

BUFFER BODIES IN THEORY AND REALITY

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Definition

1. Buffer bodies are generally bodies created by the Government to perform some of their functions, but which are to a greater or lesser extent independent of the Government. Although they are part of the machinery of government, they are outside the relevant ministry. Their position is sometimes insecure and ambiguous, most particularly when they have no independent legal basis.

Functions of Buffer Bodies

2. In higher education, the functions of buffer bodies classically include the allocation of funds. That has generally been the starting point. However, it is generally also the case that the allocation of funds cannot be divorced from other aspects of regulation of the sector, and that these go hand-in-hand with the more general oversight and planning of higher education and its development. So the buffer bodies in higher education often have the functions of planning and regulating the higher education sector, as well as deciding on the distribution of funds between universities.

3. In many countries although it is the Ministry that has these functions, the Ministry is advised by a "buffer" body. However, in such cases there is not a true buffer body in place.

4. More recently, buffer bodies have been created to carry out other functions that either did not exist previously, or were carried out by the Government. A good example of this is the establishment of bodies to undertake the quality assurance of higher education institutions, or in other cases bodies to accredit universities. In the case of the latter, these bodies have the power to set out the defining characteristics of a higher education institution, and to judge which institutions meet the criteria -- and which are therefore permitted to practise -- and those which do not. Sometimes the criteria are set down in legislation, in which case the buffer has little discretion and is merely an executive agency. In others it is the buffer itself that decides the criteria as well as carrying out the evaluation.

5. It needs to be noted that the rationale for the creation of buffer bodies is not limited to higher education, though this is an area when they are particularly well developed and where the rationale is quite clear. However, they do exist extensively in other areas -- a good example is in the Central Banks that in many countries now have functions such as the setting of interest rates which were previously the function of government.

Rationale for the Creation of Buffer Bodies

6. The reasons for the establishment of buffer bodies are numerous, and may vary from case to case. One of the most commonly stated reasons is to protect the academic freedom of universities and to reduce the possibility of government interference which might compromise academic freedom. It is certainly noteworthy that in the case of the United Kingdom the University Grants Committee, which was established in 1919 and was perhaps the first such body in the world, was established at a time when government funding became more significant, and was explicitly to avoid the possibility that the Government would use the power of funding to exert undue influence on universities. That remains a powerful argument in favour of buffer bodies.

7. A second argument is that buffer bodies enable decisions to be taken about the development of universities and university system outside the normal political cycle. Universities are bodies that can take a long time to implement change, and need a long time for developments to mature and become embedded. It does not make sense for short-term decisions to be taken as political fashions change. Governments, particularly in democratic systems, find it difficult to take long-term decisions regardless of their immediate political impact, and the existence of buffer bodies enables this.

8. Related to this, buffer bodies can take difficult political decisions which governments are often unable to take. It can often be helpful to a Government faced with controversial decisions affecting individual universities or the system as a whole, to be able to point out that the decision was not theirs, but was taken by an independent body which the law or even the constitution forbids them to control.

9. A further reason for the creation of buffer bodies is that it enables decisions to be taken by experts. Not all decisions require experts, of course, and some are better taken by people who are not close to the topic, but it enables informed and expert decisions to be taken when necessary. Arguably, this is more of an issue in other spheres than higher education -- the decisions of the Central Bank, for example, are probably better taken by independent experts than by ministers or civil servants.

Legal Status of Buffer Bodies

10. The legal status of buffer bodies, of course, varies according to the constitutional and legal arrangements in the different countries concerned. In general, however, they take two forms. Buffer bodies can either be legal or administrative entities. For all its existence, the University Grants Committee in the United Kingdom had no legal standing. It was simply an administrative committee of the relevant government department, and in formal terms simply gave advice to the Government. The Government invariably followed its advice, but legally the UGC did not exist, and it did not make decisions – it gave advice. A similar arrangement continues to exist in some countries, but it is doubtful if any non-statutory body these days would have the effective power and authority of the UK UGC.

11. The most common legal form for a buffer body is a body created by legislation with powers and responsibilities set out in that legislation. This is important, because in such cases the law sets out the powers and responsibilities of the Government on the one hand and the buffer body on the other. This is a safeguard against the Government attempting to carry out functions or influence universities in ways which go beyond their powers as set out by law.

12. Intermediate arrangements might exist whereby the law specifies the creation of a buffer body to advise the Government, but puts the power of decision and action in the hands of the Government. It might, for example, require the Government before taking certain decisions to consult with the buffer body. It is arguable whether this situation is actually worse than having no buffer body at all, since it allows the Government to go through the motions of consulting a third-party group of experts, but does not require it to take account of the advice it receives.

The UK experience of buffer bodies

Positive

13. The UK experience of buffer bodies has been mixed, though generally positive. On the positive side, it has undoubtedly led to stability of policy and practice -- the development of the higher education system in many important respects has continued independent of changes of government. On the other hand, it has allowed top level policy decisions -- such as the introduction of student fees -- to be taken by the Government of the day. That is as it should be. It is difficult to argue that universities are such important bodies that the democratically elected Government should be entitled to take no decisions in relation to the future development of the

sector. In the UK the government takes very high-level decisions and decisions about strategic developments, and leaves the day-to-day management of the sector to the buffer body, and to the universities themselves, within that framework.

14. Also positive in the UK is that the arrangement has enabled difficult decisions to be taken -- for example when the Government substantially cut funding to universities in the early 1980s, the UGC took the difficult decisions about how to concentrate these cuts on a small number of universities. It is highly likely that if left to the Government the misery would simply have been spread around.

15. And despite the inevitable grumbles about the decisions of the buffer body, by and large there is recognition that it does a reasonable job and makes reasonable decisions in the circumstances. It certainly helps that all three Chief Executives of the Higher Education Funding Council for England have been senior vice-chancellors, and in fact all three have been elected or have served as the President of the Committee of Rectors

Negative

16. The negatives relating to the buffer body experience in the United Kingdom are more or less predictable. There is often a sense of frustration on the part of the Government that it cannot do more to manage the sector as it would wish and exercise greater control over individual decisions -- that is in fact a negative for the Government but a positive for the sector as a whole. The Government's frustration could be articulated and justified in terms of democratic accountability: the Government, certainly, is democratically elected and democratically accountable in a way which the buffer body and its members are not.

17. Although the law is relatively clear about the respective responsibilities of the Government and the buffer body, there is nevertheless some ambiguity about this, and there are occasions when decisions are taken by the Government that it would at least be possible to argue are reserved by law to the Funding Council. These have never been tested in a court of law, but it might be at some point that that will become necessary.

18. The fact that the Government sets the total amount available to be spent, and the buffer body -- while advising the Government -- is in no way responsible for fixing the total but only for deciding how the total made available should be distributed, is exactly as it should be. It would be intolerable if a non-elected body should be able to decide how much of the taxpayer's money should go to higher education -- but this can lead to difficulties.

19. Finally, there is always a suspicion -- not least on the part of the Government -- that a body of experts drawn substantially (though in the case of the English buffer body by no means entirely) from the academic body to make decisions about matters concerning the development of the higher education system, may be self-serving and make decisions in their own interests. It has to be said that that is a concern also among their colleagues who see those who are members of the buffer body as being in a privileged position and able to take decisions or at least to have knowledge that is helpful to them. It has also to be said that there has never been a major problem and the reality is that the people concerned can be relied upon to make objective decisions in the interests of the development of the sector as a whole and of the national interest. But it is something that has to be guarded against.

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