The Safety Representative An experiment in Industrial Democracy? - abandoned??

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Introduction

The introduction of two Statutory Instruments - the Health and Safety (Consultation with Employees) Regs. 1996 No 1513 and the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regs 1997 No 2962 - have made it necessary to review the responsibilities of the safety representative, as those specified in these documents seemed to indicate a significant change to the philosophy proposed in the Robens Report[1] and inherent in the Health and Safety at Work Act 1974.

This philosophy may be summarised in edited words from that report as follows:

> 'Real progress in the promotion of safety and health at work is impossible without the full co-operation and commitment of all employees. If the new inspection approaches [proposed] are to work, increasing reliance will have to be placed on the contribution that work people themselves make towards safety monitoring.'[2]
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> '...We regard the question of worker involvement as quite central to this enquiry and the main themes of our report...'[3]
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> 'As we see it, an employee's safety representative... should have specific duties... He should be empowered to carry out inspections... should have

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1 *Safety and Health at Work - Report of the Committee 1970 - 1972*, Lord Robens.

2 para 59.

3 para 64.

access to and contacts with... safety inspectors.'[4]

'In the development of new approaches to inspection work we attach very great importance to more contacts and co-operation between inspectors and work people and their representatives...'[5]

The vision was that, from these regular contacts and co-operation, the inspectors would become aware of any shortcomings which would need to be addressed in their consultations with employers. Nowhere did Robens envisage that the time cost of these consultations could be overwhelming for the Inspectors - or that employers might exhibit reluctance to implement their obligations. Thus, persuasion rather than enforcement was encouraged - although enforcement measures were recommended as a last resort.

The Health and Safety at Work Act, in its original form, implemented these proposals almost exactly as summarised above.

The changes which have occurred to this approach have been incremental but, in total, have produced significant differences in the perceived 'status' of the representative. It could be argued that some result from the implementation of European legislation, but it has always been accepted that there is no European prohibition on *exceeding* the requirements of their legislation, so any downgrading to those requirements is a political decision.

A literature search undertaken initially revealed no material which considered this approach, although R Akass expresses disappointment at the implementation of the recommendations of the Robens Report.[6]

The intention is, therefore, to explore how the legislation introduced subsequent to this Act finally created this change in status and, if possible, indicate why it may have occurred.

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4 para 65.

5 para 213 - also paraphrased in para 66.

6 Akass R, *What Every Manager needs to Know about Health and Safety*, 1995, Gower, pp46 - 49.

The Context

The ten years between 1965 and 1975 were a period of change in industrial relations. The early part had seen the introduction of the era of Government/Union consultation as a counterbalance to the previously established Government/CBI.

At the same time, the confrontations between unions and employers had reached the stage of debilitating industry and, partly as a result of this, Barbara Castle, as the minister responsible, had introduced a white paper 'In Place of Strife' in which arbitration and responsibility were key elements. This was withdrawn after being rejected by the General Secretaries of the major unions.

Shortly afterwards, the Conservatives gained power and tried to implement an Industrial Relations Act which would have put unions on the same legal footing as companies. This was rendered of no practical effect by the unions' tactic of non-cooperation by refusing to register - in a similar way as that required of companies, as required by that Act.

It was in this atmosphere that Lord Robens' Committee on Health and Safety - set up to advise on the way in which all workers could be protected at work - was deliberating on its report. This was delivered in 1972, and a Health and Safety at Work Bill was prepared and put before Parliament. This Bill fell when Parliament was dissolved in 1974, but was resurrected by the new Labour Government, with minor Amendments, and passed in 1974.

The Philosophy

From the above comments on the Act, it may be recognised that it was the result of a bi-partisan approach. It introduced a fundamentally different concept to the implementation of health and safety in the workplace. Until this time, there had been two philosophies - that associated with manufactories and that associated with seafaring (which retained some of the pre-legislative attitudes of employers).

The former was prescriptive, in that it identified particular dangers in a workplace and legislated the requirement for employers to take certain actions to eliminate these dangers. Much of the legislation was originally targeted at particular industries with employers complaining, in each case, that

implementation would bankrupt the industry concerned.[7] It should be noted that this never occurred although, inevitably, a few poorly managed or underfinanced businesses did go out of production. As time went on, many of these individual pieces of legislation were consolidated into Factory Acts. However, the scope of these was narrow.[8] This narrowness of scope was broadened to include some other classes of worker by the Offices Shops and Railway Premises Act 1963[9] but a large proportion of workers were still, at that time, reliant only on Tortious Actions in Negligence for their protection.

The latter relied almost exclusively on the concept that the sea was a dangerous environment and those working in it should be aware of this and take care of themselves. To assist them to do this, there was a Code of Safe Working Practices which was reinforced by a stream of advice, in the form of 'M' Notices, from the Government Department responsible for shipping.[10] The 'Safety' legislation, of which there was a plethora,[11] was mainly concerned with the continued existence of the ship and thus, with the exception of that implementing the provisions of the Safety of Life at Sea Convention, was mainly concerned with protecting the owners' and shippers' investments.

The Health and Safety at Work Act was designed to sweep away all this and introduce a single common system applicable to all classes of employee (except seafarers!) in which both employers and employees were regarded as rational beings who could work together for their mutual benefit. Underlying this, though, was the intention that employees would be able to monitor and influence the behaviour of 'irrational' employers.[12] This was to be achieved by

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7 See eg Sir Llewellyn Woodward *The Oxford History of England, The Age of Reform 1815 1870*, 2nd ed, pp 149 - 156.

8 See Factories Act 1961 ss 172/4.

9 See ss 1/3.

10 Variously, The Board of Trade, Department of Trade, Department of Trade and Industry, and Department of Transport.

11 See Marine Information Note 14 (M&F) - or its replacement - issued by the Marine Information Centre which is part of the Marine Safety Agency. This lists around 140 relevant Statutory Instruments any of which are supplemented by requirements specified in Merchant Shipping Notices - a form of 'tertiary' legislation which is not even laid before Parliament (there are currently over 80 of these).

12 See *Robens Report* s 59.

the appointment of Safety Representatives[13] who would be able to monitor the safety policy of their firm and its proper implementation. [It should be noted, in passing, that the scope of the Act extended well beyond the employer/employee relationship; embracing almost all relationships within the scope of a business's activities.]

The Safety Representative

1. Under the Act

In its original form, every business would have the obligation, made by regulation, to recognise safety representatives and consult with them on prescribed matters. It is worth noting the original words of the Act.[14]

Even before the Regulations referred to above had been introduced, subsection (5) had already been repealed by the reconfirmed Labour Government (possibly as a result of union pressure to indicate that every workplace should recognise a trade union and that therefore the section was unnecessary)[15] - thus placing all those businesses which, by reason of size or philosophy, did not recognise a trade union outside the primary statutory monitoring system of the Act. This is all the more surprising since there could be a rational supposition that these might well be the very businesses which would most need such monitoring!

What, then, are the functions of these representatives? This is indicated,

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13 See s 2 of the Act and also *Robens Report* ss 65 & 66.

14 '2(4) Regulations made by the Secretary of State may provide for the election in prescribed cases by recognised trade unions (within the meaning of the regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and may have such other functions as may be prescribed.

(5) Regulations made by the Secretary of State may provide for the election in prescribed cases by employees of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and may have such other functions as may be prescribed.'

15 See comments in *Hansard* 28 April 1975 at pp 74 and 156/7 and the general comments made during this debate on the second reading of the Employment Protection Bill.

in general terms, in subsection (6)[16] and in order to facilitate this communication, subsection (7)[17] provides for the formation of a consultative committee.

The functions of the safety representative, as subsequently determined in the Regulations,[18] are to:

'1. Consult with employers for promoting measures to ensure Health and Safety and monitoring their effectiveness,

2. Investigate potential hazards and dangerous occurrences,

3. Investigate complaints on Health and Safety,

4. Carry out inspections in accordance with Regs 5, 6 and 7,

5. Consult with Health and Safety Inspectors,

6. Receive information from Health and Safety Inspectors,

7. Attend Safety Committee meetings.'

When properly implemented in an organisation, these regulations create a consultative structure within which managers and workers work together towards a common goal.[19] As this consultation becomes established within the organisation and new lines of communication between management and

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16 '(6) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.'

17 '(7) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in subsections (4) and (5) above, to establish, in accordance with regulations made by the Secretary of State, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.'

18 Regulations on Safety Representatives and Safety Committees (SI No 500 of 1977).

19 See Robens (*supra*) ss 65, 66 and 70.

workers develop, there is the opportunity for these to expand to encompass other areas of mutual interest, with the result that general industrial relations within the organisation are likely to change and should become less confrontational.

Since such structures were foreign to most UK businesses of the 1970s, there was, initially, considerable reluctance to implement them, and there are still a number of small-to-medium size firms to which the concept is foreign. It is this reluctance to change internal hierarchies which has proved stronger than the enforcement measures available and implemented under the Act[20] and which has, ultimately, with the reducing recognition of trade unions, led to the dilution of the concept - as will be demonstrated.

2. At Sea

As has been noted above, seafarers were excluded from the provisions of the Health and Safety at Work Act and it was not until 1982 that Regulations were made under the authority of the Merchant Shipping Act 1979. The first of these was the *MS (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regs* 1982 No 876. This was introduced under the aegis of a Conservative Government and therefore, presumably, after thorough consultation with the shipping industry. This shows considerable deviation, in organisation, to the HSW Act and the Regulations made thereunder concerning Representatives. The application was to United Kingdom ships with certain exceptions - notably fishing vessels - in which a crew of more than five were employed.

Reg 3 started by introducing an official who, while entitled by long tradition in textbooks and the Robens Committee of Enquiry, had not hitherto been nominated in legislation - the Safety Officer - and stated that the employer shall appoint one (Reg 5 then defined his duties). Reg 3 then stated that the officers and ratings may *elect* safety representatives and specified the number of these in terms of numbers of personnel. The employer should make rules for election and, where a representative was elected, the employer should appoint a safety committee with the Master as chairman and safety officer and representatives ex officio.

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[20] ss 18 - 26 and see Robens *(supra)* ss259 - 262.

Regs 6 and 7 then defined the powers of safety representatives and duties of safety committees while Reg 8 defined the duties of the employer and Master. It is worthwhile summarising these as they were admirable in the clarity with which the philosophy was annunciated within them and, with their recent repeal, they may not be easily accessed now.

The safety representative was enabled to:

'1. Consult with the Master on safety matters and promote measures for the occupational health and safety of the crew - including recommending the suspension of work.

2. Carry out or participate, with the Safety Officer, in inspections.

3. Inspect records kept by the Safety Officer.

4. Request an investigation by the Safety Officer into any matter which he believes may cause an accident.

5. Receive information of any dangerous cargoes on board, the nature of the hazard, and the existence of any other hazard on board, known to the employer or Master and which may endanger ship or crew.

6. Be identified to the crew by posted notice.

7. Receive from the employer or Master, on request, information about accidents and dangerous occurrences.

8. Receive, on request, any information or plans necessary to enable the undertaking of investigations or inspections.'

Two points in particular could be noted in these MS Regulations. The first was that the only grounds for non-disclosure were national security[21] and

[21] Reg 8, final sentence.

Reg 8(2)[22] in particular requires the sharing of information which many shore businesses in chemical production or storage have regarded as company confidential and withheld with very unfortunate results. The second was that, under Reg 8(8),[23] the safety organisation in the shore branch could make decisions on recommendations from the shipboard safety committee without any person on the decision making body having any first-hand appreciation of the significance of the suggestion (note the decisions made in *re* the Herald of Free Enterprise concerning failsafe warning lights to the bridge as to whether the bow doors were open or shut).[24]

Notwithstanding those points, the observation to be drawn from the regulations quoted above was of a close-knit workforce working together for their mutual and individual safety. This impression was, and is, frequently not at variance with reality.

This somewhat unique approach has recently been changed by the introduction of new regulations[25] which repealed the above and tended to approach the form and wording of the 'shore' requirements.[26] One improvement is the introduction of the need for competent persons to be appointed by the employer 'to provide such protective and preventative services *for the undertaking*' (my italics) and which should counter the situation extant in the Herald of Free Enterprise circumstance noted above. However, the provisions of Reg. 8 (2),(6) and (8) have disappeared and, although (6) is not of great importance, their removal suggests a message of downgrading of co-operation which is re-emphasised in the omission of (8). It should also be noted that the provision in 6(2)a) and 8(7) allowing the safety representative to recommend that certain work should be suspended has been omitted.

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22 Which concerns employers' duty to provide the information stated in No 5 above.

23 Which required the employer or Master to specify in writing the reasons for refusing to implement suggested occupational health and safety measures. Note that these could come from the Safety Officer, Safety Representative or Safety Committee.

24 Herald of Free Enterprise Formal Investigation Report of Court No 8074 para 18.

25 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997.

26 See Parts IV and V.

3. In the Business Environment

Even where a trade union is recognised, the actual implementation of the representative/committee structure with real communication and trust is far from universal in application. There are cases where the representatives find that committee recommendations are either ignored or are so amended in the minutes as to leave a misleading impression for those holding decision making powers who are frequently not on the committee.[27]

The situation in those organisations which do not recognise a trade union and which were, until the beginning of this year, not required to have either representatives or a committee was even worse. There was, not infrequently, the suspicion that any member of the workforce who attempted to bring a safety concern to the employer would be regarded as a troublemaker and could find himself, in short order, without a job. Even where this was not the case, the most recent general guidance on the employees, duties concerning health and safety, which may be found in the Management of Health and Safety at Work Regulations 1992 Reg12 states:-

> '(2) Every employee shall inform his employer or any other employee of that employer with specific responsibility for the health and safety of his fellow employees -
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> (a) of any work situation *which a person with the first-mentioned employee's training and instruction* would reasonably consider represented a *serious and immediate danger* to health and safety; and
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> (b) of any matter which a person *with the first-mentioned employee's training and instruction* would reasonably consider *represented a shortcoming in the employer's protection arrangements for health and safety.*
>
> insofar as that situation or matter *either affects the health and safety of that first-mentioned employee or arises out of or in*

[27] Such information is, by its nature, hearsay and not amenable to open verification - but the author did observe it to occur when acting as a representative.

> *connection with his own activities at work*, and has not previously been reported to his employer or to any other employee of that employer in accordance with this paragraph.'[28]

Since, in these cases, the employee will be unlikely to have received any health and safety training beyond that considered by the employer as necessary to do his work - and is equally unlikely to be acquainted with legislative requirements - the narrow scope of these guidelines indicate that the employer is at liberty to implement only what he wishes and can fulfil without attracting the adverse attention of a HSE or EH Inspector. Furthermore, the employee is not encouraged to report matters beyond his immediate working environment and is not permitted to report again dangers which have already been reported but on which no action has been taken. It will also be noted that, in these regulations, there is no guidance given as to what action, if any, an employer etc should take on receipt of any information!

This legislation therefore represents a considerable retreat from the philosophy inherent in the earlier legislation towards the more traditional attitude that managers manage and employees obey almost without question.

4. At Present

So, up to this point, the team building and communicative philosophy inherent in the Health and Safety at Work Act was initially watered down by Labour in response to its commitment to the unions, reached a high point under the early Thatcher administration with the MS Regulations and, thereafter, with the declining numbers of recognised trade unions and more strictly imposed hierarchies in companies, subsided almost to tokenism as exemplified in the Management Regs 1992.

A further light can be shed on this by the recently introduced Health and Safety (Consultation with Employees) Regulations 1996 No 1513. The reason for introducing this legislation, which seeks to cover those disadvantaged by the repeal of the HSW Act s2(5), is stated to be a need to comply with rulings of the European Court of Justice with respect to the Health and Safety Framework Directive: That all workers should have the same rights of

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[28] My italics.

consultation.[29] The regulation, strangely, then goes on not to reinstate section 2(5) of the Health and Safety at Work Act 1974 but to create a new and inferior set of rights for this group of workers. These are to be found in Regs 3 to 6. It is instructive to compare these with the 1977 and MS Regs above which, one would have thought, sought to fulfil the same purpose.

> 'Reg3 Where there are employees who are not represented by safety representatives under the 1977 Regs, the employer shall consult those employees in good time on matters relating to their health and safety at work and, in particular, with regard to -
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> (a) the introduction of any measure at the workplace which may substantially affect the health and safety of those employees;
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> (b) his arrangements for appointing or, as the case may be, nominating persons in accordance with Regs 6(1) and 7(1)(b) of the Management of Health and Safety at Work Regs 1992;
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> (c) any health and safety information he is required to provide to those employees by or under the relevant statutory provisions;
>
> (d) the planning and organisation of any health and safety training he is required to provide to those employees by or under the relevant statutory provisions; and
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> (e) the health and safety consequences for those employees of the introduction (including the planning thereof) of new technologies into the workplace.'

These may be directly compared with the functions of the representative listed on page 3 - but note that, at this point, there is no mention of an elected representative. Instead, in Reg 4, the employer is given the option either to

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[29] See Explanatory Note to the Regulations.

consult all the employees directly or with employee-elected representatives - in which case he must inform the employees of the names of the representatives consulted and who they were representing.

The first point to note is the very restricted nature of the duties laid on the employers in this context. The next is the vagueness of the requirements for election of representatives. It is clear that the decision to consult with representatives as opposed to the whole body of employees is the employer's. No guidelines, however, are given as to the number of these representatives or how the elections are to be organised or conducted, or as to how the candidates are to be determined or, indeed, any comment as to their capability. Reg 7, however, does make the employer responsible for ensuring any such representative is provided with suitable training and that the employees are informed of the names of the representatives with whom he is consulting.

Reg 6 then defines the functions of the representative (separate from the consultation by the employer). He may:

> '1. make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, *the group of employees he represents;*
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> 2. make representations to the employer on general matters affecting the health and safety at work *of the group of employees he represents* and, in particular, on such matters as he is consulted about by the employer under Reg 3; and
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> 3. represent the group of employees he represents in consultations at the workplace with inspectors appointed under section 19(1) of the Functions of Representatives of Employees 1974 Act.'

It is to be noted that the method and frequency of the consultation is determined by the employer, and there seems to be no requirement for the employer to maintain records of these consultations or to take them into account in any way. Furthermore, the scope of responsibilities of the representatives is very much narrower than those of other representatives (see the italicised comments above).

This last point raises another potential difficulty for an employer who

has some employees represented by a recognised trade union and others who are not. An employer holding to the letter of the law could have two distinct forms of consultation operating and, if a shipowner, three! In fairness, it is likely that a business which recognises trade unions and is already operating a Health and Safety system incorporating representatives most probably already has an organisation in place for non-union representatives, and will thus need, at most, to make only small changes to its existing system. It is equally unlikely that such a business would go out of its way to create the cumbersome system I have envisaged.

Analysis of the Status of the Safety Representative During this Period

The Robens Report clearly envisaged the role of the employees' representative in two lights. First, as a valuable resource of safety understanding within the workplace and secondly as a link with the safety inspectors. This latter function would appear to be fundamental, since the inspector is envisaged to have, initially, an advisory role with an escalating scale of sanctions to be used as necessary to ensure compliance with safe practice. Given the small number of inspectors and their likely workload, the feedback from the safety representatives would enable them to maximise the efficiency of their activities. Although this was implied in the actual legislation (safety representatives to have access to inspectors), it was interpreted to mean that, if an inspector called, the representative should be entitled to consult with him. This is a very different matter. It should also be considered that the representative could be placed under pressure not to consult by the employer's suggestion that the cost of further implementation of the 'rules' would have implications which would affect jobs.

Further to this initial position, the CBI was opposed to a statutory requirement to consult, preferring this to be left to the discretion of the employer.[30] The initial Act, though, followed the Robens' recommendations and made the appointment of representatives mandatory. Thus, initially, the intention expressed in the Act was for all businesses to have representatives. The functions of such representatives were to be determined by secondary legislation (the Act being an 'enabling' one).

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30 See Robens Report s 64.

However, even before these regulations were introduced, a key section of the Act, which covered workplaces which did not recognise trade unions, was repealed. This, at a stroke, removed statutory control from a significant number of businesses - and thus the first line of monitoring in them as envisaged by the Robens Report. Coterminously, it created a potential two tier system.

At this time, as generally applies, shipping was still excluded from the provisions except when within the general jurisdiction of the Courts (essentially, when in port). Even then, the rules did not apply to crew, only to those visiting the ship. The correction to this was to await regulation until 1982.

The system thus then created had until the introduction of the EC inspired Management of Health and Safety at Work Regulations 1992 to bed down the required routines, including the rights of the Representative. It would seem that, in enquiry after enquiry into accidents at work, the businesses at fault had not - even a decade or more after the implementation of the Act - set up safe systems of work with proper monitoring of their effectiveness. The somewhat tardy introduction of the principles of the Act by Merchant Shipping Regulation created a somewhat more mandatory system which clearly spelled out the requirements for an effective system on board ship. Unfortunately, this was not accompanied by a complementary system for the shore part of the organisation - presumably because this was considered to be covered by the Act. A consequence of this can be observed in the Enquiry into the Herald of Free Enterprise.

Although the EC Directive merely establishes minimum requirements and any country, in implementing them, is at liberty to exceed them, this was not done by the UK which seemed to take the opportunity to dilute the consultation between workers and employers. (This, of course, would be in line with the evidence presented by the CBI to the Robens Committee.)
At about this time, the HSE started a campaign to persuade business of the financial advantages of complying with the legislation[31] and it would be germane to ask why it took them nearly two decades to do this - and why it

[31] eg, HS(G)96 - The costs of accidents at work. HS(G)101 - The costs to the British Economy of work accidents and work related ill health. HS(G)137 - Health Risk Management: a practical guide for managers in small and medium-sized enterprises. IND(G)208(L) - Be safe - save money - the costs of accidents: a guide for small firms.

should then have been considered necessary!

It was not until 1996 - and then under perceived pressure from the EC - that the non-unionised workplace was again brought under the legislative umbrella and a form of worker consultation was introduced. This, however, was not only poorly drafted but left the chosen worker with little authority to act beyond answering questions posed by his employer.[32] Again, this seems to have been in line with the CBI evidence to the Robens Committee. It seems interesting to note that there is little evidence from the implications of the legislation that 18 years of the implementation of the Act had not resulted in a change of approach - since many large firms, presumably members of the CBI, have now had long experience of satisfactory implementation.

The final change to the legislation is the repeal of the original MS Regulations. Although additional legislative features have appeared since their introduction, the changes in the sections dealing with the Representatives have reduced their status - and this was not a requirement of the more recent legislation. By emphasising the work-related nature of their rights, the regulations have effectively removed their right to issue reports on, for example, the safety of passengers (or implementation of the letter of the regulations concerning their safety). The significance of this may only become apparent if a cruise ship has a major incident.

This article has not attempted to explore the effectiveness of the Representative, since this would be almost impossible to prove. The proof of that lies in the results - ie a business with a well-organised health and safety regime should - and probably does - save money compared to what it would have expended if it had not been so organised. But such saving does not appear in annual balance sheets so can hardly be demonstrated.

What the article has set out to demonstrate is that the concept of worker/ employer communication on a matter of mutual concern - as envisaged by the Robens Enquiry - and the use of such representatives to communicate with the Inspectors, as also so envisaged (and as originally implemented in the Act) has been steadily attenuated in subsequent legislation.

A clear consequence of this is that, in the absence of witnesses to bad

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32 As a peripheral issue, this resulted in a need to protect such a representative from 'unfair dismissal' arising from attempts to fulfil his responsibilities, as he would not be covered by the protection afforded to those representatives fulfilling trade union activities. This was achieved in s100 of the Employment Rights Act 1996.

practice, the work of the Inspector is greatly hampered, since the recommended gradations of action against a non-compliant business would occupy a disproportionate amount of time and effort on his part - assuming that his random visits exposed the initial breaches. As a result of this, instead of being able to act *before* the accident, he is usually reacting *after* it.

This, of course, is no consolation to the injured party who may not even be able to take the relatively easy civil recourse of tort of breach of statutory duty, since the inspector may, under the gradations of action and pressures of time, decline to prosecute, and is reduced to pursuing that much more difficult tort of proving negligence. Even there, the law may require him to sue a 'man of straw'!

Of equal importance is the loss of opportunity for informed and interested communication within the business with the accompanying motivational consequences - notably a reduction in the confrontational nature of much of industrial relations.

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