

CREDIT-SALE AGREEMENTS ACT.

Act No. 29, 1957.

Elizabeth II, An Act to control and regulate certain agree-
No. 29, 1957. ments relating to the sale of goods on credit;
 and for purposes connected therewith.
 [Assented to, 4th May, 1957.]

BE it enacted by the Queen's Most Excellent Majesty,
 by and with the advice and consent of the Legis-
 lative Council and Legislative Assembly of New South
 Wales in Parliament assembled, and by the authority of
 the same, as follows:—

Short title
and
commence-
ment.

1. (1) This Act may be cited as the "Credit-sale
 Agreements Act, 1957".

(2) This Act shall commence upon a day to be
 appointed by the Governor and notified by proclamation
 published in the Gazette.

Interpreta-
tion.

2. (1) In this Act, unless the context or subject matter
 otherwise indicates or requires—

"Banker" means—

- (a) the Rural Bank of New South Wales;
- (b) any body corporate authorised to carry
 on banking business under the Com-
 monwealth Bank Act 1945 (as amended
 by subsequent Acts) of the Parliament
 of the Commonwealth of Australia; or
- (c) any body corporate for the time being
 specified in the First Schedule to the
 Banking Act 1945 (as amended by sub-
 sequent Acts) of the Parliament of the
 Commonwealth of Australia.

"Credit-sale

“Credit-sale agreement” means an agreement No. 29, 1957.
for the sale of goods under which—

- (a) the purchase-price or any part thereof is payable by instalments or payments which are to be made over a period exceeding one year and are to be made nine times or more than nine times in any period of twelve months that forms part of the period firstmentioned in this paragraph; or
- (b) the purchase-price or any part thereof is payable by instalments or payments which are to be made only over a period of one year or less than one year but more than nine months and are to be made nine times or more than nine times during that period,

but does not include any such agreement—

- (i) under which the buyer is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement;
- (ii) that is a hire-purchase agreement as defined in section two of the Hire-purchase Agreements Act, 1941, as amended by subsequent Acts; or
- (iii) under which the goods comprised therein are not to be delivered to or to the order of the buyer until the whole of the purchase-price is paid.

“Goods” includes all chattels personal other than money or things in action.

“Loan” includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, and includes every contract (whatever its terms or form may be) which is in substance or effect a loan of money, and “lend” and “lending” have corresponding interpretations.

‘Prescribed’

No. 29, 1957. "Prescribed" means prescribed by this Act or by any regulation made thereunder.

"Purchase-price" means the total amount of the moneys paid or payable and the value of any other consideration provided or to be provided by the buyer under a credit-sale agreement.

(2) This Act, except where otherwise expressly provided, applies only to and in respect of credit-sale agreements entered into after the commencement of this Act.

(3) Where a deposit is provided in connection with a credit-sale agreement, the deposit shall not, for the purposes of the definition of "Credit-sale agreement" in subsection one of this section, be reckoned as an instalment or payment.

cf. N.Z.
S.R. 1955
No. 184,
Reg. 2 (2).

(4) Where by virtue of two or more agreements, none of which by itself constitutes a credit-sale agreement, there is a transaction which is in substance or effect a credit-sale agreement as hereinbefore defined, the agreements shall be treated for the purposes of this Act as a single agreement entered into when the last of those agreements was entered into.

Minimum
deposits.
cf. Act
No. 56,
1941,
s. 31.

3. (1) A seller who enters into a credit-sale agreement without having first obtained from the buyer or proposed buyer thereunder in current coin or bank notes or by cheque drawn by a banker or by the buyer or proposed buyer or the spouse of the buyer or proposed buyer on a banker a deposit of—

(a) where the minimum amount of the deposit is not prescribed under paragraph (b) of this subsection, not less than one-tenth of the cash-price of the goods the subject of the agreement; or

(b) where the minimum amount of the deposit is prescribed under this paragraph, not less than such amount as may for the time being be prescribed,

shall be guilty of an offence against this Act.

A

A regulation may prescribe—

No. 29, 1957.

- (i) that the amount referred to in paragraph (b) of this subsection shall be at such rate or rates or shall be calculated on such basis or bases (whether by reference to the cash-price of the goods the subject of the agreement or otherwise) as may be specified in the regulation;
- (ii) rates or bases varying in accordance with different amounts of cash-price, different durations of credit-sale agreements or otherwise.

In this subsection, "cash-price" means the price at which the goods the subject of the agreement might be bought for cash.

(2) Notwithstanding anything contained in subsection one of this section, the deposit required by or under that subsection may include the value of any goods (not being goods acquired by the buyer or proposed buyer for the purpose of enabling the value of the goods so acquired to be included in that deposit) provided or required to be provided by the buyer or proposed buyer to buy the goods under the credit-sale agreement.

(3) A credit-sale agreement entered into in contravention of this section shall be void:

Provided that all moneys paid and the value of any other consideration provided by the buyer under the agreement shall be recoverable as a debt due to him by the seller.

4. Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purpose of enabling those other persons to pay the deposits required by or under subsection one of section three of this Act upon the purchase of goods under credit-sale agreements shall be guilty of an offence against this Act.

Offence to carry on business of lending deposits.
cf. Act No. 56, 1941, s. 32.

5. Any person who accepts as a deposit upon the purchase of goods under a credit-sale agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the buyer by any person, other than a banker, shall be guilty of an offence against this Act.

Deposits not to be by way of loan.
cf. Act No. 56, 1941, s. 33.

6.

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No. 29, 1957. **6.** Any person who—

Contracts to evade section three, four or five.
cf. Act No. 56, 1941, s. 36.

- (a) enters into any transaction, or makes any contract or arrangement purporting to do whether presently or at some future time or upon the happening of any event or contingency anything that contravenes or will contravene any of the provisions of section three, four or five of this Act; or
- (b) enters into any transaction, or makes any contract or arrangement, whether orally or in writing, for the purpose of or which has the effect of, in any way, whether directly or indirectly, defeating, evading, avoiding or preventing the operation of any of the provisions of section three, four or five of this Act in any respect,

shall be guilty of an offence against this Act.

Penalty. **7.** Any person guilty under any of the foregoing provisions of this Act of an offence against this Act shall be liable on summary conviction—

- (a) if a company—to a penalty not exceeding two hundred pounds;
- (b) if any other person—to a penalty not exceeding one hundred pounds or to imprisonment not exceeding three months or to both such penalty and imprisonment.

Requirements relating to credit-sale agreements.
cf. 1 & 2 Geo. VI, c. 53, s. 3.

8. (1) Before any credit-sale agreement is entered into in respect of any goods, the seller shall give or cause to be given to the prospective buyer a written statement, otherwise than in the note or memorandum, of the purchase-price of the goods:

Provided that where the agreement is entered into by way of acceptance by the seller of a written offer (not being a mail order) signed by or on behalf of the buyer, the foregoing provisions of this subsection shall be deemed not to have been complied with unless the written statement was given to the prospective buyer before the written offer was so signed.

(2)

(2) A seller shall not be entitled to enforce a credit-sale agreement or any contract of guarantee relating thereto, and no security given by the buyer in respect of money payable under the credit-sale agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the buyer or guarantor by any holder thereof, unless the requirement specified in subsection one of this section has been complied with, and—

- (a) the agreement is in writing signed by or on behalf of the buyer or a note or memorandum of the agreement is made, and is signed by or on behalf of the buyer; and
- (b) where the agreement is in writing, the agreement specifies, or, where the agreement is not in writing, the note or memorandum specifies—
 - (i) the price at which the goods comprised in the agreement might be bought for cash;
 - (ii) where the purchase-price of the goods so comprised includes an amount to cover the expenses of delivering the goods or any of them to the buyer, that amount as freight;
 - (iii) where the purchase-price of the goods the subject of the agreement includes, in respect of goods so comprised which are a motor vehicle, an amount representing any one or more of the following, namely, any fee payable under the Motor Traffic Act, 1909, as amended by subsequent Acts, or the Transport Act, 1930, as amended by subsequent Acts, or any tax payable upon application for registration or renewal of registration of the motor vehicle or any premium charged in respect of a third-party policy within the meaning of the Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts—that amount as registration fees;
 - (iv)

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- (iv) where the purchase-price of the goods the subject of the agreement includes an amount for insurance (not being insurance under a third-party policy within the meaning of the Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts) in respect of goods comprised in the agreement which are goods of any of the descriptions referred to in paragraphs (a), (b) and (c) of subsection two of section eleven of this Act or a television-set or prescribed goods, that amount as insurance in respect of the description of goods concerned where there is only one description of goods so comprised and, in any other case, the part of that amount which is charged as insurance in respect of each description of goods so comprised;
- (v) the total amount payable in respect of all charges other than those referred to in subparagraphs (ii), (iii) and (iv) of this paragraph; and
- (vi) the amount of the deposit provided by the buyer in connection with the agreement.

In this subsection "charges" means the difference between the purchase-price of the goods comprised in the agreement and the price at which those goods might be bought for cash.

(3) (a) It shall be the duty of every seller under a credit-sale agreement to deliver to the buyer within twenty-eight days after the agreement is entered into—

- (i) where the agreement is in writing, a copy of the agreement, or where the agreement is not in writing, a copy of the note or memorandum; and
- (ii)

- (ii) where the goods comprised in the agreement No. 29, 1957. comprise or include goods of any one or more of the following descriptions, namely, industrial machinery, farm equipment, motor vehicle, television-set or prescribed goods, a copy of any insurance policy held by the seller or by any person on behalf of the seller which extends to indemnify the buyer against loss or damage to, or against liability in respect of, goods so comprised which are of any such description or descriptions:

Provided that where the seller is a banker and the insurance policy so held is a declaration policy, it shall be a sufficient compliance with the provisions of this subparagraph if the seller delivers to the buyer within the twenty-eight days aforesaid a statement setting out the terms, conditions and exclusions of the declaration policy so far as they concern or affect the purchaser in relation to the goods so comprised which are of any such description or descriptions.

(b) Any seller who neglects or fails to comply with any of the requirements of this subsection shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty pounds.

(c) Non-compliance with this subsection does not invalidate any credit-sale agreement.

9. (1) No credit-sale agreement which relates to household furniture or effects used or intended to be used by the buyer in his home and which is made with a buyer who is married shall be enforceable unless—

- (a) (i) the credit-sale agreement or the note or memorandum thereof contains a statement in writing signed by the spouse of the buyer signifying the consent of such spouse to the credit-sale agreement; and

- (ii) such statement is so signed by the spouse at or before the time when the credit-sale agreement was entered into; or

(b)

Regulation
of credit-
sale
agreements
with
married
persons.
cf. Act
No. 56,
1941, s. 27.

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- (b) the buyer, at or before the time when the credit-sale agreement was entered into, has produced and delivered to the seller an authority, signed by the spouse of the buyer, to pledge the credit of the buyer and the spouse or of either of them up to a specified limit which is not more than thirty pounds, and the purchase-price of the goods comprised in the credit-sale agreement, together with all other moneys owing or payable by the buyer and the spouse or either of them to the seller, does not exceed the limit so specified; or
- (c) the buyer, at or before the time when the credit-sale agreement was entered into, has produced and delivered to the seller a statutory declaration made by the buyer to the effect that the spouse of the buyer was under such a legal incapacity as to render such spouse unable to sign such statement as aforesaid:

Provided that this subsection shall not apply if the seller had reasonable grounds for believing and did in fact believe, at the time the credit-sale agreement was entered into, that—

- (i) the buyer was living separate and apart from the spouse of the buyer; or
- (ii) the spouse of the buyer was outside New South Wales:

Provided further that this subsection shall not apply if, at or before the time when the credit-sale agreement was entered into, the buyer has produced and delivered to the seller in a case where the residence of the buyer is situated more than five miles from the nearest telegraph office and the credit-sale agreement was entered into at such residence, an instrument in writing signed by the buyer, or, in any other case, a statutory declaration made by the buyer, in which instrument or statutory declaration the buyer states that he was not married at the time of the delivery of such instrument or statutory declaration to the seller, unless the seller had reasonable grounds for believing that such statement was false.

Any

Any buyer who makes a false statement in any such instrument shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding fifty pounds. No. 29, 1957.

(2) (a) This subsection shall apply to and in respect of a credit-sale agreement of the nature referred to in subsection one of this section where the purchase-price of the goods comprised in the agreement does not exceed ten pounds.

(b) Where the seller, under any such credit-sale agreement, serves (by personal delivery) on the spouse of the buyer, within seven days after the agreement was entered into, a notice in writing that such agreement has been entered into, and the spouse of the buyer does not, within seven days after service of such notice, serve on the seller a notice in writing that he objects to the credit-sale agreement being entered into, the agreement shall not, by reason only of subsection one of this section, be unenforceable.

(c) Where the spouse of the buyer serves such notice of objection the credit-sale agreement shall cease to be binding on the parties thereto; and thereupon the seller shall refund all moneys paid and the value of any consideration provided by the buyer and shall be entitled to recover the goods comprised in the agreement.

(3) If any seller to whom any such authority or statutory declaration or instrument as is referred to in this section has been delivered, fails to preserve the same until the expiration of twelve months after the transaction in respect of which it was given is finally closed, he shall be guilty of an offence against this Act, and shall be liable on summary conviction—

- (a) if a company—to a penalty of not less than twenty pounds and not exceeding two hundred pounds;
- (b) if any other person—to a penalty of not less than twenty pounds and not exceeding two hundred pounds or to imprisonment for a term of not more than two months, or to both such penalty and imprisonment.

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Credit-
sale
agreements
to have
regular
payments of
equal
amounts

10. (1) A credit-sale agreement shall provide that the instalments or payments necessary under the agreement to pay the difference between the purchase-price and the deposit provided in connection with the agreement shall—

- (a) be made at regular weekly, fortnightly or monthly intervals and at no other intervals; and
- (b) be of equal or approximately equal amounts.

(2) A credit-sale agreement entered into in contravention of this section shall be void:

Provided that all moneys paid and the value of any other consideration provided by the buyer under the agreement shall be recoverable as a debt due to him by the seller.

Limitation
on addi-
tional
charges.

11. (1) In this section, “additional charges”, in relation to a credit-sale agreement, means the difference between—

- (a) the price at which the goods comprised in the credit-sale agreement might be bought for cash together with—
 - (i) where the purchase-price includes a sum to cover the expenses of delivering the goods so comprised or any of them to the buyer, that sum; and
 - (ii) where the purchase-price includes, in respect of goods so comprised which are a motor vehicle, an amount representing any one or more of the following, namely, any fee payable under the Motor Traffic Act, 1909, as amended by subsequent Acts, or the Transport Act, 1930, as amended by subsequent Acts, or any tax payable upon application for registration or renewal of registration of the motor vehicle or any premium charged in respect of a third-party policy within the meaning of the

Motor

Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts, that amount; and

- (iii) where the purchase-price includes an amount for insurance (not being insurance under a third-party policy within the meaning of the Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts) in respect of goods so comprised which are goods of any of the descriptions referred to in paragraphs (a), (b) and (c) of subsection two of this section or a television-set or prescribed goods, that amount, and

(b) the purchase-price of the goods so comprised.

(2) The additional charges in relation to a credit-sale agreement shall not, when calculated as a rate per centum per annum in accordance with the formula set out in this subsection, exceed a rate per annum of—

- (a) where the goods comprised in the agreement, not being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—seven per centum;
- (b) where the goods comprised in the agreement, being second-hand goods at the time when the agreement is entered into, are any one or more of the following only, namely, industrial machinery, farm equipment or a motor vehicle (other than a motor cycle)—nine per centum;
- (c) where the goods comprised in the agreement are a motor cycle—nine per centum;
- (d) where the goods comprised in the agreement are goods which are not of any of the descriptions in respect of which a rate is fixed by or under paragraph (a) or (b) or (c) of this subsection—ten per centum;

(e)

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- (e) where the goods comprised in the agreement include goods of the description or of any one or more of the descriptions referred to in one of the above paragraphs of this subsection and also goods of the description or of any one or more of the descriptions referred to in one or more of the other such paragraphs—the lower or lowest, as the case may be, of the amounts per centum prescribed, by the above paragraphs in respect of a description of goods so comprised.

The rate referred to in the foregoing provisions of this subsection shall be calculated in accordance with the following formula:—

$$R = \frac{100 \times C}{T \times P}$$

where

R represents the additional charges calculated as a rate per centum per annum.

C represents the total amount of additional charges expressed in pounds and fractions of pounds.

T represents the time that elapses between the date fixed by or under the agreement for the making of the first instalment or payment and the date fixed by or under the agreement for the making of the last instalment or payment, together with—

- (i) one week where the instalments or payments are payable under the agreement at regular weekly intervals;
- (ii) two weeks where the instalments or payments are payable under the agreement at regular fortnightly intervals;
- (iii) one month where the instalments or payments are payable under the agreement at regular monthly intervals,

expressed in years and fractions of years.

P

P represents the difference between the price at which the goods comprised in the agreement might be bought for cash and the amount of the deposit provided by the buyer, together with—

- (i) where the purchase-price includes a sum to cover the expenses of delivering the goods so comprised or any of them to the buyer, that sum; and
- (ii) where the purchase-price includes, in respect of goods so comprised which are a motor vehicle, an amount representing any one or more of the following, namely, any fee payable under the Motor Traffic Act, 1909, as amended by subsequent Acts, or the Transport Act, 1930, as amended by subsequent Acts, or any tax payable upon application for registration or renewal of registration of the motor vehicle or any premium charged in respect of a third-party policy within the meaning of the Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts, that amount; and
- (iii) where the purchase-price includes an amount for insurance (not being insurance under a third-party policy within the meaning of the Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts) in respect of goods so comprised which are goods of any of the descriptions referred to in paragraphs (a), (b) and (c) of this subsection or a television-set or prescribed goods, that amount,

expressed in pounds and fractions of pounds.

(3) A credit-sale agreement entered into in contravention of subsection two of this section shall be void:

Provided

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No. 29, 1957. Provided that all moneys paid and the value of any other consideration provided by the buyer under the agreement shall be recoverable as a debt due to him by the seller.

Rates of
insurance.

12. (1) The Governor may, for the purposes of subsection three of this section, make regulations prescribing rates for insurance in respect of any class or classes of goods.

In the exercise of the power conferred by the foregoing provisions of this subsection, but without limiting the generality of that power, the regulations may provide—

- (a) different rates for insurance in respect of different classes of goods;
- (b) different rates in respect of different parts of the State;
- (c) rates on a sliding scale;
- (d) rates according to or upon any specified principle or criterion.

(2) The power conferred by subsection one of this section shall be deemed to be validly exercised by a regulation which prescribes any such rates as are referred to in that subsection by reference to a list, scale or table of insurance rates referred to in the regulations and issued by a body or association which the Governor considers to be representative of insurance companies carrying on business of the class to which the list, scale or table relates or by reference to any regulations made under the provisions of section 26D of the Hire-purchase Agreements Act, 1941, as amended by subsequent Acts.

(3) Where the purchase-price of goods the subject of a credit-sale agreement includes an amount for insurance in respect of goods comprised in the agreement which are goods of a class in respect of which rates of insurance are, at the time when the agreement is entered into, prescribed under this section and that amount exceeds the amount that would have been payable for insurance in respect of the goods so comprised had those goods been insured in accordance with those rates, the agreement shall be void:

Provided

Provided that all moneys paid and the value of any other consideration provided by the buyer under the agreement shall be recoverable as a debt due to him by the seller. No. 29, 1957.

13. (1) (a) In this section "credit-sale agreement" includes a credit-sale agreement that has been varied for the purpose of including additional goods in the agreement. Special provisions for add-on agreements.

Nothing in this paragraph shall be construed as limiting the generality of the definition of "Credit-sale agreement" in subsection one of section two of this Act.

(b) This section applies to and in respect of credit-sale agreements entered into before the commencement of this Act as well as to credit-sale agreements entered into after that commencement.

(c) This section does not apply to or in respect of any credit-sale agreement where, either before or after any variation of the agreement, the goods the subject of the agreement comprise or include industrial machinery, farm equipment or a motor vehicle.

(2) Where a credit-sale agreement is varied or is proposed to be varied for the purpose of including additional goods in the agreement it shall only be necessary to comply with or observe the provisions of this Act (subject to the modifications set out in subsection three of this section) in respect of the variation or proposed variation as though the only goods comprised in the agreement which results from the variation or which will result from the proposed variation were the additional goods.

The foregoing provisions of this subsection apply only where—

(a) the agreement proposed to be so varied or the agreement before it is so varied is not or was not unenforceable by the seller or void;

(b)

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- (b) the agreement when so varied also specifies the balance payable under the agreement immediately before it was so varied;
- (c) the provisions of the agreement when so varied, so far as they relate to goods comprised in the agreement before it was so varied, are not less favourable to the buyer than the provisions of the agreement before it was so varied.

(3) For the purposes of subsection two of this section—

- (a) section three of this Act shall be deemed to be omitted from this Act if the total amount of the moneys paid and the value of any other consideration provided by the buyer under the agreement during the period of two years immediately preceding the date on which the agreement is so varied is not less than—
 - (i) where a percentage is not prescribed under subparagraph (ii) of this paragraph at the time when the agreement is so varied—twenty per centum of the cash-price of the additional goods; or
 - (ii) where a percentage is prescribed under this subparagraph at the time when the agreement is so varied—the percentage so prescribed of the cash-price of the additional goods;
- (b) where no deposit is required pursuant to paragraph (a) of this subsection and no deposit is in fact provided by the buyer—
 - (i) subsection one of section ten of this Act shall have effect as though the words “the difference between the purchase-price and the deposit provided in connection with the agreement” were omitted therefrom and the words “the purchase-price” were inserted in lieu thereof;
 - (ii) subsection two of section eleven of this Act shall have effect as though the words “the difference between the price
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at which the goods comprised in the agreement might be bought for cash and the amount of the deposit provided by the buyer" were omitted therefrom and the words "the amount for which the goods comprised in the agreement might be bought for cash" were inserted in lieu thereof. No. 29, 1957.

(4) Notwithstanding anything contained in this Act where a credit-sale agreement has been varied pursuant to this section, it shall be a sufficient compliance with section ten of this Act so far as the balance payable under the agreement by the buyer immediately before the agreement is varied is concerned if that balance is made payable in equal or approximately equal amounts payable at the same regular intervals and by the same number of instalments or payments as are provided by the agreement as so varied in respect of the additional goods.

14. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed by this Act or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.