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CHANGES TO THE LAW ON USING A MOBILE PHONE WHILE DRIVING

In 2003 the Road Vehicles (Construction and Use) (Amendment) Regulations created a specific offence of using a mobile phone while driving. Subsection 110(6)(a) of those Regulations states that a mobile telephone is to be treated as hand-held '*if it is, or must be, held at some point during the course of making or receiving a call or performing any other interactive communication function*'.

In 2019 4KBW's Jyoti Wood appeared in the case of DPP v Baretto [2019] EWHC 2044 arguing that the Regulations did not prohibit all use of a mobile phone at the wheel and specifically that the Regulations as drafted did not prohibit the use of mobile phone to film while driving.

In their judgement the High Court ruled in favour of Mr Baretto, agreeing with Jyoti that the 2003 Regulations did not prohibit mobile phone use while driving unless the phone was being used for '*an interactive communication function*'. The effect of the judgement is that playing games, taking photos, playing music or any other 'offline' activities performed on a phone fall outside of the scope of the mobile phone offence.

This landmark decision led the government to consult on changes to the law. Following that consultation and the laying of the statutory instrument, new Regulations are coming into force today (25th March 2022).

The Road Vehicles (Construction and Use) (Amendment) (No.2) Regulations 2022 overhaul the law on using a phone while driving.

The meaning of 'using' a phone will be expanded to cover the following:

1. illuminating the screen
2. checking the time
3. checking notifications
4. unlocking the device
5. making, receiving, or rejecting a telephone or internet based call
6. sending, receiving or uploading oral or written content
7. sending, receiving or uploading a photo or video
8. utilising camera, video, or sound recording



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9. drafting any text
10. accessing any stored data such as documents, books, audio files, photos, videos, films, playlists, notes or messages
11. accessing an app
12. accessing the internet

There are exemptions for emergency use and using a phone to make a contactless payment while the vehicle is stationary- and using a mobile phone for navigation continues to be legal so long as it is not hand-held.

If you require any assistance please contact our criminal clerks on 0207 822 7000 or crime@4kbw.co.uk