

TRANSITION ADVICE FUND: POSITION PAPER ON SETTLED STATUS

Ruth Gripper

30 January 2018

The [Transition Advice Fund \(TAF\)](#) aims to ensure that EEA nationals and their family members living in the UK can secure their right to settled status. We need to avoid a situation where people living in the UK and entitled to settled status become illegally resident after the cut-off date, or in the event of ‘no deal’. The system therefore needs to take account of people who may be hesitant about engaging with the process, who find it difficult to use or who struggle to evidence their right to settled status.

The two principle concerns around any registration scheme are eligibility and coverage.

The [REGINE project](#) surveyed regularisation schemes across Europe over a decade. The data is incomplete and estimates differ, but the average of successful applications was found to be around 80%.¹ Less data is available to inform predictions of coverage. The Deferred Action for Childhood Arrivals (DACA) scheme in the USA offered young people a work permit, access to a driving licence and protection from deportation. [Analysis by the Migration Policy Institute](#) shows that after four years, of a total eligible population of 1.9million there had been approximately 820,000 applications, of which only 90% were successful.² This number has increased since 2016, but [recent evidence](#) suggests that successful coverage is still only between a half and two thirds of the eligible population, with dramatic differences by nationality. For comparisons closer to home, we can look at the [take-up of benefits](#) in the UK—where as many as one third of people do not take up means-tested benefits to which they are entitled.³ Even Child Benefit, where take-up is probably highest, hovers around 95% according to [HMRC](#). **If just 5% of the 3.4m EU citizens living in the UK do not register, this is a population of 170,000 people left without status.**

There are five key areas the TAF would like to see reflected in the Withdrawal Agreement between the UK Government and the EU. We would expect these measures to be reciprocal, as the Withdrawal Agreement aims to provide reciprocal protection for EU and UK citizens.

1. Steps should be taken to promote maximum take-up of the registration scheme.
2. The design of the scheme must take account of people who will find it more difficult to navigate the process.
3. The process must be fair, transparent and accountable.
4. The process should avoid citizens entitled to settled status becoming illegally resident after the cut-off date or in the event of ‘no deal’.
5. There should be a clear, timely and affordable pathway between settled status and British citizenship.

¹ Baldwin-Edwards, M. and Kraler, A. (eds.) (2009) *REGINE: Regularisations in Europe*. Amsterdam: Pallas Publications

² Migration Policy Institute (2016) *DACA at Four: Estimating the potentially eligible population and assessing application and renewal trends*.

³ Finn, D. and Goodship, J. (2014) *Take-up of benefits and poverty: An evidence and policy review*. Centre for Economic and Social Inclusion.

Five key requirements for a successful ‘settled status’ process

- 1. Steps should be taken to promote maximum take-up of the registration scheme. These measures need to cover promotional activity encouraging all citizens to register—recognising that some may be hesitant to do so—and provisions to waive fees where necessary.**
 - a. There needs to be proactive communication, public information and outreach promoting the scheme through a wide range of channels. This should involve civil society (including faith groups) and key services (local authorities, libraries, the Post Office, schools).
 - b. Outreach, information and advice work (see below) will require substantial funding. There are precedents for such funding, including £40 million from the Ministry of Justice to the Big Lottery Fund to ease the transition associated with the Legal Aid Sentencing and Punishment of Offenders Act 2012 for advice organisations; EU Commission funding to European Citizen Action Service (ECAS) for an advice service for EU nationals on migration and freedom of movement; and in the US, the Immigration Reform and Control Act 1986 mandated partner organisations in the legislation along with authorising budget allocation for those organisations to provide regularisation services. In a similar way the Deferred Action for Childhood Arrivals (DACA) policy in 2012 provided for the provision of information and advice services.
 - c. Fees should be waived for minors and for people facing hardship.
- 2. The design of the registration scheme must take account of people who will find it more difficult to navigate the process.**
 - a. The registration process should be user-friendly and supportive; assistance should be provided for people who have difficulty self-registering. This includes the possibility of registering in person and the provision of information in different EU languages. This assistance needs to be adequately funded.
 - b. There need to be a range of ways in which people can evidence their residence in the UK and right to settled status. This could include financial statements, utility bills, tenancy agreements, social media records, affidavit/witness statements from a professional person or body, letters of support from friends and family or even self-declaration.
 - c. Families, including third country nationals who are family members of EEA nationals, should be able to register together at the same time through a linked application.
 - d. Instances within the system where citizens interact with public services should be used to prompt settled status registration. This could be linked across other application and registration processes such as drivers’ licences, national insurance, and maternity services.
 - e. It is a criminal offence for a person to provide immigration advice in the UK unless their organisation is regulated by the Office of the Immigration Services Commissioner (OISC). The OISC regulations must be adjusted to allow appropriately skilled, *bona fide* advisors to provide advice and assistance on settled status without committing an offence. For complex cases there will be a need for specialist legal advice.
 - f. To avoid exploitation and increase trust in the system, swift regulatory enforcement action should be taken against poor or rogue immigration advice providers.

3. The process must be fair, transparent and accountable.

- a. Administrative errors should be rectified quickly and for free. People whose payments cannot be processed should be able to repay rather than having their status immediately refused.
- b. Performance of the scheme should be monitored, with regular reporting on key success indicators (e.g. waiting times, positive decisions, decisions overturned on appeal and equality impacts). This would ensure transparency, help to identify and address any problems or bottlenecks and build public trust.
- c. People should be able to track the progress of their case and there should be full, upfront disclosure of any reasons for refusal. People should be informed of the Government data that has been accessed and used in the making of the decision on their status.
- d. Any restrictions on grounds on public policy or security should be set at the same level as those which currently apply under EU law relating to freedom of movement.
- e. Unsuccessful applicants have a statutory right of appeal. The appeal process should be accessible, swift and transparent, and enforcement proceedings must not be triggered before unsuccessful applicants are able to appeal. Legal advice should be made available for those submitting appeals who are on low or no income.

4. The process should avoid citizens entitled to settled status becoming illegally resident after the cut-off date or in the event of 'no deal'.

- a. The Withdrawal Agreement must include a plan for the fair treatment of people who are entitled to settled status but do not manage to apply by the deadline. This includes having transparent and accountable processes in place for resolving their migration status after the deadline, with a clear route to regularisation. This will help to avoid a large spike in the undocumented migrant population.
- b. If the registration system opens on a phased basis for different groups, the deadline should be similarly phased. The deadline for registering for settled status should be extended in the event of administrative delays or IT failures.

5. The definition of 'settled status' should be written so as to make it clear whether it is a category of migration and associated rights in UK law. There should be a clear, timely and affordable pathway between settled status and British citizenship.

- a. The pathway to British citizenship needs to be clear, timely and affordable, including for the children of EU citizens. The costs of applying for British citizenship are already substantial: the current cost of citizenship for 2 adults and 2 children is £5,541. For non-EEA nationals the equivalent cost would be £12,881.⁴ Settled status potentially adds a further £237 to that cost (based on the current cost of a UK passport).
- b. Clarity is required over future voting rights for citizens with settled status.
- c. We welcome the commitment that evidence of comprehensive sickness insurance (CSI) will not be required to register for settled status. This pragmatic approach should be extended so that not holding CSI separately to NHS eligibility should not pose a bar to applying for naturalisation after holding settled status for a year.

⁴ British Future 2016. *Report of the Inquiry into securing the status of EEA+ nationals in the UK.*

ANNEX 1: ABOUT THE TRANSITION ADVICE FUND

The Transition Advice Fund (TAF) aims to ensure that EU citizens living in the UK can secure their right to settled status—by helping the government design a system that works for everyone, and by making sure information and support is available to help people navigate the new system.

It is completely non-partisan and funded through independent charitable donations.

Who is affected by this issue?

Anyone whose legal residence in the UK currently dependent on EU treaty rights will be affected by Britain's withdrawal from the EU. In practice, this is not only nationals of European Economic Area (EEA) countries but also people whose residence rights are dependent on EEA nationals (i.e. their partners, children or close family members). **This is upwards of 3.4m people.**

EEA nationals and their family members arriving before 29 March 2019 will be able to stay indefinitely by securing 'settled status'. The precise criteria will be set out in the final Withdrawal Agreement between the UK and the EU and will be similar to those in the existing Free Movement directive. People will need to apply for settled status, even if they already have Permanent Residence. **Anyone who fails to secure settled or temporary status before the deadline (currently expected to be two years after we leave the EU) will overnight be considered to be illegally resident in the UK.**

What is the Fund for?

The TAF aims to ensure that everyone can secure their right to settled status—particularly those who need help to navigate the process or who risk failing to secure their status.

This includes:

- People who are isolated or unaware they need to apply—for example, people in care homes or with long-term ill health.
- People who have difficulty navigating the process—such as those with poor English language skills or facing digital exclusion.
- People whose residence rights are dependent on others'—such as children and young people or other family members, including third country nationals.
- People who may struggle to evidence their residence in the UK, for example because they haven't been working—such as carers, people with disability or mental health problems.
- People whose cases are more complicated—for example, looked after children or people who have experienced domestic violence or trafficking.

Making sure the system works for these people will ensure it works well for everyone. By focusing on getting the design and delivery of the registration process right, including by making sure help is available at an early stage of the process, the TAF hopes to reduce the need for additional support or appeals further down the line.

How will the Fund work?

The TAF has two broad goals:

- To support civil society and others to influence the design and delivery of the registration process so that it is accessible to all EU citizens.
- To support the capacity of civil society and others to respond to the need for information, advice and support, particularly from people who may need extra help, so that all EU citizens can navigate the process.

The TAF will provide financial support to civil society and others to help them engage with and influence the design of the registration process, and to respond to the need for information and advice. Many people will naturally turn to the charity sector for help, and we want to both reduce the need for help, and make sure the sector is equipped to respond. We will focus on influencing the design and delivery of the new system, and influencing the advice landscape rather than directly funding the provision of advice.

Who is involved?

The TAF is a new pooled fund established by Unbound Philanthropy, the Paul Hamlyn Foundation and the Legal Education Foundation, who bring their combined experience in migration, work with children and young people, and legal education. The fund currently totals £660,000 to be distributed over three years, although we aim to grow the total to £1m. The TAF is open to any individual donors and funders who want to get involved. NPC manages the TAF day-to-day, bringing expertise in strategic philanthropy and policy-engaged funding. An advisory panel involving the founder funders and other experts sets the strategy and oversees grant-making decisions.

What does success look like?

Through this work we want everyone, particularly those who might otherwise have struggled, to secure their right to settled status. We want to see a process that is accessible and user-friendly for all citizens; and we want to see people able to access good quality advice and support.

TRANSFORMING THE CHARITY SECTOR

NPC is a charity think tank and consultancy. Over the past 15 years we have worked with charities, funders, philanthropists and others, supporting them to deliver the greatest possible impact for the causes and beneficiaries they exist to serve.

NPC occupies a unique position at the nexus between charities and funders. We are driven by the values and mission of the charity sector, to which we bring the rigour, clarity and analysis needed to better achieve the outcomes we all seek. We also share the motivations and passion of funders, to which we bring our expertise, experience and track record of success.

Increasing the impact of charities: NPC exists to make charities and social enterprises more successful in achieving their missions. Through rigorous analysis, practical advice and innovative thinking, we make charities' money and energy go further, and help them to achieve the greatest impact.

Increasing the impact of funders: NPC's role is to make funders more successful too. We share the passion funders have for helping charities and changing people's lives. We understand their motivations and their objectives, and we know that giving is more rewarding if it achieves the greatest impact it can.

Strengthening the partnership between charities and funders: NPC's mission is also to bring the two sides of the funding equation together, improving understanding and enhancing their combined impact. We can help funders and those they fund to connect and transform the way they work together to achieve their vision.

New Philanthropy Capital
185 Park Street, London SE1 9BL
020 7620 4850
info@thinkNPC.org
[@NPCthinks](https://www.thinkNPC.org)

Registered charity No 1091450
A company limited by guarantee
Registered in England and Wales No 4244715

www.thinkNPC.org