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New Swedish legislation on democracy at the workplace

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Means of providing workers with a larger say in the running of their workplaces—whether described as workers' participation, co-management, co-decision, co-determination or joint regulation [2]—are at present a topic of lively discussion in many parts of the world. Sweden is no exception, and in fact 1 January 1977 saw the coming into effect of important new legislation expressly designed to provide for a greater measure of democracy at the workplace. The Joint Regulation in Working Life Act [3] and the companion Public Employment Act constitute a thoroughgoing revision of the labour legislation enacted during the 1920s and 1930s on collective agreements, conciliation, and freedom of association and collective bargaining. Strong pressure from the powerful Swedish trade unions was obviously one of the factors accounting for the adoption of these new measures, which go a long way towards meeting workers' demands in the labour relations field and are also of some international significance, but it is worth noting that support for their main provisions came from all sides of the Riksdag (the Swedish Parliament).

The following article begins by briefly sketching in the background to the new legislation. It then summarises the main features and aims of the Joint Regulation Act before looking at its innovative provisions in more detail. This is followed by separate sections devoted to the effect of the Public Employment Act and to the views expressed by employers' and workers' organisations and political parties on the two new enactments.

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[2] It is not intended to imply that these terms are synonymous, only that they all denote approaches to the same general goal. The term " joint regulation " is used in this article to indicate that the new Swedish legislation emphasises the exercise of workers' influence through agreements with employers rather than through workers' representation on supervisory boards.

[3] An English translation will be published in the *Legislative Series* in due course. In this article the title will hereafter be abbreviated to Joint Regulation Act.

A note on the background

There is no need here to go into detail regarding the general industrial relations context in which the new legislation has been introduced. The characteristic features of the Swedish labour relations scene are well known to readers of the *Review*:[1] for instance the high level of unionisation, the predominant role of the central organisations of workers and employers in negotiating collective agreements and their periodic renewal, the traditionally strong sense of labour discipline and the prohibition of industrial action during the currency of a collective agreement. A few words may nevertheless be said about the particular circumstances that triggered off demands for the legislature to act in the field of industrial democracy.

The origins may be said to go back to 1906, when the Swedish Employers' Confederation and the Swedish Confederation of Trade Unions concluded an agreement whereby the employers acknowledged the workers' right to form organisations and via those organisations to negotiate on rates of pay and conditions of employment. At the same time, and this is the important point, the employers specifically reserved the sole right of organising and assigning work and of freely engaging and dismissing workers. Since then political democracy has made great strides: universal suffrage was established and the electorate participates massively in national and local elections. But democracy at the workplace has lagged behind, even though considerable changes have been introduced both by negotiation and by other means. All the time the right to organise work remained vested in employers.

The reaction to this state of affairs was particularly pronounced during the 1960s, when the big trade unions grew more insistent in their criticism of certain aspects of working conditions. They maintained that occupational health and accident risks were on the increase, and they demanded effective countermeasures. They pointed out that the ongoing structural transformation of commerce and industry, which aimed among other things at strengthening Sweden's international competitiveness, was a cause of insecurity in that it implied a sharp drop in employment opportunities. All this led to demands that workers' representatives should be given fuller information and greater powers of joint regulation in the management of company affairs.

In 1971, at the request of the trade unions and the Riksdag, a Parliamentary Committee was set up to inquire into these and other questions of labour relations in the public and private sectors. Great differences of opinion became apparent between the employers' and workers' representatives on the Committee, but at the same time the employers were prepared to concede several changes, and the Committee was able to present the report containing its recommendations for legislative action in January 1975. After this had been submitted for observations to a number of authorities and organisations,

[1] See, inter alia, Gunnar Högberg: " Recent trends in collective bargaining in Sweden ", in *International Labour Review*, Mar. 1973, pp. 223-238.

including the employers' and workers' confederations, the then Social Democratic Government moved a Democracy at Work Bill in the Riksdag in March 1976. This text, which as already mentioned went a long way towards meeting the wishes of the trade unions, and the companion Public Employment Act were adopted by the Riksdag, after an intensive discussion and some amendment, in June 1976. The new Swedish Government which took office in October 1976 announced that, at any rate for the time being, it accepted the new laws as they stood, and as we have seen they came into force on 1 January 1977.

The two new enactments do not mark the end of the reform of labour legislation. A new Parliamentary Committee has been appointed to investigate a number of outstanding issues concerning the democratisation of working life and to supervise the implementation of the new legislation. One of the first tasks of this Committee will be to consider the enactment of more comprehensive provisions governing the role of shop stewards, while another will be to examine demands from the trade unions that they be given sole right of decision in certain matters.

The Joint Regulation Act

Summary of main features and aims

The Joint Regulation Act supersedes the three basic enactments in the field of labour legislation: the Conciliation in Labour Disputes Act (1920),[1] the Collective Agreements Act (1928) [2] and the Right of Association and Collective Bargaining Act (1936).[3] Like the earlier enactments, the Joint Regulation Act is founded on the principles of freedom of association and collective bargaining. Workers and employers are entitled to form organisations and to negotiate in matters connected with their mutual relations: the collective agreement remains the most important instrument governing those relations. In the first instance it is up to the parties themselves to resolve their disputes, but the State is required to provide an efficient conciliation machinery and judicial procedure enjoying the confidence of both sides. Many of the provisions covering these matters in the earlier legislation have therefore been incorporated in the new Act, subject to certain amendments.

The main purpose of the Act's innovative provisions is to enable workers, by means of appropriate agreements, to exert influence over the organisation of work and the management of company affairs. The most important changes can be summarised as follows:

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[1] ILO: *Legislative Series*, 1920—Swe. 6-8, 1931—Swe. 4, 1935—Swe. 4 and 1936—Swe. 7 A.

[2] Ibid., 1928—Swe. 2.

[3] Ibid., 1936—Swe. 8 and 1940—Swe. 3.

(1) The principle whereby the employer alone was entitled to organise and assign work and could freely engage and dismiss workers has been replaced by a statutory requirement that collective agreements be concluded setting out the rights of workers in respect of joint regulation. Trade unions are entitled to resort to industrial action if such collective agreements fail to materialise; this is termed a " residual " right to industrial action.

(2) Should a dispute arise over such matters as a worker's obligation to perform certain tasks, or the implementation of a joint regulation agreement, the trade union organisation that negotiated the agreement with the employer will now enjoy a " priority " right of interpretation; in other words its opinion will hold good until a settlement is reached voluntarily between the parties or the Labour Court has ruled on the issue.

(3) In matters not covered by collective agreements, the position of the trade union with which the employer has a collective agreement has been strengthened by provisions conferring wider powers of negotiation and requiring the provision of fuller information.

(4) A trade union organisation having a collective agreement with an employer is now empowered to veto subcontracting or similar arrangements which appear to be contrary to the law or to a collective agreement applying to the work in question or which are otherwise at variance with accepted practice within the industry or trade concerned.

It will be seen that the rights referred to in points (2) to (4) above are enjoyed only by trade union organisations having a collective agreement with the employer. Other organisations which have not managed to conclude such an agreement—often known as minority organisations—lack these rights. This limitation was necessary for practical reasons in order to avoid conferring the new rights on all organisations irrespective of size or permanence.

Many of the statutory provisions in the new Act are framed in such a way that they can be adapted as necessary to the particular conditions of different industries, companies, etc., through collective agreements. This flexibility provides an assurance that the new system will operate effectively and satisfactorily, without unnecessary red tape or formality, and in a manner calculated to increase workers' job satisfaction and to encourage rational and efficient working practices. For this reason the Act does not include any provision for the exemption of small enterprises.

Apart from the conclusion of joint regulation agreements, workers can continue to exert influence through their statutory right to representation on the boards of joint-stock companies and other corporations employing not fewer than 25 persons.[1] Employees of such enterprises are entitled to nominate two board members.

[1] See ILO: *Legislative Series*, 1972—Swe. 1. Definitive arrangements came into force on 1 July 1976.

Scope

The Joint Regulation Act applies equally to the public and private sectors, but the public sector is also covered by certain special rules designed above all to reconcile the exercise of workers' influence with the broader public interest. This question is dealt with further on.

But similar problems also exist outside the public sector. The private sector includes a number of bodies—for example political, trade union, religious, cultural and charitable organisations—whose activities are generally determined and governed by democratic procedures. The same applies to the co-operative movement and other joint enterprises. In cases of this kind, any attempt by employees to influence the aims and objectives of these organisations would come into conflict with other democratic interests. This latent conflict has been resolved by the proviso that workers' influence shall not be permitted to extend to matters concerning an organisation's aims and objectives in so far as these are determined by other democratic means. Enterprises and media which have a hand in the shaping of public opinion, e.g. the press, radio and television, are further instances where the scope of the Joint Regulation Act has been limited in order to safeguard interests other than those of workers. For example, it cannot be reasonable that journalists or compositors should have the right to influence the political complexion of a newspaper.

Joint regulation agreements [1]

The Act does not impose a standard model of joint regulation. Instead it leaves the parties free, acting through negotiations and collective agreements, to develop industrial democracy at the speed and in the direction best suited to the circumstances in each case. The negotiation approach will also facilitate continuous adjustment to the changes occurring in working life and in the community at large.

Workers' rights under collective agreements providing for joint regulation can be asserted in all matters concerning the employer-worker relationship, which are held to include management questions. But the Act does more than just say that joint regulation agreements should be concluded by workers' and employers' organisations. It also puts teeth into the provision by authorising a workers' organisation to take industrial action in the event of a joint regulation agreement failing to materialise. This residual right to industrial action, as it is called, will apply even if the workers' organisation is bound by a collective agreement on wages, provided that a demand for joint regulation was presented in the course of the wage negotiations. It is not the intention, however, for democracy at the workplace to emerge as a result of industrial conflict. Periods of peaceful relations are needed between rounds of wage negotiations,

[1] Procedures for joint regulation may form the subject of a separate agreement or may be included in a broader collective agreement.

and the principal function of the residual right to industrial action will be to help bring pressure to bear for a proper solution of joint regulation questions in the course of collective bargaining.

Time will show the particular spheres in which collective agreements providing for joint regulation are concluded. Some of the most eligible topics appear to be the working environment and industrial health services, personnel policy, the organisation of working hours and the choice between alternative remuneration systems. Employers and workers have already started negotiations with a view to reaching such agreements.

Right to negotiate

In addition to the right to conclude collective agreements, workers' organisations are guaranteed a basic measure of influence in fields that are not covered by collective agreements.

First of all, the Act affirms that both workers' organisations and employers have a general right to negotiate: this principle applies equally to unions having a collective agreement with the employer and to minority organisations. Needless to say, the right to negotiate applies to rates of pay, but it also covers joint regulation concerning the organisation of work and the management of company affairs.

What is more, the new Act strengthens the negotiating position of the trade unions, above all by imposing on employers what is termed a primary duty of negotiation. An employer must now negotiate with the trade unions on his own initiative before deciding on important changes at the workplace, e.g. switching over to a new line of business, reorganising production methods, or selling the firm. Changes affecting individual workers, e.g. personnel transfers, also come within the scope of the employer's primary duty to negotiate. The employer must also negotiate on other matters if so requested by the trade union.

The obligation to negotiate applies in the first instance vis-à-vis the local trade union organisation having an agreement with the employer. Where important changes are envisaged affecting workers who belong to a trade union organisation with which he does not have a collective agreement, the employer must also negotiate with that organisation.

If the parties cannot reach an agreement, the local trade union organisation may refer the matter to the central trade union authorities. In that event the employer must defer his decision or its implementation until negotiations have been concluded at both levels. In emergencies and other exceptional circumstances the employer is exempted from this obligation, though his duty of negotiation as such continues to apply. An emergency is a situation in which safety at the place of work or important public or comparable interests are jeopardised. Steps must also be taken, for instance, to avoid damage to property. Other exceptional circumstances may arise when an employer is unpredictably confronted with a situation in which it is obvious that an immediate decision is required.

In cases of minor importance which the trade union organisation wishes to make a subject of negotiation, the Act eases the restrictions placed on an employer who wants to take a decision before negotiations have been concluded, provided there are " special reasons " in favour of his doing so.

In all cases where the parties have failed to agree and the negotiations between them have been concluded, the employer is free to take and implement his decision.

Information

If the right to negotiate is to serve its purpose as a means of exerting workers' influence, it must be supplemented by rules ensuring that the workers' representatives have access to the information they need. The basic premise of the right to joint regulation is that workers must have the same right to comprehensive information about the enterprise's activities as the employer himself.

The Joint Regulation Act therefore makes it the duty of the employer to keep the local workers' organisation with which he has a collective agreement informed of the financial and production aspects of his business and the principles on which his personnel policy is based. The workers' organisation is also entitled under the Act to examine accounts and other documents to the extent necessary in order to safeguard its members' interests in relation to the employer. The employer is further required, within reasonable limits, to assist it in these investigations. The assessment of the organisation's needs in this respect is to be based in the first instance on what the organisation itself believes to be necessary.

There are certain cases, however, in which the employer's duty to provide information does not apply. These are cases involving private matters unrelated to the business or concerning personal privacy or interests, the tactical measures taken or planned by the employer in an industrial dispute, and matters of a particularly secret or confidential nature. The intention is that these exceptions should not be interpreted too narrowly in view of the important interests that may be at stake. The employer's business interests and personal privacy are also safeguarded by rules of non-disclosure. The scope of such rules is primarily a matter for negotiation between the parties at the individual workplace: if they are unable to reach agreement, the issue is to be referred to the Labour Court.

A person who has received confidential information in his capacity as a representative of a local or central trade union organisation may divulge it only to a member of the union's executive, who is thereupon himself bound to refrain from disclosing the information.

Priority right to interpret agreements

One important issue in employer-worker relations at the workplace is whose opinion should prevail in a dispute concerning the provisions governing

such relations. This priority right of interpretation, which has hitherto been exercised almost exclusively by the employer by virtue of his authority to organise and assign work, is henceforth vested in the trade union having a collective agreement with the employer, in so far as the point at issue concerns a provision on the subject of joint regulation rights or the duties of an individual worker, e.g. in the event of a dispute concerning overtime or a worker's obligation to perform certain tasks. The workers' priority right of interpretation, however, is not to apply if it is exercised unlawfully or in other exceptional cases. In pay disputes the priority right of interpretation is retained by the employer but is limited in that the employees' interpretation of the pay settlement will become operative unless the employer immediately initiates negotiations and, if no agreement can be reached, files proceedings with the Labour Court within ten days of the conclusion of the negotiations.

Union veto on subcontracting or similar arrangements

The Joint Regulation Act introduces radical provisions in a sector where developments have taken an alarming turn, namely the employment of large numbers of workers by subcontractors who evade taxes, disregard current rates of pay and flout job security and industrial safety regulations. The Act requires the employer to negotiate with the trade union with which he has a collective agreement before concluding any agreement for the use of contract labour or some similar arrangement. In this way the workers are now given an opportunity to state their views concerning the suitability or otherwise of resorting to outside labour. But the central trade unions are also entitled to prohibit contract work and commission agreements which appear to imply a breach of the law or of the relevant collective agreement or which are otherwise contrary to accepted practice within the industry or trade concerned. This will enable the trade unions to nip undesirable contracts in the bud. To supplement this facility, rules concerning the provision of fuller information about the contractual relationship in situations of this kind are to be proposed in new fiscal legislation. On the other hand there is no question of a general prohibition of contract work. The great majority of companies offering such services are of course serious businesses and an asset to the national economy.

Industrial peace and liability for damages

There is no change in the situation whereby the conclusion of a collective agreement obliges both parties to desist from industrial action during the period of its validity. Prior to the Act's adoption workers in breach of this obligation could be assessed for damages of up to 200 Swedish kronor (approximately £30 or US$50). The government Bill proposed that this penalty should be retained, but the Opposition (now the Government) advocated the abolition of the Skr.200 limit. Votes were evenly divided on this point in the Riksdag debate and when, in accordance with Swedish parliamentary procedure, lots were drawn to settle the issue, the Opposition's proposal was

carried. However, the Riksdag has stated that the abolition of the limit does not imply that there should be a general increase in the level of damages awarded; on the contrary, it is assumed that penalties imposed for unlawful industrial action will continue to be moderate.

The fact is that once a dispute has led to unlawful industrial action, the restoration of peaceful industrial relations depends less on sanctions than on other measures: the main purpose of the award of damages is to underline the principle that *pacta servanda sunt* (agreements are to be complied with). The new Act therefore requires the employer and the local trade union organisation concerned to open negotiations as soon as unlawful industrial action has been taken, to join forces in trying to eradicate any unsatisfactory conditions that may have provoked it and to work for the termination of the dispute. In determining the severity of the sanctions to be imposed for participation in an unlawful action, particular consideration must be given to the circumstances revealed in the course of the above negotiations—e.g. whether the action was excusable in view of the circumstances which led up to it—and to the results of the negotiations.

The fact that workers have generally been considered to need safeguards against excessive claims for damages does not imply any departure from the basic principle that a collective agreement once entered into is to be complied with. The question of damages should in fact arise where deliberate and systematic assaults are made on this principle. In really grave instances, where industrial action in violation of a current collective agreement is extremely prolonged, where there is a complete deadlock between the two sides and where the efforts made by the trade union organisations to induce their members to comply with their obligations under the agreement are fruitless, workers can as a last resort be dismissed from their employment. This last resort should not be used, however, except in dire necessity and after all other possibilities of settling the issue have been exhausted.

As regards general liability for damages, the Act is based on the principle that damages in respect of breaches of the new rules of joint regulation are to be awarded against employers or trade union organisations, as the case may be, whereas the liability of the individual worker is confined to his participation in unlawful strikes. The application of this principle implies, for instance, that a workers' organisation can be held liable for damages if it has made improper use of its priority right of interpretation and if its representatives had no good grounds for the view they propounded in a dispute. The individual worker, on the other hand, cannot be held liable for following the instructions of his union in such a case.

Political strikes and sympathy action

The new Act does not contain any provisions concerning political strikes or other sympathy measures directed at conditions abroad. Where domestic politics are concerned, Swedish workers have by tradition avoided the use of

strike action to publicise their political opinions. If a situation were to arise in which the normal channels for expressing their views proved insufficient, the threat of damages would hardly be likely to prevent a political demonstration in the form of a strike. In the public sector, however, direct action aimed at influencing domestic political conditions is expressly forbidden.

The absence of provisions concerning strikes or other forms of direct action motivated by conditions in other countries was justified in the Bill proposing the new legislation. This stated that it was natural that Swedish workers' organisations should be free to take part in internationally sponsored sympathy actions in support of fraternal organisations abroad or to express their solidarity with those who were suffering political oppression or were otherwise in need of international support. If in circumstances of this kind an international trade union organisation requested its Swedish affiliate to join in an international campaign, no legal objection or impediment should be raised to compliance with the request.

There is a presumption that sympathy actions in Sweden on behalf of a party to a labour dispute in another country are permitted on condition that the primary dispute is lawful under the national legislation concerned. However, there may be instances where this condition is waived, especially in the case of countries where trade union rights and freedoms do not enjoy the same guarantees as in Sweden, for instance.

The public sector

The new Public Employment Act contains among other things the special provisions which have been judged necessary for the public sector, above all out of consideration for the democratic political process; necessary, that is, to ensure that the protection of workers' rights and influence does not prejudice the autonomy of public authorities embodying the will of the electorate.

The previous arrangement whereby agreements concerning such matters as the activities of a public authority were specifically proscribed has been departed from in the new Act. This eliminates the need to draw a necessarily artificial dividing-line between the prerogatives of political democracy and those of collective bargaining, which in a number of cases resulted in practice in a more rigid demarcation than actually proved necessary while in others the demarcation was too lax. This in turn has in the past generated unnecessary interpretation disputes between the two sides.

In future, employers' and workers' organisations in the public sector will have to judge whether or not the inviolability of political democracy permits or precludes the conclusion of agreements between them. This new approach should result in a more flexible system.

As a by-product of work on the new legislation, a preliminary special agreement has been concluded between the employers' and workers' organisations in the public sector laying down rules for the peaceful solution of disputes

between the parties. The two sides have agreed to aim for peaceful negotiations and to avoid direct action over matters in which it is considered that an agreement would be an infringement of political democracy. The special agreement provides for the setting up of a committee [1] to which questions concerning political democracy can be referred when the parties are unable to reach agreement on them. This committee is to intervene when so requested by both sides or at the request of only one side if notice has been given of direct action. No direct action is to be taken while the issue is being considered by the committee.

In delivering its opinion the committee is to state whether it considers that an agreement in the matter concerned would be an infringement of political democracy. The statement thus issued is to be regarded as a recommendation.

The right of public employees to resort to direct action in a dispute has been substantially extended. In public enterprises, for instance, direct action will be governed by essentially the same rules as apply in the private sector. It is solely in connection with questions concerning the exercise of authority or concerning work which is absolutely essential for the exercise of authority that certain restrictions have been considered necessary. As mentioned earlier, political strikes are forbidden in the public sector.

Attitudes of employers, workers and political parties to the new legislation

The trade union organisations endorsed the new legislation in practically all respects, even though it was not possible to accede to their demands for sole right of decision in certain matters and for various other advantages. As mentioned earlier, the trade unions have secured a promise that these points will be further investigated.

The Swedish Employers' Confederation endorsed most of the main principles of the Joint Regulation Act but was critical on a number of points. First of all, it wanted true management questions to be excluded from the purview of the Act. Moreover, it was sceptical concerning the feasibility of transferring negotiations to the central workers' and employers' organisations, as envisaged by the Act, on the grounds that this might prevent company decisions from being taken with the necessary dispatch. The Confederation was also critical of the onerous obligations placed on the employer to provide information and of the absence of a firm prohibition on the disclosure of confidential information to a wider circle. Finally, the Confederation anticipated that the power of the trade unions to veto subcontracting agreements would lead to unnecessary red tape.

As far as the political parties are concerned, the most interesting points of criticism were made by the Centre Party, the Conservatives and the small

[1] The committee is to have 13 members, seven of whom (including the committee chairman) are to be appointed by the Government from among the members of the Riksdag, while the remaining six are to be appointed in equal numbers by employers and workers.

Communist Party. The following are some of the objections which these parties raised to the government Bill during the Riksdag debate.

To help ensure that negotiations were primarily held with employees at the workplace concerned, the Centre Party and the Conservatives wanted the primary duty of negotiation to be made conditional on a shop steward having been appointed on behalf of the union members employed at workplaces not having a local trade union branch. The same two parties also called for a supplementary rule concerning a primary right of negotiation for union members in cases where no shop steward had been appointed.[1]

The Centre Party also advocated a statutory prohibition of collective agreements concerning the aims, scope or nature of national or local government activities. Matters of this kind, it argued, should be exclusively reserved for decision by political bodies, although it was conceded that public employers should be bound by the same primary duty of negotiation as private employers. This proposal was not carried.

The Conservative Party proposed a large number of amendments, most of which were in line with those advocated by the Employers' Confederation.

The Communist Party differs fundamentally from the other parties in its views concerning labour legislation. Among other things it demanded that the workers' interpretation of an agreement should be binding on the employer. The Labour Court should be abolished, and any disputes that might arise concerning the implementation of legislation should be tried by an ordinary court of law. The Communist Party also demanded that trade union organisations be given powers of veto in a large number of matters, including all company decisions on investments. It further proposed that the obligation to refrain from direct action during the term of a collective agreement should be rescinded. The Party moved the rejection by the Riksdag of the Public Employment Act, and it called for a new Bill entitling public employees to conclude agreements in all matters and conceding unlimited powers of direct action.

Conclusion

The influence exerted by workers over their entire working environment will be decisively strengthened as a consequence of the new Joint Regulation Act. Great efforts will be made through negotiations and agreements to arrive at solutions and results matching up to the high hopes entertained by Swedish workers. It is in these negotiations and in the everyday aspects of working life that the revised labour legislation will acquire its full significance. Everything will therefore depend on the effective supply of training and information to those who are most closely affected by the reform and upon whom new tasks will devolve through the revised allocation of roles in working life. The

[1] In an explanatory statement the Riksdag recorded its confidence that workers and employers would solve problems of this sort in a practical and reasonable manner.

Riksdag has accordingly voted large sums to subsidise the training activities of the employers' and workers' confederations in this field.

As should be clear from this account, the legislation now in force in Sweden is of a far-reaching and generalised character. Once again it is worth emphasising that the reform will not be complete until the employers' and workers' organisations have concluded the requisite agreements. Only then will it be possible to judge the true merits of the reform. It may therefore be worth returning to the subject in a couple of years' time to view the over-all picture and assess the final outcome. ■