

Legal Guidance: Visas for International (including EEA and Swiss national) Students as Elected Officers

Last Updated: November 2022

This document contains guidance for HR colleagues and managers in students' unions where international students at their institution wish to stand for election or are elected as student (or sabbatical) officers. This version of the guidance has been updated to reflect the post-Brexit UK immigration system changes made in 2020.

1. **Can international students be elected officers?**

Yes – if they have immigration permission which allows them to work in a full-time elected (sabbatical) officer post.

UK Visas and Immigration ('UKVI') is part of the Home Office and provides for international students studying in the UK. The student visa rules can be found at: www.gov.uk/guidance/immigration-rules/appendix-student

Prior to October 2020, international students were granted a Tier 4 visa in order to study in the UK. From the 5 October 2020, 'Student permission' replaced 'Tier 4 (General) student leave'. The Student route now includes both students who apply for immigration permission on or after 5 October and holders of Tier 4 (General) student immigration permission.

The Student route allows students to work full time as Elected Student Union (Sabbatical) Officers at the students' union associated with their place of study (or elected National Union of Students officers) for up to two 2 years. Effectively the Home Office considers this period of employment as part of the course of study.

Students can work as an elected officer in between their studies or in the academic year following the completion of their studies. However, if their Student permission runs out prior to completing their studies or completing their period of employment as Elected Student Union (Sabbatical) Officer, they will need to make a new application to extend their Student permission to enable them to complete their studies or to continue to work respectively.

2. **What work can be done under the Student route?**

Students will have conditions in relation to work as part of their immigration permission. For those who are able to work, the 'Student route' (<https://www.gov.uk/government/publications/points-based-system-student-route/student-and-child-student-accessible#bookmark55>) allows students to study full time or to work full-time as an Elected Student Union (Sabbatical) officer, plus up to 20 hours per week additional employment during term time (some students this may only be 10 hours per week during term time).

Students can work as an Elected Student Union (Sabbatical) officer as a break during their course or at the end of it as a new graduate, as long as their current permission allows for them to work as an Elected Student Union (Sabbatical) officer.

No organisations in the UK can employ anyone who does not have the appropriate right to work status, even if they have been elected to the Elected Student Union (Sabbatical) officer. The appropriate right to works checks will need to be undertaken prior to the start of the employment.

Students who take up the position of Elected Student Union (Sabbatical) officer during their course will need to ensure that their sponsoring institution reports a change of conditions to the Home Office before the role starts.

Students whose permission will expire prior to the commencement of their Elected Student Union (Sabbatical) officer role, or during the course of the position, will need to apply for new permission.

Where the student's permission covers just part of the Elected Student Union (Sabbatical) officer period of employment, they will need to apply for an extension at some point to cover the rest of the term. However, this doesn't stop them from taking up the role initially and being employed legally under their current leave, as long as the extension is applied for and given in time for it to continue when the current permission expires.

If their permission expired and no further extension had been granted, the Elected Student Union (Sabbatical) officer would no longer be able to work in the role, even if their term had time left to run. In this situation it is advisable for the Elected Student Union (Sabbatical) officer, the students' union and the institution to plan ahead to get the permission extension needed, as the individual will have to meet many of the requirements they needed for their original confirmation of acceptance (CAS) from their Student Sponsor.

3. **How does it work for part-time officer roles?**

A student can undertake a part-time Elected Student Union (Sabbatical) officer role, but the hours of work will be restricted to those allowed by their current leave permission. This is usually up to 20 hours a week during term time, and they must also continue their studies full-time. Note that 'work' is paid or unpaid, and voluntary work is included in the 20-hour limit. Each student's Permission will confirm the number of hours they are permitted to work.

4. **Who is the sponsor?**

The institution (college, university etc.) remains the Student (including Tier 4) sponsor even though the employment as an Elected Students' Union (Sabbatical) officer is with the students' union. This is the case whether it is during or at the end of the period of study. This is also the case for the NUS UK Officer team – the sponsor remains the 'home' institution where the course of study took place or where will continue once the Elected Student Union (Sabbatical) officer role ends.

5. **What does the student running for election need to do?**

They should let the students' union know about their status when running for election. They should also let their sponsor know as soon as possible after they have been elected. This will allow as much time as possible time to get things in place.

They should also check whether they need Student (previously Tier 4) permission to take up the employment. If they already have it, they should check whether it covers the whole term of the sabbatical officer role and confirm with their sponsoring institution that the appropriate report will be made to the Home Office. If the Student will require new permission, they should make arrangements to apply for an extension. This application can be made in the UK or outside the UK depending on the expiry of the current permission. They will need a new CAS from their sponsoring institution to support the application.

This can all take quite a lot of time and could affect when they're able to take up their elected officer role, as some students' unions have discovered. Starting early is important.

6. **How does Brexit impact on EEA and Swiss National students wanting to be elected officers?**

Anyone with Settled or Pre-Settled status can continue to perform the role and will not be impacted.

EEA and Swiss nationals who do not have Settled or Pre-Settled Status will need to have 'Student permission' to study or work as Elected Students' Union Officers .

Detailed guidance for students on visas, immigration and becoming an Elected Student Union (Sabbatical) officer can be found on the UK Council for International Student Affairs site: www.ukcisa.org.uk/Information--Advice/Visas-and-Immigration/Students-union-sabbatical-officers#layer-6283

7. **What do sponsors need to do?**

The sponsor will need to tell the Home Office about any sponsored students who will be employed as an Elected Student Union (Sabbatical) officer, before they take up the position, and should maintain contact with the Home Office throughout the term. The sponsor remains responsible for the individual throughout and for ensuring they stick to the required conditions. Clearly, the students' union and the sponsor institution will need to keep in touch with one another on how things are going and to advise of any changes. It's important to establish this working relationship as early as possible.

If the elected student needs to seek Student permission in order to do their officer post, the sponsor must assign a confirmation of acceptance for studies (CAS) to the student before the student can make that application.

8. **What checks do students' unions need to do?**

The students' union needs to carry out 'right to work' checks for all Elected Student Union (Sabbatical) officer (not just international officers) just as they would for any prospective new employee before they commence employment. There are a few ways to carry this out:

8.1 **Manual right to work checks – in person and digitally**

You will still be able to carry out right to work checks by obtaining original versions of one or more acceptable documents e.g. a passport of a British citizen. This must be done in person whilst you are in possession of the original document(s). Details can be found here:

<https://www.gov.uk/government/publications/right-to-work-checklist/employers-right-to-work-checklist-accessible-version>.

You can now no longer use the manual check to check a BRP.

8.2 **Employer checking service**

Where the evidence or information provided suggests the person may have a right to work but they are unable to provide the acceptable documents, for example, because an application is outstanding, the ECS can say whether

someone has a right to work. You can carry out a check (with the prospective employee's permission) using the following link: www.gov.uk/employee-immigration-employment-status

8.3 Share code

Individuals with a BRP or an e-visa can obtain a code from the Home Office website and share it with their employer to prove their right to work.

Currently, EEA and Swiss nationals can prove their Settled or Pre-settled status, or e-visa by visiting the Home Office website at: www.gov.uk/view-prove-immigration-status.

Others can use: <https://www.gov.uk/prove-right-to-work>

It is illegal to employ anyone who doesn't have appropriate permission to work and the penalties (fines) are high. Right to work checks should be carried out in a non-discriminatory way. Home Office guidance on explains how to approach this: <https://www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination>

[An NUS Charity guidance checklist created with Bates Wells on right to work checks is also available.](#)

Government guidance on checks and links to related information can be found here: www.gov.uk/check-job-applicant-right-to-work

9. What form does Student (and Tier 4) leave take?

Student (and Tier 4) leave granted outside of the UK (entry clearance) is in the form of a sticker (called a vignette) in the student's passport which is valid for 30 days (90 days whilst Coronavirus concessions are still in effect) and a biometric residence permit (BRP). The student collects their BRP soon after arrival in the UK and it's valid for the rest of their leave. Student (and Tier 4) leave granted in the UK itself (leave to remain) is evidenced through a BRP only.

The Home Office has now started rolling out e-visas for certain nationalities. These can be checked via the online share code system.

You should check that the vignette, BRP or share code clearly state that they have Student or Tier 4 permission (or otherwise have the right to work). There may be a restriction on it stating that the person can work no more than 20 hours a week in term time. However, in the case of employment as an Elected Student Union (Sabbatical) officer, they are allowed to work full-time. (The explanation here is that the 'standard' Student or Tier 4 permission BRP allows a student to study full-time and to work up to 20 hours per week in term time. The

Home Office considers employment as an Elected Student Union (Sabbatical) officer as part of the course of study).

Full details can be found on the website of the UK Council for International Student Affairs (UKCISA) www.ukcisa.org.uk

10. **What other routes are there for international students to be sabbatical officers?**

There are a range of different immigration statuses, some of which will have a right to work and others which have restrictions.

Most international students who complete their course can apply for a Graduate visa. They will be able to take up the position of an Elected Student Union (Sabbatical) officer on a Graduate visa.

To the best of our knowledge, the Skilled Worker route (formerly Tier 2) is unlikely to be the best option in most circumstances. Here the right to work is restricted to the sponsoring employer and a range of tests and conditions are attached. Currently, few students' unions are Skilled Worker Sponsor organisations and it's unlikely that the role of elected officer would meet the associated conditions in any event.

This can be a complex issue. Students' unions should refer to guidance via UKCISA and the Government's website, or seek further legal advice if the Student route isn't available: <https://www.gov.uk/browse/visas-immigration/work-visas>

11. **What about the financial aspects like Visa fees? Who should pay for them?**

Visa fees can run into hundreds of pounds and can be a significant cost for students. As such, they can be a barrier to an international student running for election or being employed as an elected officer, and one which home students don't have to face.

Many student's unions already have policies to cover the cost for international students if they are elected as officers. Student's unions are free to make their own decision about whether to cover the cost for international students. However, NUS has a policy to pay visa fees and we strongly recommend that students' unions do so too. NUS also pays for the NHS surcharge. Not only does this remove the financial barrier, but it encourages and facilitates international students, who constitute significant numbers at many institutions, to be part of the democratic process.

12. How should these payments be treated?

Where the students' union wishes to remove the financial barrier for the student officer by paying the visa fees (and also the NHS surcharge), there may be a couple of potential approaches, and it is advisable to check with the union's own auditors on the preferred approach:

- (a) **Class the payment as earnings** and make a payment for the relevant amount through payroll, grossed up for tax and National Insurance (both Employees and Employers).
- (b) **Treat the payment as a benefit in kind (BIK).** Tax would need to be paid on a BIK and the students' union will need to decide whether to make the tax payment on the elected officer's behalf or let the individual pay the tax on the BIK.

Where the employer chooses to pay the BIK tax on behalf of the sabbatical officer/employee, the employer would need to apply for a PSA (PAYE Settlement Agreement) from HMRC. A PSA allows you to make one annual payment to cover all the tax and National Insurance due on minor, irregular or impracticable expenses or benefits for your employees. This would need to be done before the 5th July following the end of the tax year.

It may be that professional help would be needed to draft the PSA, so there could be additional cost to the students' union for this.

Where the sabbatical officer/employee pays the BIK tax themselves, this would most likely be as a reduction in their tax code for the following tax year, and the detail would normally need to be included in a P11D submission at the end of the relevant tax year.