

Consultation questions

1. Do you agree that compensation/condonation of Foundation subjects should not be permitted within Qualifying Law Degrees? If you disagree, please give your reasons.

We have assumed that the question relates only to the compensation/condonation of the final module/subject mark. This appears to be what is intended in the consultation document, but we are aware that an earlier consultation also raised the issue of internal compensation/condonation. Our understanding is that JASB accepted the force of the arguments against preventing internal compensation presented at the time by the ALT among many others.

Our view is that the logical order to consider the question of compensation/condonation is to consider whether it is acceptable in principle under any circumstances, and then to consider its application to different categories of subject. This is, of course, not the order in which the questions are presented here.

The award of a degree represents certification that the student has met, at least to an adequate standard, all the learning outcomes of the degree programme. Passing a module indicates the same at module level. However, it is frequently the case that modules have both generic and specific outcomes. It is perfectly logically possible for the failure of a module to reflect failure to achieve, in that module, an outcome which has been met elsewhere. However, the specific learning outcomes of a module are likely to relate to knowledge and understanding of the topic, and it is probably the case that most module failure is at least largely due to inadequate knowledge.

In cases where it is clear that all the programme outcomes have been met, because module failure is on a generic outcome met elsewhere, there is no academic case against compensation/condonation. In principle, even a limited failure to demonstrate knowledge in relation to a specific topic in the syllabus may not be fatal to the award of a degree. This would certainly apply to an optional module. As it does not have to be taken at all in order to meet the requirements of the degree, it is clear that failure does not disentitle the student to the award. Ostensibly, it might be thought that this argument does not apply to the Foundations, but in reality this is not the case, as demonstrated below.

There is clearly room for the argument that there are certain ineluctable areas of knowledge, but in reality a candidate who marginally fails a particular module may have some knowledge, while a candidate who scrapes a pass may nonetheless have studied only a restricted part of the topic, and their overall grasp may be no better. Rhetorically, one may ask, which is the better profile, 38, 55, 55, 55, 55, 55, 55, or 40, 40, 40, 40, 40, 40, 40? Most observers would consider the first a better overall student, and more likely to make the grade in a profession.

It is also worth noting that compensation is more often used early in programmes, at a time when students may still be finding their feet. They may well be able to go on and demonstrate the ability to meet the programme learning outcomes at higher levels (FHEQ 2/5 and 3/6) despite a false start.

In some institutions there is no, or limited, opportunity to retake a failed final year module. Compensation is seen as an alternative, on the basis that the degree outcomes are likely to be met at this stage, and the student's progress is not interrupted.

In principle therefore, compensation should be allowed. To be compensated the student must be able to demonstrate strength elsewhere in their studies. It is a reflection of the holistic nature of the degree, and is consistent with the principle of rewarding what has been achieved. This principle is of course at present accepted in relation to the CPE – where one marginally failed element may be compensated on the basis of strength elsewhere.

Condonation is not usually provided for in HEI regulations, although there are no doubt exceptions. In the present context it is the BSB and SRA who have discretion to condone a single marginal failure of a core subject. The published criteria in Appendices E and F of the JASB Handbook indicate that the approach is analogous to consideration of compensation, in that the main criterion is 'strength elsewhere'.

Turning to the specific question, while we accept that the Foundations are of particular and legitimate concern to JASB, as they represent the professional exemption subjects, and therefore JASB, SRA and BSB are fully entitled to set their own criteria in this area, we are not convinced that a case has been made for moving from the present position where limited compensation/condonation is permitted. There is certainly no case for expanding compensation/condonation, but the arguments for elimination are not strong. A candidate with a bare pass can hardly be said to have significantly more strength in the subject than one with a marginal fail, and the difference may relate to criteria other than knowledge. A candidate with a string of bare passes is clearly weaker than one with a series of good passes and one marginal failure.

2. Do you agree that compensation/condonation of legal (but non Foundation) subjects should not be permitted within Qualifying Law Degrees? If you disagree, please give your reasons.

No – this is a matter for the HEI. The reasons set out above apply a fortiori here, as there is no professional requirement to take or pass these subjects, so absence of knowledge does not impact on suitability to practise.

3. Do you agree that compensation/condonation in non law subjects (that make up the required 360 credits for the QLD) should not be permitted within Qualifying Law Degrees? If you disagree, please give your reasons.

No – this is a matter for the HEI. The reasons set out above apply a fortiori here, as there is no professional requirement to take or pass these subjects, so absence of knowledge does not impact on suitability to practise.

4. Do you agree that compensation/condonation should not be permitted within Qualifying Law Degrees at all? If you disagree, please give your reasons.

No – for the reasons set out above

5. If you consider that some credit compensated/condoned should be allowed for Foundation subjects, should this be limited to a specific number of credits (e.g. 20 credits maximum)? Or limited to one Foundation subject? If not, what would you suggest?

As the paper notes, the form of QLDs varies. While 20 credit modules are the basis of many programmes, others use larger credit rated modules. The limit should be one module. If a credit point figure is required it should be 30.

6. If you consider that compensation or condonation should be allowed but according to certain conditions, please specify what these conditions should be (such as a range of acceptable marks that could be considered for compensation, for example 38% and above, a minimum average of other marks, a limited number of credits, or a limited number of Foundation subjects).

Typically HEIs impose an overall limit of credits which can be compensated, usually not more than 30 per level of study. This would be an appropriate starting point. If HEI regulations are more generous, this can be dealt with by conditions attached to validation. Similarly the fact that compensation can only be granted for one Foundation module can be dealt with by a condition. Again typically the cut-off point for consideration of compensation is 35% (and this is currently so for BSB/SRA condonation). No convincing argument has been presented for departing from this. There should be demonstrable strength elsewhere. Initially it is for HEIs to define this in the context of their own regulations, but JASB could indicate minima, such as the 'double marks above the line' convention, which many institutions operate.

To summarise, in relation to Foundations, we see no clear case for departing from the present position. Accordingly compensation/condonation should be allowed for one, and one only, Foundation, but should be allowed in accordance with the HEI's regulations for other subjects up to a maximum of 30 credits per level (inclusive of any Foundation module).