

# Thirty-five years of health and safety – what has changed, and what has stayed the same

Address by John Rimington, House of Lords, 3 Nov 09



I have been asked to mark this occasion by talking for about fifteen minutes about what has changed in health and safety, and what has stayed the same since the great events of 1975 laid all the current foundations.

But before I begin on the subject, may I congratulate NEBOSH on its thirtieth birthday, the more so that I am going to tell you in a few minutes that the most important change that has taken place in health and safety provision since 1975 has been the professionalization of the subject that NEBOSH, acting for IOSH, has done so much to create and foster. I would like to couple with that remark the name and memory of my distinguished predecessor at HSE, John Locke, for he was the first official to realise the importance of these developments and put his effort where his mouth was in helping, playing a leading part, with others present, the development of the framework for professional testing and examination.

And now I shall get on with my main subject, promising first that fifteen minutes really will be my limit. I have also to point out that it is now getting on for fifteen years since I ceased to be the head of HSE, and much has happened over that period of which I have only second-hand knowledge.

With those qualifications, let me say straight away that a great deal has changed, particularly in the background and therefore the reasoning for the Robens report and the Health and Safety at Work Act. In those days the United Kingdom still possessed a very big and highly unionised and politically active industrial sector. There was also a situation where, due largely to changes in technology and industrial activity, possible industrial harms and accidents were rapidly increasing in scale and passing beyond the boundaries of industrial plants. Furthermore, the nature of the harms and accidents that were possible was being affected by a vast increase in the number of toxic materials and harmful agents in common use, and particular types of harm were no longer specialised in particular industries. Thus for example, the transportation of many dangerous materials was producing new risks; and, to take another example more or less at random, accidents due to the spread of gases were no longer confined to coalmines and the proximity of town gas establishments but were for example of concern to the whole chemicals industry, up and downstream.

So, quite apart from the fact that “conventional” industrial accidents were showing few signs of diminishing at the time of the Act, there were massive new problems to be tackled, mainly concerned with the “traditional” primary and secondary economic sectors. It was clear to the authors of the Robens report that the systems of regulation and precaution then in place were inappropriate. The relevant laws and public authorities were fragmented and sometimes obsolete, and the whole subject needed to be jacked up in the public estimation and in the minds of those responsible for creating the risks. Robens saw three things very clearly.

First, that the relevant public resource must be somehow unified and become better technologically equipped through combination, cross-fertilisation and better links to the national scientific base.

Second, that official specification of detailed solutions needed to be replaced by a joint effort, in effect, between the civil service and industry, to act together and in agreement, and also in accordance with radically re-shaped law based on principles, not commands, and permitting discretion to responsible actors. Robens strongly criticised what he called “an ever-expanding body of regulations enforced by an ever-expanding body of inspectors”, as opposed to what he called “voluntary, self-generating effort”.

Third, that politicians were the last people to be relied on to grip the problem, because of its highly technological content and because politicians have a natural aversion from risks they cannot understand and were unlikely to take responsibility for dealing effectively with them. Fortunately, at that moment, government was being reformed in a way which favoured the creation of bodies with governmental functions but which were not directly controlled by Ministers – in other words, Quangos.

It was this set of perceptions that led to the formation of the Health and Safety Commission and Executive with a remit to foster a major collective effort bringing in both industry and the national science base, and to begin by combining all government effort in the relevant fields and replacing and reforming the huge tangle of contemporary health and safety law.

What the enterprise did not succeed in moderating, and what the Robens Report only partly saw, was the developing phenomenon of actions for civil liability, or, if you like, the “compensation culture”, and its expansion into field beyond industrial accidents but still within the much larger areas of health and safety made visible by the new Act. Nor could the report have foreseen the effects of the gradual transfer of lawmaking functions to Europe with its particular effects on health and safety regulation-making after the Madrid Summit of 1986. Robens can be excused, too, for not fully appreciating the way that once the “health and safety genie” was out of the bottle, it would begin to attach itself to all sorts of “softer” harms and to unusual public dangers such, to take a far-out example, tombstones falling on naughty small boys.

Even from this short ramble into the history, we can see that a lot has changed since 1975 in the background to health and safety efforts. The big fact of a large politicised industrial sector is no longer with us; the whole subject of health and safety has become internationalised; public interest has been attracted and in some respects over-excited, and the subject-matter has spread to the “softer” harms such as stress that are by no means confined to the effects of work. In the increasingly important area of health, borderlines are often unclear, ethical and social issues complicate matters, the science may be uncertain, and outcomes disputable. There are also many questions on the borderlines between leisure or social activity and work. Often, the case for involvement has become less obvious, the means less clear and any expansion of activity less justifiable to politicians and Treasury officials.

Now, what about the successes and failures of the last thirty five years? First, the major institutions created by the Act have mainly survived through much difficulty, and they have succeeded in the main tasks set for

them. There has in fact been a really major co-operative effort to bring accidents down and to tackle the then developing threat of big industrial and transport accidents. And here let me say that we in the UK did not just lead the way in this – in many ways, and with an honourable mention of our friends in the Netherlands, we dominated the rest of the World's effort and laid down almost all the structures and principles now applied in avoiding major accidents – a plain fact that one never sees celebrated and the scale of which even I had not appreciated until, quite recently, I was asked to research and write a historical account of the relevant developments in connection with a lawsuit between two international companies, neither of them British.

Secondly, a point also not commonly appreciated and celebrated, the new approach to law and regulation was actually thought through and applied, and has been almost routinely recommended to other regulators by Government investigators into the part allegedly played by health and safety in "burdens on business". As part of that, we in this country developed and applied a whole approach to risk assessment and risk management that has been taken up in Europe and internationally and includes the emphasis placed on the responsibilities of managers and the importance of proportioning safety precaution to the risks assessed.

Most importantly, on the back of all these achievements, the importance of health and safety precaution has indeed been jacked up and there has emerged out of that and helped to guide it, a new profession of health and safety specialists, chartered and respected and acting within industry and as consultants;- a profession that did not exist save in rudimentary form prior to 1975. Of all the changes that have taken place since that time, this is in my opinion the most significant, for it locks in the rest of the achievement, marks the collective effort that gave rise to it, and ensures that health and safety is no longer a matter of voices crying in a wilderness or exhortation by government officials, but is a real and present aspect of industrial life.

However, while we are patting each other's backs over these big and difficult achievements, let us note that no-one else is cheering. This is partly because of a widespread and politically tinted feeling about nannying that has little to do with the actual behaviour of inspectors and safety professionals and is directly contrary to the ethos of Robens, the HSWA, the HSE and the safety profession. Its main cause is the efflorescence of civil litigation and the natural reaction of insurance companies. Science masters at school do not limit experimentation with chemicals because they fear prosecution by HSE, which could only succeed if they had been shown to be criminally irresponsible, but because they and the school governors fear civil action for compensation involving a much lower burden of proof, if anything, for whatever reason, goes wrong.

The criticisms about overdoing health and safety have arisen also because some actions are seen to be only partly connected with real and present dangers and major harms, and may have more to do with the way people choose to run their lives. In other words, some forms of action, however desirable, can involve aspects of social; policy and personal choice, where regulators and professionals tread too heavily at their peril. There is also the question of cost, very important for obvious reasons just now. I am not referring so much to alleged burdens in industry. Properly handled and with the determined application of the principles of reasonable practicability which are built into our regime, health and safety precaution should be a burden only to those who just don't want to be bothered about risks and don't count possible costs. No, what I mean is the cost of the institutions built to implement the HSWA. There is no doubt that something like HSE continues

to be needed. There has to be a background of law and inspection backed by technical competence and knowledge and scientific experiment, both to preserve current gains and to respond to new situations. The trouble is that, to operate effectively, this must always be of high quality and comprehensive enough to engage and control external effort where needed that costs money. The question I have asked myself for years, ever since the politically-ridden decision to abstract the Air Pollution Inspectorate from HSE in 1986, is how and whether the various agencies regulating technological risks can be brought together in the interests of economy and cross-fertilisation just as HSE itself was originally got together with many pains, and made to cohere despite obvious difficulties. But that is not something that can be pursued in the space of fifteen minutes.

My time is almost up. Let me conclude with words of encouragement. Great problems have been overcome due largely to the efforts of many of the people gathered in this room. Health and safety have not become less important, but the subject matter has become more diffuse. At root, the cardinal requirement for dealing with this new situation is precisely that which was at the root of the reforms of 1975 – the application of common sense, discretion and proportionality allied to technical competence. In addition, a sense of what can be left alone. I will tell a story. In 1984, I seriously considered intervening over the dangers to professional cricketers from unrestricted fast bowling. I left it severely alone, and cricketers subsequently found their own solutions in the shape of protective gear and restricting “bumpers”.

You should be proud of what you do. Many people are alive and walk free of injury because of it. But we must continue the tradition of keeping out of things that are not essential, and letting society and industry find their own way, as they will do given the professional help that is now available. If that is our aim, I can say boldly, my Lords, ladies and gentlemen that in respect to the great principles of health and safety action, nothing has changed in my time. There are just adaptations to be made and lessons to be learned.