



Department for

**Infrastructure**

An Roinn

**Bonneagair**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

# Consultation Document

## Use of a Mobile Phone While Driving

### Review of Existing Offence and Associated Penalties



March 2018

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This document is available in a range of formats please contact us with your requirements.

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## Permanent Secretary's Foreword

This consultation paper gives you the chance to have a say about what penalties should be in place for those who use a mobile phone while driving. The previous Infrastructure Minister had indicated that there would be a consultation on this issue. We would plan to use the outcome of this consultation to put proposals to an incoming Infrastructure Minister, when appointed.

It is now widely accepted that using a mobile phone will compromise driving performance in a range of ways. Glancing at your phone, for just two seconds, doubles your risk of crashing. Worryingly, however, too many drivers have relaxed their attitudes when it comes to the use of their hand-held mobile phone. Their desire to stay connected outweighs their concern for their own safety and that of other road users.

It is already an offence in Northern Ireland to drive a vehicle while 'using' a hand-held mobile phone or similar device. Since June 2007, the offence has been punishable by a fixed penalty of £60 and three penalty points. It would seem that the time is right to consider whether the current level of penalty continues to represent an active deterrent for this offence. The law in Great Britain has changed recently to increase penalties there.

This consultation is a first important step in that process. It seeks your views on proposals for an increase in the current level of the fixed penalty fine and penalty points.

It also considers how the current offence is drafted in legislation and whether the wording should be changed. This is in light of the rapid development of mobile phone technology, particularly smart phones, in recent years. We need clear laws, effective enforcement and a meaningful deterrent.

I look forward to hearing your views.

Peter May Permanent Secretary, Department for Infrastructure

# Executive Summary

## Introduction

The [Road Safety Strategy for Northern Ireland to 2020](#) contains an action measure (AM105) to 'consider further measures to reduce mobile phone usage, including texting, while driving'.

This consultation assesses the impact of using a hand-held mobile phone while driving both in terms of the effect on driving ability and the deaths and injuries caused in Northern Ireland. It considers the need for change, reports on the arrangements in both Great Britain and the Republic of Ireland and proposes options.

At present, the offence in Northern Ireland is punishable by a fixed penalty fine (£60) and three penalty points on your driving licence. The maximum penalty on conviction in court includes a £1,000 fine (£2,500 for a passenger carrying vehicle or goods vehicle) and three penalty points. You may also be disqualified from driving.

In 2016, the Department for Transport consulted on proposals to increase the fine and penalty points for the same offence in Great Britain. There was clear support for an increase in the penalties available and, with effect from 1 March 2017, the fixed penalty increased to £200 and six points, for all drivers. Prior to consultation, the penalty in Great Britain was already higher than in Northern Ireland at £100 and three penalty points (increased from £60 in 2013).

While the consultation explores a number of options in terms of the appropriate level for the fixed penalty fine - new proposals could potentially see the fine increase to £200.

Views are also sought on proposals to increase the number of penalty points for this offence. The consultation asks whether there should be a specific penalty for drivers of HGVs and buses - or whether the same number of points should apply to all drivers.

Any increase to the number of penalty points would also apply when a driver is convicted in court. This will ensure no differentiation between the number of points when a driver accepts a Fixed Penalty Notice or is prosecuted through the courts.

The consultation also proposes a number of longer-term legislative changes to the existing offence aimed at assisting enforcement and creating a more effective deterrent.

All of the proposals outlined in the consultation ultimately aim to reduce the number of deaths and injuries on the roads.

Views are invited on all aspects of this paper. The responses will be used to put proposals to an incoming Infrastructure Minister, who will make a decision on the way forward.

## Who should read this paper?

Generally all road users but the following may have a particular interest:

- Drivers incl. HGV/Bus Drivers and Novice Drivers (who have held their licence for less than two years)
- Bus / Coach Operators
- HGV Operators
- Road Safety Organisations
- Mobile Phone Retailers
- Legal Professionals

## How to respond

The consultation period began on **6 March 2018** and will run until **15 May 2018**. Please ensure that your response reaches us by the closing date.

You are invited to [access the document and respond online](#) or alternatively you can complete the response form at the back of the document and return to either of the addresses below:

Email: [safeandsustainabletravel@infrastructure-ni.gov.uk](mailto:safeandsustainabletravel@infrastructure-ni.gov.uk)

Post: Mobile Phone Consultation Responses  
Safe and Sustainable Travel Division  
Department for Infrastructure  
Room 4-20 Clarence Court  
10-18 Adelaide Street  
Town Parks  
Belfast BT2 8GB

Telephone: 028 9054 0822 (text relay prefix 18001)

When responding, please indicate at **Question 8** whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. If you have any questions on this document or attached papers, please contact us using the details provided above.

## Freedom of Information

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can refuse to disclose information only in exceptional circumstances. Before you submit your response, please read the paragraphs

below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances.

The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature;
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses, please contact the Information Commissioner's Office at:

Information Commissioner's Office – Northern Ireland

3<sup>rd</sup> Floor

14 Cromac Place

Belfast

BT7 2JB

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Website: <https://ico.org.uk/about-the-ico/who-we-are/northern-ireland-office/>



## Consultation Document

The consultation paper assesses the impact of using a hand-held mobile phone while driving both in terms of the effect on driving ability and injuries caused in Northern Ireland. It considers the need for change and proposes a number of options to deter this behaviour.

Having considered this information you are invited to provide responses to nine questions which are placed at the end of the document.

The Department will prepare a summary of all the responses to this consultation and publish it online. Copies of individual responses may also be made available to anyone that requests them – please see question below.

### Are you content for a copy of your response to be made available, if requested?

Please note that if you ask for your response to be kept confidential this will only be possible if it is consistent with our obligations under the Freedom of Information Act 2000.

Yes

No

## Impact Assessments

The overall purpose of the proposals is to achieve a stronger deterrent to offending and make offenders clear of the risk to road safety.

Any negative consequences will apply to those who choose to break an already existing law and as a result face tougher sanctions. Beneficial impacts on road safety, through the reduction in numbers of people killed or seriously injured in collisions (where the principal or contributory collision factor is driver distraction through the use of a mobile phone or other hand-held device) are expected.

The consultation paper also requests comments and evidence on any possible (positive or negative) impacts these options might have on equality for specific groups or individuals as set out in Section 75 of the Northern Ireland Act 1998, on groups/individuals living or working in rural areas and on costs for businesses or charities.

The Department has carried out the following impacts assessment screens on each of the proposals:

- Equality Impact Assessment Screen
- Regulatory Impact Assessment Screen
- Rural Impact Assessment Screen

- Privacy Impact Assessment Screen

The impact assessment screens have found no undue impacts arising from any of the proposals in this consultation. The impact assessment screens will be kept updated so that they reflect the development and implementation of policy. The Department has, as is required, published the equality impact assessment screens to the [Departmental website](#).

## 1.0 The Risk of Using a Mobile Phone While Driving

- 1.1 In Northern Ireland, you are breaking the law if you drive a vehicle while 'using' a hand-held mobile phone or similar device. The offence is punishable by a fixed penalty (currently £60) and three penalty points on your driving licence. The maximum penalty on conviction in court includes a £1,000 fine (£2,500 for a passenger carrying vehicle or goods vehicle) and three penalty points. You may also be disqualified from driving.
- 1.2 Despite this, illegal mobile phone use by drivers is an increasing problem on our roads. Every day road users frequently see drivers openly using their hand-held phones while driving instead of focusing their attention fully on the road.
- 1.3 The problem will only get worse given the widespread use of mobile/smart phones and other devices and, the ever growing social media culture. In 2016 smartphone ownership amongst drivers aged 17-24 years old was 95.6%, 93.5% for 17-35 years old and 90.6% for 17-49 years old. (Source: TGI 2016 NI)
- 1.4 This presents a very serious road safety issue. PSNI statistics reveal that between 2012 and 2016 there were four people killed or seriously injured (KSIs) and 26 slight casualties on our roads where use of a mobile phone was deemed the '**principal**' causation factor. During the same period there were 12 people killed or seriously injured and 52 slight casualties where use of a mobile phone was deemed the '**contributory factor**'.
- 1.5 These statistics may understate the true position. PSNI would suggest that by the time an officer attends a scene, the phone may be removed or secured elsewhere. It is only in the case of a fatality that police powers to examine a phone are held to be reasonable and proportionate to the potential intrusion that a mobile phone examination would entail. As such, the figures presented here should be treated with caution.
- 1.6 During 2016, 'distracted driving' was the biggest cause of KSIs on the roads. Figures show that 110 KSI casualties were caused by '**inattention or attention diverted**', 93 by 'excessive speed having regard to conditions' and 85 by 'wrong course/position' on the road. Mobile phone/device use while driving certainly contributes to driver distraction. However, for the reasons described above, it may often go unrecorded as it is difficult to pinpoint or prove.

- 1.7 Most people accept that hand-held mobile phones are distracting and potentially dangerous while driving. However, the desire to stay connected at all times seems to override this knowledge. Drivers know that they are breaking the law, yet they continue to do it - either openly or covertly at traffic lights, in slow traffic or on less busy roads.
- 1.8 Many drivers have clearly relaxed their attitudes to the risks. The RAC's 2016 Report on Motoring<sup>1</sup> reveals that 31% of the drivers surveyed admitted to using a mobile phone while driving compared with 8% in 2014. This increase is backed up by anecdotal evidence from PSNI.
- 1.9 Some drivers appear to believe that driving while using a hand-held mobile phone is normal behaviour. Action is now needed to achieve a shift in views about what behaviour is acceptable at the wheel. Such shifts have been achieved in other areas of road safety. For similar reasons – to reduce the harm caused to all road users - we need to make the illegal use of mobile phones while driving as socially unacceptable as not wearing a seat belt or as shameful as drink driving.
- 1.10 This consultation paper considers two main issues that can move the illegal use of mobile phones in that direction. These are:
- (i) an increase in the level of fine and number of penalty points for the existing offence; and
  - (ii) a possible change to the wording of the current mobile phone offence, as drafted in legislation, to address enforceability concerns.
- 1.11 Proposals for change have been outlined in the document. In terms of time-frame, an increase to the level of fine and penalty points could be achieved in the short-term through subordinate legislation. However any change to the wording of the current mobile phone offence would require primary legislation and is therefore a longer-term proposal.
- 1.12 It is important to note that the proper use of hands-free devices when driving would remain legal.

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<sup>1</sup> <https://www.rac.co.uk/pdfs/report-on-motoring/rac-report-on-motoring-2016.pdf>

## 2.0 Proposal – Review of Existing Penalty

- 2.1 The number of motorists using hand-held mobile phones while driving for calls, texts or social media updates has clearly risen in recent years. This suggests that this behaviour is increasingly being viewed as a minor offence – or even accepted practice. The fact is that this behaviour risks serious injury and even death, not only to the driver, but other road users as well. It is clear that a more effective deterrent is now required.
- 2.2 Summarised research on this issue is available on the Road Safety Observatory website<sup>2</sup>. Experimental evidence suggests that:
- Texting whilst driving leads to slower reaction times to sudden events, longer glances away from the road and poorer lane control;
  - Both handheld and speech-based texting causes distraction, as does engagement with social media via a smartphone; and
  - Certain aspects of driving performance are impaired more by using a phone than by having a blood alcohol level at the current drink drive limit of 80mg/100ml<sup>3</sup>.
- 2.3 Last year, the Department for Transport (DfT) consulted on a possible increase in the fine and penalty points in Great Britain for using a hand-held mobile phone while driving. The consultation did not include any proposals to amend the wording of the current offence in legislation.
- 2.4 The analysis of the responses<sup>4</sup> received showed clear support for an increase in the penalties available. Prior to consultation the penalty in Great Britain for contravening this regulation was £100 and three penalty points (increased from £60 in 2013). With effect from 1 March 2017 this increased to £200 and six points, for all drivers.
- 2.5 There are signs that the Government's tougher stance on hand-held phone use has had some impact. The RAC's 2017 Report<sup>5</sup> on Motoring has found a high level of awareness regarding the increase in penalties. Encouragingly, the proportion of

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<sup>2</sup> <http://www.roadsafetyobservatory.com/KeyFacts/drivers/driver-distraction>

<sup>3</sup> <http://www.roadsafetyobservatory.com/Evidence/Details/10900>

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/565099/hand-held-mobile-phone-driving-consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565099/hand-held-mobile-phone-driving-consultation-response.pdf)

<sup>5</sup> Report is based on interviews conducted with a representative sample of more than 1700 motorists around the UK; [https://www.rac.co.uk/pdfs/report-on-motoring/rac\\_rom\\_2017.pdf](https://www.rac.co.uk/pdfs/report-on-motoring/rac_rom_2017.pdf)

motorists who admit to using hand-held phones while driving has declined from 31% in 2016 to 23%. This decline was largely amongst occasional rather than frequent users.

- 2.6 In Northern Ireland, the same offence currently attracts a fixed penalty of £60 and three penalty points. This penalty has been in place since June 2007. Since then, mobile phone ownership and usage has grown at an amazingly fast rate. Arguably, the penalty no longer represents an active deterrent.
- 2.7 In September 2016, the need to review the nature of the offence and the level of fixed penalties was raised at a meeting of the Road Safety Forum, chaired by the Infrastructure Minister. There was strong support for change and the Infrastructure Minister stated his intention to review the position here, taking into account arrangements in both Great Britain and the Republic of Ireland.
- 2.8 An increase to the fixed penalty fine would likely reduce offending and communicate to offenders the risk to road safety. Also, an increase in penalty points would reduce the number of times a driver can be caught before they lose their licence.
- 2.9 Currently, most drivers can be given penalty points for offences on four separate occasions before they face disqualification having reached the required 12 points under the 'totting-up' process. However newly qualified drivers will have their licence revoked if they reach six penalty points within two years of passing their driving test.
- 2.10 The fear of losing a licence is a powerful factor in motivating good driver behaviour. Penalty points can therefore be more of a deterrent than the actual level of the fine. In the Road Safety Monitor 2014 <sup>6</sup> drivers who felt that they did drive more safely when they had penalty points on their licence put it down to several reasons but mainly (87%) the fact that they did not want to lose their licence.
- 2.11 If there is general support for an increase to the penalty then we need to decide on the level of that increase. Any increase to the number of penalty points would apply whether a driver accepts a Fixed Penalty Notice or is prosecuted through the courts.
- 2.12 This consultation also considers whether there should be a specific penalty for drivers of a particular class of vehicle [HGVs and buses] - or whether all drivers illegally using a mobile phone should be treated equally seriously, as in Great Britain.

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<sup>6</sup> <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/doe/ni-road-safety-monitor-2014-report.pdf>

2.13 For the purpose of this consultation, reference to a “HGV” means a Large (or Heavy) Goods Vehicle with a gross vehicle weight of over 3.5 tonnes and a “bus” means a Large Passenger Carrying Vehicle capable of carrying 16 or more passengers.

### 3.0 Proposal – Review of Existing Offence

- 3.1 In both Northern Ireland and Great Britain it is an offence to **'use'** a hand-held mobile phone while driving.
- 3.2 However in the Republic of Ireland, it is an offence under the Road Safety Act 2006 to **'hold'** a mobile phone while driving. The offence attracts a fixed penalty fine of 60 Euros and three penalty points. This penalty is increased to five penalty points upon conviction in a court. The wording of the offence means that it is not necessary to prove that the phone was actually in use; it is sufficient that it was being held while driving.
- 3.3 A loophole in the Irish law meant that while it was already illegal to text while driving, drivers could avoid a penalty if operating a phone resting in a cradle or via a hands-free kit. New regulations introduced in 2014 extended the provisions of the 2006 Act and ***made it an offence to send or read a text message or email from a mobile phone while driving in a public place.*** This includes a hands-free phone.

#### Rationale for intervention

- 3.4 The offence which applies in Northern Ireland is contained in Regulation 125A of the Motor Vehicles (Construction and Use) Regulations (NI) 1999. This states that it is an offence to drive on a road while **'using'** a hand-held mobile phone or a hand-held device.
- 3.5 The provision goes on to specify that a hand-held device, with the exception of a two-way radio, is a device which performs an **"interactive communication function"** and this function is defined in the legislation by reference to some examples:
  - (i) *sending or receiving oral or written messages;*
  - (ii) *sending or receiving facsimile documents;*
  - (iii) *sending or receiving still or moving images; and*
  - (iv) *providing access to the internet.*
- 3.6 The PSNI has reported difficulties both in detecting offenders and in achieving successful prosecutions. The legislation uses the term (and examples of) 'interactive communication function' to define a hand-held device – and provides some examples. However, it appears that these examples are being used to formulate a very narrow definition of what constitutes **'use'** of a mobile phone.



- 3.7 This narrow interpretation of 'use' makes it more difficult for PSNI to enforce the legislation. Mobile phones, smart phones and mobile devices are now capable of carrying out an array of functions which are not reflected within the "interactive communication" definition. Moreover, in circumstances where the driver declines to accept a fixed penalty, the police can face real obstacles in obtaining a successful conviction in court. The court must be persuaded that the driver was actively using the phone for an interactive communication function; the amount of evidence needed for a conviction is set at a very high level.
- 3.8 This currently means that drivers could evade prosecution by arguing, for example, that they were reading a text that had been received earlier - and as such was not "*sending or receiving ... a written message*", as currently stated in legislation as an example of an interactive communication function.
- 3.9 There is growing concern about the effectiveness of current legislation on this issue.
- 3.10 The Department considers that legislative change is now required to remove any confusion as to what constitutes a mobile phone offence. This would require primary legislation. We therefore view this as a **longer-term** proposal, given the timescale needed to make primary legislation.
- 3.11 The Department is considering changing the law to provide that a driver of a vehicle (or the rider of a motorcycle) could not '**hold**' or '**use**' a (hand-held) mobile phone or device while a vehicle is moving or stationary but not parked with the engine switched off. The offence will also extend to the operation, in certain defined circumstances, of a hands-free mobile phone or other mobile device.
- 3.12 As is currently the case, the offence would also apply to a person who is supervising a learner driver. Current exemptions which include the use of a two-way radio or to call 999 or 112 in a genuine emergency when it is unsafe or impractical to stop, would still apply. Further exemptions may be required in the future to allow for advanced driver assistance systems (ADAS) such as remote control parking – which may be controlled by hand-held mobile phones<sup>7</sup>. The Department plans to consult on proposals relating to remote control parking during March 2018.

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<sup>7</sup> Remote control parking is a type of ADAS that allows the driver to carry out a parking manoeuvre from either inside or outside the vehicle, by issuing a command from an external device.

## Defining - New Offence

3.13 The Department proposes to draft new legislation in a way that would reduce the risk of legal loop-holes appearing in the future as existing mobile phone technologies are developed and new functions are introduced.

### Definition of 'hold'

3.14 The term '**hold**' would mean holding a mobile phone or device by hand or supporting or cradling with another part of the body. The aim would be to ensure that if you hold a mobile phone while driving then you are breaking the law. This would apply even if the phone is not actually being used – and even if it is switched off.

### Definition of 'use'

3.15 The term 'use' may be more difficult to define. It will remain legal to use a hands-free kit for certain functions but illegal for other functions. It will remain illegal to use a hand-held phone or device for *any* function that it could perform. The challenge will be to make clear what functions will be illegal for both hands-free and hand-held devices.

### Hand-held phone

3.16 The term 'use' would include *any* function that the phone or device could perform. In effect, a driver or rider should not hold or use the mobile phone or device at all while driving. The term 'use' would include all interactive functions such as talking on the phone, making an out-going or reading an in-coming message, accessing the internet and social media services or using 'sat-nav' functions. Importantly, it would also include non-interactive functions such as taking a 'selfie' photograph, checking the time, checking battery power levels, checking if a message has been received (as opposed to reading the message) or setting/changing music that is being played for example via Bluetooth. This is not a definitive list and there may be other non-interactive functions that a hand-held phone is or will be capable of performing that will be held to be described as 'use'.

3.17 As is currently the case, the mobile phone offence would apply in all circumstances other than when the vehicle is parked and the engine is switched off. As at present, it would continue to be an offence to use a hand-held mobile phone if stopped at traffic lights, queuing in traffic or in a lay-by at the side of a road with the engine running. However it would also be an offence to hold the phone in such circumstances.

## **Hands-free phone**

- 3.18 It would be an offence to 'use' a hands-free phone or device by touching the device while it is in the dashboard holder/cradle or attached to the handlebars of a motor bike - to unlock the device or to push buttons, enter codes or access the internet.
- 3.19 It would remain legal to use the mobile phone to follow a map. If a driver plans to use the phone navigation or a mapping app, the route should be programmed before setting off and the phone should be fixed so it is in clear view for use while driving without requiring the driver to hold it. In other words, it should be used in the same way as a dedicated 'sat nav' device. It would be illegal to re-set the instructions on the phone while driving.
- 3.20 It is important to clarify that if you are using a phone hands-free, you must stay in full control of your vehicle at all times. Any hands-free mobile phone or device should be fully set up before moving off, so it does not require the driver, at any time while using it, to press anything on the body of the phone or device. The police already have the power to stop drivers if they believe that they are distracted by their hands-free mobile phone and you could be charged with the offence of not being in proper control of your vehicle under Regulation 120 of the Road Vehicles (Construction and Use) Regulations (Northern Ireland) 1999.
- 3.21 Any final decisions will be considered in light of the responses received and will be taken by an incoming Minister. Further engagement with interested parties can be arranged, if required, before taking forward any changes to the current offence.

## 4.0 Options – Fixed Penalty Fine

4.1 This section considers options for increasing the level of the fixed penalty fine and, separately, the number of penalty points for the current offence of using a hand-held mobile phone while driving. It also considers the 'Do Nothing' option.

4.2 As previously noted, these changes could be achieved in the short-term with the use of subordinate legislation associated with the existing offence.

### **Option 0 - Do nothing**

This would mean the current penalty of £60 and three penalty points would not change

- This option would not address concerns that the current penalty does not reflect the seriousness of the offence and no longer represents an effective punishment or deterrent.
- Adopting this option would also mean that we would fall further behind penalties in Great Britain (£200 and 6 penalty points) for a similar offence.

### **Option 1 - Increase the Fixed Penalty Notice (fine level) by 100% from £60 to £120 for all drivers (including HGV and bus drivers)**

- The increasing extent of offending suggests that many drivers are still refusing to take this offence seriously.
- Raising the Fixed Penalty Notice by 100% from £60 to £120 would help to demonstrate the seriousness of this offence in comparison to other motoring offences.

### **Option 2 - Increase Fixed Penalty Notice (fine level) in line with recent changes in Great Britain (1 March 2017) from £60 to £200 for all drivers (including HGV and bus drivers)**

- Given that driving performance can be impaired more by using a phone than by having a blood alcohol level at the current drink drive limit of 80mg/100ml - a significant increase in the penalty would provide a stronger deterrent to stop offending.
- Raising the Fixed Penalty Notice from £60 to £200 would achieve parity with recent changes to the mobile phone offence in Great Britain which came into effect on 1 March 2017.

## Options – Penalty Points

### Increase Penalty Points Depending on Licence Category

#### Option 3 - Increase the number of penalty points from three to four for non HGV/bus drivers and from three to six for HGV and bus drivers who commit the offence while driving a HGV/bus

- The aim of penalty points is to influence and improve driver behaviour and address the unacceptable levels of death and serious injury on our roads. An increase in penalty points – whether as part of a fixed penalty offer or on conviction in court - will help reinforce the potential impact and level of risk that is linked to the use of hand-held mobile phones while driving.
- Currently a driver (excluding a new driver) can be given points for offences on four separate occasions before they reach the required 12 points for disqualification under the ‘totting-up’ process. By raising the penalty points to four, the number of times a non HGV-driver has to be caught before ‘totting-up’ is triggered will reduce to **three separate occasions**.
- The situation differs for new drivers. Under current legislation, you will lose your licence if you reach six or more penalty points within two years of passing your first driving test. An increase in penalty points is therefore likely to lead to a greater behavioural change and more positive road safety outcomes amongst novice drivers - the majority of whom are young people below the age of 25.
- This option includes a higher number of penalty points where a HGV or bus licence holder commits a mobile phone offence whilst driving such a vehicle. Despite the potentially serious consequence of a collision involving a heavy vehicle, HGV and bus drivers receive the same penalty points as non-HGV/bus drivers using their hand-held mobile phone while driving. ***Should the offence of driving while using a hand held mobile phone in a HGV/bus be deemed to be of greater significance?***
- This proposal would increase the penalty points from three to six where a HGV/bus licence holder commits a mobile phone offence whilst driving such a vehicle. If a HGV/bus licence holder commits an offence in a vehicle other than a HGV or bus then they would receive four penalty points.

**A further option can be found on the next page that would increase the number of penalty points for all drivers – irrespective of the vehicle being driven.**

## Options – Penalty Points

### An increase to Penalty Points that would be applicable to all Drivers

#### Option 4 - Increase number of penalty points from three to six for ALL drivers

This option would mean **all** drivers illegally using a mobile phone would be treated equally seriously.

- As previously noted, the fear of losing a licence is a powerful factor in motivating good driver behaviour. This level of increase in the number of penalty points is likely to provide an even stronger deterrent than the actual amount of the fine.
- By raising the penalty points to six, the number of times a driver has to be caught, before 'totting up' is triggered, will reduce to **two separate occasions**. For new drivers, a **single offence** will mean that their licence will be automatically revoked (withdrawn).
- DVA records show that 67 NI licence holders currently have committed more than two mobile phone use offences. This option would mean that in future, such drivers would reach the 12 point threshold and would face disqualifications<sup>8</sup>.
- In relation to HGV and bus drivers, the Department has existing powers which could be used to ensure offenders who do hold an HGV/bus vocational licence face additional sanctions if they commit an offence which incurs penalty points – i.e. a vocational licence could be potentially suspended or revoked.
- Finally, increasing the number of penalty points from three to six would achieve parity with recent changes to the mobile phone offence in Great Britain which came into effect on 1 March 2017.

#### Preferred Approach:

#### Change to Fixed Penalty Notice fine and penalty points

The preferred approach would be to combine option 2 and 4. This means an increase to the fixed penalty fine from £60 to £200 and an increase to the level of penalty points from three to six for all drivers – either as part of a fixed penalty offer or on conviction in court.

<sup>8</sup> Figures are not part of DfI National Statistics Reporting

## Share Your Views - Penalties

You are invited to share your views on the proposed options for increasing the level of the **fixed penalty fine and the number of penalty points**.

### Question 1:

Do you think that driving while using a hand-held mobile phone is dangerous?

Yes

No

### Question 2:

Do you think there should be an increase in the Fixed Penalty Notice fine (currently £60) for this offence? (please tick only one box)

**Yes** - increase to £120 for all drivers (including HGV/buses)

**Yes** - increase to £200 for all drivers (including HGV/buses)

**Yes** - Other (please specify in comment section below)

**No** – please say why not in comment section below

Comment:

**Questions 3:**

**Do you think there should be an increase in Penalty Points (currently three points) for this offence? (please tick only one box)**

**Yes** - four points for non-HGV/bus drivers and six points for HGV/bus drivers

**Yes** - six points for all (including HGV/buses)

**Yes** - Other (please specify in comment section below)

**No** - please say why not in comment section below

Comment:



## Share Your Views – Offence

You are invited to share your views on the [Department's proposals](#) to amend the wording of the mobile phone offence as outlined above.

### Questions 4:

The Department proposes to amend the wording of the mobile phone offence in legislation. Do you agree with the intention to make it illegal to 'hold' or 'use' a hand-held mobile phone?

Yes

No

Comment:

### Questions 5:

Do you agree with the Department's intention to make it illegal to 'use' a hands-free phone by touching it while it is in the dashboard holder/cradle or attached to the handlebars of a motorbike?

Yes

No

Comment:

### Questions 6:

Do you have any further comments about penalties or the proposed change to legislation for the mobile phone offence?

Comment:

## Additional Information

### Question 7. What Age Category do you fall into?

0-16

17-24

25-34

35-49

50-64

65+

### Question 8. What Identification Category do you fall into?

Please tick all that apply

Novice Driver/Rider (those within two years of passing your test)

Experienced Driver/Rider

Learner Driver/Rider

HGV Operator / Driver

Bus / Coach Operator / Driver

Mobile Phone Retailer

Legal Professional

Other

Group or Organisation

### Question 9. If you have selected 'Other' or 'Group or Organisation' in Question 8 e.g. Road Safety Organisations, Councils, please provide details here:

Other

Please specify

Name of Group or Organisation

Please specify

## Full list of consultation questions

### Fixed penalty fine and the number of penalty points

1. Do you think that driving while using a hand-held mobile phone is dangerous?
2. Do you think there should be an increase in the Fixed Penalty Notice fine (currently £60) for this offence?
3. Do you think there should be an increase in Penalty Points (currently three points) for this offence?

### Mobile Phone Offence

4. The Department proposes to amend the wording of the mobile phone offence in legislation. Do you agree with the Department's intention to make it illegal to 'hold' or 'use' a hand-held mobile phone?
5. Do you agree with the Department's intention to make it illegal to 'use' a hands-free phone by touching it while it is in the dashboard holder/cradle or attached to the handlebars of a motorbike?
6. Do you have any further comments about penalties or the proposed change to legislation for the mobile phone offence?

### Additional Information

7. What Age Category do you fall into?
8. What Identification Category do you fall into?
9. If you have selected 'Other' or 'Group or Organisation' in Question 8. e.g. Road Safety Organisations, Councils, please provide details here:

