

MOBILE PHONES, PENALTY POINTS & REVOCATION RISKS IN LONDON



by Neil Morley

About the author...

Neil Morley is a leading lawyer in Taxi Licensing Law who founded Travis Morley in 2010. He has consulted on national law reforms, government briefs and well-reported High Court cases. His opinions have been widely sought by trade organisations, businesses and individuals. He has been published in the Law Society Gazette, Journal of Licensing, Professional Driver Magazine, TaxiPoint and is a regular contributor to Private Hire News.

If you want to check you are affected by any Taxi Licensing Law matters, please contact Travis Morley now on 01159 724928 or emailenquiries@travismorley.com or visit www.travismorley.com.

The Road Vehicles (Construction & Use) (Amendment) (No.2) Regulations 2022 is now in force and expands the prohibition on mobile phone use. Neil Morley gives an overview.

On 25th March 2022 the Road Vehicles (Construction & Use) (Amendment) (No.2) Regulations 2022 came into force across England, Scotland and Wales.

It amends the prohibition on using mobile telephones (or interactive communication devices) when drivingⁱ. A contravention of which constitutes an offenceⁱⁱ liable to a fine and penalty pointsⁱⁱⁱ.

Previously, the offence was committed when a driver, whilst driving, held a mobile telephone (or interactive communication device) and used it for communication^{iv}. This has now been amended, and the scope widened^v, so that:

"...the offence of using a hand-held mobile phone or similar device is triggered when a driver holds a mobile phone or similar device and uses it regardless of whether that use involves interactive communication..."^{vi}

Consequently, it is *"...illegal to hold and use a phone, sat nav, tablet or any device that can send or receive data...for any reason, whether online or offline..."^{vii}* while driving. Exceptions are however available in certain circumstances to permit emergency calls^{viii}, remote controlled parking functions^{ix}, contactless payments^x or when safely parked^{xi}. In all other situations, hands-free devices may be used^{xii}.

In the unfortunate event a driver commits an offence; it may either be discharged by fixed penalty notice^{xiii} or trial at a magistrates' court^{xiv}. If a fixed penalty notice is accepted, the driver will be fined £200 and receive 6 penalty points^{xv}. If the matter proceeds to court, the driver risks being disqualified, fined up to £1000 and receiving 6 penalty points^{xvi}.

Wherein a driver accepts the fixed penalty notice or is convicted at court, it will likely result in the revocation by Transport for London ("TfL") of a private hire driver licence. TfL clearly states, in respect of these offences and penalties, it will consider the following action^{xvii}:

xii	Using a hand-held mobile phone or hand-held device	Revocation
xiii	Any other single offence that resulted in six or more penalty points.	Revocation

Whilst revocation is not automatic, TfL is seemingly following the base stance of the Department for Transport^{xviii} ("DfT") and Institute of Licensing^{xix} ("IoL") on such matters. Should TfL take such enforcement action, an affected driver will have a right of appeal against the decision^{xx}.

Moving forward, it is of paramount importance London private hire drivers are aware of this prohibition and, if not done so already, take reasonable steps to avoid committing an offence.



ⁱ This means "...a device, other than a two-way radio, which is capable of transmitting and receiving data..." (Regulations 110(4) Road Vehicles (Construction & Use) Regulations 1986 (as amended).
ⁱⁱ Regulation 110 Road Vehicles (Construction & Use) Regulations 1986 (as amended).
ⁱⁱⁱ Section 41D(b) Road Traffic Act 1988 (as amended).
^{iv} Road Traffic Offenders Act 1988.
^v This includes calls, messages, faxing and internet access (Regulation 110(5) Road Vehicles (Construction & Use) Regulations 1986 (as introduced by the Road Vehicles (Construction & Use) (Amendment) (No.4) Regulations 2003)).
^{vi} Note: For additional background information see DPP v Barreto [2019] EWHC 2044 (Admin).
^{vii} Para. 710, 'Explanatory Memorandum to the Road Vehicles (Construction & Use) (Amendment) (No.2) Regulations 2022' (CO/EM/2021.2), Department for Transport, 1st February 2022.
^{viii} 'Using a phone, sat nav, or other device when driving', The Highway Code, Department for Transport, 27th July 2022.
^{ix} Regulation 110(5) Road Vehicles (Construction & Use) Regulations 1986 (as amended).
^x Regulation 110(5A) Road Vehicles (Construction & Use) Regulations 1986 (as amended).

^{xii} Regulation 110(5B) Road Vehicles (Construction & Use) Regulations 1986 (as amended).
^{xiii} 'Exceptions', 'Using a phone, sat nav, or other device when driving', The Highway Code, Department for Transport, 27th July 2022.
^{xiv} 'Using devices hands-free', 'Using a phone, sat nav, or other device when driving', The Highway Code, Department for Transport, 27th July 2022.
^{xv} Sections 51-53 Road Traffic Offenders Act 1988 (as amended).
^{xvi} Section 9 Road Traffic Offenders Act 1988 (as amended).
^{xvii} Schedule 3 Road Traffic Offenders Act 1988 (as amended).
^{xviii} Schedule 2 Road Traffic Offenders Act 1988 (as amended).
^{xix} Para. 4.5.9 & Table 1, 'Taxi & PHV Driver Policy' (Version 2.0), Transport for London, 28th March 2022.
^{xx} Page 36 'Annex – Assessment of Convictions', Statutory Taxi & Private Hire Vehicle Standards, Department for Transport, 2020.
^{xxi} Para. 4.41, 'Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades', Institute of Licensing, 2018.
^{xxii} Section 17(4) Private Hire Vehicles (London) Act 1998 and Section 17 Transport Act 1985 (as amended).

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