

<b>Title: Increasing Mobile Phone FPN and Penalty Points for the offence of using a Mobile Phone whilst driving</b>  <b>IA No:</b>  <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 01/07/2016
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary Legislation
	<b>Contact for enquiries:</b> Pauline.morgan@dft.gsi.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
£0m	£0m	£0m	No	Non-Qualifying Regulatory Provision

**What is the problem under consideration? Why is government intervention necessary?**

Evidence suggests that the use of a hand-held mobile phone whilst driving was a contributory factor in 21 fatal accidents (1%) and 84 serious accidents (0.5%) in 2014 and there is a strong indication that this was underreported. Use of a hand-held mobile phone device while driving has been illegal since 2003. The level of a fixed penalty notice (FPN) was increased to £60 in 2007 and further increased to £100 in 2013. Despite this, recent surveys commissioned by DfT have found a persistent number of drivers that reportedly use a hand-held mobile phone. A campaign using unmarked Police Vehicles called Operation Tramline found evidence of ongoing widespread non-compliance with 109 of the 231 vehicles stopped were stopped for mobile phone offences<sup>1</sup>. Intervention is necessary, to ensure there is an effective deterrent to dissuade offending.

**What are the policy objectives and the intended effects?**

There are two main objectives. Firstly, an increase in the penalty is needed to act as a stronger deterrent to offending and make offenders clear of the risk to road safety. Raising the penalty points and increasing the level of FPN will result in fewer strikes before a driver risks disqualification and result in a greater immediate cost to the offender. In addition, not offering the remedial course as an alternative to the FPN and penalty points will act as a further deterrent, as first time offenders face the full FPN and fixed penalty points.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1: Do Nothing  
 Option 2:  
 Increase fixed penalty point from 3 to 6 points for all drivers.  
 Increase the penalty notice from £100 to £200.  
 Not offer a remedial course for first-time offenders.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 2019/20					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> 0		<b>Non-traded:</b> 0	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: \_\_\_\_\_ **Andrew Jones** Date: 28<sup>th</sup> October 2016

<sup>1</sup> <http://www.hampshire.police.uk/internet/news-and-appeals/2015/march/170315-operation-tramline-jou-operation>

Description: Increase the fixed penalty point from 3 to 6 points and the fine from £100 to £200 for all drivers

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2014	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>	<b>Total Cost (Present Value)</b>	
Low	0	1	0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised costs by ‘main affected groups’</b>					
The key monetised cost of the proposal is associated with the set-up of the new penalties on existing IT systems. This cost will be incurred by the Driver and Vehicle Licencing Agency (DVLA) and is estimated to be negligible. This is a transition cost incurred by the public sector.					
<b>Other key non-monetised costs by ‘main affected groups’</b>					
Offenders incur costs by paying FPNs. Offenders may incur further costs associated with the addition of extra points onto their licences, such as increased insurance premiums. Furthermore, in cases where the offender already has points on their licence or is a novice driver, there is an increased risk of disqualification from driving. In these cases the offender will incur all the costs associated with being less independently mobile. Fines and penalty points are sanctions against illegal activity and can be avoided by compliance with the law and thus do not factor as a direct cost.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>	<b>Total Benefit (Present Value)</b>	
Low	N/A	1	N/Q	N/Q	
High	N/A		N/Q	N/Q	
Best Estimate	N/A		N/Q	N/Q	
<b>Description and scale of key monetised benefits by ‘main affected groups’</b>					
Higher penalties are expected to act as a deterrent to the use of mobile phones whilst driving and thus prevent a significant number of accidents and KSIs on the road each year. The benefit of the proposal is expected to be large, significantly outweighing the costs, given that the avoidance of a single fatality on the road is valued at around £1.8m alone (WebTAG). It has not been possible to predict with certainty the number of accidents that can be avoided each year as a result of the intervention and therefore this benefit has been assessed qualitatively.					
<b>Other key non-monetised benefits by ‘main affected groups’</b>					
Reduction in the number of accidents and KSIs on the road each year. The resulting benefit to society will include reduction in the human costs, lost economic output, police and medical costs associated with a fatality or casualty on the road. There will be further savings from the reduction in insurance administration costs, congestion savings and reduced damage to property and road infrastructure associated with each accident prevented.					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	3.5
The relationship between the level at which the penalty is set and the number of offences (both committed and recorded) cannot be estimated robustly.					

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	No	Non-Qualifying Regulatory Provision

## Evidence Base (for summary sheets)

### Problem under Consideration

1. Research shows that mobile phones can be a considerable distraction to drivers. One study by the Transport Research Laboratory (TRL) found the use of a mobile device impairs driving by a greater degree than if the driver were above the drink driving limit.<sup>1</sup> Drivers were found to have slower reaction times, difficulty staying in the same lane and were less able to adapt to gradually changing conditions on the road.
2. Drivers who use their mobile phone whilst at the wheel therefore run an increased risk of crashing. In 2014 mobile phone use was a contributory factor in 21 fatal accidents (1% of all recorded fatalities on the road) and 84 of serious accidents (0.5% of all recorded serious accidents on the road).<sup>2</sup> These figures come from the STATS19 database of records of road traffic incidents attended by the police, and are likely to be underestimated due to the difficulties in allocating a mobile phone to the driver at the site of an accident.
3. The frequency and severity of incidents involving drivers that use mobile phones indicates that road users are being subjected to unnecessary risks and, as a result, society is incurring significant costs. The problem is larger if, at the time of the offence, the driver is in control of an HGV or passenger vehicle. In both instances, should an accident occur, the harm and damage that is caused is likely to be much greater than if a car had been involved.
4. Use of a hand-held mobile phone device while driving any vehicle has been illegal since 2003. Those committing the offence are liable to receive both FPNs and penalty points on their licence.
5. Despite existing deterrents, the use of hand-held mobile phone devices remains prevalent amongst drivers. In 2014 the Department for Transport and Transport Scotland commissioned mobile phone surveys and found that 1.6% of all car drivers in England & Scotland were observed using a hand-held mobile phone whilst driving. Goods vehicles and lorry drivers were observed to have comparable rates of mobile phone use to car drivers. The report also indicated that there had been no significant change in the number of drivers observed using a hand-held mobile phone since the previous TRL survey commissioned by DfT in 2009.<sup>3</sup>
6. There is further evidence of a high prevalence of mobile phone use from the Operation Tramline initiative where officers used an unmarked HGV tractor unit to see into vehicles which would otherwise be too high to view. In this operation 109 of the 231 vehicles stopped were stopped for mobile phone offences<sup>4</sup> Research from the Institute of Advanced Motorists (IAM, 2015) found that 9% of the 500 drivers surveyed admitted taking a selfie whilst driving in the last month.<sup>5</sup>
7. The available data sources suggest different levels of non-compliance with the law, and therefore it is not known with certainty the frequency with which mobile phones are used by drivers. This uncertainty derives from the fact that surveys based on self-reporting may be prone to bias on the part of the driver themselves, and because observing this type of driver behaviour from outside the vehicle is difficult or requires considerable resource (as was employed in the Operation Tramline case).

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<sup>1</sup> TRL, 2002, Report TRL547, How dangerous is driving with a mobile phone? Benchmarking the impairment to alcohol

<sup>2</sup> Seat belt and mobile phone use surveys: England and Scotland, 2014, DfT and Transport Scotland  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406723/seatbelt-and-mobile-use-surveys-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406723/seatbelt-and-mobile-use-surveys-2014.pdf)

<sup>3</sup> *Ibid.* DfT and Transport Scotland 2014, TRL 2009

<sup>4</sup> <http://www.hampshire.police.uk/internet/news-and-appeals/2015/march/170315-operation-tramline-jou-operation>

<sup>5</sup> <https://www.iamroadsmart.com/media-and-policy/news-and-insights/advice-and-insights/2015/10/09/the-new-driving-dangers---selfies-video-calls-or-just-watching-tv>

8. Nonetheless, it is apparent that there are a considerable number of individuals who use their mobile phone whilst driving, and that this poses a risk to both the occupants of the vehicle and other road users.
9. The fact that this behaviour persists suggests that the current level of deterrent (the combined effect of both enforcement and penalties) is not sufficient. A further consideration is that, because there is no provision for the £100 FPN to adjust in line with inflation, the scale of this deterrent will continue to decrease in real terms unless action is taken. In the current system it is also possible for first time offenders to bypass the FPN and penalty points by taking a remedial training course, this may also reduce the current level of deterrent.

### **Rationale for intervention**

10. Individuals who drive whilst using a handheld device pose a risk to their own safety and the safety of other road users and passengers. This negative road safety externality imposes a cost on society and is not, at present, avoided or recovered in full.
11. Intervention is necessary to make the roads safer through providing a higher level of deterrent and effective enforcement in order to dissuade offending.

### **Policy Objectives**

12. The overriding objective of introducing the measures is to improve road safety outcomes. It is hoped that greater penalties will raise awareness of the dangers to road safety and deter individuals from illegally using their mobile phones whilst driving.
13. This objective is in line with the Government's message in the Road Safety Statement (2015) of taking tough action on those who use their mobile phone whilst driving. Higher penalties will highlight the seriousness of the offence, a message that may be underplayed at present as the current FPN is the same as arguably lesser offences such as failing to stop at a zebra crossing. Increasing the penalty points should further emphasise the seriousness of the offence and will reduce the amount of times an offender can be caught before they lose their licence.

### **Background**

#### Strategic Framework for Road Safety

14. In May 2011 the Government published its Strategic Framework for Road Safety ("the Framework"), which sets out a package of policies that would continue to reduce deaths and injuries on our roads. The Framework recognises the importance of targeted enforcement to tackle those behaviours that represent a risk to road safety. The measures announced focus on making the enforcement process more efficient, ensuring that penalties are set at the right levels. In December 2015 the Government published its Road Safety Statement which emphasised its priority for taking tough action against offenders who use their hand held mobile phone when driving.
15. The Government has a Manifesto commitment to '...reduce the number of cyclists and other road users killed and injured on our roads every year'."

## Consultation

16. The department conducted a 7 week consultation on
  - Increasing the FPN by 50% from £100 to £150 for all drivers
  - Increasing the Penalty Points from 3 to 4 for regular motorists and from 3 to 6 for drivers of Large Goods Vehicles (HGV) or large Passenger Carrying vehicles
17. There was overwhelming support for increasing the Fixed Penalty Notice (FPN) and also for increasing the penalty points for the offence, both showed 94% of online respondents in favour.
18. Additionally, opinions were sought on the use of remedial training for first time offenders driving HGVs. 65% of online responses were against this.
19. Ideas for how the mobile phone industry and insurance industry could contribute to improving road safety were invited; the largest number of online responses did not provide an answer. A minority said drive safe mode should be encouraged and a smaller minority suggested that the offence was not the responsibility of the industries concerned.
20. The overwhelming support for change means that the “do nothing” options has been ruled out. There is clear support that an increase in the penalty will make a difference.
21. Following the consultation, an amended approach will be taken forwards.
  - Increase fixed penalty point from 3 to 6 points for all drivers.
  - Increase the penalty notice from £100 to £200.
  - Not offer a remedial course, as an alternative to FPNs and penalty points, for first-time offenders.

## **Description of the options**

### Option 1: Do nothing

22. This would involve maintaining the existing £100 FPN and level of penalty points. There is no provision for the FPN to adjust in line with inflation, thus the real value of the penalty is expected to decline over time. The option of the remedial training course as an alternative to FPNs and penalty points for first time offenders will stay in place.
23. The level of offences and FPN issuances is, assuming no other changes, expected to remain within the historic range.

Option 2: Increase the current level of FPNs and penalty points incurred for mobile phone offences. Not offer a remedial training courses for first time offenders.

24. Increase the FPN by 100% from £100 to £200
25. Increase the Penalty Points from 3 to 6 for all motorists.
26. The following table summarises the level of existing penalties and the new penalties proposed by the preferred option.

*Table 1: existing and proposed penalties for mobile phone offences*

<b>Option</b>	<b>Penalty points</b>	<b>Fine</b>	<b>Training course</b>
Option 0 - Do nothing	3 (All motorists)	£100	An option for first time offender instead of FPN and points.
Option 1 - 100% increase in FPN, increase Penalty Points, no offer of training course.	6 (All Motorists)	£200	Not an option for any individual.

27. The legislative changes needed to increase the penalty points and the fine can be implemented through secondary legislation.
28. It will continue to remain the case that upon being issued with an FPN the receiver can choose to pay, not pay or challenge the FPN in court. Those who are found guilty of the offence at court typically face a larger fine than the standard FPN, this is a maximum of £1000 for car drivers and £2500 for HGV drivers.
29. Currently in some cases, when express permission is granted by the police and suitable training is available, first-time offenders are offered the opportunity of attending a remedial training course rather than incur the fine and penalty points. This opportunity will not be offered, hence first time offenders will incur a FPN and 6 penalty points. The majority of mobile phone offences recorded each year are first time offences.<sup>6</sup>
30. Penalty points are associated with significant costs to the offender such as increases in the driver's insurance premium, and must stay on a driving record for 4 years from the date of the offence.
31. In cases where an experienced driver already has points on their licence the higher penalty will increase the risk that they are disqualified from driving. Licences can be revoked if a motorist accumulates 12 points within 3 years (equivalent to two mobile phone offences under the new proposal).
32. For novice drivers the impact of higher penalty points will be larger as, under existing rules, their licences will be revoked if they collect 6 points.<sup>7</sup> The proposal to raise penalty points will mean that novice drivers will be disqualified following their first mobile phone offence. Novice drivers who are disqualified are required to apply and pay for a new provisional licence and pass both theory and practical parts of the driving or riding test again to get a full licence. Under option 2 the remedial training course will not be offered and all novice drivers will therefore be disqualified from driving after their first offence. A higher proportion of 17 to 29 year old drivers in England and Scotland were observed using hand-held mobile phones (5.2 per cent) than both 30 to 59 year old drivers (2.4 per cent) and drivers aged 60 and over (0.7 per cent)<sup>8</sup>.
33. If a driver is disqualified they will incur all the costs associated with being less independently mobile, and the largest impact is likely to be on novice drivers, the majority of whom are young people below the age of 25.<sup>9</sup>

#### Other considerations

34. There is a lack of robust evidence as to the effectiveness of increased penalties at deterring the use of mobile phones. The Government is therefore in a unique position to evaluate the effectiveness of these measures and improve the existing evidence base.
35. The department is concurrently developing other proposals to address dangerous driving behaviours, and will continue to work with the mobile phone industry to explore what could be done to prompt safe driving. These are likely to compound the positive road safety impact of raising the mobile phone penalties.
36. However, for the purposes of the analysis contained within this IA it has not been possible to accurately reflect the impacts of any future measures. The baseline has been set based on existing road safety measures and observed offence rates.

#### **Costs and Benefits of all Options**

37. This section sets out the assessment of the additional costs and benefits of increasing motoring fixed penalty notice offences in the preferred option. The do nothing option is not assessed separately as this is used as the baseline for our analysis.
38. The analysis has been undertaken in line with Green Book guidance. A 10 year appraisal period has been considered. All values are presented in 2014 prices. The first year of the policy's implementation is 2017 and all values across the appraisal period are discounted to 2015 in line with current Better Regulation guidance.

## Transition Costs

39. Implementation costs to the DVLA are negligible.
40. Changes to the level of penalty points and FPNs issued for mobile phone offences will be enacted through a statutory instrument. There are no associated direct costs associated with making the legislative changes.

## Ongoing Costs

### Costs incurred by offenders

41. The primary costs associated with the measure will be incurred by individuals who are caught using their mobile phones whilst driving. In every case the individual driver, rather than their employer, will be expected to bear the punishment for breaking the law. The cost to the offender is, therefore, the opportunity cost associated with penalty points and the cost of the fine.
42. The amount for a FPN is not dependent on an offender's ability to pay and as such offenders may choose to challenge the FPN in court. Should this challenge fail then the average fine incurred by the offender is higher at £330 (based on current Home Office records). Since the penalties have increase and the option for remedial training for first time offenders has been removed individuals might become more likely to challenge the FPN.
43. Penalty points are associated with significant costs to the offender such as increases in the driver's insurance premium. Furthermore, in cases where the offender already has points on their licence or is a novice driver, there is an increased risk of disqualification from driving. Licences can be revoked if a motorist accumulates 12 points within 3 years (equivalent to two mobile phone offences under the new proposal), or 6 points for recently qualified drivers (one mobile phone offence). In these cases the offender will incur all the costs associated with being less independently mobile.
44. Recently qualified drivers, should they choose to regain their licence, will incur further costs as they must reapply for a provisional licence and may only drive as a learner until they pass further theory and practical tests. Aside from the individual's time, the cost of a provisional drivers licence is £34, a theory test is £23, and a practical test is either £62 or £75 depending on when it is taken.
45. An individual can avoid the costs detailed above by complying with the law. In accordance with better regulation guidance, we therefore do not consider that this proposal will result in direct costs to drivers. The NPV, business NPV and EANDCB estimates, reflect this position.

### Costs incurred by the Driving and Vehicle Licencing Agency

46. The DVLA will not incur additional, ongoing costs as a result of the proposal; the administration of penalty points and revocation of licences are handled electronically and factored into business as usual activity.

### Costs incurred by the Police and Justice System

47. Effective enforcement is a key factor in deterring potential offenders. The resources used for the monitoring of motor offences by the police is factored into business as usual costs and is therefore not counted as a direct cost within this impact assessment. Implicit in this reasoning is an assumption that there will be no change to the level of enforcement of mobile phone offences if the penalties are increased. It is possible that, as more drivers are deterred from using their mobile phones, police will find that less resource is devoted to processing FPNs, this would free up police time for other activities.
48. The HM Courts & Tribunals Service have suggested that the change resulting from the proposal will not lead to any additional costs to the Police National Legal Database (PNLD).

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<sup>6</sup> CU80 Offence Report – November 2014

<sup>7</sup> *Rules introduced under the New Drivers Act*

<sup>8</sup> DfT, Seat belt and mobile phone use surveys: England and Scotland, 2014

<sup>9</sup> Around 70% of those who have passed their test in the past 3 years (2013-2016) are below the age of 25.



49. The justice system will incur costs in the event that the offender is prosecuted for the offence of using a mobile phone. This could happen, for example, if penalties are not paid or are contested in court by the driver accused of committing the offence.
50. The proportion of unpaid FPNs has remained steady in recent years at approximately 3%.<sup>10</sup> Official statistics on proceedings at the Magistrates courts shows a downward trend in the number of prosecutions for the mobile phone offence.<sup>11</sup> Recent data from the MoJ suggests that the number of offenders prosecuted each year has ranged from 17,000 to 24,000 (based on annual estimates for 2012-2014 in England and Wales)<sup>12</sup>.
51. It is difficult to predict to how the increased penalties will affect the numbers of prosecutions that take place each year. There will be an upward pressure from the fact that higher penalties will encourage more people to challenge. There will also be upward pressure from no opportunity to attend a remedial course as an alternative to FPN and penalty points. On the other hand there will be a downward pressure as we expect fewer people to offend in the first place due to the increased deterrent. These pressures are explored in more detail below but it has not been possible, on the basis of existing evidence, to suggest which of these pressures will be larger,
52. It is possible that more prosecutions will take place if the higher penalties lead to an increased incentive to challenge the offence in court. This is because the relative cost of going to court compared to the cost of the penalties has reduced. The relative cost of penalties for first time offenders who can no longer take the course has increased. For novice drivers who will now lose their licence the likelihood of challenging the FPN may increase largely. Furthermore, there may also be a greater number of people reaching the 12 penalty point limit and this necessitates judicial proceedings (note that this is not the case for novice drivers who are automatically disqualified on reaching a maximum of 6 points).
53. On the other hand, as we expect the higher penalties to deter more drivers from offending in the future it is reasonable to assume that there will also be downwards pressure on the total number of prosecutions, which could be expected to fall in proportion to the total number of offences committed. Historically, the number of prosecutions has tended to follow a similar trend to the number of offences (a caveat is that there is frequently some lag between an offence being recorded and the driver being prosecuted, this results in a non-perfect match in the annual data). The effect of fewer prosecutions would be to lower costs for both the Police and Justice System.
54. There are both upward and downward pressures on the likelihood of offenders going to court. Given the uncertainty in both the baseline future trend and “do something” trend we have not been able to robustly estimate whether there will be a change in the number of prosecutions each year.
55. It is estimated that each additional prosecution for the offence of using a hand-held mobile phone whilst driving costs the CJS approximately £300 per defendant proceeded against<sup>13</sup> (seen Annex B for further explanation and caveats). We assume that costs would be approximately equivalent in Scotland.
56. We also estimate that the prosecution process requires approximately four hours of police time. Based on an average wage of £37 per hour (2014 prices). The estimated hourly cost of a police officer includes salary, expenses, regional allowance, training and employer contributions to pension and national insurance (post-April 2016 arrangements). The estimates were calculated using the Annualised Survey of Hours and Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) Police Actuals and Association of Chief Police Officers (ACPO) Mutual Aid Rates. In total this results in a gross cost per prosecution of approximately £445 (2014 prices).

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<sup>10</sup> Home Office, Fixed penalty notice statistics - police powers and procedures, year ending 31 March 2014

<sup>11</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-09-04/8713>

<sup>12</sup> Data for Scotland is not available for this specific offence, however it can be assumed that the total number of prosecutions would be higher.

<sup>13</sup> Rounded to the nearest £100 and in 2014 prices.

## Benefits (non-monetised)

57. The proposal is expected to have beneficial impacts on road safety. Higher FPNs, points and removing the option for remedial courses for first time offenders is expected to increase the deterrent for mobile phone offences and reduce the incidence of poor driving behaviours on the roads.
58. It should be noted that there may be further indirect road safety benefits of the proposal as, due to the greater risk of disqualification, drivers will be deterred not only from committing a second mobile phone offence but from committing any other offence (such as speeding or drink driving) that is punishable with points.
59. The scale of the road safety benefits are expected to be large (significantly outweighing the costs of the proposal), as prevention of accidents and casualties on the road generates a large economic saving. The extent of the road safety impact will depend on two key relationships namely:
  - a. How effective the new, higher, penalties are at deterring individuals from using their mobile phones whilst driving.
  - b. The reduction in an individual's risk of being in an accident as a result of complying with the mobile phone law, i.e. the impact of reduce mobile phone offences on the number of road accidents.

These relationships are explored below, along with a qualitative assessment of the total road safety impact.

### Deterrent effect of higher penalties

60. Given lack of evidence, it is not possible to robustly predict to what extent the increase in penalties will deter mobile phone use by drivers. Nonetheless, basic economic theory suggests that the higher the opportunity cost of an activity (in this case mobile phone use), the less of that activity individuals will engage in. On this basis we can be confident that there will be a reduction in the number of drivers who use their phones and/or the frequency with which drivers use their phones.
61. It is likely that for most drivers, particularly novice drivers, the increased risk of disqualification will act as the largest deterrent to mobile phone use. There is some evidence to suggest that a higher penalty point level could provide a significant deterrent effect. For example, with the introduction of penalty points for mobile phone offences in 2007, there was an immediate drop in the proportions using hand-held mobile phones.<sup>14</sup> It should be noted that it is not possible to robustly infer what proportion of this reduction was due to the introduction of penalty points, however it seems reasonable to assume that this was a significant factor.
62. Higher FPNs will also act as a deterrent, although it is recognised that the relative increase in the FPN of £100 is a small sum to many driver's on the road (particularly when compared to other costs associated with running a vehicle), and there is a risk that this will not alter drivers' behaviour, particularly those in higher income percentiles. Nonetheless, the total sum of £200 under the new proposal is not insignificant and there is some evidence to suggest that a higher FPN level could provide a deterrent effect.
63. A previous increase in FPNs for mobile phone offences of £40, for example, coincided with a subsequent fall in the number of FPNs issued of 40%. Survey data on mobile phone usage (perhaps a better measure of effectiveness than FPN issuances) shows that after the penalty was increased from £30 to £60 in 2007, there was an immediate drop in the proportion of drivers using hand-held mobile phones. Another example, includes when the driving whilst not wearing a seat belt FPN offence was increase from £30 to £60 in 2009. The number of FPNs issued for the offence reduced from 203,400 to 176,400 in 2010. These examples provide an indication as to how driver's behaviour will be affected by higher penalties.
64. Although, the examples above support the view that higher FPNs will improve driver behaviour we cannot be certain of the size of the impact. Establishing a robust causal relationship from the

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<sup>14</sup> Seatbelt and mobile phone usage surveys: England and Scotland 2009, Louise Walter, TRL (March 2010)

examples above is complicated by the impact of other factors such as police priorities and resources.

65. Higher penalties will also generate a heightened awareness of the road safety risks of using a mobile phone, this can be expected to compound the deterrence effect implied by the penalties themselves.
66. Due to a lack of empirical research, it has not been possible to combine these factors (higher penalty points, FPNs and awareness) into a comprehensive relationship, whereby we can predict with certainty the reduction in mobile phone use caused by the higher penalties.

Road safety risks associated with the use of a hand held mobile device

67. A well-established body of research exists into the detrimental effects of phone use on driving ability. A 2008 TRL and RAC Foundation study, for example, found that texting whilst driving reduced drivers reaction times by up to 35%.<sup>15</sup> Drivers who use their mobile phone whilst at the wheel therefore run an increased risk of crashing. In 2014 mobile phone use was a contributory factor in 21 fatal accidents and 84 serious accidents.
68. There is also not a clear empirical relationship that would suggest to what extent a reduction in mobile phone usage would reduce the number of accidents and KSIs. It could be assumed, for example that a 50% reduction in mobile phone use whilst driving would lead to a proportionate decrease in the number of accidents and casualties. However this claim would be difficult to substantiate as accidents are affected by a number of other factors and we cannot be certain what the characteristics of drivers who stop using a phone will be; it could be that these drivers tend to be safer in general and thus the reduction in accidents will be lower than if the most dangerous drivers had changed their behaviour.
69. Due to these inherent uncertainties it has not been possible to robustly estimate the scale of the reduction in accidents and KSIs that will occur as a result of the proposal. Nonetheless, it is expected that the proposal will prevent accidents and KSIs on the road.
70. However, even a small reduction in the number of accidents caused by distracted drivers using their phones will have a large economic and human impact.
71. The prevention of a fatality or casualty on the road is associated with considerable welfare savings reflecting the human costs, lost economic output, police and medical costs resulting from a serious incident. There will be further savings from the reduction in insurance administration costs, congestion savings and reduced damage to property and road infrastructure associated with each accident prevented.
72. The DfT's transport appraisal guidance, WebTAG, places an average value of £1.88m for the prevention of a single fatal accident and an average value of £0.21m on the prevention of a serious accident (2014 prices).
73. The road safety benefits of the proposal are therefore expected to be large, considerably outweighing the costs associated with introducing higher penalties.

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<sup>15</sup> TRL, RAC Foundation, 2008, Dangers of Texting Whilst Driving

## FPN revenues

74. FPN revenues depend on the number of FPNs issued and the level of the fine. There is uncertainty about the number of FPNs that would be issued given the policy change.
75. An increase in penalty points, increasing fine and the removal of the option for a remedial training course, as a route to bypass these for first time offenders, will increase the deterrent to offend. This should decrease offences and decrease FPNs issued. However removing the offer of a remedial course means that all first time offenders must now incur the FPN, this will increase the number of FPNs issued. At the same time an increase in the level of the FPN will increase the revenue from each fine issued. Given these uncertainties it is difficult to robustly state whether revenues from FPN will increase or decrease. In the case where revenues generated from FPNs will increase, this will represent a transfer from offenders to the government (currently referred to the Consolidated Funds).
76. In addition, removing the option for remedial courses for first time offenders will result offenders paying for a FPN rather than to go on a remedial course resulting in a transfer of revenue from those that provide remedial or diversionary courses to the government.

## **Direct costs and benefits to business calculations**

77. It is recognised that vocational drivers (HGV and PSV drivers) are likely to be impacted more from an increase in the penalties than other motorists. These individuals are likely driving for business purposes. Extrapolating from 3 months' worth of data for careless driving offences (CU80 offence) committed by vocational drivers we estimate that approximately 5,400 received FPNs for either a first or second offence during 2015. This offence code includes some non-mobile phone related offences and therefore it likely to be an overestimate. Nonetheless, even on a conservative basis vocational drivers are likely to be a significant proportion of those receiving penalties for the mobile phone offence. Car drivers may also incur the penalties in the course of driving for work or commuting to work, this could potentially impact on business (particularly if the driver is self-employed).
78. However, these proposals are not expected to have any direct impacts on business. Where an offender driving for work has to pay an FPN, it is the offender who is liable. Furthermore the costs can be avoided by observing safe driving behaviour.
79. The largest indirect cost to business is likely to result from the increased risk of a driver reaching the maximum 12 points and having their licence revoked. This could mean that more individuals lose their licence and are unable to work. This cost can, however, be avoided if good driving practice is encouraged, particularly in the HGV and passenger transport sectors.
80. Better Regulation guidance is that any costs (fines and penalties) incurred by companies for non-compliance with the law should not contribute to the EANDCB.

## **Business Impact Target and One in Three Out (OI30)**

81. This measure is a Non Qualifying Regulatory Provision (NQRP) because it relates to an increase in penalties (Administrative Exclusion E). It will not score against the Business Impact Target and it is not in scope of OI30.
82. The key costs of the proposal are either incurred by the government, DVLA set-up costs, or offenders as a result of non-compliance with the law. Neither is considered to have a direct impact on business.

## Wider impacts

83. The measure increases sanctions for illegal activity, therefore the impact will primarily fall on individual's who break the law. The higher sanctions are likely to impact different sections of the society to varying degrees.
84. For novice drivers (drivers who have held their license for less than two years) the impact of higher penalty points will be largest as, under the new penalty system their licences will be revoked following just one offence. This could have a large negative impact on, for example, employment opportunities as those who are disqualified will not be independently mobile. The majority of novice drivers are young people, below the age of 25, and, although it is recognised that this group will be disproportionately impacted, it should be noted that they are also more likely to offend in the first place. Targeting this group with relatively higher penalties is thus likely to lead to greater behavioural change and more positive road safety outcomes.
85. The FPN will be set at the same level for all offenders, regardless of their relative ability to pay. For this reason the higher fine is likely to be more affordable for some sections of society than others. It is expected that the higher fine will have the largest negative impact on drivers from low income backgrounds. There is an equity consideration as the implication is that the fixed rate FPN may not be a sufficient deterrent for higher income drivers.
86. The benefit of improved road safety outcomes is likely to affect all road users and wider society.
87. This measure will not impose direct burdens on small firms, nor will any indirect costs (such as the risk of employees losing their licences) be expected to be disproportionately greater for these firms.
88. We do not anticipate that this measure would lead to a net change in environmental factors such as carbon dioxide emissions or noise pollution.
89. The proposal will have an impact on the Justice System as detailed in the main body of the impact assessment. It is expected that any additional costs incurred from progressing cases through the courts will be recovered from fine revenues.

## Equalities Statement

90. While the proposed options to increase penalties and their enforcement applies to all motorists and riders we have considered the impact on novice drivers under the New Drivers Act. Age is a protected characteristic under the Equalities Act 2010.
91. The New Drivers Act applies to all novice drivers irrespective of age. However, most new drivers fall within a younger age bracket – the average age of car driver practical tests passes between 2007-2011 was 21 to 26.4 years old depending on the region of Great Britain.<sup>16</sup>
92. However, young drivers are more likely to use mobile phones while driving than other age groups. Young drivers are also statistically over-represented in reported road accidents. In 2015, the death per million population rate was at 49 road deaths for every million people aged 17 -24 compared with 27 deaths for every million people for the whole population<sup>17</sup><sup>18</sup>.
93. There are a range of causes behind the disproportionate number of road accidents and casualties suffered by young drivers. However the policy aim of reducing the number of incidents of people using their mobile phone while driving is likely to be most effective where there is a strong deterrent effect on young drivers.

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<sup>16</sup> <https://www.gov.uk/government/publications/average-age-of-candidates-passing-their-car-practical-driving-test>

<sup>17</sup> Factors affecting Road Casualties Great Britain 2015 at:

<https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-annual-report-2015>

<sup>18</sup> Road Casualties Great Britain 2015 |(Main results) at:

<https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-annual-report-2015>

## Summary of preferred option with description of implementation plan

94. The preferred option is Option 2 as this would increase the deterrent for driving whilst using a handheld mobile device.
95. Increasing FPN levels for motoring offences requires secondary legislation for increasing the penalty fine, points and removing the option to allow the police to offer remedial courses for first time offenders.
96. The measure may be associated with publicity to alert motorists about the new FPN and penalty point levels, before or when the measure is introduced.
97. The Department is planning to conduct a roadside observational survey which monitored mobile phone use in follow up to the one previously held in 2014<sup>19</sup> to monitor the effectiveness of the changes before 2020. This will help us to consider whether any further measures should be taken in the future
98. Further details are contained within the Post Implementation Review plan in annex C.

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<sup>19</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/406723/seatbelt-and-mobile-use-surveys-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406723/seatbelt-and-mobile-use-surveys-2014.pdf)

## Annex A: Details of remedial training courses

99. Remedial training are offered by police forces in England and Wales to offenders as an alternative to a fixed penalty notice or prosecution. In the locations where it is available Mobile Phone offenders can be referred to the “What’s Driving Us” course provided by the police under the National Driver Offender Retraining Scheme (NDORS). The table below shows the number of offenders who have attended the “What’s Driving Us” course, this includes people attending in relation to other reckless driving offences. There has been year on year increases in the number of attendees since the courses inception in 2012.

Year	Number of Attendees
2013	65,031
2014	99,668
2015	123,397

100. These courses are designed not to punish or deter, but to reduce the likelihood that those taking them will re-offend in the future.

101. The cost of the What’s Driving Us course ranges from £79.50 in Manchester to £97 in London, and averages £90. The course is classroom based and lasts 4 hours. The standard value of leisure time is approximately £6, according to WebTAG guidance, and attendees also incur travel costs to and from the course centres. The opportunity cost of the remedial course therefore exceeds the current £100 FPN. It should be noted that this statement does not account for the additional costs of penalty points.

102. If the current FPN was increased to £200 exceeding the real opportunity cost of attendance (conservatively estimated at £120), and the course remained in place, it may result in a greater uptake of the remedial course. By removing the offer of a course, individuals will face from by increased fines and penalty points. This may act as a further deterrence, particularly for novice drivers who will now have no option but to lose their licence.

## **Annex B: Using a hand-held mobile phone whilst driving offence– Criminal Justice System (CJS) Costs<sup>20</sup>**

1. This cost note has been requested by the Department for Transport to assess the cost of prosecuting the existing offence of using a hand-held mobile phone whilst driving<sup>21</sup>. This offence is summary only with the maximum sentence of a fine (please see the glossary in below for a description of these terms and others).
2. This note provides an estimated cost per defendant<sup>22</sup> proceeded against for the offence of using a hand-held mobile phone whilst driving. The cost provided is an estimated average cost of a proceeding from the beginning of that proceeding to the end of the case (whether the offender is found guilty or not and accounting for the range of disposals possible).
3. Data from 2014 for the offence of using a hand-held mobile phone whilst driving was used to model the flow of this offence through the CJS.
4. It is estimated that each additional prosecution for the offence of using a hand-held mobile phone whilst driving could cost the CJS approximately £300 per defendant proceeded against.<sup>23</sup> See annex B for further details of how this cost is estimated.

### **Estimated CJS costs per case<sup>24</sup>**

5. Cost estimates have been produced using unit costs for different parts of the criminal justice system. There are some assumptions and caveats associated with these, and these must be quoted in published documents. See the tables below for a full outline of the assumptions and associated risks, and see below for a further breakdown of the costs to each CJS agency.

### *CPS and HMCTS*

6. Prosecution costs to the CPS and court costs to HMCTS are only applicable for the magistrates' court as the offence is summary only.
7. It is estimated that costs to the CPS would be approximately £150 per case.
8. It is estimated that costs to HMCTS would be approximately £100 per case<sup>25</sup>.

### *Legal Aid (LA) Costs*

9. Legal aid costs are only applicable for the magistrates' court as the offence is summary only.
10. It is assumed that the eligibility rate<sup>26</sup> in the magistrates' court is 10% based on the proportion of defendants estimated to be able to pass the interests of justice test.
11. Costs to the Legal Aid Agency (LAA) are therefore estimated to be approximately £50 per defendant proceeded against.

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<sup>20</sup> Costs to the Criminal Justice System (CJS) consist of costs to the Crown Prosecution Service (CPS), Legal Aid, Her Majesty's Courts and Tribunals Service (HMCTS), Prison and Probation.

<sup>21</sup> [http://www.legislation.gov.uk/ukxi/2003/2695/pdfs/ukxi\\_20032695\\_en.pdf](http://www.legislation.gov.uk/ukxi/2003/2695/pdfs/ukxi_20032695_en.pdf)

<sup>22</sup> This includes HMCTS and CPS costs which are calculated on a per case basis.

<sup>23</sup> Rounded to the nearest £100 and in 2013/14 prices.

<sup>24</sup> All costs below have been rounded to the nearest £50 and are in 2013/14 prices.

<sup>25</sup> This assumes that it is tried as a summary motoring offence.

<sup>26</sup> Legal Aid eligibility in the magistrates' court is dependent on a defendant passing the interests of justice test, and a means test. For more information, see: <https://www.gov.uk/legal-aid/eligibility>



### *Prison and probation costs*

12. There are no prison or probation costs as the maximum sentence for the offence is a fine.

### *Fines and other financial impositions*

13. For the purposes of disaggregating by offence type, it is currently not possible to calculate the income received from financial impositions or the cost of enforcing them. This is due to the way that HMCTS currently collects its data.

## **Glossary**

**Cost per defendant:** The cost per defendant is a cost per person proceeded against. It is a weighted cost that accounts for the proportion of defendants tried in the magistrates' and Crown Court, the proportion of offenders sentenced to each disposal and the average time those sentenced to a custodial sentence spend in prison. It tells you the average cost of a proceeding from the beginning of that proceeding to the end of the case (whether the offender is found guilty or not and accounting for the range of disposals possible).

**Criminal Justice System:** The CJS encompasses the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA) and HM Prison and Probation Services.

**Crown Court:** Deals with the more serious, triable either way or indictable cases, for example murder, rape and serious fraud/theft. In the Crown Court, whether the defendant is found guilty or not guilty is decided by a jury.

**Disposal:** The end result of a trial at court. In this publication the disposals of interest are sentences, but other disposals are possible, for example where there is no finding of guilt and the defendant is acquitted.

**Indictable Only Offence:** An offence that is triable only in the Crown Court; all proceedings will start in the magistrates' court but will be sent straight for trial in the Crown Court.

**Magistrates' Court:** Magistrates cannot normally order sentences of imprisonment that exceed six months (or 12 months for consecutive sentences), or fines exceeding £5,000. The magistrates' court deals with summary only offences. Some cases are triable-either-way in either magistrates' courts or the Crown Court.

**Proceeding:** The start of legal action brought against somebody charged with committing a criminal offence.

**Summary Only Offence:** An offence that is triable only in the magistrates' court; all proceedings will start and end in the magistrates' court.

**Triable Either Way Offence:** An offence that is triable in either the magistrates' court or Crown Court. Some proceedings will start and end in the magistrates' court whereas others will start in the magistrates' court but end in the Crown Court. In triable either way cases, defendants can elect to stand trial in the Crown Court or they can be sent for trial in the Crown Court because the offence is deemed serious enough.

***Progression of cases through the CJS<sup>27</sup>***

Data from 2014 for the summary only offence using a hand-held mobile phone whilst driving<sup>28</sup> was used to model the flow of this offence through the criminal justice system (CJS). This offence has a maximum sentence of a fine.

**Assumptions**

**Risks**

**Proportion of cases tried in the magistrates' vs. the Crown Court**

- Data from 2014 shows that 100% of defendants are tried in the magistrates' court and 0% are tried in the Crown Court as the offence is summary only.

**Proportion of defendants found guilty**

- Data from 2014 shows that 92% of defendants are convicted.

- More defendants will be convicted which could impact on the costs modelled although this is unlikely as the maximum sentence is a fine.

**Disposals given:**

- Data from 2014 shows that, of those sentenced after conviction, 0% of offenders are given a custodial sentence as the maximum sentence for the offence is a fine.

**New policies**

- Our analysis does not take into account the possible interaction with other policies that have not yet been commenced.

- There is the risk that such policies, once commenced, could have an impact on the base case set out in this impact assessment. As a result, the associated impacts may be under or over estimated.

***Cost assumptions***

**CPS costs, advocacy costs:**

- **The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks).**

- **The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated.**

Source: CPS 2014; MoJ internal analysis, 2014

<sup>27</sup> All costs provided below have been rounded to the nearest £100 and are in 2013/14 prices.

<sup>28</sup> [http://www.legislation.gov.uk/ukxi/2003/2695/pdfs/ukxi\\_20032695\\_en.pdf](http://www.legislation.gov.uk/ukxi/2003/2695/pdfs/ukxi_20032695_en.pdf)

### HMCTS costs (magistrates' court):

To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,100 per sitting day in 2013/14 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2013-14. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.

### Timings data for offence categories:

- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits.
- The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ (MC) sits.
- Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information available on admin time, however we have excluded it for simplicity.
- The timings are collection of data from February 2009. Any difference in these timings could influence costings.
- The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.
- Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).

### HMCTS average costs per sitting day:

HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.

**Legal Aid Costs:***Cases in the magistrates' court*

- It is assumed for this offence that the eligibility rate for legal aid in the magistrates' court is 10%.
- The average cost per case is £500 and assumes that there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: <https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014> (Main tables, table 2.3).

*Magistrates' court*

- Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.
- More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.

# Annex C: Post Implementation Review (PIR) Plan

1. **Review status:** Please classify with an 'x' and provide any explanations below.

<input type="checkbox"/>	Sunset clause	<input type="checkbox"/>	Other review clause	<input type="checkbox"/>	Political commitment	<input checked="" type="checkbox"/>	Other reason	<input type="checkbox"/>	No plan to review
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2. **Expected review date** (month and year, xx/xx):

0	4	/	1	8
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## Rationale for PIR approach:

Describe the rationale for the evidence that will be sought and the level of resources that will be used to collect it.

Will the level of evidence and resourcing be low, medium or high?

The post-implementation review will follow a medium-evidence approach. This is proportionate given that the changes are expected to have impacts on driver behaviour where the outcomes are, at present, uncertain.

What forms of monitoring data will be collected?

The review will use existing monitoring data covering;

- Records on FPNs issued for mobile phone (CU80) offences
- Records on prosecutions for mobile phone offences (Home Office data)
- Driver disqualification statistics
- 

The available monitoring data will be compared with data from a baseline period before the changes were implemented (where available). The Department is also planning to conduct a roadside observational survey which will monitor the effectiveness of the penalty changes. This data can be compared to an earlier 2014 survey.

What evaluation approaches will be used? (e.g. impact, process, economic)

The post-implementation review will use process evaluation and some impact evaluation. The process evaluation will draw upon stakeholder feedback while the light-touch impact evaluation will involve comparing available monitoring data to pre-implementation values (where available).

How will stakeholder views be collected? (e.g. feedback mechanisms, consultations, research)

Existing engagement channels will be the main route for obtaining views from key stakeholders such as safety and enforcement organisations and trade associations. Official correspondence on the subject will also be monitored.