

Summary of amendments to proposed quality and standards conditions following consultation

Purpose of this document

The Office for Students (OfS) published a consultation on quality and standards conditions in July 2021.¹ Following this consultation, the OfS published a final version of revised conditions B1, B2, B4 and B5 and new conditions B7 and B8, on 2 March 2022, in an amendment to the regulatory framework titled 'The quality and standards conditions'.²

This document summarises changes made to the new and revised conditions following the July 2021 consultation, making a comparison between the condition wording set out in Annexes A and B of the consultation with the final wording of the conditions.

For full details of the consultation outcomes, and information on the implementation of the revised and new conditions, please refer to the publication 'Consultation on quality and standards conditions: Analysis of responses to consultation and decision'.³

¹ See www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

² See www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

³ Hereafter referred to as 'Analysis of responses to consultation and decision' (available at www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions-outcomes/).

Summary of amendments

	Relevant paragraph of final text	Topic	Consultation text (if applicable)	Final text (added text underlined, removed text struck out)	Reason for amendment
	See 'Quality and standards conditions' for the final text ⁴		See Annexes A and B of 'Consultation on quality and standards conditions' for the consultation text ⁵		
1.	B1.2, B2.2, B4.2, B5.2, B7.2, B8.2	Effect on other conditions of registration	Without prejudice to the scope of [paragraph 1 of the condition]...	Without prejudice to <u>the principles and requirements provided for by any other condition of registration</u> and the scope of [paragraph 1 of the condition]...	This provides clarification, for the avoidance of doubt, that the principles and requirements set out in conditions B1, B2, B4, B5, B7 and B8 do not affect the interpretation of other conditions of registration.
2.	B1.4	Exception for equality law	N/A	<u>Insofar as relevant skills includes technical proficiency in the English language, the provider is not required to comply with B1.3.e to the extent that it is able to demonstrate to the OfS, on the balance of probabilities, that its English language proficiency requirements, or failure to have</u>	This exception has been added as a backstop mechanism to deal with any conflict that could arise between B1.3.e and equality legislation in the context of English language proficiency. This is in the light of comments from respondents about the potential for conflicts between English language

⁴ Available at www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/.

⁵ Available at www.officeforstudents.org.uk/publications/consultation-on-quality-and-standards-conditions/.

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				<p><u>English language proficiency requirements, for one or more students, are strictly necessary as a matter of law because compliance with B1.3.e in respect of that student, or those students:</u></p> <ul style="list-style-type: none"> i. <u>would amount to a form of discrimination for the purposes of the Equality Act 2010; and</u> ii. <u>cannot be objectively justified for the purposes of relevant provisions of that Act; and</u> iii. <u>does not fall within an exception or exclusion provided for under or by virtue of that Act, including but not limited to provisions of the Act that relate to competence standards.</u> 	<p>proficiency requirements and equality law.</p> <p>B1.3.e requires providers to ensure that each course ‘requires students to develop relevant skills’. The effect of the new exception is that, insofar as the definition of ‘relevant skills’ includes technical proficiency in the English language, a provider does not have to comply with B1.3.e where it can demonstrate that this is strictly necessary for it to comply with obligations under the Equality Act 2010 relating to discrimination, and therefore it is not possible to comply with both sets of obligations.</p> <p>A similar exception has been added to condition B4 – see row 11. For further explanation, see paragraphs 82-83 of the document ‘Analysis of responses to consultation and decision’.</p>
3.	B1.5.c (previously B1.4.c)	Definition of educational challenge	‘educational challenge’ means a challenge that is no less than the minimum level of rigour and difficulty	‘educational challenge’ means a challenge that is no less than the minimum level of rigour and difficulty reasonably expected of	This addition is to reflect our policy intent that what constitutes ‘educational challenge’ may vary depending on the level of the

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			reasonably expected of the higher education course, in the context of the subject matter of the course.	the higher education course, in the context of the subject matter <u>and level</u> of the course.	course, noting comments from consultees on this point.
4.	B1.5.d.i (previously B1.4.d.i)	Definition of effectively delivered	‘effectively delivered’, in relation to a higher education course, means the manner in which it is taught, supervised and assessed ... including, but not limited to, ensuring: <ul style="list-style-type: none"> i. an appropriate balance between lectures, seminars, group work and practical study, as relevant to the content of the course... 	‘effectively delivered’, in relation to a higher education course, means the manner in which it is taught, supervised and assessed ... including, but not limited to, ensuring: <ul style="list-style-type: none"> i. an appropriate balance between <u>delivery methods</u>, <u>for example</u> lectures, seminars, group work and/or practical study, as relevant to the content of the course... 	This amendment is to support diversity and innovation in course delivery, by making it clear that a provider has latitude to choose the particular delivery methods it adopts for a course, provided that these are appropriately balanced (as relevant to the content of the course).
5.	B2.2	Requirement to take all reasonable steps	...the provider must ensure: <ul style="list-style-type: none"> a. each cohort of students registered on each higher education course receives resources and support to ensure: <ul style="list-style-type: none"> i. a high quality academic experience 	... the provider must <u>take all reasonable steps to</u> ensure: <ul style="list-style-type: none"> a. each cohort of students registered on each higher education course receives resources and support to ensure<u>which are sufficient for the purpose of ensuring</u>: 	In light of the consultation responses that interpreted the purpose of condition B2 as measuring student success, we reflected on whether it would be appropriate to change the condition wording. The amended drafting clarifies that the requirement under condition B2 is not to ‘ensure’ student success. Rather, it is to

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			<ul style="list-style-type: none"> for those students; and ii. those students succeeding in and beyond higher education; and b. effective engagement with each cohort of students to ensure: <ul style="list-style-type: none"> i. a high quality academic experience for those students; and ii. those students succeeding in and beyond higher education. 	<ul style="list-style-type: none"> i. a high quality academic experience for those students; and ii. those students succeedingsucceed in and beyond higher education; and b. effective engagement with each cohort of students to ensure<u>which is sufficient for the purpose of ensuring:</u> <ul style="list-style-type: none"> i. a high quality academic experience for those students; and ii. those students succeedingsucceed in and beyond higher education. 	<p>take ‘all reasonable steps’ to ensure students receive sufficient resources, support and engagement for the purpose of ensuring their success (and a high quality academic experience). These wording changes build the concept of reasonableness into the condition, which allows the OfS to consider what is required from a provider in light of the particular academic needs of the students it recruits and other relevant circumstances, while also ensuring that condition B2 does not place an overly onerous burden on providers.</p> <p>For further discussion of this amendment, see paragraphs 111-121 of the document ‘Analysis of responses to consultation and decision’.</p>
6.	B2.3	Interpretation of ‘all reasonable steps’	N/A	<u>For the purposes of this condition, ‘all reasonable steps’ is to be interpreted in a manner which (without prejudice to other relevant considerations):</u>	This addition expands on the ‘all reasonable steps’ requirement in condition B2. It explains that, in assessing whether a provider has taken ‘all reasonable steps’, the

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				<ul style="list-style-type: none"> a. <u>focuses and places significant weight on:</u> <ul style="list-style-type: none"> i. <u>the particular academic needs of each cohort of students based on prior academic attainment and capability; and</u> ii. <u>the principle that the greater the academic needs of the cohort of students, the number and nature of the steps needed to be taken are likely to be more significant;</u> b. <u>places less weight, as compared to the factor described in B2.3.a, on the provider's financial constraints; and</u> c. <u>disregards case law relating to the interpretation of contractual obligations.</u> 	<p>OfS would place significant weight on the particular academic needs of each cohort of students (based on their prior academic attainment and capability) and that, the greater the needs of a cohort, the more effort is likely to be required to satisfy condition B2. In practice, this means that a provider needs to understand the particular academic needs of each 'cohort' of students (i.e. each group of students registered on a course) and tailor its resources, support and engagement to match those needs, rather than providing 'generic' academic support that may not be appropriate to the type of students it recruits.</p> <p>B2.3.b explains that, in assessing 'all reasonable steps', the OfS will place less weight on a provider's financial constraints, as compared to the academic needs of its students. This is because we take the view that, while a provider may recruit any type of student it chooses, it must be in a position to</p>

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					provide sufficient resources and support consistent with the needs of those students, even where this would incur costs beyond those that would be incurred if the provider's students needed more limited resources and support. B2.3.c clarifies, for the avoidance of doubt, that case law relating to contractual obligations will not be applied when assessing 'all reasonable steps'.
7.	B2.4.e (previously B2.3.e)	Definition of engagement	'engagement' means routinely building into the course delivery opportunities for students to contribute to the future development of the higher education course in a way that maintains the academic rigour of that course, including, but not limited to, through membership of the provider's committees, including the governing body, opportunities to provide survey responses, and participation in	'engagement' means routinely building into the course delivery <u>routine provision of</u> opportunities for students to contribute to the future development of the <u>their academic experience and their</u> higher education course, in a way that maintains the academic rigour of that course, including, but not limited to, through membership of the provider's committees, including the governing body, opportunities to provide survey responses, and participation in	These amendments clarify that the requirement for effective engagement relates to all elements of the student academic experience (which may extend beyond opportunities to contribute to development of a course). We have removed the reference to membership of a governing body because we agree with the comments that this may not always be appropriate, depending on the legal form of the provider.

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			activities to develop the course and the way it is delivered.	activities to develop the course and the way it is delivered.	
8.	B2.4.g.i (previously B2.3.g.i)	Definition of physical and digital learning resources	‘physical and digital learning resources’ includes... but is not limited to: <ul style="list-style-type: none"> i. physical locations, for example teaching rooms, libraries and laboratories... 	‘physical and digital learning resources’ includes... but is not limited to: <ul style="list-style-type: none"> i. physical locations, for example teaching rooms, libraries, <u>studios</u> and laboratories... 	This is in response to the suggestion that ‘physical and digital learning resources’ should include some reference to creative spaces such as studios, to better reflect the physical resource needs of students studying on creative arts courses.
9.	B2.4.k (previously B2.3.k)	Definition of sufficient in number	‘sufficient in number’ will be assessed by reference to the principle that the larger the cohort size of students, the greater the number of staff and amount of staff time should be available to students, and means, in the context of the staff team: <ul style="list-style-type: none"> i. there is sufficient financial resource to recruit enough staff; [...] <ul style="list-style-type: none"> iii. higher education courses have an adequate number of staff, and amount of 	‘sufficient in number’ will be assessed by reference to the principle that the larger the cohort size of students, the greater the number of staff and amount of staff time should be available to students, and means, in the context of the staff team: <ul style="list-style-type: none"> i. there is sufficient financial resource to recruit enough and <u>retain sufficient</u> staff; [...] <ul style="list-style-type: none"> iii. higher education courses have an adequate number of staff, and amount of staff time, to provide students with the 	The amended wording at B2.4.k.i is to clarify our policy intention that a provider needs to have sufficient financial resources to retain, as well as recruit, staff. The amended wording at B2.4.k.iii is to clarify that condition B2 is concerned with providers taking all reasonable steps to ensure sufficient resources (and support/engagement) for the purposes of ensuring a high quality academic experience and success in and beyond higher education, rather than whether higher education provision is as

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			<p>staff time, to provide students with the academic experience advertised; and</p> <p>iv. the impact on students of changes in staffing is minimised/minimal.</p>	<p>academic experience advertised; and</p> <p>iv. the impact on students of changes in staffing is minimised/minimal.</p>	<p>advertised. The latter is covered by consumer law.</p> <p>The amendment at B2.4.k.iv is to better express this paragraph as an outcomes-based requirement.</p>
10.	B2.4.l.iii (previously B2.3.l.iii)	Definition of support	<p>‘support’ means the effective deployment of assistance...including but not limited to:</p> <p>[...]</p> <p>iii. support relating to avoiding academic misconduct...</p>	<p>‘support’ means the effective deployment of assistance...including but not limited to:</p> <p>[...]</p> <p>iii. support relating to <u>understanding, avoiding and reporting</u> academic misconduct...</p>	<p>This aspect of the definition of ‘support’ is aimed at ensuring that students understand what may constitute academic misconduct, its consequences, and how it can be avoided. Responses to consultation signalled agreement with our view that providers should have responsibility for supporting students’ understanding of these matters. The amended wording at B2.4.l.iii is to better reflect this policy intention.</p>
11.	B4.2.d (previously B4.3.c.iii)	Requirement relating to English language proficiency	<p>‘assessed effectively’ means assessed in a challenging and appropriately comprehensive way...and includes but is not limited to:</p> <p>[...]</p>	<p><i>Paragraph iii (previously B4.3.c.iii) has been deleted and replaced by:</i></p> <p>...the provider must ensure that:</p> <p>d. <u>subject to paragraph B4.3, in respect of each higher</u></p>	<p>The previous text of condition B4 obliged providers to require technical proficiency in the use of the English language when assessing students, via the definition of ‘assessed effectively’ (at B4.3.c.iii). This requirement has</p>

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			iii. requiring technical proficiency in the use of the English language...	<u>education course, academic regulations are designed to ensure the effective assessment of technical proficiency in the English language in a manner which appropriately reflects the level and content of the applicable higher education course...</u>	<p>been removed, and replaced by new wording at B4.2.d. This paragraph requires providers to have academic regulations in place for the effective assessment of proficiency in English, which appropriately reflect the level and content of each higher education course.</p> <p>This is because we agree with comments that our English language proficiency requirement should make allowances for the fact that the appropriate level of English proficiency will vary depending on the course. In order to comply with this requirement, we would expect a provider to be able to demonstrate that it has regulations in place for assessing English language proficiency both at a provider level and at a subject level and that these regulations cover all of its courses.</p>
12.	B4.3	Exception for equality law	N/A	<u>The provider is not required to comply with B4.2.d to the extent that:</u>	This paragraph has been added to provide two exceptions to the requirement relating to English

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				<ul style="list-style-type: none"> a. <u>a higher education course is assessing a language that is not English; or</u> b. <u>the provider is able to demonstrate to the OfS, on the balance of probabilities, that its academic regulations, or failure to have any academic regulations, for assessing technical proficiency in the English language for one or more students are strictly necessary as a matter of law because compliance with B4.2d in respect of that student, or those students:</u> <ul style="list-style-type: none"> i. <u>would amount to a form of discrimination for the purposes of the Equality Act 2010;</u> ii. <u>cannot be objectively justified for the purposes of relevant provisions of that Act; and</u> iii. <u>does not fall within an exception or exclusion</u> 	<p>language proficiency in B4.2.d. These are:</p> <ul style="list-style-type: none"> a. An exception that deals with circumstances in which a course is assessing a language other than English. The effect of the exception is that the requirement to have academic regulations for the effective assessment of English language proficiency will not apply where a course is assessing proficiency in a language other than English. This is because we agree with comments that this requirement should make allowances for the fact that some courses may not be assessed in the English language. b. An exception that provides a mechanism to deal with any conflict that could arise in respect of equality legislation. This is because we agree with consultation comments that it is important that our

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				<p><u>provided for under or by virtue of that Act, including but not limited to provisions of the Act that relate to competence standards.</u></p>	<p>regulatory requirements should not create a conflict with equality legislation for providers. This exception will act as a backstop mechanism in the event that the requirement relating to English language proficiency creates an unreconcilable conflict with provisions in equality legislation that relate to discrimination. The effect of the revised drafting is that there is an exception to the requirement relating to English language proficiency to the extent that a provider can demonstrate that it is strictly necessary for it to comply with obligations under the Equality Act 2010 relating to discrimination and therefore it is not possible to comply with both sets of obligations. Given our views on the importance of the assessment of English language proficiency for</p>

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					<p>students from all backgrounds and in relation to the wider public interest, we consider it is appropriate to place the onus on a provider to demonstrate that this exception applies and that there is a high hurdle to meet for the exception to apply. This therefore means that the nature of the evidence a provider would need to put forward would go beyond articulating potential legal concerns or matters it has had regard to in its decision-making and would require compelling evidence and reasoning on matters of law.</p> <p>For further explanation, see paragraphs 184-195 of the document 'Analysis of responses to consultation and decision'.</p>
13.	B5.2	Sector-recognised standards requirements	<p>...the provider must ensure that...:</p> <p>a. any standards set are consistent with any</p>	<p>...the provider must ensure that...:</p> <p>a. any standards set are <u>consistent with appropriately</u></p>	We consider that 'appropriately reflect' more clearly describes the flexibility that exists within sector-recognised standards.

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			<p>applicable sector-recognised standards; and</p> <p>b. awards are only granted to students whose knowledge and skills are consistent with any applicable sector-recognised standards.</p>	<p><u>reflect</u> any applicable sector-recognised standards; and</p> <p>b. awards are only granted to students whose knowledge and skills are consistent with <u>appropriately reflect</u> any applicable sector-recognised standards.</p>	
14.	B7.3.a.iii	Definition of capacity and resources	<p>‘capacity and resources’ includes, but is not limited to:</p> <p>i. the financial resources of the provider;</p> <p>ii. the number, expertise and experience of the staff employed, and to be employed, by the provider;</p> <p>iii. the provider’s management and governance arrangements.</p>	<p>‘capacity and resources’ includes, but is not limited to:</p> <p>i. the financial resources of the provider;</p> <p>ii. the number, expertise, and experience of the staff employed, and to be employed, by the provider;</p> <p>iii. <u>the physical and digital learning resources deployed, and to be deployed, by the provider and</u></p> <p>iv. the provider’s management and governance arrangements.</p>	We have amended the definition of ‘capacity and resources’ to clarify that this includes ‘the physical and digital learning resources deployed, and to be deployed, by the provider’. This recognises the importance of learning resources in meeting our ongoing quality requirements, without setting an expectation that higher education courses should necessarily have either physical or digital learning resources.

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15.	B8.2	Sector-recognised standards requirements	...the provider must demonstrate, in a credible manner, that any standards to be set and/or applied ... are consistent with any applicable sector-recognised standards.	...the provider must demonstrate, in a credible manner, that any standards to be set and/or applied ... are consistent with <u>appropriately reflect</u> any applicable sector-recognised standards.	We consider that 'appropriately reflect' more clearly describes the flexibility that exists within sector-recognised standards.