



Border Force

IS11D Letter - Company (Owner/Hirer)
Clandestine Entrant Civil Penalty Team
Home Office
Border Force South East & Europe
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Date: **02/11/2022**

Port Ref: CAL/CP/ **20221102-2221**

Dear Sirs

Re: Clandestine Entrants-Notice of Liability to a Penalty
Immigration and Asylum Act 1999

On **02/11/22** in the United Kingdom Immigration Control Zone at Calais
the vehicle index **WD 97346** / **CL895 HTV**
of which you were the owner/hirer, and was driven by
Franciszek Wojciech Kowalski
was found to contain **4** (**four**) clandestine entrant/s
[as defined in section 32 of the Immigration and Asylum Act 1999 ("the act").

We were unable to carry out further enquiries at the time of the incident. However, you may be aware that under section 32 of the Act, the Secretary of State may require a person who is responsible for a clandestine entrant to pay a penalty. In this regard 'responsible person' includes the vehicle owner, hirer and driver.

A responsible person shall not be liable to the imposition of a penalty if he can show that the carriage of the clandestine entrants was a result of duress.

There is also a defence if a responsible person can show that he did not know and that he had no reasonable grounds for suspecting that clandestine entrants were or might be in the vehicle, that there was in operation an effective system for preventing the carriage of clandestine entrants, and that the system in place was properly operated.

The purpose of this letter is to advise you that consideration will be given to whether it is appropriate to impose a penalty on any of the responsible persons and, if it is considered appropriate, the amount of penalty that should be imposed.

At this stage, no decision has been made regarding the imposition of any penalty. You now have **28 days** from the date of this letter to respond in writing to the questions below and provide further documentary evidence.

1. Do you **own** the vehicle tractor and/or trailer unit?
2. Is any part of the vehicle **hired** or **leased**, if so please provide details.
3. Which company operated the vehicle on the day of the incident? Please provide a copy of the **EU Operating Licence**.
4. Do you employ the **driver** of the vehicle stated in this letter?
5. Confirm whether you provided the following security devices for this vehicle: **security cord, padlocks, seals or other security devices**. Provide **evidence** if available.
6. Was the driver provided with a **clandestine prevention security checklist** for this journey?
7. Was the checklist completed on the day of the incident? If so, please provide a **copy of the completed checklist**.
8. Provide details of **any other security checks** the driver or others may have carried out en route to the United Kingdom.
9. Do you provide any **written instructions** to drivers regarding the prevention of clandestine entry? **Please provide a copy of these instructions**.
10. Does your company **monitor** vehicle security and ensure drivers are making the required checks? If so provide **evidence** of how your company monitors vehicle security. For example you could supply a range of completed checklists or details of your company procedures for monitoring.
11. Do you provide **training** to the driver on the prevention of the carriage of clandestine entrants? If so, provide evidence of this. For example you could provide training records, a copy of the training course content or attendance sheets signed by the drivers.
12. Provide **any other evidence** you consider shows you have complied with the Prevention of Clandestine Entrants Code of Practice.

If you do not reply within 28 days, a decision on whether to impose a penalty will be made on the basis of the information currently available. Responses can be submitted by post or email to the addresses shown above on this letter.

If it is considered appropriate to impose a penalty, in setting its amount the Secretary of State will have regard to the 'Level of Penalty Code of Practice'. The level will be assessed taking into account such matters as the vehicle's security, any checks that were made of it during the journey to the United Kingdom and the level of operational control each responsible person had over the vehicle. If a penalty is imposed on any of the responsible persons, each will receive a notice explaining how and when written objections or an appeal to the court against liability and/or against the amount of penalty imposed can be made.

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I have also written to the driver of the vehicle to ask him/her to provide in writing and within 28 days of the date of this letter, any information regarding the existence and operation of an effective system for preventing clandestine entrants, and the security equipment provided for the vehicle in question.

For information, the 'Prevention of Clandestine Entrants Code of Practice' describes the measures to be taken and the procedures to be followed by persons operating a system for preventing the carriage of clandestine entrants. A copy of the code of practice, and of the 'Level of Penalty Code of Practice' referred to above, can be found by visiting the Home Office website at:

<http://www.gov.uk/government/publications/guidance-for-hauliers-on-preventing-clandestine-entrants>

Yours faithfully

HM Inspector

For and on behalf of the Secretary of State

<https://www.gov.uk/secure-your-vehicle-to-help-stop-illegal-immigration>