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STATUTORY INSTRUMENTS

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**1989 No. 581**

**The Preservatives in Food (Scotland) Regulations 1989**

**Title and commencement**

1. These Regulations may be cited as the Preservatives in Food (Scotland) Regulations 1989, and shall come into force on 3rd May 1989.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Food and Drugs (Scotland) Act 1956;

“appropriate designation” means, as respects any permitted preservative or any food, a name or description or a name and description sufficiently specific, in each case, to indicate to an intending purchaser the true nature of the permitted preservative or of the food, as the case may be, to which it is applied;

“biscuits” includes wafers, rusks, crispbreads, oatcakes, matzos and chocolate-coated, chocolate-filled or chocolate-flavoured biscuits;

“bread” has the meaning assigned to it by the Bread and Flour (Scotland) Regulations 1984(1);

“canned food” means any food which—

(a) is in a hermetically sealed container, and

(b) (i) has been sufficiently heat processed to destroy any *Clostridium botulinum* in the food or its container, or

(ii) has a pH of less than 4.5,

and “canned”, in relation to any food, shall be construed accordingly;

“carbohydrate” means any substance containing carbon, hydrogen and oxygen only in which the hydrogen and oxygen occur in the same proportion as in water;

“cheese” and “soft cheese” have the meanings respectively assigned to them by the Cheese (Scotland) Regulations 1970(2);

“Community” means the European Economic Community;

“Community controlled wine” means wine, grape must, sparkling wine, aerated sparkling wine, liqueur wine, semi-sparkling wine and aerated semi-sparkling wine as respectively defined in Annex 1 to Council Regulation (EEC) No. 822/87(3) on the common organisation of the market in wine;

“compounded food” means food containing two or more ingredients;

“concentrated fruit juice” has the meaning assigned to it by the Fruit Juices and Fruit Nectars (Scotland) Regulations 1977(4);

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(1) S.I. 1984/1518, to which there is an amendment not relevant to these Regulations.

(2) S.I. 1970/108; relevant amending instruments are S.I. 1974/1337 and 1984/847

(3) O.J. No. L84, 27.3.1987, p.1.

(4) S.I. 1977/1026; relevant amending instruments are S.I. 1977/1883 and 1982/1619

“container” includes any form of packaging of food for sale as a single item, whether by way of wholly or partly enclosing the food or by way of attaching the food to some other article, and in particular includes a wrapper or confining band;

“dock” includes any harbour, moorings, wharf, pier, jetty or other works in or at which food can be shipped or unshipped and any warehouse, transit shed or other premises used in connection therewith for the temporary storage or loading for despatch of food which is unshipped or to be shipped;

“flavouring” includes flavouring essence and flavouring extract and means any product consisting of a flavouring agent and such other substances, if any, the use of which in food is not forbidden and which are reasonably necessary to produce a solid, a solution or an emulsion, but no other ingredient or ingredients;

“flavouring agent” means any sapid or odorous substance capable of imparting and primarily intended to impart a specific and distinctive taste or odour to food, but does not include herbs, spices, onions, garlic, salt, fruit juices, soft drinks, fruit acids, acetic acid, any carbohydrate material, any purine derivative, any preparation of yeast, coffee or chicory or any substances prepared by the hydrolysis of protein-containing materials;

“flavouring syrup” means a solution of carbohydrate sweetening matter containing sufficient flavouring to provide, after dilution with milk or water, a drink with that flavour;

“flour confectionery” means any solid or semi-solid product complete in itself and suitable for consumption without further preparation or processing other than heating, of which the characteristic ingredient, apart from any filling, is ground cereal, whether or not flavoured, coated with or containing any carbohydrate sweetening matter, chocolate or cocoa; and includes shortbread, sponges, pastry, pastry cases, crumpets, muffins, macarons, ratafias, meringues and petits fours, but does not include pharmaceutical products, bread, biscuits, canned puddings, Christmas puddings or any product containing a filling which has as an ingredient any meat or fish or any animal, vegetable or microbial material processed before or during the preparation of the product to resemble the texture of meat or fish;

“food” means food intended for sale for human consumption and includes drink, chewing gum and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food or drink or of such products, but does not include—

- (a) water, live animals or birds,
- (b) fodder or feeding stuffs for animals, birds or fish, or
- (c) articles or substances used only as drugs;

“freeze drink” means any pre-packed liquid which complies with the requirements in the Soft Drinks (Scotland) Regulations 1964(5) as to the composition of any soft drink for consumption without dilution and which is clearly and legibly labelled as intended for freezing before consumption;

“fruit juice” has the meaning assigned to it by the Fruit Juices and Fruit Nectars (Scotland) Regulations 1977;

“fruit spread” means the product obtained by processing fruit, fruit pulp or purée and carbohydrate sweetening matter, with or without the addition of other substances, to a suitable consistency by the application of heat and which is not a product as described in column 2 of Schedule 1 to the Jam and Similar Products (Scotland) Regulations 1981(6);

“hermetically sealed container” means a sealed container which is airtight and impermeable to gases;

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(5) S.I. 1964/767; relevant amending instruments are S.I. 1969/1847, 1970/1619, 1976/442 and 1977/1026

(6) S.I. 1981/1320, to which there are amendments not relevant to these Regulations.

- “human consumption” includes use in the preparation of food for human consumption;
- “ice cream” has the meaning assigned to it by the Ice-Cream (Scotland) Regulations 1970(7);
- “permitted antioxidant” means any antioxidant in so far as its use is permitted by the Antioxidants in Food (Scotland) Regulations 1978(8);
- “permitted colouring matter” means any colouring matter in so far as its use is permitted by the Colouring Matter in Food (Scotland) Regulations 1973(9);
- “permitted emulsifier” means any emulsifier in so far as its use is permitted by the Emulsifiers and Stabilisers in Food (Scotland) Regulations 1980(10);
- “permitted miscellaneous additive” means any miscellaneous additive in so far as its use is permitted by the Miscellaneous Additives in Food (Scotland) Regulations 1980(11);
- “permitted preservative” means any preservative specified in columns 1 and 2 of Part I of Schedule 1 or, subject to the provisions of paragraph (2) of this regulation, specified in columns 3 and 4 of that Part of that Schedule which, in either case, satisfies the specific purity criteria in relation to that preservative specified or referred to in Part II of that Schedule, and, so far as is not otherwise provided by any such specific purity criteria, satisfies the general purity criteria specified in Part III of that Schedule, or any mixture of two or more such preservatives;
- “permitted solvent” means any solvent in so far as its use is permitted by the Solvents in Food (Scotland) Regulations 1968(12);
- “permitted stabiliser” means any stabiliser in so far as its use is permitted by the Emulsifiers and Stabilisers in Food (Scotland) Regulations 1980;
- “permitted sweetener” means any sweetener in so far as its use is permitted by the Sweeteners in Food (Scotland) Regulations 1983(13);
- “pre-packed” means made up in advance ready for retail sale in or on a container; and on any premises where food of any description is so made up, or is kept or stored for sale after being so made up, any food of that description found made up in or on a container shall be deemed to be pre-packed unless the contrary is proved;
- “preparation”, in relation to food, includes manufacture and any form of treatment;
- “preservative” means any substance which is capable of inhibiting, retarding or arresting the growth of micro-organisms or any deterioration of food due to micro-organisms or of masking the evidence of any such deterioration but does not include—
- (a) any permitted antioxidant,
  - (b) any permitted colouring matter,
  - (c) any permitted emulsifier,
  - (d) any permitted miscellaneous additive,
  - (e) any permitted solvent,
  - (f) any permitted stabiliser,
  - (g) any permitted sweetener,
  - (h) vinegar,
  - (i) any soluble carbohydrate sweetening matter,

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(7) [S.I. 1970/1285](#), to which there are amendments not relevant to these Regulations.

(8) [S.I. 1978/492](#); relevant amending instrument is [S.I. 1980/1886](#)

(9) [S.I. 1973/1310](#); relevant amending instruments are [S.I. 1975/1595](#), [1976/2232](#), [1979/107](#) and [1987/1985](#)

(10) [S.I. 1980/1888](#); relevant amending instruments are [S.I. 1982/514](#) and [1983/1815](#)

(11) [S.I. 1980/1889](#); relevant amending instrument is [S.I. 1982/515](#)

(12) [S.I. 1968/263](#); relevant amending instrument is [S.I. 1980/1887](#)

(13) [S.I. 1983/1497](#), to which there is an amendment not relevant to these Regulations.

- (j) potable spirits or wines,
- (k) herbs, spices, hop extract or flavouring agents when used for flavouring purposes,
- (l) common salt (sodium chloride),
- (m) any substance added to food by the process of curing known as smoking;

“processing”, in relation to food, includes curing by smoking and any treatment or process resulting in a substantial change in the natural state of the food but does not include boning, paring, grinding, cutting, cleaning or trimming;

“raw peeled potatoes” includes chips, sliced potatoes, diced potatoes and potatoes which have undergone the culinary process known as “blanching”;

“reduced sugar jam”, “reduced sugar jelly” and “reduced sugar marmalade” have the meanings assigned to them by regulation 2(2) of the Jam and Similar Products (Scotland) Regulations 1981;

“retail sale” means any sale to a person buying otherwise than for the purposes of re-sale, but does not include a sale to a caterer for the purposes of his catering business, or a sale to a manufacturer for the purpose of his manufacturing business;

“sauce” means a liquid, thickened or unthickened, frozen or otherwise, used as a garnish with food and having a colour and flavour derived essentially from ingredients other than meat, but does not include mustard, gravy sauce or any product having characteristics similar to gravy;

“sausage” does not include any cured meat product which has been acidified or fermented;

“sell” includes offer or expose for sale or have in possession for sale, and “sale” and “sold” shall be construed accordingly;

“smoking” means treating food with smoke or smoke solutions derived from wood or ligneous vegetable matter in the natural state, and excludes smoke or smoke solutions derived from wood or ligneous vegetable matter which has been impregnated, coloured, gummed, painted or otherwise treated in a similar manner;

“soft drink” has the meaning assigned to it by the Soft Drinks (Scotland) Regulations 1964;

“specified food” means any food of a description specified in column 1 of Schedule 2;

“specified sugar product” has the meaning assigned to it by the Specified Sugar Products (Scotland) Regulations 1976(14);

“Sterile pack” means a hermetically sealed container which has been sufficiently heat processed to destroy any *Clostridium botulinum* in the container or in any food which is in the container;

“storage”, in relation to food, means storage at, in or upon any farm, dock, vehicle, warehouse, fumigation chamber, cold store, transportable container, whether refrigerated or not, or any barge, ship, aircraft or hover vehicle whilst, in each case, at, in or upon any port, harbour, airport or hover-port in Scotland;

“sweetened” means containing any added soluble carbohydrate sweetening matter or added permitted sweetener and “unsweetened” shall be construed accordingly.

(2) Unless a contrary intention is expressed, any permitted preservative specified in columns 3 and 4 of Part I of Schedule 1 may be used as an alternative to the permitted preservative specified in relation thereto in columns 1 and 2 of that Part of that Schedule, if calculated as that permitted preservative, and any reference in these Regulations to any permitted preservative specified in the said columns 1 and 2 shall be construed accordingly.

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(14) S.I. 1976/946; relevant amending instrument is S.I. 1982/410

(3) Unless a contrary intention is expressed, all proportions mentioned in these Regulations are proportions calculated by weight of the product as sold.

(4) Any reference in these Regulations to a label borne on a container shall be construed as including a reference to any legible marking on the container however effected.

(5) For the purpose of these Regulations, the supply of food, otherwise than by sale, at, in or from any place where food is supplied in the course of a business shall be deemed to be a sale of that food.

(6) Any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

### **Exemptions**

**3.** The provisions of these Regulations shall not apply to food having any preservative in it or on it, or to any preservative which, in each case, is intended at the time of sale or importation, as the case may be, for exportation to any place outside the United Kingdom.

### **Sale, etc. of food containing preservative**

**4.—(1)** Save as hereinafter provided, no food sold or imported into Scotland shall have in it or on it any added preservative.

(2) Any specified food may have in it or on it permitted preservative of the description and in the proportion specified in relation thereto in columns 2 and 3 respectively of Schedule 2;

(3) Any specified food in relation to which two or more permitted preservatives are specified in Schedule 2 may have in it or on it an admixture of those preservatives as follows:—

- (a) in the case of fruit spread, sambal oelek, concentrated snack meals with a moisture content of not less than 15% and not more than 60%, soup concentrates with a moisture content of not less than 25% and not more than 60% or wine (including alcoholic cordials) other than Community controlled wine, to the maximum quantity of each such preservative appropriate thereto in accordance with that Schedule;
- (b) in the case of beer, fruits or plants (including flowers and seeds), crystallised, glace, drained (syruped) or candied peel or cut and drained (syruped) peel, or grape juice products (unfermented, intended for sacramental use), if the permitted preservative sulphur dioxide is present, to the maximum quantity of that preservative appropriate to that food in accordance with that Schedule and as regards any other such permitted preservative present, only if, when the quantity of each such preservative is expressed as a percentage of the maximum quantity appropriate to that food in accordance with that Schedule, the sum of those percentages does not exceed one hundred;
- (c) in the case of preparations of saccharin, sodium saccharin, or calcium saccharin and water only, if the permitted preservative benzoic acid is present, to the maximum quantity of that preservative appropriate to that food in accordance with that Schedule and as regards any other such permitted preservative present, only if, when the quantity of each such preservative is expressed as a percentage of the maximum quantity appropriate to that food in accordance with that Schedule, the sum of those percentages does not exceed one hundred;
- (d) in the case of marinated herring whose pH exceeds 4.5, or marinated mackerel whose pH exceeds 4.5, if the permitted preservative hexamine is present, to the maximum quantity of that preservative appropriate to that food in accordance with that Schedule and as regards any other such permitted preservative present, only if, when the quantity of each such preservative is expressed as a percentage of the maximum quantity appropriate to that food in accordance with that Schedule, the sum of those percentages does not exceed one hundred;

- (e) in the case of cheese (other than Cheddar, Cheshire, Grana-padano or Provolone type cheeses or soft cheese) or cured meat (including cured meat products), in accordance with the appropriate provisions of that Schedule;
  - (f) in the case of prawn and shrimps in brine,—
    - (i) if the permitted preservative sulphur dioxide is present, to the maximum quantity of that preservative appropriate to that food in accordance with that Schedule;
    - (ii) if the permitted preservative sorbic acid or benzoic acid is present, to the maximum quantity of that preservative appropriate to that food in accordance with that Schedule;
    - (iii) if the permitted preservatives sorbic acid and benzoic acid are present, only if, when the quantity of each such preservative is expressed as a percentage of the maximum quantity appropriate to that food in accordance with that Schedule, the sum of those percentages does not exceed one hundred; and
    - (iv) as regards any other such permitted preservative present, only if, when the quantity of each such preservative is expressed as a percentage of the maximum quantity appropriate to that food in accordance with that Schedule, the sum of those percentages does not exceed one hundred;
  - (g) in any other case, only if, when the quantity of each such preservative present in that food is expressed as a percentage of the maximum quantity of that preservative appropriate to that food in accordance with that Schedule, the sum of those percentages does not exceed one hundred.
- (4) Any specified food and any food intended for use in the preparation of a specified food (but excluding any pre-packed food, any specified sugar product or any fruit juice or concentrated fruit juice specified at item 1 or 2 in column 1 of Schedule 3 to the Fruit Juices and Fruit Nectars (Scotland) Regulations 1977) may, on importation into Scotland or on a sale other than a retail sale, have in it or on it permitted preservative of a description appropriate to the specified food in accordance with Schedules 1 and 2 in any proportion if, as the case may be, the seller gives to the importer on or before importation or to the buyer on or before sale a document which complies with the requirements of paragraphs 4, 5 and 6 of Schedule 3.
- (5) Any food may have in it or on it any proportion not exceeding five milligrams per kilogram, formaldehyde derived from any wet strength wrapping containing any resin based on formaldehyde or from any plastic food container or utensil manufactured from any resin of which formaldehyde is a condensing component.
- (6) The permitted miscellaneous additive dimethylpolysiloxane may contain formaldehyde in any proportion not exceeding one thousand milligrams per kilogram.
- (7) Cheese, clotted cream or any canned food may have in it or on it the permitted preservative nisin.
- (8) Any food may have in it or on it the permitted preservative nisin introduced in the preparation of that food by the use of any cheese, clotted cream or canned food containing nisin.
- (9) Any food may have in it or on it formaldehyde introduced in the preparation of that food by the use of the permitted miscellaneous additive dimethylpolysiloxane if that formaldehyde is present in the food in no greater proportion, in relation to the quantity of dimethylpolysiloxane used, than the proportion specified in relation to dimethylpolysiloxane in paragraph (6) of this regulation.
- (10) Flour may contain the permitted preservative sulphur dioxide or sodium metabisulphite as prescribed by the Bread and Flour (Scotland) Regulations 1984.
- (11) Community controlled wine may have in it any of the permitted preservatives sulphur dioxide, potassium bisulphite, potassium metabisulphite, sorbic acid and potassium sorbate or any other preservative to the extent, in each case, authorised by any Community Regulation.

(12) No person shall sell or import into Scotland any food which does not comply with this regulation.

5. Subject to regulation 7, nothing in the preceding regulation shall prohibit the presence in any compounded food of any permitted preservative introduced in the preparation of that food by the use of one or more specified foods (other than any unfermented grape juice product intended for sacramental use) if that permitted preservative—

- (a) may under these Regulations be present in any specified food used in the compounded food, and
- (b) is present in the compounded food in no greater proportion, in relation to the quantity of the specified food used, than the proportion specified in relation to that specified food in column 3 of Schedule 2:

Provided that—

- (i) if the said specified food or foods may under these Regulations contain the permitted preservative sulphur dioxide, the compounded food may contain that permitted preservative in a quantity not exceeding that introduced by the use of any such specified food or fifty milligrams per kilogram, whichever is the greater;
- (ii) if the said specified food or foods may under these Regulations contain any of the permitted preservatives benzoic acid, methyl 4-hydroxybenzoate, ethyl 4-hydroxybenzoate or propyl 4-hydroxybenzoate, the compounded food may contain that permitted preservative in a quantity not exceeding that introduced by the use of any such specified food or one hundred and twenty milligrams per kilogram, whichever is the greater;
- (iii) if the compounded food is a specified food other than a cured meat product it may not contain any permitted preservative specified in relation thereto in column 2 of Schedule 2 in any greater proportion than is specified in relation thereto in column 3 of that Schedule;
- (iv) if the compounded food is ice-cream or an edible ice made with fruit pieces in stabilised syrup which may under these Regulations contain the permitted preservative sorbic acid, the compounded food may not contain that permitted preservative in a quantity exceeding three hundred milligrams per kilogram.

### **Sale, advertisement and labelling of preservatives**

6.—(1) No person shall sell or import into Scotland or advertise for sale any preservative (including any preservative with which any other substance has been mixed) for use as an ingredient in the preparation of food unless such preservative is a permitted preservative.

(2) No person shall sell any permitted preservative (including any permitted preservative with which any other substance has been mixed) for use as an ingredient in the preparation of food except in a container bearing a label in accordance with the requirements of paragraphs 1, 2, 3 and 6 of Schedule 3.

### **Food for babies and young children**

7. No person shall sell any food that is specially prepared for babies or young children or for babies and young children if it has in it or on it any added sodium nitrate or sodium nitrite.

### **Sampling and analysis of citrus fruit**

**8.—(1)** In relation to the sampling of citrus fruit for the purpose of analysis to establish the presence in or absence from that fruit of biphenyl, 2-hydroxybiphenyl or sodium biphenyl-2-yl oxide and the quantity of any such substance present—

- (a) the power of a sampling officer or of an officer under section 28 or 32 respectively of the Act to procure samples shall be exercised in accordance with Part I of Schedule 4;
  - (b) the duty of a sampling officer or of an officer under section 30 or 32 respectively of the Act to seal or fasten up each part of the sample shall be performed in accordance with paragraph 1 of Part II of Schedule 4;
  - (c) the duty of a sampling officer or of an officer under section 30 or 32 respectively of the Act to submit one part of the sample for analysis by the public analyst shall be performed in accordance with paragraph 2 of Part II of Schedule 4.
- (2) The method to be used in analysing citrus fruit for the purpose of establishing—
- (a) the presence in or absence from that fruit of biphenyl, 2-hydroxybiphenyl or sodium biphenyl-2-yl oxide shall be as specified in Part I of Schedule 5;
  - (b) the quantity of biphenyl in that fruit shall be as specified in Part II of Schedule 5;
  - (c) the quantity of 2-hydroxybiphenyl or sodium biphenyl-2-yl oxide in that fruit shall be as specified in Part III of Schedule 5.

(3) The modified Clevenger-type separator to be used in analysing citrus fruit in accordance with the preceding paragraph and Parts II and III of Schedule 5 for the purpose of establishing the quantity of biphenyl, 2-hydroxybiphenyl or sodium biphenyl-2-yl oxide in that fruit shall conform with the diagram in Schedule 6.

### **Condemnation of food**

**9.** Where any food is certified by a public analyst as being food which it is an offence against regulation 4 to sell or import into Scotland, that food may be treated for the purposes of section 9 of the Act (under which food may be seized and destroyed on the order of a justice of the peace) as being unfit for human consumption.

### **Penalties and enforcement**

**10.—(1)** If any person contravenes or fails to comply with any of the foregoing provisions of these Regulations he shall be guilty of an offence and shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding one year, or both.
- (2) Each district and islands council shall enforce and execute these Regulations in its area.

### **Defences**

**11.—(1)** In any proceedings for an offence against regulation 4 it shall be a defence for the accused to prove that the presence in any food of any preservative other than a permitted preservative or the presence of a permitted preservative in any food other than a specified food, as the case may be, is solely due to the use of that preservative in food storage or in the preparation of food for storage—

- (a) as an acaricide, fungicide, insecticide or rodenticide, for the protection, in each case, of food whilst in storage, or



(b) as a sprout inhibitor or depressant, otherwise than in a place where food is packed for retail sale.

(2) In any proceedings for an offence against these Regulations in relation to the publication of an advertisement, it shall be a defence for the accused to prove that, being a person whose business it is to publish or arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business.

(3) In any proceedings in respect of the sale or importation before 31st December 1989 of food having in it or on it ethylene oxide contrary to regulation 4, it shall be a defence for the accused to prove that the presence of that substance in or on that food is solely due to its use for pathogen reduction of that food in accordance with the second column of entry C in the Annex to Directive [79/117/EEC](#) of the Council, prohibiting the placing on the market and use of plant protection products containing certain active substances<sup>(15)</sup>.

### **Application of various sections of the Act**

12. Sections 41(2) and (5) (which relate to proceedings), 42(1), (2) and (3) (which relate to evidence of analysis), 44 (which relates to the power of a court to require analysis by the Government Chemist), 45 (which relates to a contravention due to default by some person other than the person charged), 46(2) (which relates to the conditions under which a warranty may be pleaded as a defence) and 47 (which relates to offences in relation to warranties and certificates of analysis) of the Act shall apply for the purposes of these Regulations as if references therein to proceedings, or a prosecution, under or taken or brought under the Act included references to proceedings, or a prosecution as the case may be, taken or brought for an offence under these Regulations and as if the reference in the said section 44 to section 41(5) included a reference to that subsection as applied by these Regulations.

### **Revocation**

13. The Regulations specified in the first column of Schedule 7 are hereby revoked to the extent specified in relation thereto in the third column of that Schedule.

St Andrew's House,  
Edinburgh  
23rd March 1989

*Sanderson of Bowden*  
Minister of State, Scottish Office

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(15) O.J. No. L33, 8.2.1979, p.36; the relevant amending Directive is [86/355/EEC](#) of the Council-O.J. No. L212, 2.8.86, p.33.