



HM Government

NEW PLAN

FOR IMMIGRATION

Clandestine Entrant Civil Penalties

Government consultation

This consultation begins on 18th July 2022.

This consultation ends on 12th September 2022.

About this consultation

- To:** Anyone who drives a vehicle which is going to enter the UK, including private drivers and commercial drivers.
- Anyone who is the owner or hirer of a vehicle which is going to enter the UK.
- Anyone who is the owner, hirer or operator of a detached trailer which is going to enter the UK.
- Anyone who is interested in the Clandestine Entrant Civil Penalty Scheme.
- Duration:** From 18th July 2022 to 12th September 2022.
- Enquiries (including requests for the paper in an alternative format) to:** Clandestine Entrant Civil Penalty Scheme Consultation
Clandestine Entrant Civil Penalty Consultation
Home Office, 2 Marsham Street, London SW1P 4DF
- Email:
ClandestineEntrantCivilPenaltyConsultation@homeoffice.gov.uk
- How to respond:** Please respond online by 12th September at:
<https://www.gov.uk/government/consultations/clandestine-entrant-civil-penalty-scheme>
- Alternatively, please send your response by 12th September to:
- Clandestine Entrant Civil Penalty Consultation
Home Office, 2 Marsham Street, London SW1P 4DF
- Email:
ClandestineEntrantCivilPenaltyConsultation@homeoffice.gov.uk
- Additional ways to respond:** A series of stakeholder meetings is also taking place. For further information please use the 'Enquiries' contact details above.
- Response paper:** A response to this consultation exercise is due to be published in due course at:
<https://www.gov.uk/government/consultations/clandestine-entrant-civil-penalty-scheme>

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Introduction

Illegal migration is facilitated by serious organised criminals exploiting people and profiting from human misery. The same criminal gangs and networks are also responsible for other illicit activity ranging from drug and firearms, trafficking to modern slavery and serious violent crimes. A significant number of people, who arrive in the UK through concealment in vehicles by tourist and freight transport routes, have had their entry illegally facilitated by organised criminal gangs. Despite extensive work with overseas partners to strengthen our shared borders and enhance our strategic partnerships, this method of entry continues and endangers the lives of those involved. In many cases, this is a result of criminal gangs and opportunistic migrants taking advantage of unsecured or poorly secured vehicles to smuggle people or enter the UK clandestinely.

For these reasons, the UK operates a scheme to tackle illegal migration called the Clandestine Entrant Civil Penalty Scheme. The Scheme means that when clandestine entrants are found in a vehicle, a penalty of up to £2,000 per entrant can be imposed on any responsible person connected to the vehicle in question, up to a maximum aggregate of £4,000 in total per clandestine entrant. A responsible person is defined as the owner, hirer or driver of the vehicle. The Scheme applies to all vehicles, commercial and private, as well as anything that is designed to be towed or carried by a vehicle (such as trailers, caravans, containers etc). In circumstances where the driver is employed by the vehicle owner or hirer, such as an HGV, the employer is also liable for the driver's penalty. The penalty level has not been changed for nearly twenty years.

During the financial year 2020-2021, there were 3,145 incidents where clandestine entrants were detected concealed in vehicles, despite the Covid-19 pandemic causing a lower volume of traffic. This rose to 3,838 incidents during the financial year 2021-2022. The Government is therefore concerned that the Scheme is not having enough of an effect, as drivers are not taking the steps required to secure vehicles, and clandestine entrants are continuing to use these routes to enter the UK.

It is for this reason that the Government committed to review and overhaul the Scheme as part of its New Plan for Immigration. A public consultation on the New Plan for Immigration was held from 24 March to 6 May 2021. The Government then introduced changes to the Scheme through the new Nationality and Borders Act 2022.

The changes under the 2022 Act include narrowing the statutory defences available to those who have carried a clandestine entrant. This means that where a clandestine entrant has been carried, it will no longer be a statutory defence to say that an effective system for preventing the carriage of clandestine entrants was in operation, and that person may still be issued with a penalty. However, if the person has complied with regulations to be issued by the Secretary of State, which will require them to take actions to secure their transporter,

report unauthorised access and keep records to show they took these steps, this could mean the level of the penalty is reduced.

The 2022 Act also introduces a new civil penalty for failing to adequately secure a goods vehicle, regardless of whether a clandestine entrant has been found. The Secretary of State will also make regulations which set out what is meant by a goods vehicle being adequately secure and the required vehicle security standards that will determine whether liability arises under this new offence. These may include vehicle checks, reporting unauthorised access and retaining records to demonstrate steps taken.

Before any of these regulations can be made under the 2022 Act, the Secretary of State has a statutory duty to consult with such persons as she considers appropriate. The Government has also agreed to consult on the level of penalty for the new offence of failing to adequately secure a goods vehicle, with a view to bringing into operation a new Level of Penalty: Code of Practice. The Secretary of State is now discharging these obligations through this consultation, which is designed to seek the views of all interested parties on these issues and others connected with the Scheme.

The consultation is aimed at:

- Anyone who drives a vehicle which is going to enter the UK, including private drivers and commercial drivers.
- Anyone who is the owner or hirer of a vehicle which is going to enter the UK.
- Anyone who is the owner, hirer or operator of a detached trailer which is going to enter the UK.
- Anyone who is interested in the Clandestine Entrant Civil Penalty Scheme.

The consultation is aimed at anyone in the UK and at international drivers and businesses.

Alongside this consultation document, the Home Office will be running a series of engagement events to explore these issues in more detail. If you would like to join an engagement event, please email:

ClandestineEntrantCivilPenaltyConsultation@homeoffice.gov.uk

The closing date to express an interest in joining an engagement date is 19th August 2022.

We welcome your views and look forward to hearing from you.

The proposals

Firstly, in respect of the existing offence of carrying a clandestine entrant, we would like you to tell us what you think the regulations should say about the steps to be taken to secure a vehicle from access by a clandestine migrant.

Secondly, in respect of the existing offence, we are considering the circumstances in which such a penalty should be imposed. The 2022 Act means that it will no longer be a statutory defence for someone to say that the driver had an effective system in place for preventing the carriage of a clandestine entrant. The only statutory defence will be that the driver was acting under duress, which is to say that somebody was forcing them to carry the clandestine entrants later found. In all other cases, the presumption will be that a penalty will be issued, unless this is not in the public interest because there are exceptional circumstances. We would like to hear your views as to what these circumstances could be.

Thirdly, in respect of the existing offence, we are considering increasing the maximum penalty from £2,000 per entrant and the aggregate penalty from £4,000 per entrant. We are considering making this change to ensure that the level of penalty provides enough of an incentive to comply with the requirements of the scheme. We would like to hear your views about this proposal. We would also like to hear your views on whether there should be higher levels of penalties where there are aggravating circumstances and lower levels where there are mitigating circumstances, and what these circumstances should be. For example, although it will not be a statutory defence for someone to say that the driver took reasonable steps to secure their vehicle, this could be a mitigating factor to reduce the level of their penalty.

Fourthly, in respect of the new offence of failing to adequately secure a goods vehicle, we would like to hear your views about what the regulations should say about what it means for a vehicle to be adequately secure against unauthorised access and the steps to be taken to secure that goods vehicle.

Fifthly, in respect of the new offence, we would also like to hear your views on what the maximum and aggregate penalty should be and whether there should be higher levels of penalties where there are aggravating circumstances and lower levels where there are mitigating circumstances, and what these circumstances should be.

Finally, we also wish to use this consultation exercise to ask you about the Civil Penalty Accreditation Scheme for Hauliers.

Together, these measures aim to help to drive up levels of compliance with the Scheme, and encourage greater numbers of responsible persons to take more responsibility for countering the threat that insecure vehicles present to UK border control. This will help to

improve efforts to protect our border, to safeguard those vulnerable individuals who are placed in dangerous conditions and to stop those who seek to evade our border controls.

Questionnaire

Section 1: existing offence of carrying a clandestine entrant

Q1. What should the regulations say about the steps responsible persons should take to secure a vehicle from access by a clandestine entrant? [tick all that apply]

In the case of vehicles, the responsible person is the owner, hirer or driver of the vehicle. In the case of a detached trailer, the responsible person is the owner, hirer or operator.

(Owners / hirers only)	(Owners / hirers only)	(Owners / hirers only)	(Drivers / operators only)	(Drivers / operators only)
Drivers / operators trained on steps to reduce risk of carrying clandestine entrants	Retain records of driver / operator training	Provide drivers / operators with equipment to secure vehicles / detached trailers	Check vehicle / detached trailer to ensure no clandestine entrants have gained access	Supervise securing of vehicle / detached trailer

(Drivers / operators only)	(Owners / hirers / drivers / operators)	(Drivers / operators only)	(Drivers / operators only)	(Owners / hirers / drivers / operators)
Use security devices to secure vehicle / detached trailer	Retain evidence that vehicle / detached trailer has been secured	Check vehicle / detached trailer before presenting at the border	Use a checklist to document steps taken	Other

If other, please specify:

Q2. What should be the exceptional circumstances in which a penalty is not imposed for carrying a clandestine entrant? [tick all that apply]

The 2022 Act means that it will no longer be a statutory defence for someone to say that the responsible person had an effective system in place for preventing the carriage of a clandestine entrant. The only statutory defence will be that the driver was acting under duress, which is to say that somebody was forcing them to carry the clandestine entrants later found. In all other cases, the presumption will be that a penalty will be issued, unless this is not in the public interest because there are exceptional circumstances.

Responsible person has voluntarily declared that they may be carrying clandestine entrants	Responsible person is being investigated or prosecuted for serious criminal offences arising out of the same incident	Responsible person has extenuating circumstances (such as serious health issues)	Other

If other, please specify:

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Q3. What should the maximum penalty be for a responsible person for carrying an individual clandestine entrant? [tick one]

£2,000	£5,000	£7,500	£10,000	Other

If other, please specify:

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Q4. What should the total aggregate penalty for all responsible persons be for carrying an individual clandestine entrant? [tick one]

The current total aggregate penalty is £4,000.

£4,000	£10,000	£15,000	£20,000	Other

If other, please specify:

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Q5A. Should there be higher levels of penalties in aggravating circumstances and lower levels in mitigating circumstances? [tick one]

Yes	No	Don't know

Q5B. If yes, what should the aggravating factors be? [tick all that apply]

Responsible person has been involved in previous incidents	Responsible person has outstanding unpaid penalties	Responsible person has failed to comply with measures set out in the regulations / Level of Penalty: Code of Practice	Other

If other, please specify:

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Q5C. If yes, what should the mitigating factors be? [tick all that apply]

Where a clandestine entrant has been carried, it will no longer be a statutory defence to say that the responsible person had an effective system in place for preventing the carriage of a clandestine entrant. However, if the person has complied with regulations to be issued by the Secretary of State, this could mean the level of the penalty is reduced.

The Civil Penalty Accreditation Scheme for hauliers promotes best practice in the haulage sector to secure vehicles and check for clandestine entrants in freight vehicles.

Responsible person has not been involved in previous incidents	Owner is part of the Accreditation Scheme	Responsible person complied with measures set out in the regulations / Level of Penalty: Code of Practice	Responsible person has voluntarily declared that vehicle may be carrying clandestine entrants	Other

If other, please specify:

Section 2: new offence of failing to adequately secure a goods vehicle

Q6. What should the regulations say about the steps responsible persons should take to secure a goods vehicle? [tick all that apply]

In the case of goods vehicle, the responsible person is the owner, hirer or driver of the vehicle. If the goods vehicle is a detached trailer, the responsible person is the owner, hirer or operator of the trailer.

(Owners / hirers only)	(Owners / hirers only)	(Owners / hirers only)	(Drivers / operators only)	(Drivers / operators only)
Drivers / operators trained on steps to reduce risk of carrying clandestine entrants	Retain records of driver / operator training	Provide drivers / operators with equipment to secure vehicles / detached trailers	Check vehicle / detached trailer to ensure no clandestine entrants have gained access	Supervise securing of vehicle / detached trailer

(Drivers / operators only)	(Owners / hirers / drivers / operators)	(Drivers / operators only)	(Drivers / operators only)	(Owners / hirers / drivers / operators)
Use security devices to secure vehicle / detached trailer	Retain evidence that vehicle / detached trailer has been secured	Check vehicle / detached trailer before presenting at the border	Use a checklist to document steps taken	Other

If other, please specify:

Q7. What should the total maximum penalty be for a responsible person for failing to adequately secure a goods vehicle? [tick one]

£2,000	£5,000	£7,500	£10,000	Other

If other, please specify:

Q8. What should the total aggregate penalty for all responsible persons be for failing to adequately secure a goods vehicle? [tick one]

£4,000	£10,000	£15,000	£20,000	Other

If other, please specify:

Q9A. Should there be higher levels of penalties in aggravating circumstances and lower levels in mitigating circumstances? [tick one]

Yes	No	Don't know

Q9B. If yes, what should the aggravating factors be? [tick all that apply]

Responsible person has been involved in previous incidents	Responsible person has outstanding unpaid penalties	Responsible person has failed to comply with measures set out in the regulations / Level of Penalty: Code of Practice	Other

If other, please specify:

Q9C. If yes, what should the mitigating factors be? [tick all that apply]

The Accreditation Scheme promotes best practice in the haulage sector to secure vehicles, and check for clandestine entrants, and prevent illegal migration in freight vehicles.

Responsible person has not been involved in previous incidents	Owner is part of the Accreditation Scheme	Responsible person complied with measures set out in the regulations / Level of Penalty: Code of Practice	Responsible person has voluntarily declared that vehicle may be carrying clandestine entrants	Other

If other, please specify:

Section 3: Civil Penalty Accreditation Scheme for Hauliers

The Accreditation Scheme promotes best practice in the haulage sector to secure vehicles, check for clandestine entrants, and prevent illegal migration in freight vehicles. Participation rates in this scheme have grown in recent years.

Q10A. Does your business participate in the Accreditation Scheme? [tick all that apply]

Yes	No	Don't know

Q10B. If yes, what are the main benefits of the Scheme? [tick all that apply]

Formal route of communication with Border Force on matters related to Civil Penalties	Guidance from Border Force on what needs to be done by applicant to improve compliance with measures set out in the regulations / Level of Penalty: Code of Practice	Exemption from penalty liability as long as company can demonstrate continued compliance with measures set out in the regulations / Level of Penalty: Code of Practice	Other

If other, please specify:

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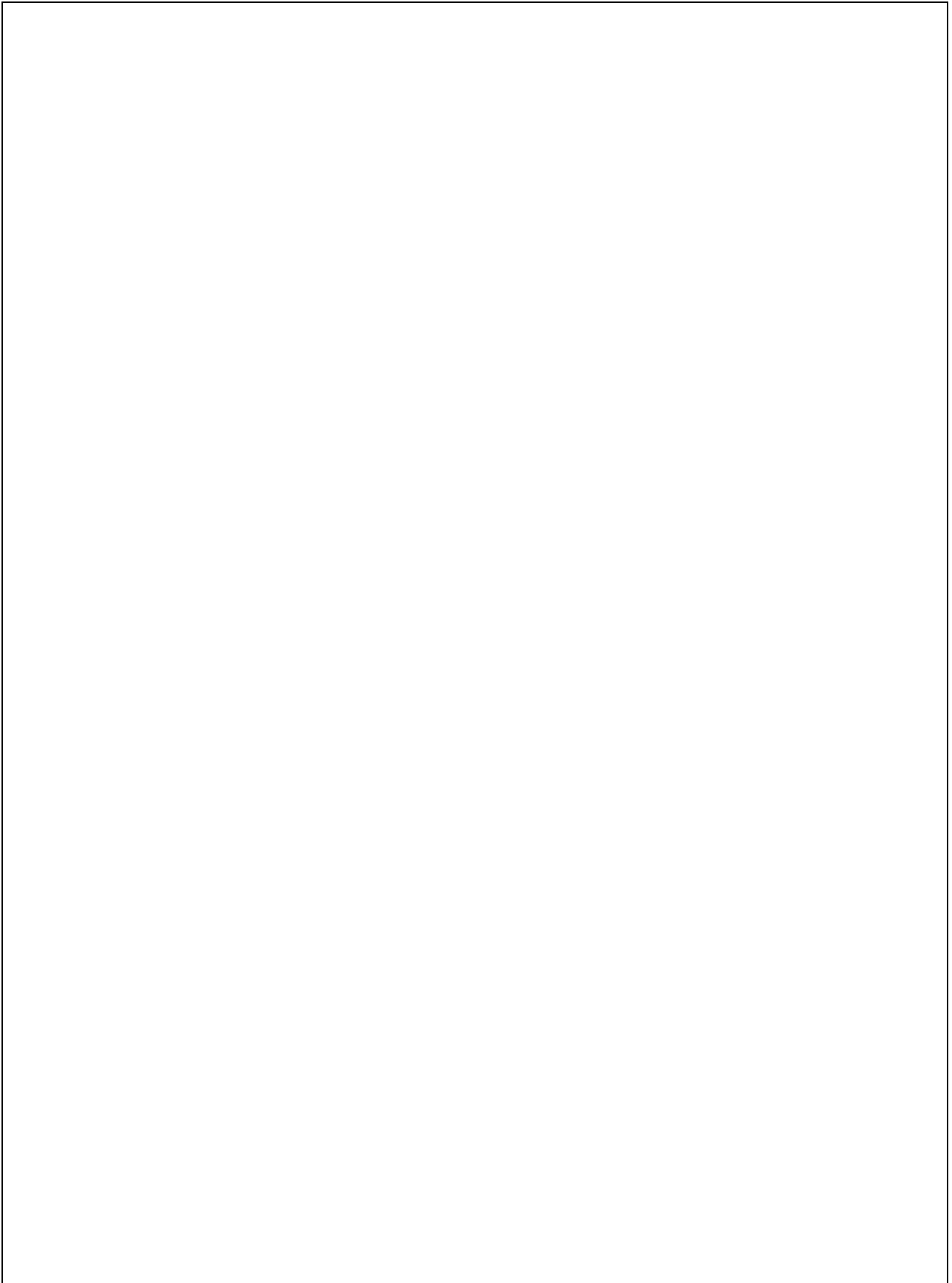
Q10C. If no, what would encourage you to join the Scheme? [tick all that apply]

Extend Scheme to drivers	Provide educational tools through Scheme (such as instructional videos / training packs)	Increase engagement with Border Force (such as industry events)	Other

If other, please specify:

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Q11. How could the Accreditation Scheme be improved? [freetext]



Section 4: other comments

Q12. Please use this freetext box to make any other comments about the Clandestine Entrant Civil Penalty Scheme.

This includes any comments you may wish to make about possible equalities impacts or possible impacts on vulnerable people or children.

Thank you for participating in this consultation.

About you

Please use this section to tell us about yourself.

Are you [please tick all that apply]	
Owner	
Hirer	
Driver	
Operator	
Other [please tell us]	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details and how to respond

Please respond online by 12th September at:

<https://www.gov.uk/government/consultations/clandestine-entrant-civil-penalty-scheme>

Alternatively, please send your response by 12th September to:

Clandestine Entrant Civil Penalty Consultation
Home Office, 2 Marsham Street, London SW1P 4DF

Email: ClandestineEntrantCivilPenaltyConsultation@homeoffice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at <https://www.gov.uk/government/consultations/clandestine-entrant-civil-penalty-scheme>.

Alternative format versions of this publication can be requested from:

Email: ClandestineEntrantCivilPenaltyConsultation@homeoffice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available online at GOV.UK.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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This publication is available at <https://www.gov.uk/government/consultations/clandestine-entrant-civil-penalty-scheme>.

Any enquiries regarding this publication should be sent to us at:

ClandestineEntrantCivilPenaltyConsultation@homeoffice.gov.uk