

EXPLANATORY MEMORANDUM TO
THE PASSENGER AND GOODS VEHICLES (RECORDING EQUIPMENT)
(TACHOGRAPH CARD FEES) REGULATIONS 2005

2005 No.1140

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations provide for the issue of digital tachograph cards. Such cards are company cards, control cards, driver cards or workshop cards used in connection with digital tachographs, which are tachographs conforming to Annexes IB and II to Commission Regulation (EEC) No.3821/85 Directive as amended.

- 2.2 They provide for the payment of fees for the issue of company cards and driver cards.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The issuing of the cards will be handled by the Driver and Vehicle Licensing Agency (DVLA), an agency of the Department for Transport. The DVLA has had Trading Fund status since 1st April 2004.

- 3.2 The fees for digital tachograph cards are calculated to enable DVLA to recoup costs for the issue of digital tachograph cards and the maintenance of the record and thus provide services efficiently and without additional cost to taxpayers.

- 3.4 The estimated costs associated with the implementation and operation of the digital tachograph system over a five-year period (until 2009-10) is £72 million.

- 3.5 The Regulations are made exclusively under section 2(2) of the European Communities Act 1972. It was regrettably not possible to base the provisions of fees on section 56 of the Finance Act 1973 as it would not have been possible for the instrument to have been signed by two Lords Commissioners of H.M. Treasury by the time it had to be laid before Parliament. However, the fees provisions have been agreed by H.M. Treasury.

4. Legislative Background

- 4.1 Most drivers of large commercial vehicles are subject to the "EU drivers' hours rules" set out in Commission Regulation (EEC) 3820/85. These rules limit continuous driving time and require drivers to take minimum breaks and rest periods. This helps to reduce the risks of drivers becoming involved in fatigue-related accidents and thus improves road safety.
- 4.2 In order to enforce the drivers' hours rules, it is important to have a record of drivers' activities. Therefore, vehicles subject to the EU drivers' hours rules have to be fitted with a tachograph in accordance with Commission Regulation (EEC) 3821/85. The tachograph is a device which automatically records driving.
- 4.3 Existing tachographs, which conform to Annex I to Regulation 3821/85, create paper record sheets. In 1998, the EU adopted Regulation 2135/98, which amended 3821/85 paved the way for the introduction of digital tachographs, conforming to the new Annex IB. These will store records of driver activities in digital memory rather than on paper. They operate with driver cards (held by drivers), company cards (held by owners or holders of vehicles), workshop cards (held by those authorised to work on digital tachographs) and control cards (held by enforcement officers).
- 4.4 Regulation 3821/85 as amended by Regulation 2135/98 requires each Member State to issue the digital tachograph cards needed to operate the new system in their country.
- 4.5 The timetable set by Article 2 of Regulation 2135/98 for the introduction of digital tachographs proved impossible for member States to meet because of manufacturing difficulties. However it is anticipated that manufacturing will be sufficiently advanced for tachograph cards to be needed in a May in order that industry may prepare for commercial availability of vehicles fitted with digital tachographs later in 2005.
- 4.6 A transposition note setting out the provisions of the Council Regulation reflected in the Regulations is attached

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

Not applicable.

7. Policy Background

- 7.1 DVLA has a policy of recouping the costs of driver and vehicle services by charging fees in accordance with the principles in the Treasury's Fees and Charges Guide published in 1992. This is intended to put costs onto users rather than taxpayers generally.
- 7.2 The estimated costs associated with the implementation and operation of the digital tachograph system over a five-year period (until 2009-10) is £72 million. DVLA has calculated that the fees to be charged for driver and company cards in accordance with the new Regulations will be sufficient to cover these costs. The transaction volume profile indicates that the fee level incorporated in the public consultation and in the fees regulations is fully consistent with first year cost recovery. The fee levels and relationship to cost recovery will be reviewed annually in accordance with HM Treasury Guidance.
- 7.3 No fees are to be charged for workshop or control cards, the numbers of which will be small compared to the number of driver cards. Workshops already pay an annual fee and are accredited by the Vehicle and Operator Services Agency (VOSA) an agency of the Department for Transport. Control cards will be issued only to the police or VOSA officials to enable them to carry out their enforcement functions.
- 7.4 Between 21 December 2004 and 15 February 2005 the Government sought views on the proposed fee structure for the issue of digital tachograph cards. A summary of responses and the Government's conclusions has been published and copies have been placed in the House libraries.
- 7.5 438 consultation documents were issued and a total of 32 responses were received. Nine of the respondents did not wish to comment and two were happy with either option. Only seven of the respondents stated a preference for either of the proposed fee structures with three choosing Option one, and four choosing Option two. There was also an opportunity in the consultation for respondents to declare that they did not support either proposal and 14 of them took this option. The fee structure, which this Regulation implements, is Option one. The key benefit of this option is that it offers a fair distribution of the costs. Although very slightly more responses were in favour of Option two, the strength of feeling from those who favoured neither option on the basis that drivers should not be asked to pay a fee at all could not be ignored. As Option one proposes lower fees for drivers the Department's view is that this can be interpreted as the option representing the majority view.

8. Impact

A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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Transposition Note

Council Regulation (EEC) No.3821/85 as amended by Council Regulation (EC)
No.2135/98 on recording equipment in road transport

The Passenger and Goods Vehicles (Recording Equipment) (Tachograph Card Fees) Regulations 2005 set the fees for the issue tachograph cards to be used with tachographs which comply with Annex IB of Council Regulation (EEC) No.3821/85 (digital tachographs). This note sets out those provisions of the Council Regulation which are reflected in the Regulations.

Article	Objective	Regulation	Responsibility
12	Tachograph equipment is to be installed by approved persons only, so workshop cards are not for others	6(1)	Secretary of State
14(3)	Driver card issuing	3	Secretary of State
14(3)(a)	Residence	2(2)	Secretary of State
14(3)(d)	Not more than 1 driver card	3(2)(d)	Secretary of State
14(4)(b)	Driver cards to those subject to 3820/85 only	3(2)	Secretary of State
14(4)(d)	New driver card on change of residence	4	Secretary of State
15(1)	Renewal applications not less 15 working days before expiry date	3(3)(ii)	Secretary of State
16(3)	Replacement of damaged, malfunctioning,	7	Secretary of State

	lost or stolen card		
Annex 1	Definitions of company card, control card, driver card, workshop card	2(1); 5 (company cards); 6(2) (control cards).	Secretary of State

FINAL REGULATORY IMPACT ASSESSMENT (RIA)

CARD ISSUING FEE FOR DIGITAL TACHOGRAPH CARDS

Objective

The objectives of the introduction of Digital Tachograph card fee are:

- Meet EU Directive 3820/85, 3821/85, 2135/98 and 1360/2002
- For DVLA and DVLNI to cover the cost of system development and card production
- Improved Road Safety

1. This discussion document considers how the Card Issuing fee will be implemented in England, Scotland, Wales and Northern Ireland.

Background

2. Most drivers of large commercial vehicles are subject to what are known as the "EU drivers' hours rules"¹. These rules limit continuous driving time and require drivers to take minimum breaks and rest periods. This helps to reduce the risks of drivers becoming involved in fatigue-related accidents and thus improves road safety.

3. In order to enforce the drivers' hours rules, it is important to have a record of drivers' activities. Therefore, vehicles subject to the EU drivers' hours rules have to be fitted with a tachograph. This is a device which automatically records driving and other activities.

4. Existing tachographs create paper record sheets. In 1998, the EU adopted a Regulation², which paved the way for the introduction of digital tachographs. These will store records of driver activities in digital memory rather than on paper.

5. EU Regulation 2135/98 requires each Member State to issue the digital tachograph cards needed to effectively operate the new system in their country.

6. The Driver and Vehicle Licensing Agency (DVLA) the Driver Vehicle Licensing Northern Ireland (DVLNI) have developed the systems and technology required to be able to issue cards. DVLA and DVLNI will be issuing four types of card:

¹ These rules are set out in EEC Regulation 3820/85

² Council Regulation (EEC) 2135/98 which amends Council Regulation (EEC) 3821/85

- **Driver card** – to be used by any driver subject to the relevant regulations when driving any vehicle fitted with the digital tachograph system. It will record data such as driver's hours and rest periods.
- **Company card** – to be used by owners of vehicles fitted with the digital tachograph system to download the data relating to their company and to control access to data in the digital tachograph.
- **Workshop card** – for use by accredited workshop fitters primarily to install, repair and calibrate the on-board vehicle units.
- **Control card** – to be used by the Vehicle and Operator Service Agency (VOSA), the Driver and Vehicle Testing Agency (DVTA) and Great Britain (GB) and Northern Ireland (NI) police to gain access to data stored in digital tachographs.

7. This partial regulatory impact assessment (RIA) considers the introduction of a fee for the issue of digital tachograph cards for Great Britain (GB) and Northern Ireland (NI). An order would be required under section 102 of the Finance (No2) Act 1987 or section 56 of the Finance Act 1973 for GB and article 3 of the Fees & (Northern Ireland) Order 1988 for NI.

8. The proposed fee structures illustrate a fee for each card by transaction type. The transactions are defined as follows:

- **Card application** – this covers the issue of a card and subsequent additional company cards for those companies who find that they need additional cards.
- **Renewal** – this covers the issue of a new card on the expiry of the existing card. Driver and Company cards will be renewed every 5 years, Workshop cards every year and Control cards every 2 years.
- **Exchange** – the issue of a new card bearing the same expiry date of that card which it replaces if the personal details on the existing card change.
- **Replacement** – to replace a card that has been lost or stolen.
- **Malfunction** – to replace a faulty card.

9. **Businesses that consider they would be affected by the proposals are invited to: -**

- **briefly describe the activities they undertake**
- **explain how each of the options would affect them**
- **describe the costs and/or benefits that would arise from each of the options**
- **provide views on the implementation**
- **identify any unintended consequences.**

Risk assessment

10. We have no option but to introduce the system, otherwise Great Britain and Northern Ireland would contravene the EU Directive.

11. The estimated costs associated with the implementation and operation of the digital system over 5 years (until 2009-10) is £72 million.

12. Implementation of a fee for the digital tachograph card is vital in funding the card issuing system and to enforcement. Without the funding from the scheme, DVLA and DVLNI costs would have to be recovered from elsewhere, which would mean an increase in fees for other DVLA and DVLNI transactions. This in turn would mean that the digital tachograph card production and Drivers Hours' roadside enforcement would be wholly subsidised by other motorists through driver first licence applications, vehicle first registration applications or both driver and vehicle applications.

13. If the driver first licence application transaction fee were raised to a level to also cover the cost of the digital tachograph system, the fee would need to be raised from £38 to £54. This new fee has been calculated using current transaction volumes. If the vehicle first registration transaction were used, the fee would increase from £38 to £43. If costs were recouped from both transactions, the current fees would need to be increased from £38 to £42.

14. None of the above scenarios would be popular with ordinary driving licence holders or vehicle keepers, as they would be paying for a service from which they would derive little or no benefit. Therefore, the only viable option is to look at levying a fee on those motorists obliged to use the digital tachograph.

15. Also, if no fee is attached to the card there is a risk that drivers in particular may apply for more cards than they need, thus presenting a very real security risk to the system. In addition if replacement cards were provided free of charge, their estimated numbers may escalate leading to increases in costs.

16. As other European Union Member States will be charging a fee for the digital tachograph cards it may be seen as unfair competition if GB and NI issues the cards to its drivers and operators free of charge. It is easy to construe this as a hidden subsidy to GB and NI transport industry.

17. The regulation is estimated to effect 1.4 million drivers and 120,000 companies between the financial periods 2005-06 and 2009-10.

Options

Option 1

18. Option one proposes a charging structure for the various types of card needed under the scheme. The table below gives the proposed fees for the various different card types:

Transaction	Driver Card	Company Card	Workshop Card	Control Card
Card Application	£38	£38	£0	£0
Renewal	£19	£19	£0	£0
Replacement – lost/stolen	£19	£19	£0	£0
Exchange – change of details	£0	£38	£0	£0
Malfunction	£0	£0	£0	£0

19. This option proposes to cover the costs of the card-issuing scheme over the 5-year period. It also provides for some subsidy of driver fees by companies, for example, exchange transactions.

Card application

20. DVLA and DVLNI propose to charge a fee of £38 in respect of driver and company card applications including any additional company cards. The fee covers the cost of setting up the record and contributes to the maintenance of that record.

Renewal cards

21. A fee of £19 is proposed for renewal cards. Issuing renewal cards will result in additional costs. It is anticipated that these costs will be lower than costs associated with issuing the cards initially, given that records have previously been created. Hence the level of the fee for the renewal card is lower.

Replacement cards

22. A fee of £19 is proposed for replacement cards. It is hoped that the fee for cards which are lost or stolen will help minimise the risk associated with drivers having more than one legitimate card whilst not placing too onerous a burden on drivers or companies who need to obtain replacements.

Exchanges

23. Drivers will be issued with a free card on notification of a change of personal details. This is necessary to ensure that drivers' personal details remain accurate and up-to-date on the database and on the driver's card. Accurate driver details are important to both companies and enforcement agencies.

24. It is planned to charge a fee of £38 to update any company card with a new address. Company card exchanges will be issued following receipt or notification of change of business details e.g. company name and/or address. This fee will contribute to the maintenance of accurate driver and company records.

Workshop cards and Control cards

25. The numbers of control and workshop cards needing to be issued are small compared with the number of driver cards. It is estimated that there are over a million vocational drivers whilst it is expected that the number of workshop and control cards needing to be issued will amount to only a few thousand.

26. It is proposed that all workshop and control cards will be issued free of charge. Workshops pay a yearly fee and are accredited by VOSA and DVTA and will not be required to pay for a card. No charge will be made to VOSA, DVTA or GB and NI police to obtain the control cards that are necessary for them to carry out their statutory duties in ensuring compliance.

Option 2

27. Option two proposes a different charging structure for the various types of card needed under the scheme. The difference is mainly that drivers will absorb more of the costs associated with the card-issuing scheme than operators. The table below gives the proposed fees for the various different card types:

Transaction	Driver Card	Company Card	Workshop Card	Control Card
Card Application	£44	£20	£0	£0
Renewal	£20	£20	£0	£0
Replacement Lost/Stolen	£20	£20	£0	£0
Exchange – change of details	£0	£20	£0	£0
Malfunction	£0	£0	£0	£0

28. This option again proposes to cover the costs of the card-issuing scheme over the 5-year period. However, this option provides for a greater degree of subsidising of the system by the driver.

Card application

29. A fee of £44 in respect of first applications for driver cards and £20 for company cards. The fee covers the cost of setting up the record and contributes to the maintenance of that record.

Renewal cards

30. A fee of £20 is proposed for renewal cards. Issuing renewal cards will result in additional costs. However, it is anticipated that these costs will be lower than costs associated with issuing the original cards, given that records have previously been created.

Replacement cards

31. A fee of £20 is proposed for replacement cards. It is hoped that the fee for cards which are lost or stolen will help minimise the risk associated with drivers having more than one legitimate card whilst not placing too onerous a burden on drivers or companies who need to obtain replacements.

Exchanges

32. Drivers will be issued with a free card on notification of a change of personal details. This is necessary to ensure that drivers' personal details remain accurate and up-to-date on the database and on the driver's card. Accurate driver details are important to both companies and enforcement agencies.

33. It is planned to charge a fee of £20 to update a company card with a new address. Company card exchanges will be issued following receipt or notification of change of business details e.g. company name and/or address. This fee will contribute to the maintenance of accurate driver and company records.

Workshop cards and Control cards

34. The numbers of control and workshop cards needing to be issued are small compared with the number of driver cards. It is estimated that there are over a million vocational drivers whilst it is expected that the number of workshop and control cards needing to be issued will amount to only a few thousand.

35. It is proposed that all workshop and control cards will initially be issued free of charge. Workshops are accredited by VOSA and DVTA and will not be required to pay for a card. No charge will be made to VOSA, DVTA or GB and NI police to obtain the control cards that are necessary for them to carry out their statutory duties in ensuring compliance.

Benefits

36. The key benefit of charging a fee for the digital tachograph card is that it offers a self-funding solution to the card issuing and enforcement problems.

Option 1

37. The key benefit associated with this proposal is that Option one offers a fair distribution of the costs of the system with the company providing for some subsidy of driver fees, such as, exchange transactions.

Option 2

38. The key benefit under Option two is that company costs will be lower than under Option one. The fact that company costs are low however has the contrasting effect of making driver costs high in order to cover the shortfall in costs.

39. The introduction of the digital tachograph card fee will affect businesses and individuals subject to the EU Drivers' Hours Regulation. Most vocational drivers, companies/operators and accredited workshop fitters are required to comply with EU Directives 3820/85, 3821/85 and 1360/2002.

40. The key business sectors affected will be the heavy goods vehicle operators and coach industry. It is estimated that this represents around 120,000 companies.

41. In addition approximately 1.4 million drivers within these sectors will be affected.

Costs

42. In considering the fee structure DVLA and DVLNI has taken account of the costs of setting up the system, creating a record, issuing the card, including the material and administration costs and the on-going costs of maintaining an accurate record.

43. Also, the fee contributes towards the TACHOnet system, which facilitates the data exchange for card status enquiries between EU Tachograph Card Issuing authorities and enforcement bodies. VOSA, DVTA and GB and NI police will use TACHOnet for roadside checks on workshop and driver card status notifications.

44. The increase in operation costs to DVLA and DVLNI is estimated at around £72 million for the years up to 2009-10. This is recovered through the proposed fee under both options over a number of years and the scheme becomes self-funding in 2009-10.

Option 1

45. The total number of drivers that are estimated to apply for a digital tachograph card between 2005-06 and 2009-10 is 1.4 million at £38 each. This will result in an estimated cost of £53.2 million over a 5-year period.

46. It is expected that 220,000 company cards will be issued in the first year (as initially only vehicles first put into service will be fitted with the new type digital tachograph) with a take up of 45,000 per year afterwards. This assumes therefore that the total cost to industry for a volume of approximately 400,000 at £38 each will be £15.2 million.

Option 2

47. The total costs incurred by drivers and operators in total in obtaining cards (based on the estimated volumes above) under Option two is roughly the same. However, the cost incurred by drivers under this option is around £61.6 million whereas the cost incurred by operators via company cards is approximately £8 million.

EQUITY AND FAIRNESS

48. The development of the system and the card production processes in preparation for this initiative has resulted in additional costs to both DVLA and DVLNI. In common with the principle already established for driver licensing and vehicle registration, the fee structure for digital tachograph cards continues with the principle of fair and equitable distribution of costs and seeks to cover costs in the fairest way possible.

SOCIAL EXCLUSION ISSUE

49. DVLA and DVLNI do not believe that any social exclusion is likely to arise from these proposals.

RACE RELATIONS ISSUE

50. It is not considered that these proposals will have any race equality impact.

HUMAN RIGHTS

51. We believe that these regulations will have no impact on human rights.

CONSULTATION WITH SMALL BUSINESSES

52. The Small Business Service (SBS) was consulted as part of this exercise and raised some concerns regarding a potentially disproportional impact on small business within the affected sectors. The proposed fee structures, in preparation for the introduction and issue of digital tachograph cards could further add to the escalating cumulative regulatory burden on commercial road users which is a particularly competitive and SME populated industry.

53. SBS would like DVLA and DVLNI to further explore the potential of providing a greater degree of subsidising of the system. They feel that the potential of this proposal to greatly increase road safety for all road users warrants exploration of cost recovery over a wider user group. However, the drivers' hours rules remain unchanged. Council Regulation (EEC) 2135/98, which amends Council Regulation (EEC) 3821/85 changed the method of recording the necessary information from paper record sheets to digital memory. Therefore, the Agencies feel that there is no significant increase to road safety to warrant subsidy of the cards by a wider user group. The SBS appreciate that as an EU introduced proposal, the UK must ensure industry subsidies are not interpreted as unfair competition, however they were concerned that no comparison data was available in the partial regulatory impact assessment. This information is now available and the table below demonstrates that the fees levied by GB and NI are broadly in line with other Member States.

COST OF CARD (IN EUROS)		
COUNTRY	DRIVER CARD	COMPANY CARD
Spain	<25	<25
Estonia	26-50	26-50
Germany	26-50	26-50
Italy	26-50	26-50
Liechtenstein	26-50	>25
Switzerland	26-50	>25
Great Britain/Northern Ireland *	51-75	51-75
Sweden	51-75	51-75
Austria	76-100	51-75

Norway	76-100	76-100
Finland	>100	>100

* The cost of both cards will be £38, which is approximately 58 Euros.

54. Whilst the SBS understand the rationale of a self-funding solution, they are concerned the fee options presented may incorporate the potential cost of enforcement problems. The principle "the user pays" should not be extended to compliant road users to cover the cost of enforcing a minority. (Partial RIA, paragraph 88) DVLA became an executive agency on 2 April 1990, and was established as a Trading Fund in April 2004. The Trading Fund provides the Agency with greater freedom to manage its financial affairs, whilst remaining under the control and management of a Minister (and accountable to Parliament through that Minister). However, it is still subject to the same centrally applied administrative rules and procedures as a Government department.

55. The costs of driver services have always been covered by driver fees in accordance with the principles in the Treasury's Fees and Charges Guide.³

56. As a Trading Fund, DVLA is required to promote efficiency and to ensure that in providing its services it provides value for money for taxpayers including non-drivers. DVLA's current "user-pays" principle of recouping costs from drivers for the issue of a digital tachograph card and the maintenance of the record enables DVLA and operators to provide services efficiently and without additional cost to all taxpayers.

57. Also, paragraphs 77 and 78 of the partial regulatory impact assessment stipulate the reasoning for not charging enforcement bodies. This is broadly due to the relatively small numbers involved and the fees already charged to workshops to obtain accreditation. Imposing a fee upon the workshops would inevitably mean this being passed on to the end user with a risk that such fees would be 'rounded up' thus potentially increasing costs to that end user.

58. SBS are questioning the Agencies' assertion that the impact of this proposal on small businesses will be insignificant. The SBS encourage DVLA to provide a thorough industry breakdown, identifying both the quantity and size of businesses affected. SBS recommend industry focus groups to fully understand the problems faced by the industry and explore wider options for this proposal. DVLA has met with a number of associations, such as the Freight Transport Association, who do not see the implementation of digital tachographs as unduly more burdensome than the current analogue tachographs. 75% of the businesses in this sector comprise of organisations using three or fewer vehicles. The cost of driver and company cards for such an operator would be in the region of £160 spread over a 5-year period.

SMALL FIRMS IMPACT TEST

59. The impact on small businesses has been covered above.

³ Fees and Charges Guide 1992.

COMPETITION ASSESSMENT

60. The proposed fee structures affect all vocational drivers subject to the relevant EU regulation in England, Scotland, Wales and Northern Ireland. The vehicle company operators subject to the relevant EU regulation are all broad-based with no one firm or small group of firms, holding a pronounced market share. No firm would be affected to any greater degree than any of its competitors of comparable size. The costs would fall in direct relation to the size of the business.

ENFORCEMENT AND SANCTIONS

61. A separate consultation exercise will be carried out on the enforcement powers and penalties necessary to implement digital tachographs.

MONITORING AND REVIEW

62. DVLA and DVLNI monitor its own financial position continuously. Interested parties are consulted as part of this review process.

SUMMARY AND RECOMMENDATIONS

63. DVLA and DVLNI wish to introduce a fee for the introduction and issue of digital tachograph cards.

64. Option 1 is recommended. The key benefit of this option is that it offers a fair distribution of the costs. Although it appears that DVLA and DVLNI are going against the majority view, it is thought that this option takes into account the comments of the respondents who felt that the fee was unfair to the driver. While a fee is still being imposed, it appears to be the fairer option from the driver's point of view.

MINISTERIAL DECLARATION

65. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

Tony McNulty

8th April 2005