about texting/internet access/video phones?**

The use of a mobile phone or similar device for any of these activities while driving is also prohibited if the phone (or other device) has to be held in order to operate it.

**Q4. Are drivers still able to use navigation equipment, personal digital assistants (PDAs) or other computer equipment that sends or receives data (which would include GPS transmissions)?**

Yes - providing that it is not a hand-held device. Use of devices other than mobile phones are only prohibited if the device performs an interactive communication function by sending and receiving data. If the device does not perform this type of function, you can use the device without breaching the regulations.

But remember the warning in the Highway Code (Rule 128) that using in-vehicle systems can be distracting. You must exercise proper control of your vehicle at all times.

**Q5. Why are you not banning the use of hands-free mobile phones while driving?**

Using any type of phone while driving is distracting.

Drivers should remember that the police can still use existing legislation (for failure to have proper control) if a driver is distracted by a call on a hands-free phone. If there is an incident and the driver is using any phone (hand-held or hands-free) or similar device, then there is a risk of prosecution for careless or dangerous driving.

**Q6. Will mobile phones have to be switched off in vehicles?**

No. Passengers may want to use them. And drivers can use them when they are safely parked.

**Q7. What if the phone rings when I'm driving?**

Let it ring and return the call when safely parked. Better to switch to voicemail before starting.

**Q8. Who do the new regulations apply to?**

The new regulations apply to the drivers of all motor vehicles on the road, including cars, motorcycles, goods vehicles, buses, coaches and taxis.

They also apply to anyone supervising a learner driver, while the learner driver is driving. Anyone supervising a learner driver needs to be concentrating on what the driver is doing and should not be using a mobile phone.

**Q9. Do the new mobile phone regulations apply to cyclists?**

No. However, the police have powers to deal with careless or dangerous cycling.

**Q10. Can I use a hand-held mobile phone when stopped in a traffic jam?**

The prohibition applies when driving. Driving includes times when stopped at traffic lights or during other hold-ups that may occur during a typical journey when a vehicle can be expected to move off after a short while.

In exceptional traffic jams, such as a lengthy stoppage on a motorway, it would be clear that someone wasn't driving if the engine was off.

**Q11. Are there any exemptions?**

Yes. There is an exemption for calls to 999 (or 112) in genuine emergencies where it is unsafe or impractical to stop. There is also an exemption for the use of 2-way radios (see **Q14** below).

**Q12. Am I allowed to cradle a phone between my ear and shoulder?**

No. The offence applies if a phone has to be "held" while making or receiving a call. Therefore you should not hold a phone between your ear and shoulder - or anywhere else - when driving.

**Q13. Are employers guilty of an offence if their employees use a hand-held phone while driving?**

The new regulations apply to "anyone who causes or permits any other person" to use a hand-held mobile phone while driving.

The Department considers that employers would not be liable just because they supplied a telephone or because they phoned an employee who was driving. However, employers would probably be liable if they required their employees to use a hand-held phone while driving and might also be liable if they failed to forbid employees to use such phones on company business.

**Q14. Are 2-way radios included in the new offence?**

The use of 2-way radio equipment when driving is not included in the new offence but remember there is still a risk of distraction and prosecution under other powers.

**Q15. If you prohibit using mobile phones, then surely you'll have to stop people talking or tuning the radio? What powers do the police have?**

We have no such intentions. There are many potential distractions while driving and it remains the driver's responsibility to drive safely at all times. Research shows that it is more distracting to talk on a mobile phone than to have a conversation with a passenger who can see what is happening.

**Q16. Is the offence endorsable?**

No. The offence is subject to a £30 fixed penalty or maximum fine of £1000 for conviction in court (maximum of £2,500 for drivers of goods vehicles or buses/coaches).

However, we do plan to increase the penalty for the new offence by making it subject to 3 penalty points and a £60 fixed penalty. Primary legislation will be needed for this when a suitable opportunity arises to amend Schedule 2 of the Road Traffic Offenders Act 1988. We do not have a timetable for that yet.

Remember, in some circumstances, for example if there has been an accident, a prosecution for careless or dangerous driving may be justified if a phone was in use at the time of the crash. The penalties on conviction for such offences include heavy fines, endorsement, disqualification and, in serious cases, imprisonment.