

ABILL

ENTITLED

AN ACT to Amend the Banking Services Act; and for
connected matters.

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NOW THEREFORE, BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Banking Services (Amendment) Act, 2016, and shall be read and construed as one with the Banking Services Act (hereinafter referred to as the “principal Act”) and all amendments thereto. Short title.

2. Section 132 of the principal Act is amended by—

(a) deleting subsection (4)(b);

Amendment
of section
132 of
principal
Act.

- (b) deleting from subsection (5), the words “and with respect to subsection (4)(b) the Consumer Affairs Commission”.

Amendment
of section
133 of
principal Act.

3. The principal Act is amended—

- (a) in subsection (1) by deleting the phrase “made under section 132(4)” and substituting therefor the phrase “made under section 132A”; and
- (b) in subsection (2) by deleting the phrase “made under section 131 or 132” and substituting therefor the phrase “made under section 131, 132 or 132A”.

Insertion of
new section
132A.

4. The principal Act is amended by inserting next after section 132 the following as section 132A—

“ Supervisor
shall
regulate
consumer
related
matters.

132A.—(1) The Supervisor shall, with the approval of the Minister, make and issue, within sixty days of the date of commencement of this Act in the first instance, and from time to time thereafter, a code of conduct on consumer related matters, and without prejudice to the generality of the foregoing, the code shall provide for the following—

Twelfth
Schedule.

- (a) a mandatory minimum service package as set out in the Twelfth Schedule;
- (b) the obligation to provide notice of modifications to fees and charges, terms and conditions and any other material information to the customer at least forty-five days before such changes are scheduled to take effect, such notice to state the procedure for the customer to accept the modification, challenge the modification or terminate the agreement with regard to the account in question, without the imposition of a fine, charge or penalty however described;

- (c) subject to the minimum service package, customers' access to their information at a reasonable cost;
- (d) requiring any interest rate, however described by the licensee, to be also expressed as an effective annual rate, and to be calculated in a standard manner across the banking services industry;
- (e) the obligation to keep language in agreements with customers simple and clear, and to ensure that key terms, including but not limited to, rates, terms, fees and payment dates, are clearly identified and defined for the customer's attention;
- (f) the establishment of effective mechanisms to address customer complaints;
- (g) communication of customer complaint mechanisms and procedures to customers;
- (h) reporting and record keeping obligations in relation to customer complaints and resolutions within the times and in the formats specified by the Supervisor;
- (i) the format, frequency and deadlines in respect of information to be provided to the Supervisor for the administration of the code of conduct;
- (j) the obligation to keep terms in agreements fair and reasonable, having regard to the circumstances which were, or ought reasonably to have been known to, or in the contemplation of the parties when the agreement was made;

- (k) measures that will be taken to facilitate access to banking services for senior citizens and customers with disabilities;
- (l) confidentiality and privacy policies in relation to customer information; and
- (m) any other matter the Supervisor thinks necessary.

(2) The code of conduct referred to in subsection (1), and any amendment thereto, shall be formulated after consultation with organizations recognised by the Supervisor as representing deposit taking institutions, and the Consumer Affairs Commission or such other organisation as may from time to time be charged to carry out similar functions, and any other persons, who in the opinion of the Supervisor, are relevant stakeholders, but shall at all times include the minimum service package.

(3) The code of conduct shall be subject to affirmative resolution.

(4) A licensee who does not comply with the code of conduct commits an offense.

(5) A contravention of the code of conduct may invalidate the transaction where it appears to the Supervisor that, on a balance of probabilities, the customer was placed in an adverse position by the breach.

(6) Subject to subsection (5), no proceedings or determination made under a code of conduct shall affect the rights of any party to enforce any claim under the contractual arrangements between the parties.

(7) A party aggrieved by the decision of the Supervisor to invalidate a transaction may appeal to the Supervisory Appeals Board, in writing.

Review of
minimum
service
package by
Parliament.

(8) The minimum service package shall be reviewed every two years by a Joint Select Committee of the Houses of Parliament, specifically convened for that purpose, and the Supervisor shall include the recommendations of the Houses of Parliament in the minimum service package.

(9) In this section—

“date of commencement” means the date of the coming into operation of the Banking Services (Amendment) Act, 2016”;

“minimum service package” refers to the mandatory services which must be provided by a licensee to its customers and which must be a part of the code of conduct on consumer related matters.”.

Insertion of
Twelfth
Schedule.

5. The principal Act is amended by inserting next after the Eleventh Schedule, the Twelfth Schedule—

“ TWELFTH SCHEDULE (Section 132A)

Mandatory Minimum Service Package

1. This minimum service package shall apply to any account, credit facility or financial instrument however described, that is the subject of a contract between a licensee and a customer, hereinafter collectively known as “account”.

2. A customer shall not be charged for any inquiry of any sort and by any medium on any transaction of each account which is the subject of a contract with a licensee.

3. Each customer shall be entitled to a minimum of 120 transactions of any sort, inclusive of deposits and withdrawals, and by any medium every twelve months at no charge on an account.

4. Each customer shall be entitled to any statement or any other document from the licensee that is required for statutory purposes at no charge.

5. A licensee shall not impose any fee, charge or payment however described, for the purpose of cashing or changing a cheque or instrument of that nature.

6. (a) The licensee may freeze an inactive account with a credit balance and classify it as dormant; or

(b) close an inactive account with a zero balance.

7. (a) Subject to paragraph 6(a), where an account is to be classified as dormant—

(i) the customer shall be given written notice of the pending state of the account at least 90 calendar days prior to such classification;

(ii) the written notice shall—

(A) state the cut-off date on which the account will be classified as dormant;

(B) state the required manner and method of response to the notice;

(C) state the action that will be taken if the customer fails to respond to the notice;

- (D) include a current statement of account;
 - (E) state any option available for the reactivation of a dormant account;
 - (iii) no transaction shall be made to the account;
 - (iv) the benefits attached to the account shall continue to be applied to the account;
 - (v) no maintenance fee shall be charged to the account;
 - (vi) statements of account shall be prepared and published electronically in the usual statement cycle applicable to the account as if the account was not classified as dormant.
- (b) Subject to paragraph 6(b), where an account is to be closed and is classified as an inactive account with a zero balance—
- (i) the customer shall be given written notice of the pending state of the account at least 90 calendar days prior to such classification;
 - (ii) the written notice shall—
 - (A) state the cut-off date on which the account will be closed;
 - (B) state the required manner or method of response to the notice;
 - (C) state the action that will be taken if the customer fails to respond to the notice;
 - (D) include a current statement of account;
 - (E) state any option available for the reactivation of an inactive account with a zero balance prior to the cut-off date; and
 - (iii) no maintenance fee shall be charged to the account.

8. The licensee shall make no modification to the terms and conditions of an account which could result in the customer being placed in an adverse

or prejudicial position, or which materially alters the position of the customer to his detriment when compared with the initial agreement between the customer and the licensee.

9. (a) A licensee shall not increase interest rates, annual fees and other charges on an account or make a contractual change without written notice of at least forty-five calendar days having been provided to the customer. The referred changes include the renewal or extension of the contract.
- (b) The written notice shall:
- (i) provide the customer with the option to not accept the changes to the contract.
 - (ii) propose the changes to be made to the contract;
 - (iii) state the date on which the change (including renewal or extension) would become effective;
 - (iv) state the required manner and method of response to the notice; and
 - (v) state the action that will be taken if the customer fails to respond to the notice.

10. The licensee shall disclose all fees and charges applicable to a transaction undertaken by automated teller machine, automated banking machine, or any medium through which a customer may transact business upon any account with the licensee prior to the completion of the transaction, and the customer shall be entitled to choose whether to continue or to terminate the transaction without the imposition of a fine, charge or penalty however described.

11. (a) There shall be a 72-hour cooling off period after the execution of any agreement between a customer and the licensee for the provision of banking services.
- (b) The licensee shall:
- (i) state the method the customer shall use to terminate the agreement within the cooling off period;
 - (ii) provide the customer with all the information concerning the cooling off period prior to the execution of any agreement.
- (c) Where the customer terminates the agreement between the cooling off period within the cooling off period, no fine, charge or penalty, however described, shall be imposed.

12. The licensee shall disclose the terms and conditions of agreements being offered to customers prior to the transaction being entered into.

13. The licensees shall clearly distinguish the terms and conditions of banking services from promotional material.

14. Licensees shall provide customers with a factsheet containing key contractual terms.”.

MEMORANDUM OF OBJECTS AND REASONS

The Sessional Select Committee of the House of Representatives on Economy and Production, pursuant to Private Member's Motion 30/13, considered the levels of fees charged by financial institutions in Jamaica and *inter alia*, made the following observations in its Report:

- (a) The fees charged by state-licensed deposit-taking institutions on the transactions of depositors discourage deposits and negatively impact the savings rate of the country;
- (b) Customers who do not have internet access would need to visit their financial institutions or contact a representative in order to obtain information on a regular basis;
- (c) The ratio of income from fees as opposed to the income generated from core banking activities is a cause for concern.

Further, the increased and widespread imposition of banking fees discourages the use of regulated and transparent financial transactions in licensed financial institutions.

This Act seeks to amend the Banking Services Act to further regulate the financial sector licensed by the Bank of Jamaica as Supervisor pursuant to the Banking Services Act, in order to increase customer protection via the regulation of fees and charges to customers, provision of information to customer and a mandatory minimum service package to customers.

FITZ JACKSON, C.D., M.P.

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**AN ACT to Amend the Banking Services
Act; and for connected matters.**

As introduced by Private Member.
