Robens Revisited

An examination of Health and Safety law
25 years after the Robens Report
with particular emphasis
on the Explosives Industry

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The full text of this article and associated spreadsheet can be found at:-
http://homepages.enterprise.net/saxtonsmith/robens/robens.htm
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**Introduction**

The Robens report on “Safety and Health at Work”\(^1\) was published in June 1972 and forms the basis of much of the modern Health and Safety legislation. This paper attempts to determine whether the Robens ideals have been met in the 25 years since publication, and pays particular attention to the author’s own field – explosives. An examination of the perceived philosophy of new legislation is presented and conclusions are drawn regarding the responsibilities of both Government and Industry in formulating and implementing new and revised legislation.

**Background**

The author has been involved as a member of various HSE committees drafting and modifying legislation since 1989. During that time there has been a dramatic increase in the number of new regulations “made under the Health and Safety at Work Act” which has led to much misunderstanding and even non-compliance within Industry. The author’s particular field, explosives, has seen eight major new regulations made under the Health and Safety at Work Act (HSWA) in the last ten years, with at least another four promised in the next three years.

The legislative framework for new regulations was set up following the work of Robens, and is administratively controlled by the Health and Safety at Work Act 1974. The current legislative framework is thus vastly different from that which prevailed at the time of the Robens report. Many of the criticisms that Robens made in the 1970s are seen to be relevant now, although the precise problems are now different.

Finally it is argued that the Robens ideals have now been stretched to such an extent that regulations and their accompanying supportive documents can now be introduced without recourse to Parliament.

**The Robens report**

Lord Robens was charged with the task of

> reviewing the provision made for the safety and health of persons in the course of their employment (other than transport workers while directly engaged on transport operations and who are covered by other provisions) and to consider whether any changes are needed in:—

1. the scope or nature of the major relevant enactments, or
2. the nature and extent of voluntary action concerned with these matters, and

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\(^1\) Safety and Health at Work. The report of the Robens Committee. Cmnd 5034. Published June 1972
to consider whether any further steps are required to safeguard members of the public from hazards, other than general environmental pollutions, arising in connection with activities in industrial and commercial premises and construction sites, and to make recommendations.

There is much that is excellent in the Robens report, and there can be no doubt that it changed for good the structure of Safety and Health legislation, and the structure of the enforcing authorities. However, 25 years on, many of the criticisms Robens made of the law at that time appear to be valid once again.

Results and conclusions of the report

In essence the report concluded that Safety and Health legislation the UK needed a radical overhaul and that:–

1. there was too much law
2. law should be simplified
3. the balance between “prescriptive” and “goal setting” legislation needed to shift towards the latter
4. framework law should be supported by specific Regulations, Codes of Practice and Guidance where necessary and appropriate. Voluntary Standards would form the next tier in this scheme
5. the Inspectorate should be reformed

These goals were achieved by the provisions of the Health and Safety at Work Act 1974.

Looking at these points in turn we see that many of Robens’ criticisms are valid today.

1. there is still too much legislation; indeed new regulations are appearing at a seemingly accelerating rate (see appendices 3, 4 and 5). In many respects there is more “law” now than when Robens made his criticisms. This is amply illustrated by the trouble the author has had in finding a complete list of statutory instruments in the Health and Safety area!
2. the reliance on Codes of Practice and Guidance means that even keeping up with legislative requirements is more onerous than ever before. It is true that the actual law is simpler, but the information necessary to comply with law is more complicated and extensive than ever. In the Explosives sector one document (the so-called green book2) effectively presented all explosive legislation and Orders in Council etc that were made under it. We now require many tens of separate documents and Codes of Practice.
3. the balance between “prescriptive” and “goal setting” legislation has shifted completely to the latter. This point will be expanded on later.
4. HSE information suggests that regulations are a last resort, whereas in practice legislation appears to be the first resort – then supported by codes and guidance. There is very little evidence of codes or guidance standing alone.

2 A guide to the Explosives Acts, commonly referred to as “The Green Book”.
5. It is probably necessary, and indeed is ongoing, to reform the inspectorate once again. There is a strong case to be made for finally abolishing all the specialised Inspectorates and concentrating on the general “Factory Inspectorate” backed up by specialists. Again, this point will be expanded upon later.

All in all, we have passed to a position that in many respects Robens would recognise as similar to that in 1970.

**John Rimmington’s speech April 1995**

In 1995 John Rimmington, then the Director General of the Health and Safety Commission, reviewed the application of the Robens report and the effect of the legislation in the 21 years since the formation of the HSC and the HSE.

The review was, naturally, very up-beat in its assessment of the successes of HSWA and subsequent regulations and the enforcement and administration introduced following the Robens report. However a few words of caution were also expressed, particularly with respect to the role of Europe in determining new domestic legislation. The review was also presented at a time of Government deregulation and acknowledges the dangers of “gold plating” and “double banking” in the formulation of new legislation.

Some of the important passages from his speech are given in appendix 2.

One recurring feature of the speech concerns the impact on small firms of the increasing bureaucratic burden. This problem needs to be re-addressed urgently. Small companies need (and appear to want – see later) clear, prescriptive guidance on what they should do or not do. Small companies can afford neither the time to carry out the risk assessments required by modern regulations, nor the expense of employing one of the myriad of “health and safety” consultants that have appeared to service the apparent need.

This is not to say that an “off the shelf” approach to safety is the best way forward. Good safety requires thought, good safety requires management but good safety is not dependent on the size and weight of a risk analysis!

There are occasions, however, when all that a small business needs is to be told how to do the job.

**The structure of modern Health and Safety legislation**

There are several potential problems with the approach outlined originally by Robens and implemented increasingly in recent years. The major perceived benefit of moving towards enabling Acts, goal setting regulations, and supporting Codes of Practice and Guidance is that change can be introduced more quickly to take account of changing technological developments.
The counter to this is that legislation is progressively removed from parliamentary scrutiny, and therefore progressively can be changed with less consultation.

<table>
<thead>
<tr>
<th>Parliamentary Scrutiny</th>
<th>Ease of Change by HSE</th>
<th>Level of Detail</th>
<th>Mass of Paperwork</th>
<th>HSE Accountability</th>
<th>Perceived benefit by small companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>More</td>
<td>Less</td>
<td>Less</td>
<td>Less</td>
<td>More</td>
<td>More</td>
</tr>
</tbody>
</table>

HSC/E would claim that all new legislation goes through a rigorous process of consultation and cost/benefit analysis prior to adoption, but there have been very few (if any) occasions where these processes have prevented, or even substantially changed, proposed regulations.

Furthermore and unfortunately, these processes are only applied to regulations themselves. Codes of Practice need not and do not have to undergo the same scrutiny. This of course, has both benefits and drawbacks. The benefits are those foreseen by Robens, namely the ability to change with new technological developments. The drawbacks are that the user is confronted with a set of ever changing requirements, and that HSE can change these without need for consultation with industry.

In fact, this has led to the ultimate approach that nothing of substance will be written down in Approved Codes of Practice (ACoPs) or Guidance. The requirement for you to determine by risk and hazard analysis (however inaccurate or time consuming) that what you are doing is as “safe as is reasonably practical” is the ultimate manifestation of this approach. No definitive guidance will be given (for fear of possible litigation), no consistent approach will be offered. If you get it wrong...
and have an accident, no amount of risk analysis, safety planning or even safe working practice will prevent the ultimate sanction - the Courts.

On the other hand there are examples (predominantly in older ACoPs) where HSE has been very specific which leaves no room for practical and sensible alternatives.

For example, the Carriage of Explosives Regulations 1989 (CER) and their associated ACoP require 2 x 9 litre water fire Extinguishers to be present on all vehicles carrying explosives over a certain weight. It is the author’s understanding that this requirement was introduced primarily to cater for tyre fires on HGVs. In the case of a transit van, this requirement still applies regardless of the fact that:

1. tyre fires are extremely uncommon on smaller vehicles
2. it is physically impossible to fit 2 x 9 litre water extinguishers on the outside of a transit van. To comply with the requirement for their presence they are consequently fitted within the load compartment of the vehicle rendering them almost useless in an emergency!

No official body was prepared to concede the absurdity of this situation, or to agree that smaller extinguishers of a similar rating would be more appropriate in this instance because the ACoP has explicitly detailed the number and type of extinguishers required.

The freedom to be able to adopt modern technologies and methods is theoretically very desirable. However, whereas it may benefit long standing members of the Industry who consider that they know what they are doing, it provides no assistance to small members of Industry, and in particular those wishing to enter Industry.

One of HSE’s pages on the Internet states

Where HSC/E consider action is necessary to supplement existing arrangements, their three main options are:

- guidance
- Approved Codes of Practice, and
- regulations

HSC/E try to take whichever option or options, allows employers most flexibility and costs them least, while providing proper safeguards for employees and the public.

and goes on to describe these three in some detail. The section concludes

Guidance and ACoPs give advice, but employers are free to take other measures provided they do what is reasonably practicable. But some risks are so great, or the proper control measures so costly, that it would not be appropriate to leave employers discretion in deciding what to do about them. Regulations identify these risks and set out specific action that must be taken

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4 see http://open.gov.uk/hse/hsehome.htm
Often these requirements are absolute – to do something without qualification by whether it is reasonably practicable.

The implication is that regulations are a last resort – in practice this is simply not the case – regulations usually come first, ACoPs and Guidance on specific aspects of the regulation follow to expand and reinforce the information contained within the regulation itself. The simultaneous publication of Regulations and ACoPs is thus not merely desirable, but essential to allow Industry to comply with the requirements of new legislation.

““It is up to the Courts to decide”

The ultimate answer that is always given is that “It will be up to the Courts to decide”. This may well be true, but it is not helpful, especially to those entering a business for the first time. There have been few prosecutions in recent years – the perceived wisdom is not that we are becoming inherently safe, but that HSE are more reluctant to prosecute unless they have an absolutely watertight case. In any case, prosecution must be seen as the last resort of any legislation – both industry and HSE have failed if prosecutions need to be made. This renders the assertion that “it is up to the Courts to decide” meaningless.

Many Health and Safety experts acknowledge that whatever measures have been taken by a company, if a case does come to Court it is likely that the attitude will be “whatever you did was obviously not enough”. Furthermore many people now seem to take the attitude that it is quantity rather than quality of Health and Safety documentation that is important. The ability to provide reams of risk assessments, COSHH data and safety reports is seen to be the primary aim – the substance is seen to be almost irrelevant if “whatever you did was obviously not enough”!

A condensed “Health and Safety at Work Act” and subsequent regulations

Thus we now have a multi-tiered regime that may not help those people whom it is intended to help – those that potentially create the risk.

The author’s understanding is that HSWA, distilled to its very basics, says that at work

Nothing you do, or fail to do, should endanger your work force or others affected by your actions.

Modern regulations would extend this by saying, in essence

You must be safe in areas X, Y and Z, see the ACoPs for details

ACoPs would then state
Although this is not law, you should follow these ideals. We cannot be too specific in case we are wrong. If you choose to do things differently it will be “up to the Courts to decide” if you did it properly – and this ACoP will be taken as the standard. Where we are specific, there is no room for flexibility, however practical and sensible this may be.

Doubtless there will be much criticism of this oversimplified summary of legislation. However, this is the impression that many within industry have of the current legislative framework. This has serious consequences.

Firstly, if the fines a Court can impose are insufficient there is no deterrent to deliberately disobeying the law. This situation does exist – the cost of compliance with some modern regulations are enormous – the fines are relatively small by comparison. If the chances of being caught are slim the risk will be taken. This failing is compounded by the fact that most of HSE’s work now is retrospective and reactive, and there is very little proactive work. The reasons for this are many, not least due to financial constraints, but this does not lead to greater safety overall.

Secondly, this structure is tailor-made to confuse the very people who are trying to live and work by the regulations. It leads to a proliferation of guides, notes, letters etc. which very few in industry have the time or capacity to digest and act on – even if, in many cases, they knew of their existence. The lack of dissemination of information from HSE to the industries that they are trying to regulate is deplorable.

Furthermore it is next to impossible for industry to find all the regulations to which they might be subject. The Explosives Industry Group of the CBI (EIG/CBI) redressed this deficiency for the Firework Industry with the guide “Fireworks and the law”\(^5\) - it is a pity that HSE themselves could not produce similar guides, either generally, or addressed to specific industries. The increased use of Internet based services would seem to be an ideal place for publishing such information.

**The relentless advance of new legislation**

Appendices 4-7 illustrate the advance of new legislation since the Robens report. Robens identified that too much legislation was ultimately confusing and unhelpful, and it must be acknowledged that in the years immediately following HSWA the number of new regulations was much reduced. However, in recent years this desirable position has been reversed, and more and more legislation appears.

Much of the blame for revision of domestic legislation is put at Europe’s door. However, this is only partly true or just. HSE/C are quite capable and willing to introduce new regulations without European input, but they do so in areas where there is no likelihood of challenge from Europe as to, for instance, introduction of unnecessary and inappropriate barriers to trade. We may see changes in this approach under a new Government.

\(^5\) Available from EIG/CBI, Centre Point, New Oxford Street, London
Europe

Regulations arising from the European Parliament or the European Commission generally receive a bad press in the UK. Not all of the requirements are opposed by Industry; however in general industry resents

1. the mass of legislation so demanded
2. the excessive implementation of European Directives into UK law. Industry sees 10 page directives converted into 100 page regulations and Codes of Practice — without much greater substance!
3. the variety of extent and timing of implementation of directives by other members of the EU. It is often said that the UK argues in Europe, but implements law, whereas the remainder of the EU don’t argue – but don’t implement either. It is likely, however, that Industries in other EU countries feel similar prejudices. Personal experience suggests that bad law is ignored much more openly in continental, especially southern, Europe

Government needs to be seen to implement European law even handedly and fairly. If necessary, pressure should be applied to the European Parliament and Commission to ensure that the European ideals of free markets and uniformity are not abused.

It is true that an increasing amount of Health and safety law is driven by directives from Europe. However this must not be used as an excuse by HSC/E to justify the accelerating growth in legislation in recent years.

In the Explosives field, only three pieces of current legislation have been demanded directly as a result of European Directives. In the immediate future there are likely to be another four. It is difficult to predict how this trend will continue!

Responsibility and accountability

It is very easy to draw the conclusion from the above discussions that it is not only the ease of making and changing legislation that drives the move from Acts to regulations to Codes of Practice etc. A consequence of this move is that the Inspectorate are no longer able to offer definitive advice, or consistent interpretation, of the regulations that are produced.

Robens acknowledged in 1972 that legislation was poorly understood, even by those trying to enforce it. The situation is now common again. There appears to be a lack of consistency within the Inspectorate and between Government departments. For example:—

- Each Inspector is now unwilling to give a definitive answer to a question posed on site. The Inspector will wish to “consult with colleagues”. This is of course, laudable – if the result is a consistent answer given to all in the industry, however this is rarely the case.
When an Inspector changes for a particular site, the “goal posts” change too. Something that was considered appropriate by one Inspector can be overruled immediately by a subsequent Inspector.

The result of this is that Industry never has the consistent and long-term stability that is required.

It is felt by many within industry that Inspectors are no longer willing to give advice or commit themselves for fear of being challenged in the Courts. The role of the “Specialist Inspector” is thus diminishing. HSE themselves recognise this, and indeed the author understands that the whole future of the Explosives Inspectorate within HSE is currently under review.

**HSE Surveys of small business**

HSE carried out a survey\(^6\) of small business in 1996 to determine whether Industry felt they were being well served. The results confirm the Rimmington view that small businesses want to be told what to do and what not to do. It appears extremely arrogant to ignore this clear need. Examination of Appendices 4-7 illustrate why small business needs this clear and unambiguous information: there are simply too many Regulations and associated Approved Codes of Practice and Guidance documents across the whole scope of Health and Safety law for small businesses, in particular, to keep pace with change.

The survey found that many small businesses appear to understand Health and Safety law poorly, although the majority agreed that Health and Safety was an extremely important concern.

**Application of HSWA and associated regulations to those NOT AT WORK**

This is one area where the move from Acts to “Regulations made under HSWA” has particularly serious consequences. In the Explosives Act 1875 there are sections that apply to the “private use” of explosives - ie by people not at work. The HSWA considers the safety of the public from people at work, but cannot be applied to people who are not at work. Presumably this means that all legislation subordinate to HSWA can similarly not apply. There must be similar areas of concern in other industries.

This question has been put to many within HSC/E over many years without an answer being forthcoming. In recent discussions with HSE a former Chief Inspector (now an Industry consultant) has repeatedly made this very point and is of the opinion that to proceed with this approach is unlawful – but nevertheless this is a current HSC/E approach.

There is nothing within the Robens report or within HSWA that should lead HSC/E to make law that affects the private individual in this manner.

\(^6\) Survey of small businesses conducted 1996. Results available from HSE
Drafting new legislation: the mechanics

The author has had considerable experience in recent years of the mechanics of drafting new HSE explosive legislation. The process can be divided into the following sections as illustrated by the draft programme for the proposed Manufacture and Storage of Explosives Regulations (MSER)

<table>
<thead>
<tr>
<th>Stage</th>
<th>PLANNED Months from Inception</th>
<th>ACTUAL Months from Inception</th>
</tr>
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<tbody>
<tr>
<td>Decision to make new Regulations</td>
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<td>0</td>
</tr>
<tr>
<td>HSE consideration of issues</td>
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<td>4</td>
</tr>
<tr>
<td>Initial consultation</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Initial proposals to HSC</td>
<td></td>
<td>21</td>
</tr>
<tr>
<td>Drafting of Regulations</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>Instructions to solicitors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Submission to HSC</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>Formal Consultation and Cost/benefit analysis</td>
<td>19</td>
<td>3</td>
</tr>
<tr>
<td>Redrafting of regulations</td>
<td>22</td>
<td>3</td>
</tr>
<tr>
<td>Final proposals to HSC</td>
<td></td>
<td>39</td>
</tr>
<tr>
<td>Regulations laid</td>
<td>25</td>
<td>42</td>
</tr>
<tr>
<td>Regulations into force</td>
<td>31</td>
<td>45</td>
</tr>
</tbody>
</table>

Overall the process, therefore, is likely to take nearly 4 years from inception to regulations coming into force.

Let us look at some of these aspects in greater detail.

**Drafting**

This stage is usually carried out by HSE policy branches in consultation internally with the inspectorate. It is at this stage that many of the fundamental ideals and structure of the new legislation is formed. It is to be regretted that there is little or no input by Industry at this stage – many “real world problems” with academic ideals could be corrected at this stage and prevent a lot of wasted time later.

Unfortunately many of the legislators have little or no practical experience of the things they are attempting to regulate. This situation is not helped, despite offers from industry, by the fact that internal HSE rules make it very difficult for one inspector, let alone a member of the policy section, to gain knowledge by visiting the premises and operations they are about to regulate.

**Informal consultation**

Informal consultation usually takes place with industry once the overall scope and nature of new legislation has been determined by HSE themselves. Industry are
called upon to present potential problems with ideas already formulated, suggest new practices that may need to be controlled and to highlight potential problems once regulations are acted upon.

Formal consultation

Formal consultation is the last possible opportunity for Industry to influence Regulations before they are enacted, there being no possibility of Parliament debating these Regulations. HSE legislation is usually subject to three months’ public consultation, and this is followed by appraisal and possible bilateral meetings with those who have raised particularly intractable problems. Unfortunately there is no requirement to act on any of the points raised by consultees during this period, and it is the opinion of the author that if anything of substance has not been agreed prior to this phase there is little chance of changing things.

A period of approximately 3 months usually elapses after the consultation period before revised regulations are prepared.

Cost/benefit analysis

HSE are required to carry out a cost/benefit analysis of new and modified regulations. Unfortunately here, the costs are almost invariably underestimated – little consultation with industry seems to take place. To make matters worse, the benefits cannot usually be quantified and thus the result of this analysis is often

The benefits of this legislation are increased safety, greater harmony with European directives …..

Consequently, however poor the balance of a cost/benefit analysis may be, it is never taken as a reason for abandoning or modifying proposed regulations.

Submissions to HSC

Throughout the drafting process representations are made to HSC to ensure that the new regulations are in step with current philosophy. Rimmington noted that Industry is represented on the HSC and that HSC/E are therefore self-limiting in scope. He states that

In a certain sense, HSE being overseen by “industry” is perhaps less likely to impose “burdens” than other regulatory bodies

but sadly, this is not the experience of many within industry itself. Representation on HSC is by its nature limited to general members from Industry, who hopefully consult with specialists to present views. It would be better if each new or modified Regulation were examined by a small expert committee prior to being put into force. The steering committees that do exist at present unfortunately do not fulfil this role.

7 Consultative Document to Packaging of Explosives Regulations 1991(PEC)
These committees are run by HSE with the purpose of making new Regulations – fundamental decisions as to the appropriateness of these Regulations is excluded from Industry.

**Negotiation with other Government departments**

Several recent HSE explosive regulations have required the involvement of other Government departments throughout the drafting, consultation and legal processes.

For instance, both the Carriage of Explosives by Road regulations (CER) and the Packaging of Explosives for Carriage regulations (PEC) not only required the participation of the Department of Transport in consultation, but also, seemingly, required the DoT’s solicitors to work alongside HSE’s in the drafting process. When the regulations came into force the DoT is deemed the “Competent Authority” for the regulations whereas HSE are the enforcing authority. This is a ludicrous situation. The duplication of effort slows the process down, different departments’ solicitors do not always agree on the form or content of legislation, and the recipient of the legislation – Industry – now has two Government departments to deal with.

Particularly in the case of PEC this has introduced an unacceptable new bureaucracy in which applicants for packaging approval have to consult with both authorities. Classification of explosives (CLER) now also requires dealing with both authorities as the determination of the hazard of an item (its classification) is critically dependent on its packaging. Unfortunately to determine the correct packaging for an item one needs to know the item’s classification – a classic “chicken and egg” situation. Both departments have made attempts to overcome this circular problem, but the problem should never have arisen. It is particularly galling to note that Industry raised this very problem at the formal consultation process and was dismissed⁸.

**Explosive legislation from 1972 to 1997 and beyond**

Appendix 3 lists the legislation that has been applied to the Explosives Industry from 1972 to the present day, and an indication of legislation that we know is to be forthcoming in the next few years. Far from the ideals set out in Robens, and attempts by recent governments to “deregulate”, there appears to be an increase in the legislative burden year by year.

There is little chance of this bandwagon ever stopping. The continued dilution of regulations, and increasing reliance on risk assessment and safe management of risk, rather than “getting one’s hands dirty” must lead also to a change in the nature of HSE. It is obvious that the expertise in the Inspectorate is gradually diminishing – specialised Inspectors are rapidly becoming general factory Inspectors. In the Explosives sector the future of a specialised Explosives Inspectorate is now being questioned⁹.

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⁸ Results of Consultative Document to PEC and personal correspondence with HSE
⁹ Ongoing review
**Conclusions**

This report attempts to highlight some of the problems encountered by Industry when dealing with Health and Safety at work legislation.

Robens concluded that

1. there was too much law
2. law should be simplified
3. the balance between “prescriptive” and “goal setting” legislation needed to shift towards the latter
4. framework law should be supported by specific Regulations, Codes of Practice and Guidance where necessary and appropriate. Voluntary Standards would form the next tier in this scheme
5. the Inspectorate should be reformed

Many of the criticisms that Robens made are still valid. Thus, in the author’s opinion

1. there is still too much law
2. law **itself** has become too simplified
3. the balance between “prescriptive” and “goal setting” legislation has moved too far towards the latter
4. the “meat” of regulations is now put too much in Codes of Practice and Guidance
5. if the trends above continue, it may be appropriate to look at reform of the Inspectorate once again

There are fundamental questions that should be asked at the outset of new or revised legislation

1. Who is to be affected by this legislation?
2. What do they want to see in the legislation to allow them to comply?
3. Is this legislation of positive overall benefit resulting in increased safety?
4. How can we disseminate the information to those who need to know?
5. Can we enforce the Regulations even-handedly?
6. Is it worth producing these Regulations at all?

Criticisms implied in this report are not aimed at individuals. On the contrary, it is hoped that this report will serve as a useful tool in the future to both HSE and industry alike.
Appendices

Appendix 1 – Extracts from the Robens report

The essential sections of the Robens report pertinent to the present argument are given below. No apology is made for these extracts being subjective and somewhat selective, but it is hoped that they are not used out of context.

Section 28

The first and perhaps most fundamental defect of the statutory system is simply that there is too much law. The nine main groups of statutes we have mentioned above are supported by nearly 500 subordinate statutory instruments containing detailed provisions of varying length and complexity.

It was argued in some submissions made to us that the sheer mass of this law, far from advancing the cause of safety and health, may well have reached the point where it becomes counterproductive.

Our present system encourages rather too much reliance on state regulation, and rather too little on personal responsibility and voluntary, self-generating effort. This imbalance must be redressed. A start should be made by reducing the sheer weight of the legislation.

Section 29

The second main defect is that not only is there too much law, but too much of the existing law is intrinsically unsatisfactory. The legislation is badly structured, and the attempt to cover contingency after contingency has resulted in a degree of elaboration, detail and complexity that deters even the most determined reader. It is written in a language and style that renders it unintelligible to those whose actions it is intended to influence. Line managers, supervisors and shop-floor operatives are not legal experts. Even the personnel of the inspectorate experience difficulty in picking their way through it all. Moreover, neither Parliament nor civil service administrators can cope with the task of keeping this huge and detailed body of law up to date. Obsolescence is a chronic disease of the statutory safety provisions and yet clearly, unless the provisions are in tune with modern technology, they are more likely to be a hindrance than a help. For example, the Explosives and Petroleum (Consolidation) Acts – both of venerable age – are badly in need of revision, a fact which the Home Office readily acknowledges.

Section 30

As a result, much of the legislation appears irrelevant to the real, underlying problems.

Section 35

At the level of the individual workplace, one establishment may be subject to a multiplicity of safety and health provisions under a number of Acts and sets of regulations.

...It is true that a wide variety of safety and health problems can arise at certain kinds of workplace, but it is difficult to accept that the pattern of administrative controls need to be as complex as this.

Section 39

At the national level of policy formulation and law making, the problems arising from fragmentation of administrative responsibility are more deep-seated. No government department with responsibilities in this field can take any major initiative without close and extensive consultation with several other departments which have similar or related interests and responsibilities.

In our view the obsolescence and inadequacies of many of the existing statutory provisions and enforcing arrangements are in no small part due to the fact that where overlapping responsibilities are
involved ‘the need to have wide consultation may mean that all can move forward only at the pace of the slowest’.

Section 41

The most fundamental conclusion to which our investigations have led us is this. There are severe practical limits on the extent to which progressively better standards of safety and health at work can be brought about through negative regulation by external agencies. We need a more effectively self-regulating system.

Section 130

We do not accept that such a statement of basic principles would be too general to be meaningful and helpful in practice.

Section 138

Regulations which lay down precise methods of compliance have an intrinsic rigidity, and their details may be quickly overtaken by new technological developments. On the other hand, lack of precision creates uncertainty.

The need is to reconcile flexibility with precision. We believe that, wherever practicable, regulations should be confined to statements of broad requirements in terms of the objectives to be achieved. Methods of meeting the requirements may often be highly technical and subject to frequent changes in the light of new knowledge. They should, therefore, appear separately in a form which enables them to be readily modified.

Section 178

... we recommend that safety and health at work legislation should apply explicitly for the protection of the general public as well as work people.
Appendix 2 – Extracts from John Rimmington’s speech

During the very hurried negotiations on the framework directive, the UK found itself in a collapsing minority in defence of its main principle – that health and safety law should be founded on reasonable practicability, involving a balancing of cost against risk. We contrived to substitute for it in the principle – which we consider equivalent – that health and safety measures should be based on an assessment of risk. Unfortunately in the course of negotiations, our proposals became amplified into a decision in favour of written risk assessments applying on a very wide scale. I believe written risk assessments to be a useful discipline so long as it is strictly confined to important risks; but applied too widely it can easily become bureaucratic bindweed preventing small firms in particular from seeing and doing the obvious.

The advent of the six-pack coincided with the climax of the Government’s concern with over-regulation, and for a time HSC/E appeared the principal inhabitants of death row. Accusations were freely made that we had not only “thrown” the European negotiations in the interests of securing gold plated standards, but were also zealous over-implementers and enforcers; a position not without irony, since we had very clearly warned about the consequences of conceding QMV\textsuperscript{10} for our achieved dominant position in influencing European law prior to 1987.

The Health and Safety Commission’s reaction to its predicament was to carry out a fundamental review of all health and safety law during the financial year 1993-94. \ldots\ Carried through with the enthusiastic help of several industrial working parties, it redirected attention to the continued existence of outdated statutory lumber, re-emphasised the need for simplicity in HSE guidance and asked whether the architecture of the law is right. Finally it drew stark attention to the difference in need and outlook between small firms wanting prescriptive guidance, if possible unenforced, and the bigger firms who make the technological pace, and who continue to support the classic Robens approach, with law strictly enforced on the competition, including the competition abroad.

The reform of any complex law represents a huge undertaking; which in this case is not helped by the fact that European law continues to stream in, much of it more prescriptive than we want and not always in convenient sequence or sensible priority.

\textsuperscript{10}Qualified majority voting
## Appendix 3 – Summary of Explosives legislation

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### Notes

HSE/DoT = administered by HSE and/or Department of Transport
This list does not include ACoPs and Guidance
## Appendix 4 - Breakdown of legislation by year 1974-1996

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**TOTAL** | 17 | 130 | 210 | 12 | 234 | 111 |
Appendix 5 - Breakdown of legislation by year 1974-1996 (By category)

Cumulative Total

Year


Specific (Not Explosive)
General
Specific (Explosive)