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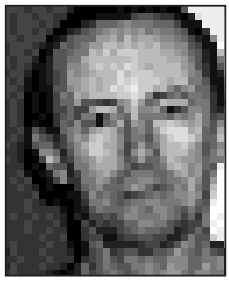
Robens revisited

The case for a review of occupational health and safety legislation

An Interim Report from the Institute of Employment Rights
by David Walters and Philip James



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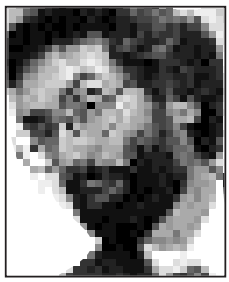

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Robens Revisited – the case for a review of occupational health and safety regulation

by David Walters and Philip James

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Chapter 1
Introduction

Over one million employees suffered a work-related injury in the year 1995/96. A further two and a half million workers are estimated to have suffered from illness which they believed to have been caused or made worse by their work[1]. Despite being preventable, occupational injuries, ill health and fatalities continue to be an unacceptable burden on society. Working conditions are still a source of discomfort and stress for thousands of people at work. The economic cost of occupational accidents, ill-health and fatalities represents a significant drain upon the economy not only in terms of the direct economic losses associated with such events but also through the costs to the public exchequer for treatment, rehabilitation and other forms of support for victims.

Much the same was said at the outset of the Committee of Inquiry on Safety and Health at Work (the Robens Committee), over 25 years ago. This committee called for fundamental changes in the way that health and safety was regulated in Britain. Its proposals, many of which were incorporated in the Health and Safety at Work Act (HSW) 1974[2], were seen as providing the basis for the creation of a more effective system of regulation which would result in improved levels of worker protection.

Yet twenty five years later occupational injuries, ill health and fatalities continue to represent an unacceptable and largely preventable burden on society. Perhaps it is time to revisit the question of what is the most appropriate and effective system for preventing work-related injuries and ill-health in Britain and also to enquire how such injuries and ill-health might be most effectively ameliorated. To address these issues the Institute of Employment Rights has embarked on a comprehensive review of the system for health and safety in Britain. It is hoped that the results of the review, which will be published in 1999, will stimulate a renewed and informed debate on how occupational health and safety should be regulated in the new millennium.

The aim of this interim report is to present the case for a re-examination of the system for regulating health and safety in the UK in the light of

enormous changes that have taken place in the economic, social and political environment over the last 25 years. One starting point for the review is the impact of the HSW Act 1974 and the approach to regulation advocated by Robens whose report formed the basis of the Act. The review will question whether the 1974 Act and the Robens Report really was the radical rethinking of health and safety regulation that it was claimed to be and whether it resulted in a greatly improved sustainable system for health and safety[3]. The recommendations of the Robens Report, although broadly welcomed by the main political parties, never received universal support. In particular, doubts were expressed about its central argument that apathy, rather than the nature and context of work, was the primary cause of accidents[4]. As a result its consequent advocacy of a more effective system of self-regulation as the means to achieve improvements in health and safety standards was also the subject of significant dissent[5].

Whatever the strengths of the committee's analysis, it is far from clear whether they remain relevant given the enormous changes that have occurred in the wider political and economic environment, both in Britain and internationally, over the past two decades. For these changes unquestionably raise a host of important new challenges to the regulation of health and safety. The second and perhaps more significant starting point for the review follows from this. It concerns the consequences of changes that have occurred in the broader economy, employment and social welfare; as well as the effects of membership of the European Union (EU), all of which have created a fundamentally altered context for the regulation of occupational health and safety in the present decade. This approach casts further doubt on the continued relevance of measures introduced as a result of Robens (or which date from that period) to the changed economic, social and political scene in which the regulation of health and safety in Britain (and the rest of Europe) is currently located. At the same time, in considering the changed context of current health and safety regulation it is also important to identify those strategies that have proved effective in the period since the Robens Report and the HSW Act 1974. In this respect it is particularly important to identify the approaches which remain relevant to the current situation or which can be easily adapted to accommodate recent and future change.

Chapter 2
Elements of change

EU Directives have become the main driving force behind developments in British health and safety legislation[6]. They have also led to an increase in the environmental responsibilities of employers. These developments have raised important questions concerning the adequacy of Britain's statutory framework. These include for example:

- whether the general duties and their qualifications contained in the HSW Act are onerous or specific enough to comply with EU requirements;

- whether employers should be required to have access to specialist health and safety services;

- whether the legal frameworks relating to protection of workers' health and safety and those relating to the amelioration of work-related sickness and injury and the protection of the wider environment should be more closely integrated[7, 8].

Application of information technology, greater job insecurity, the increasing intensification of work have all given rise to a greater awareness of the growing importance of new risks to health (such as stress and work related upper limb disorders) without necessarily diminishing the existing threats from physical and chemical hazards. In addition, organisational downsizing, the decentralisation of management structures, the decline in trade union membership, recognition and influence, the growth of small enterprises, increases in self employment and the increasing importance of non-standard forms of employment such as sub-contracting and part-time and temporary working have all contributed to radical change in the environment in which health and safety is managed and enforced. They raise a number of further questions. For example:

- what can be done to protect workers from psychological as well as physical stresses?

- how can more workers gain access to effective systems of representation?

- what steps can be taken to ensure that employers are sufficiently encouraged to protect the well being of those who carry out work activities on their behalf?

- how can systems for health and safety which are based on a model of regulation in large organisations be made relevant to the features of small organisations in which increasing numbers of people work?

A further issue in the application of statutory systems for health and safety concerns the role of the regulatory authorities, their resources and their strategies for achieving compliance with health and safety measures. Their resources have been markedly reduced in recent years at a time when they have acquired new responsibilities. Concurrently they have been required to cope with the deregulatory pressures of previous Government policies while attempting to regulate health and safety in a rapidly changing and increasingly complex working environment created by the types of changes outlined above[9]. There is evidence to show that the numbers of inspections conducted, prosecutions taken and enforcement notices issued by inspectors have been falling almost continuously over the past decade[10]. These developments raise fundamental questions concerning the role of regulation and the resources necessary to make it effective. It is important to know for example:

- what additional resources are required by the regulatory agencies and how best such resources, if available, could be best utilised?

- how should resources be most effectively distributed between the various divisions of the regulatory authorities?

- what balance should be achieved between preventive inspections, accident investigations and formal enforcement actions?

An additional question in the light of current pressures on public expenditure is whether external enforcement by regulatory agency inspectors could be supplemented by the provision of other forms of incentive to encourage employers to take a more positive approach to protecting the health and safety of workers. Issues that merit consideration in this respect include for example:

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The Institute has attracted wide and distinguished support. Among the membership are John Hendy QC, Professor Keith Ewing, Lord McCarthy, Sir Peter Pain, and the general secretaries of Britain's largest trade unions.

The results of the work of the Institute are published in papers and booklets. It also provides short articles, free of legal jargon, for trade union journals and other publications.

The Institute provides tools of analysis and debate for the trade union movement in the area of labour law. We are not a campaigning organisation.

The Institute does not assume that legal measures can offer ultimate solutions for political, economic and social problems. However, it recognises that law has a part to play in influencing the employment relationship, both individually and collectively.

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