

# Scottish Hazards

## - the rise and fall of Robens



SCOTTISH HAZARDS

*February 2025*

## Background

The Health and Safety at Work Act came was enacted on the 1<sup>st</sup> October 1974, the culmination of two year's work by the Roben's Review between 1970 and 1972. The review itself was driven by increasing concern of rising workplace deaths and catastrophic events such as the collapse of Tip Number 7 at Merthyr Vale Colliery onto Aberfan Village, killing 116 children and 28 adults on the 21<sup>st</sup> of October 1966, as well as the James Watt Street Fire on 18<sup>th</sup> November 1968 that resulted in the loss of 22 workers. These deaths were caused by barred windows, a legacy of the buildings former use as a bonded warehouse and the fire escapes being locked by the proprietors of the upholstery company, A & J Stern.

Ironically, Barbara Castle, Employment Secretary in Harold Wilson's Government saw fit to appoint Lord Robens, who was Chair of the National Coal Board at the time of the Aberfan tragedy, to lead the first ever review of our health and safety system. His actions, or perhaps more accurately, inactions were to draw significant criticism from grieving families in the Aberfan community as well as later during the subsequent public inquiry into the tragedy.

The significant reduction of work-related fatalities might bear testimony to the success of the Health and Safety at Work Act 1974, but it would be wrong to claim this to be the sole reason. The destruction of the United Kingdom's heavy industry such as coal mining and ship building has undoubtedly contributed to the fall in workplace fatal and non-fatal injuries. Additionally, increasingly automated workplaces have resulted in fewer workers being exposed to the risks that had previously claimed the lives of, or caused series injury to, industrial workers.

The thrust of the Roben's review was to radically change the paternalistic approach to health and safety regulation and enforcement, to a system where employers and workers took responsibility for developing health and safety systems in their workplaces to ensure legal obligations were met and, as a result, are safer and healthier. The 1974 Act was always designed as enabling legislation to allow this objective to be met.

It is not clear to what extent Robens' vision for worker involvement has adapted and developed to meet a number of challenges over the 50 years the Act has been in place, not least those posed by successive anti deregulatory neo-liberal governments, both Conservative and Labour. Governments have failed to look at health and safety objectively opting to support the pleas from business that health and safety is a burden and have done nothing to ensure the Act was amended, when necessary, to ensure the provisions were suitable and sufficient for an economy becoming less reliant on heavy industry and more on service industries as well as the growth of small and medium enterprises as major employers.

The Act led to the formation of the Health and Safety Commission and Executive in 1975. The HSC established tripartism at the heart of health and safety in the United

Kingdom and its first Chair was a Scot, Bill Simpson, an official from the Amalgamated Engineering Union (AEU).

The Robens Review also stressed the view that the HSE should also be autonomous from Government. In our view the ideology of the Conservative/Liberal Democrat coalition Government that came to power in 2010 and their swingeing budgetary cuts threatened the HSE's autonomy and tripartism, two key elements of the system the Robens Review had developed.

Prior to the 2010 election, David Cameron had committed to taming the "health and safety monster", in December 2009 he told an audience, at an event organised by right wing think tank Policy Exchange<sup>1</sup>, that he was going to address the "over the top" health and safety system.

Sadly, after the election he immediately set work to deliver this commitment by commissioning three reviews, Common Sense, Common Safety (2010), Good Health and Safety is Good for Everyone (March 2011) and Reclaiming Health and Safety for All (November 2011). Three reviews of our health and safety system with 18 months, all driven by myths and ideologic opposition to workers' rights and denying injured workers and their families just compensation for injuries sustained at work.

Scottish Hazards believes the 50<sup>th</sup> anniversary is a landmark, one that should be used to reclaim and rebuild our health and safety system following the ideological attacks witnessed since 2010. It is also the time for trade unions and the hazards movement to hold the new Labour Government to account and deliver their manifesto commitments to deliver safer workplaces.<sup>2</sup>

### **Robens Vision**

At the heart of the Robens review was the balance between two elements of the health and safety system of the time, on one hand regulation and supervision by the state and, on the other, industrial and self-regulation by the state. It is often forgotten Lord Robens was a strong advocate of cutting regulation. He was in favour of codes of practice instead of regulation and reducing health and safety supervision by the state in favour of more effective management of health and safety by employers, who create the risk and their workforce, who work with them.

The arguments put forward by Robens that business found the mass of health and safety regulation overly burdensome and complicated to understand might chime with what we heard from the Conservative Government, and the Coalition before that, to justify ideological and unjustified health and safety attacks.

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<sup>1</sup> Policy Exchange 01.12.24 <https://youtu.be/SOBPe4RCTXU>

<sup>2</sup> LABOUR'S PLAN TO MAKE WORK PAY, Delivering a New Deal for Working People; P17, Safer Workplaces. [LABOUR'S PLAN TO MAKE WORK PAY - Delivering A New Deal for Working People](#)

However, the review headed by Lord Robens was commissioned by a Labour Government to address concerns at the number of workers losing to their lives in accidents at work. In 1974, 651 workers had lost their lives as a result of fatal injuries at work and 336,722 suffered non-fatal injuries. Comparison figures for 2023/24 are 138 fatal and 61,633 non-fatal respectively.

Robens' proposal for a less complicated regulatory framework, with one single piece of enabling legislation, was to lead to the Health and Safety at Work Act 1974. The difference in the approach taken by the Commission was that Lord Robens and his review consulted widely and reached a consensus among review members based on over 120 responses from a wide range of organisations.

Although there was widespread consultation by Ragnar Lofstedt and his team, the Government was to choose to ignore one of his key recommendations on the long-established legal principal of strict liability attaching to health and safety regulations, a move that would automatically deny thousands of workers injured at work their rightful compensation.

The topic of regulation will be looked at more in more depth later, but Robens was to make other, important recommendations aimed at delivering his second objective, to have those who create and work with workplace risks involved at every level of his proposed health and safety system for Great Britain.

### **Tripartism and Autonomy**

There is a modern myth that the tripartism Robens recommended applied at every level of the new health and safety system, including an alternating Chair with the TUC and business organisations nominating suitable candidates when it became their turn. This is not strictly true, since Sir Bill Callaghan the last TUC backed Chair of the HSC left office in 2009 there has not been one Chair from the organisation representing workers' interests. In that time, we have had three Chairs, Dame Judith Hackitt and Martin Temple, both from business organisations and the current Chair Sarah Newton, a former Conservative Government Minister in the DWP. This is not tripartism.

In recent years Government control and influence over appointment of vacancies in the HSE has not just extended to appointment of the Chair. The law states the Secretary of State should appoint the Chair of HSE Board and its members but what happens when the process undermines the long established and important principle of tripartism, the very foundation on which our health safety system was established.

In our view making public appointments preferable to Governments may meet their needs and, in the past the UK Government's anti-trade union agenda, but it does not provide the best representation on the HSE Board for workers.

<b>HSC/ HSE Chairs (1974 to 2024)</b>			
<b>Name</b>	<b>HSE/C</b>	<b>Period in Office</b>	<b>Organisation</b>
Sir William James Simpson	HSC	1974 to 1983	AEEU (General Secretary)
Sir John Cullen	HSC	1983 to 1993	Chemical Industries Association
Sir Frank John Davis	HSC	1993 to 1999	British Glass Manufacturers Association
Sir Bill Callaghan	HSC	1999 to 2007	TUC
Dame Judith Hackitt	HSC	2007 to 2008	Chemical Industries Association
Dame Judith Hackitt	HSE	2008 to 2016	
Martin Temple	HSE	2016 to 2020	EEF The Manufacturers' Organisation
Sarah Newton	HSE	2020	Government appointment

In 2013, three years after the Coalition Government came to power the TUC nominated the FBU General Secretary, Matt Wrack for a vacant employee representative position. Out of nowhere, Johnathon Baume, recently retired as General Secretary of the FDA, without any support from the trade union movement, not even the union he had led was appointed to represent employee interests on the HSE board<sup>3</sup>.

Nearly 10 years later there was to be a similar occurrence. Hazards Magazine reported in an article from 2022, "TUC thrown off"<sup>4</sup>, for the first time in its history the HSE did not have a TUC member on its board. The TUC had nominated then Deputy General Secretary Paul Nowak for the seat being vacated by previous TUC member, Kevin Rowan, Head of Organising. The Tories vetoed the TUC nomination and readvertised the post. Paul Nowak was nominated again but was unsuccessful, and the "successful" candidate was an individual who, many years ago, was an employee of the TUC.

He does not speak for workers.

Scottish Hazards is also aware of other examples where applications for vacant positions on the board have not been acknowledged, and the positions have been readvertised without any explanation to the applicant.

The sinister circumstances behind these moves are only a further example of attacks on the autonomy of the HSE as well as the tripartism that has, in the main worked well for workers between 1974 and 2010 and the onslaught of the coalition government's attacks on health and safety.

<sup>3</sup>CWU Connect, Unions Safety, The NW BT Unions Health and Safety Coordinating Committee  
<https://unionsafety.eu/docs/HSNewsItems%2013/GovernmentHatredOfWorkerRepresentationExposedInHSEBoardAppointmentDecision.html>

<sup>4</sup> Death of Decency, TUC thrown out, Hazards 159, 2022  
<https://www.hazards.org/deadlybusiness/deathofdecency.htm>

It is recognised that the Secretary of State appoints the Chair of the HSE Board as well as its non-executive members, this was Robens' expectation. It would probably have been his intention, to preserve and advance tripartism in our health and safety system that this would be done fairly and transparently.

And it is not sure what Robens would have thought of the decision taken by the Rt Hon Therese Coffey to appoint Sarah Newton, a former Conservative MP and Minister of State for Disabled People, Work and Health in the DWP the very department that had inflicted cuts on the HSE since 2010.

A cynical person might suggest the Government had developed a practice of trawling for the right person for positions on the board or making political appointments in the case of the Chair. Scottish Hazards would certainly say, that in the case of the two TUC nominations the two successful candidates were far, far away from being seen as a strong, independent and effective voice for workers that the two unsuccessful candidates would have been.

The Labour Government has to commit to being open and transparent when making appointments to the HSE Board and revert to Robens vision of the HSE as an autonomous and tripartite body. It cannot be tripartite if nominations, and subsequent appointments are not supported by the TUC, the collective voice of Britain's workers.

### **Common Sense, Common Safety: A review by Lord Young of Graffam**

One of the first acts of health and safety loathing Prime Minister David Cameron was to invite Tory Grandee and personal friend Lord Young of Graffam to carry out a review of health and safety regulation, and to investigate a particular bug bear of the Prime Minister, the growing compensation culture.

Lord Graffam's report *Common Sense, Common Safety*<sup>5</sup>, was delivered to the Prime Minister in October 2010 less than six months after the Coalition Government came to power

The Robens Review revisited it certainly was not. It was however the opening salvo against the health and safety system that had developed since 1974 and would lead to two further reviews really setting out the Government's plan to attack our health and safety regulation, an ideological attack that was to last 17 years culminating in the proposed bonfire of "burdensome" EU derived regulations.

In his recommendations Lord Graffam admitted that the supposed compensation culture was a matter of perception rather than reality, and that there was unmistakable evidence the public believes that the number of claims and the sums paid in

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<sup>5</sup> [Common Sense, Common Safety \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

compensation had risen in the years prior to his review. None of this unmistakable evidence was presented, our view would be that the perception was driven by inaccurate reporting by the media and the ideological untruths communicated by the Conservatives before and after the 2010 election.

In 2013, Hazards Magazine<sup>6</sup> analysed industrial injury compensation statistics and found the following:

- Only one in 26 workers developing a new work-related illness received a compensation payment
- One in 40 people, described in the article as a high-end estimate, received a compensation payment after suffering work related skin disease
- Work related COPD resulted in 1 in 68 workers, or maybe even less, receiving compensation
- The odds of receiving compensation, for work related stress, anxiety and depression lengthened considerably to 1 in 754.
- Compensation payments received by workers fell from 219,183 in 2000/2001 to 87,655 in 2011/12 a fall of 60%.

Hazards Magazine concluded that considering only a small proportion of workers received compensation for injuries at work, and the amounts of claims were reducing and not increasing as the Government stated, there was no such thing as a compensation culture.

### **Good Health and Safety is Good for Everyone: The next steps in the Government's plans for reform of the health and safety system in Britain**

Good Health and Safety is Good for Everyone<sup>7</sup> was the second attack on our health and safety system and carried out by the UK Government itself, an ideological piece of work created by the Government to ensure the enforcement agency worked within the financial constraints they were imposing on the regulator and would continue to do so for fourteen years.

This was more of the same as the earlier review, Common Sense, Common Safety, but far more brutal. It was also, in our view of the end of the HSE as an autonomous body as Robens had envisaged, as the UK Government were taking control of the work of the health and safety regulator.

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<sup>6</sup> Hazards 122, April-June 2013 [Robbed! Bandages but no bloody compensation - Hazards magazine](#)

<sup>7</sup> Good Health and Safety, Good for Everyone - The next steps in the Government's plans for reform of the health and safety system in Britain [good-health-and-safety.pdf \(publishing.service.gov.uk\)](#)

This latest review was to set out where the HSE could investigate and inspect, it was to reduce inspections in the high risk areas they were allowed to continue to inspect, at that time construction, waste management and recycling as well as certain areas of manufacturing (E.g. molten and base metal manufacture).

There were sectors where the Government has decided that proactive inspection was no longer considered to be a useful component of future interventions (agriculture, quarries and health and social care)

They identified lower risk workplaces where proactive inspection will no longer take place. These areas include low risk manufacturing (e.g. textiles, clothing, footwear, light engineering, electrical engineering), the transport sector (e.g. air, road haulage and docks), local authority administered education provision, electricity generation and the postal and courier services.

Enforcement of health and safety legislation by Local Authority Environmental Health Departments was not to escape the cull of proactive enforcement, the Government expected to see a reduction of 65,000 in workplace inspections and greater targeting where proactive inspections continue. Inspections by local authorities were dealt a double whammy, as many slashed funding for environmental health departments because of the same Coalition Government austerity measures that were also driving the attacks on the HSE.

Local authorities had always enforced health and safety differently, planning a programme for inspections on an annual basis and working with businesses to resolve issues arising from visits before resorting to formal enforcement measures. This may be the reason Fee for Intervention was rejected by local authorities as it might have undermined their established practice of assisting employers to comply with regulations.

Fee for Intervention<sup>8</sup> applies when an employer is deemed to be in breach of health and safety law. It did not become the revenue generator for the HSE many had thought and, at times, was barely washing its hands with revenue generation barely exceeding administration costs. The current fee is £174.00 per hour and is chargeable for the duration of the visit and only for work done in connection with the material breach. This can cause tension particularly if a union representative or employee has raised the concern, and the matter requires lengthy investigation and engagement until a resolution is achieved.

One positive outcome of Good Health and Safety, Good for Everyone might have been proposals to make health and safety simple, obviously this is based on the ideological assumption it is genuinely overly complicated in the first place. The HSE developed

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<sup>8</sup> HSE Fee for Intervention, [Fee for intervention \(FFI\) - HSE](#)

web-based guidance<sup>9</sup> to take employers through basic health and safety necessities, including how to appoint a competent person to help manage health and safety and accessing a health and safety consultant through the Occupational Health and Safety Consultants Register, another of the proposals in this review.

In relation to the first point the previous UK Government continually stated that half of UK businesses found health and safety complicated and burdensome. Yet in 2022 the Department of Business and Trade, in their annual report on small businesses found around 7% of small business accessed external health and safety advice in 2022<sup>10</sup> while three times that number sought similar external advice on how to grow their businesses.

In our view it is wrong for business to claim health and safety legislation is complicated if UK Government reports show so few appear to access the advice they need to ensure they meet their health and safety obligations to their workers.

### **Reclaiming Health and Safety for All: An independent review of health and safety legislation.**

More commonly referred to as the Lofstedt Review, this was the first independent review of health and safety legislation<sup>11</sup> and the supposed burden placed on businesses by an apparent raft of health and safety legislations that they seemed incapable of, or unwilling to try to understand. In his introduction he states that, in general, *the problem lies less with the regulations themselves and more with the way they are interpreted and applied.*

In pursuit of the ideological, deregulated economy they failed to accept this view and, instead were to use Lofsted's review to justify their continued attacks on health and safety, arguably undermining the independence of this work.

Ragnar Lofstedt, Professor of Risk Management at Kings College London was asked by the Government to carry out a review of health and safety legislation and make recommendations on regulations that should be revoked as they serve no purpose, updating of Approved Codes of Practice attaching to Health and Safety Regulations as well as the abolition of strict liability to mitigate health and safety risks, the latter point was to have a huge impact on trade unions seeking compensation for members injured at work.

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<sup>9</sup> HSE: Health and safety basics for your business, <http://www.hse.gov.uk/simple-health-safety>

<sup>10</sup> Department for Business and Trade, August 2022, Page 39, [Longitudinal Small Business Survey: SME Employers \(businesses with 1-249 employees\) – UK, 2022 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144442/longitudinal-small-business-survey-sme-employers-businesses-with-1-249-employees-uk-2022.pdf)

<sup>11</sup> \*[Reclaiming health and safety for all: An independent review of health and safety legislation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144442/longitudinal-small-business-survey-sme-employers-businesses-with-1-249-employees-uk-2022.pdf) to

The TUC's evidence<sup>12</sup> set out a few home truths that the UK Government were ignoring in their quest not to let facts get in the way of their desired outcome.

The pointed out in their response to the call for evidence to Lofstedt's Review that:

- the regulation-setting process in the UK has been built on consensus between employers and employees (until now)
- through the process of tripartism efforts reviewing and revoking redundant regulation has been ongoing since 1974
- regulation by ideology as opposed to effectiveness and need would destroy the consensus that had existed on health and safety regulation since the Health and Safety at Work Act was introduced
- regulation is required because in workplaces individuals do not have control over how work is managed regulations are required to ensure they are not forced to take risks with their health and safety and that of others during the course of their work.

The TUC went on to dispel the myths put forward by the Government in Common, Sense, Common Sense Common Safety and Good Health and Safety, Good for Everyone, and which Lofstedt was now being asked to legitimise in his review.

They point to evidence from the UK and abroad that suggest broad based acceptance that good regulation and enforcement stimulated economic growth while, at the same time, there was no evidence to the contrary. The TUC went further than the conclusion Lofstedt was to reach, namely that the problem lay with the interpretation and application of health and safety regulations.

The TUC pointed out to the review that the arguments that health and safety was overly burdensome and becoming increasingly so were just not true

*“The reverse is true as there has been a significant fall. We now have 46 per cent fewer regulations than in 1974 when the Health and Safety at Work Act came into effect. This process of simplification and consolidation is still going on and there are 37 per cent fewer health and safety regulations now than just 15 years ago.*

The fact was that since the HSAWA has been introduced in 1974 the HSE, working with employers and trade unions in the spirit of tripartism that Robens envisaged had reduced the number of health and safety regulations by nearly 50%.

It was not just regulations that had been simplified in the period between 1974 and 2011 when the Coalition Government were finalising their ideological assault on our health and safety system, the TUC added in their evidence

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<sup>12</sup> TUC Evidence to Lofstedt, 22 July 2011, [TUC evidence to Lofstedt review of regulation | TUC](#)

*“Over the last four years the HSE has reduced the number of forms used for collecting information from business from 127 to 54, a 57.5 per cent reduction. This has been done with the support of employers, unions and safety professionals, but the driving force has been a belief that regulation should be simple and effective.*

In our view the overly burdensome arguments never stood up and were only a cover for their ideological attacks on health and safety and wider employment protections.

### **Red Tape Challenge**

Shortly after Lofstedt was commissioned to carry out his independent review the Coalition Government launched the “The Red Tape Challenge” anticipating widespread support, particularly from the business community, for this exercise aimed at reducing burdens on business.

The Red Tape Challenge<sup>13</sup> was a chaotic waste of time and ironically placed a huge burden on the businesses, trade unions and individuals responding to the exercise. We should not forget the burden on the civil service and the resources deployed to create this piece of work that did not produce the desired result for the government. Any contrary views to the UK Government’s drive for deregulation were, in the main, ignored.

Unchecked UK<sup>14</sup> reviewed the effectiveness of the Red Tape Challenge and found:

- the Red Tape Challenge revealed the lack of public appetite for deregulation
- little weight was given to the views of the public anyway
- it was a flawed process
- the Red Tape Challenge failed to deliver on bureaucracy and cost reduction

### **Civil Liability & the Employment and Regulator Reform Act**

The long-established principle of civil liability attaching to work related injury compensation came under scrutiny of the Government following Lofsted’s recommendations and respondents to the Red Tape Challenge.

As the TUC stated at the time, is it fair for individuals to be injured at work while using work equipment that is faulty, even if the employer was unaware of the fault, for these

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<sup>13</sup> Red Tape Challenge [\[ARCHIVED CONTENT\] Red Tape Challenge - Health and Safety \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk)

<sup>14</sup> Unchecked UK [The-2011-Red-Tape-Challenge-outcomes-and-effectiveness.pdf \(unchecked.uk\)](https://www.unchecked.uk)

workers to be denied compensation for their injuries while the employer, arguably the party with the broadest (and insured) shoulders, suffers no financial detriment<sup>15</sup>.

The Lofstedt review adopted approach and asked is it reasonable for employers to have to pay compensation when an employee is injured where there is a strict liability, we would say definitely. Employers create the risks arising from their business activity, they purchase the equipment, control and monitor its use and their workforce, in most circumstances, have no such control over equipment purchased and it how it is used.

In posing that question Professor Ragnar Lofstedt without giving thought to the consequences to the counter argument, that removing strict liability would have an adverse impact on injured workers by denying the right to claim compensation for injuries sustained during the course of their employment, was all the ammunition the Government required.

This was the latest Government attempt to address a compensation culture that by, their own admission, was a perception rather than a reality, in common with their ongoing attack on workers' rights, they were going to move the perceived unfairness felt by employers resulting from civil compensation cases following work related injuries, and transfer that unfairness to injured workers by denying access to compensation where a breach of a statutory offence cannot be proved.

In common with Lord Young's review, Common Sense, Common Safety and the Government's own review, Good Health and Safety is Good for Everyone the Coalition Government was determined to deliver for their business paymasters. Lack of any evidence to support the actual existence of any compensation culture, rather than a perception of one, was of no consequence.

What was to be different on this occasion was the stealth with which they acted and the unconstitutional manner in which they removed the long-standing legal concept of civil liability attaching to health and safety compensation claims.

The Lofstedt Review was submitted to the Coalition Government in November 2011. His recommendation regarding strict liability was as follows

***“I recommend that regulatory provisions that impose strict liability should be reviewed by June 2013 and either qualified with ‘reasonably practicable’ where strict liability is not absolutely necessary or amended to prevent civil liability from attaching to a breach of those provisions”<sup>16</sup>***

The very same month the UK Government published its response to the 110-page Lofstedt Report. Despite the recommendation to review regulations imposing

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<sup>15</sup> [TUC slams changes to liability laws | TUC](#)

<sup>16</sup> [Reclaiming health and safety for all: An independent review of health and safety legislation \(publishing.service.gov.uk\)](#) Page 91, Chapter 21.

health and safety by 2013, as Lofstedt recommended, the UK Government made its intentions clear in their response, saying

***“The Government recognises the unfairness which results where an employer is found liable to pay damages to an injured employee despite having taken all reasonable steps to protect their employees from harm. The Government will look at ways to redress the balance, in particular preventing civil liability from attaching to a breach of such provisions”<sup>17</sup>***

They ignored the view of their independent specialist and signalled their intention to redress the balance of “fairness” they suggested required to be addressed.

On the 11<sup>th</sup> of June 2012, the published the impact assessment looking at two options,

1. target strict liability duties and either qualify them with ‘reasonably practicable’ or prevent civil liability from attaching to them (the Lofstedt recommendation), and
2. prevent civil liability from attaching to all duties under health and safety regulations by amending section 47 HSWA.

In the summary to the impact assessment, the HSE sets out their stall early, choosing to support the Government’s stated intention to prevent civil liability attaching to health and safety regulations. They argue this option would most likely drive improvements in the compensation culture perception and reduce overcompliance with health and safety regulations!

Coming from our health and safety regulator, their subservience to their sponsoring department and interference into who gets compensation was wrong. They highlight in the impact assessment accounts of employers over complying with health and safety regulations yet provided no evidence of this apart from anecdotal accounts, harvested from the already discredited Red Tape Challenge. Scottish Hazards would have hoped the HSE would have recognised, in their role as our health and safety regulator, the importance of developing their own evidence base aimed at supporting or discounting the anecdotal evidence of over compliance with health and safety regulation.

It is hard to build an accurate picture of the number of compensation cases that have not progressed as a result of removing strict liability, but the decision will have resulted in workers being denied compensation for injuries suffered as a result of work. The underhand way the Government of the time pushed this change through without any consultation and acted against the recommendations of its own expert Ragnar Lofstedt was disgraceful and the current Government should address this injustice

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<sup>17</sup> [The Government response to the Lofstedt Report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), Page 14.

If a worker is injured as a result of unseen catastrophic failure of work equipment or any other matter, then surely any litigation should be a matter for the employers and the supplier of the equipment. Those with the broadest shoulders should pay the price.

### **Employment Medical Advisory Service – ever decreasing circles**

While Lord Robens may have been a curious choice to review Britain's health and safety system given his close connection to the Aberfan disaster, what is not so well known in his time as head of the NCB is he was an advocate of the need to improve occupational health in the mining industry.

It is, therefore, less of a surprise the Robens Review contained a chapter devoted to occupational medicine including reference to the Employment Medical Advisory Service set up in 1972. The review suggested the service should sit within the proposed health and safety authority (the HSE) on its establishment and EMAS came into the HSE on its inception in 1975.

The service was designed to provide advice to workers and employers on work related health concerns as well as supporting HSE inspectors and Environmental Health Officers to enforce the HSAWA in relation to work related ill health. Employment Medical Advisers within EMAS had warranted powers of inspection, to obtain documents and other information from employers as well as carry out medical examinations on workers when it was felt that work was harmful to health.

At the outset it was envisaged EMAS would employ 120 doctors with additional nurses and support staff.<sup>18</sup>

In 1990 there were 65 doctors and 21 nurses working in EMAS with more occupational medicine specialists working in Employment Rehabilitation Centres.

By 2004, EMAS was reduced to a service consisting of 15 doctors and 27 nurses for the whole of the United Kingdom.

Robens said at the time said he could not envisage EMAS developing in isolation from the mainstream NHS, and went on to add his commission would like to see more emphasis on occupational medicine in the training of doctors. The UK are now training less occupational health doctors and nurses than we ever have and, from the HSE website if you want information on EMAS you must apply in writing (no e-mail address supplied). A search of the HSE Annual Report and Accounts will take you no further forward if you want information on EMAS, there appears to be none.

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<sup>18</sup> Regulating Health and Safety at Work: An Agenda for Change? Phil James and David Walters, Institute of Employment Rights, December 2005, P64

This is a clear example of the HSAWA not changing with the times and successive UK Governments have allowed EMAS to be decimated and it was never allowed to develop as Roben's envisaged.

As far back as the Robens Commission there was debate about the definition of a comprehensive occupational health service. The British Medical Association urged, in their evidence to the Robens Commission that employers should, by law, have to provide occupational services to a specified standard, or to pay for a service provided by the state. The review had also grappled with the role of such services, some of the respondents advocated closer connection between NHS health interventions and workplaces with less focus on specified disease and more on emerging concerns such as mental health and vocational rehabilitation. It is deeply disappointing these issues causing concern regarding occupational health provision have not been addressed over 50 years later.

The excellent manifesto document from Doctors in Unite, published in 2021,<sup>19</sup> sets out their proposals for a statutory occupational service delivered by the state, there is some commonality with the BMA's response to the Robens Review over 50 years ago. Scottish Hazards supports their proposals for National Occupational Health Services, and for these services to be accountable to the UK Parliament, the Scottish Parliament and the Welsh Assembly and be mainstreamed into existing statutory health services.

Interestingly they advocate for local services controlled by workers, regulators and communities. This replicates, to a certain extent, some of the Scandinavian models developed over the last 50 years, local services based on social partnership, a model that UK Governments and employer's bodies have never subscribed to, or spent any time trying to, understand.

Last year the previous UK Government carried out a consultation, Occupational Health - Working Better, aimed at increasing access to occupational health, including a minimum framework for occupational health provision, what lessons could be learned from other countries and alternative ways of delivering occupational health services using a multi-disciplinary workforce.

Scottish Hazards responded that any framework should be statutory, needless to say the Government opted for voluntarism. We pointed out to the UK Government that in other countries cited as examples where workers had far higher access to occupational health provision, in each one of these examples accessibility was linked to occupational health being placed on a statutory footing in these countries.

On the last point, we suggested more could be done to improve delivery of occupational health by focusing on non-medical interventions and looking at equipping trade union representatives to support colleagues manage sickness absence and return to work by

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<sup>19</sup> Doctors in Unite, October 2021 [A National Occupational Health Service – Doctors in Unite](#)

providing training on non-medical interventions such as case management practices. Ideally, and in the spirit of Robens, employers and trade unions would work together to promote health at work, occupational health, including prioritising job retention and rehabilitation. This would lead to far more positive resolution to ill health cases at work, rather than the current situation with unions having to support members fighting draconian sickness absence management procedures and facing termination of employment.

### **HSE Cuts, Cuts and More Cuts.**

The threat to our health and safety system Robens developed was clear in the lead up to the May 2010 election when the Tory/Lib Dem coalition Government came to power. Attacks on the autonomy of the HSE and tripartism were matched with an immediate slashing the DWP grant to the HSE, from £239million in 2009/10 to £212million the following year. However, things were about get a whole lot worse. In 2022/12 the HSE were to lose a further £43.5 million grant funding for the DWP to £170 million. Within two years of the coalition coming to power David Cameron's government and his Lib Dem lapdogs had slashed the HSE's funding by 29% and their attack on the organisation was now in full swing.

<b>HSE DWP Grant Funding (000's)</b>		
2009/10	2014/15	2019/20
£239,430	£141,054	£121,343

By the time the Government had been in power for 10 years the HSE budget had been cut by 49%. It is hard to think of any other NDPB impacted to this extent, by the ideological attacks by the Tories, intent on peddling their own myth that health and safety was a burden. As one might expect most of the pain inflicted on the HSE fell on the workforce.

The latest figures may suggest a turnaround in the HSE fortunes with the 2022/23 accounts showing a DWP payment of £165.8 million. However, the HSE assumed responsibility for building regulation in England in 2022. The Building Safety Regulator strategic plan 2023 – 24 does not provide information in financial resources provided to the HSE although the accounts mention the HSE receiving substantial funding from the Department of Levelling Up, Housing and Communities to set up and run the building safety regulation for England. The cost has not been disclosed but it has to be borne in mind this work being carried out by our UK wide health and safety regulator will only be of benefit to England.

<b>HSE Headcount 2009/10 to 2023/24</b>					
	<b>2009/10</b>	<b>2014/15</b>	<b>2019/20</b>	<b>2022/23</b>	<b>2023/24</b>
Frontline Staff Of which the following are inspectors	1464 <b>(1342)</b>	1047 <b>(981)</b>	1059	1004	976
Inspectors working in functions other than inspection	153	70			
Other professional or specialist staff	1425	1111	1019	1396	289
Other staff (of which agency)	660 (118)	375 (0)	270 (28)	280 (105)	257 (50)
<b>Total Staff Numbers</b>	<b>3702</b>	<b>2575</b>	<b>2371</b>	<b>2785</b>	<b>2742</b>

It is not known how many of existing HSE staff now work in building regulation, but we have concerns some very experienced HSE staff may have been transferred to this work.

HSE staffing figures over the same period suggest the organisation is not best placed to lose experience staff without further damage to enforcement of our workplace health and safety legislation.

In the ten-year period to 31 March 2020 the number of HSE frontline staff had been cut by 28%, and by 2023 total job losses amongst this group of staff totalled 460, a 31% reduction from 2010. In the first five years, inspector numbers alone had fallen by 25%, until HSE management appear to have decided we should no longer have that information, and they now only publish numbers of frontline staff. In 2004 the HSE employed 1619 inspectors, twenty years later they have 976 “frontline staff”, a reduction of 40%.

The group of staff labelled as other professional and specialist staff suffered cuts of 28%, but in the three years to 31 March 2023, 382 other professional or specialist staff had been recruited into the HSE. It is not clear from the accounts what these roles are, building inspectors perhaps.

The biggest cuts fell on other staff, support workers in lower grades with 380 (60%) job losses in 10 years with a net increase of 10 added jobs between 2020 and 2023. A net reduction in posts of 58% in 14 years.

Over the years the HSE have lost 100's of experienced and dedicated workers. Many inspectors could have earned far more working as health and safety consultants or in industry. The HSE have lost that experience along with the positive working relationships that had developed over many years between inspectors, trade union reps and employers. The loss of experience extends to other staff, those who supported

frontline workers and who are no longer there to do so. Fewer support staff has resulted in more workers being removed from frontline activity for admin purposes such as progressing prosecutions.

Scottish Hazards believes pro-active enforcement is the key to accident prevention, but that activity does not have to be carried out by warranted enforcement officers. The UK recognises the proactive work that trade union health and safety reps do day in, day out to prevent accidents and establish the highest standards of health and safety management in their workplaces, but successive Governments and the HSE have always fought back against other methods of health and safety interventions such as roving safety representatives and allowing union health and safety representatives to issue provisional/union improvement notices

Roving safety reps in agriculture and the Workers Safety Advisor Pilot in Scotland's third sector are two such initiatives. In the 1990s the TGWU piloted a roving safety representatives' scheme in agriculture in the UK, taking the trade union safety effect into non-unionised workplaces. The pilot evaluated favourably but in the same way as many other innovative occupational health and safety was consigned to history. In 2004 the HSE funded the Worker's Safety Adviser Challenge Fund with many trade union backed projects receiving funding. One such project, managed by the STUC, provided support to third sector organisations, helping them to establish health and safety management systems and, crucially, ensuring their workforce were fully involved in the process.

The UK Government should also provide reps with the power to issue union improvement notices, sometimes known as union improvement notices. These are used extensively in other countries, particularly in Australia and reps issue a notice to employers in breach of health and safety regulations, a timescale to address their concerns and the consequences of not doing so. The HSE have, in the past have been strongly against introducing these notices, but any objection now would be hypocritical their retreat from proactive enforcement on most workplace and business sectors.

In our view the initiatives outlined above fit entirely with the thoughts of the Robens Review about putting workers at the heart of health and safety decision making along with their employers. Since 1974 we have also witnessed de-unionisation of the UK workforce often, as is the case in the last 14 years, for no other reason than an ideological opposition to workers have a strong independent voice to protect their financial physical and psychological security.

In the lead up to the election, now Prime Minister Keir Starmer committed to a review of health and safety legislation, we cannot help but feel this is going to disappoint because up until now they are missing the point, it is our health and safety system that needs reviewed.

A modern day Robens is required to establish if our enforcement body is fit for purpose, what needs to be done to revitalise health and safety (unashamedly stealing the name of a previous HSE strategy), how do we bring EMAS back and with a bigger role in improving the UKs occupational health and how do we ensure autonomy is returned to the HSE and never placed under threat again.

## **Conclusion**

It is fair to say both the legislation that derived from Robens, the Health and Safety at Work Act 1974 and the HSC/HSE have, in the main fulfilled the functions the Robens Review recommended, certainly for thirty six of its fifty year history. This would be harder to argue that view had it not been for the requirement to bring forward the “six pack”<sup>20</sup> regulations to ensure the UK met their obligations to transpose EU Directive into our health and safety regulatory framework.

The results of this year’s general election put paid, once and for all of any bonfire of retained EU regulation and denied the Tory Party and its Brexiteers the opportunity to cause any further damage to our health and safety system. However, alarming messages are being sent out by the Labour Government, Prime Minister, Sir Keir Starmer is committed to getting “rid of regulation that needlessly holds back investment”. On the other hand, his New Deal for workers contained a commitment to review health and safety legislation to ensure it reflects the diversity of the workforce.

The latter maybe promises some hope for the future that long standing concerns and complaints about occupational stress, bullying, work related suicides and sexual harassment not being investigated or RIDDOR reportable might change but we are not holding our breath. The first message is concerning and is nothing more than a return to the ideologically driven Tory mantra that regulation is burdensome.

Are we about to witness the Red Tape Challenge Mark II, the Labour version.

The UK and Scottish Governments have to accept the cost of occupational ill-health and injury, currently running in excess of £20billion per year, is unsustainable as is the pain and heartache suffered by workers and their families when things go wrong.

Too many workers in the UK are denied an effective voice in health and safety in their workplaces. In workplaces where trade unions are recognised the SRSC Regulations have proven to be effective in preventing injury and ill health. The Health and Safety (Consultation with Employees) Regulations 1996 apply to non-unionised workplaces and, in our experience are largely ignored by employers or the arrangements in place are not shared with the workers. It also has to be said that the HSE’s record of enforcing consultation regulations is abysmal, only one notice issued in the last 10 years for a breach of the 1996 regulations.

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<sup>20</sup> <https://www.tuc.org.uk/guidance/what-are-main-health-and-safety-regulations>

Scottish Hazards believes powers over health and safety, equality and employment rights should be devolved to the Scottish Parliament allowing us to develop effective legislation to hold employers and individuals accountable when workers are killed as a result of health and safety failures. It would allow for a tripartite body, a Scottish HSE or similar to address the issues arising from non-reportable harm caused to workers and their families as described elsewhere. We would have our own inspectorate and enforcement body with a focus on proactive interventions, provision of advice, supporting improvement to remedy breaches but taking enforcement action where appropriate.

In order to repair the damage to our health and safety system and revitalise Robens vision we are seeking the following commitments from the UK and Scottish Governments.

**Scottish Hazards is seeking the following joint commitments from the new Labour Government and the Scottish Government 2024**

1. End deregulation agenda and develop an occupational health and safety system based on prevention, precaution and participation. In Scotland this should start with full devolution of health and safety regulation and enforcement, allowing convergence with existing devolved powers including health, environment, justice and local authorities. This should be followed by the creation of a properly funded and staffed Scottish Occupational Health and Safety Agency (SOHSA), funded through a Scottish Work Environment Act Independence could deliver a healthier future for Scotland's workers - OEHRG - University of Stirling - 28 March 2014 ([regulatingScotland.org](http://regulatingScotland.org))
2. To work with the devolved nations to build world leading occupational health services that support, not sanction, workers, place job retention and rehabilitation at the heart of occupational health and mainstream delivery of occupational health services into our NHS of Scotland, Wales and England
3. To carry out a wide-ranging review of the HSE with a particular emphasis on redressing the ideological attacks inflicted on the organisation by the Tory Government and its coalition partners in the early days. There should be an immediate return to the Robens principles of autonomy and tripartism and the body should, in the short term, better reflect the views of workers in Scotland and Wales, nor withstanding the comments regarding devolution of health and safety in point 1 above.
4. The decision to transfer oversight of local authority for health and safety enforcement to the HSE should be reversed.

### **Scottish Hazards is seeking the following commitments from the new UK Labour Government**

1. Put in place legislation which imposes duties upon company directors in relation to health and safety, and requiring large companies to appoint a director responsible for health and safety.
2. Ensure strong enforcement of the rights of trade union health and safety representatives under the SRSC Regulations and commit enforcers to developing a positive working relationship with safety representatives, ensuring that all reported concerns from trade union safety reps will be addressed effectively within a reasonable time. The HSE must reinstate its direct phone lines and create a whistleblower help line.
3. Create regulations enabling roving trade union health and safety representatives to access and support any worker within their sector, building on the support the Scottish Government gave unions during the covid pandemic.

### **Scottish Hazards is seeking the following commitments from the Scottish Government**

1. A commitment to make a comprehensive Scottish NHS based Occupational Health Service a reality. A major recommendation of the 2019 Scottish Government Health and Work Strategy Review Report was to “Establish a single, integrated National Occupational Health body for Scotland.” We need an occupational health service which is based on prevention and provides rehabilitation focussed on those injured and made unwell. This should include a robust primary care element with GP’s recording occupation and being given support from community based occupational health advisors.
2. Ensure Public Health Scotland and local public health departments work in partnership with others to ensure strong public health action and messaging which recognises that work and the work environment is a key factor determining the population’s health, that improving workplace health is a key part of reducing inequalities in health and building a sustainable economy based on Fair Work.
3. Develop a Scottish National Care Service which is not for profit and free at the point of need and within that establish national collective bargaining in the social care sector
4. Support for proposals to amend the law on culpable homicide in Scotland to ensure all those responsible for involuntary deaths by homicide are prosecuted consistently, regardless of where that death occurs, whether in our communities or workplaces, large or small, serving as a deterrent and helping prevent future loss of life.
5. Support the development and adoption of a Scottish Toxics Use Reduction Strategy which would provide resources and tools to help businesses, local authorities and communities to find safer alternatives to toxic chemicals.

5. Ensure all aspects of Fair Work as identified in the Fair Work Framework are fully implemented. We welcome the Scottish Government's commitment to improving the quality, safety and security of work in Scotland. We welcome the Framework's emphasis on the importance of worker involvement, trade unions and partnership. To implement Fair Work First, and use public sector funding streams and procurement to drive improvements in health and safety and support for Scottish jobs, including just transition
6. Create a statutory Scottish Employment Injuries Advisory Council to provide expertise about support for people who can no longer work because of workplace injury or disease, with resources and powers to carry out research.

**Scottish Hazards**  
**February 2024**