

A BILL

ENTITLED

AN ACT to Amend the Banking Services Act.

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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, 2017 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,
construction
and
commence-
ment.

Amendment
of section
132 of
principal Act.

2. Section 132 of the principal Act is amended —

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

Insertion of
new section
132A.

3. The principal Act is amended by inserting next after section 132 the following section—

“ Code of
conduct on
consumer
related
matters.
Eight
Schedule.

132A.—(1) Within sixty days from the relevant date, the Supervisor shall make and, issue a code of conduct on consumer related matters (referred to as the “Consumer Code” in this section and the Eighth Schedule).

(2) Without prejudice to the generality of subsection (1), the Consumer Code shall include provision—

- (a) for a mandatory minimum service package (hereinafter referred to as the “minimum service package”) as set out in the Eighth Schedule to be provided by deposit taking institutions to their customers;
- (b) obliging deposit taking institutions to provide to their customers, notice of every modification of a fee, charge, term, or condition, in respect of the services provided by such institutions to customers, and any other material information with respect thereto;
- (c) for customers to be afforded access to information relating to their deposit accounts and transactions with deposit taking institutions at a reasonable cost, subject to the minimum service package;

- (d) requiring any interest rate, however described by a deposit taking institution, to be also expressed as an effective annual rate and to be calculated in a standard manner across deposit taking institutions;
- (e) obliging deposit taking institutions to keep language in agreements with their customers simple and clear, and ensure that key terms (including, but not limited to, rates, terms, fees and payment dates) are clearly identified and defined for their customers' attention;
- (f) establishing effective mechanisms and procedures to address customer complaints;
- (g) for the communication of customer complaint mechanisms and procedures to customers;
- (h) for the reporting and record keeping obligations of deposit taking institutions in relation to customer complaints and the resolution thereof within the times and in the formats specified by the Supervisor;
- (i) prescribing the format and frequency of, and the deadlines within which information is to be provided to the Supervisor for the administration of the Consumer Code;
- (j) obliging deposit taking institutions to keep terms in agreements with their customers fair and reasonable, in

keeping with the *Consumer Protection Act* and with general principles of contract law and consumer protection law;

- (k) for measures that will be taken to facilitate access to financial services for senior citizens and customers with disabilities; and
- (l) for any other matter the Supervisor thinks necessary for the protection of consumers of financial services.

(3) A notice under subsection (2)(b) shall—

- (a) be given at least sixty days before the modification is scheduled to take effect;
- (b) state the procedure for the customer to object to, or give feedback on, the modification; and
- (c) inform the customer of the right to terminate as provided for in subsection (4).

(4) Where an agreement or transaction with a deposit taking institution is the subject of a modification referred to in subsection (3)(c), the consumer shall be entitled to terminate the agreement or transaction, within ninety days after receiving notice of the modification or, if no such notice was given, within ninety days after the imposition of the modification, and no imposition, fine, charge or other penalty (however described) shall be payable by the consumer in respect of such termination.

(5) The Consumer Code, and every material amendment thereto, shall—

- (a) be formulated after consultation with—
 - (i) organizations recognised by the Supervisor as representing deposit taking institutions;
 - (ii) the Consumer Affairs Commission or such other organization as may be from time to time charged with carrying out similar functions, and
 - (iii) any other persons who, in the opinion of the Supervisor are relevant stakeholders;
- (b) at all times include the minimum service package; and
- (c) be subject to affirmative resolution.

(6) A deposit taking institution that does not comply with the Consumer Code, or with directions issued under subsection (8)(b), commits an offence.

(7) Subsection (6) applies subject to the provisions of section 132(6) to (8), and no proceedings for an offence under subsection (6) shall be brought against a deposit taking institution in any case where directions under subsection (8)(b) or section 132(7) are issued to the institution, unless the institution fails to comply with the directions.

(8) Where the Supervisor believes that any provision of the Consumer Code is being, or has been, contravened by a deposit taking institution, the Supervisor may—

- (a) issue a warning to the institution, as to the likelihood of directions being issued

pursuant to section 132(6) unless the contravention is rectified; or

- (b) subject to subsection (9), issue such directions to the institution as appear to be appropriate to require the institution to comply with the Consumer Code.

(9) Directions issued under subsection (8)(b) shall be addressed—

- (a) to the attention of the person with responsibility for the governance and daily oversight of the deposit taking institution, as well as the directors of the board of the institution; or
- (b) in the case of a foreign deposit taking institution, to the attention of the person with responsibility for the governance and daily oversight of branch operations in Jamaica, as well as the members of the body responsible for the governance and oversight of branch operations in Jamaica.

(10) 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.

(11) In this section, the “relevant date” means the commencement date of the Banking Services (Amendment) Act, 2017.”.

Amendment
of section
133 of
principal Act.

4. Section 133 of the principal Act is amended—

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

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

5. The principal Act is amended by—

Insertion of
Eighth
Schedule in
principal Act.

- (a) re-numbering the Ninth, Tenth and Eleventh Schedules as the Tenth, Eleventh and Twelfth Schedules, respectively, and amending the references thereto accordingly, wherever they appear in the principal Act; and
- (b) inserting next after the Seventh Schedule, the following as the Eighth Schedule—

“ EIGHTH SCHEDULE (Section 132A)

Mandatory Minimum Service Package

1. In this Schedule,

“account” means a continuing relationship between a deposit taking institution and a customer who is an account holder, in which deposits or debts are held and processed within a framework of established rules and procedures;

“banking service” means the provision of any account, credit facility or financial instrument (however described), which is subject to a contract between a deposit taking institution and a customer;

“dormant account” means a savings account showing no deposit or withdrawal activity (other than the posting of interest) for a period specified by the deposit taking institution where the account is held, not being less than six calendar months or as the Supervisor may prescribe from time to time.

2.—(1) Responses to inquiries made by a customer, in respect of the banking services provided by a deposit taking institution to a customer not more than fifteen years before the date of the inquiry, shall be provided free of charge to the customer.

(2) Sub-paragraph (2) does not apply to third-party charges imposed in respect of the inquiry.

3.—(1) In respect of each account, credit facility or other financial instrument, however described, held by a customer under a contract with a deposit taking institution, the customer shall be entitled to conduct, free of charge, a minimum of one hundred and twenty transactions in a calendar year, regardless of the type of transaction and the means by which the transaction is conducted.

(2) Subsection (1) does not apply to third-party charges imposed in respect of the transaction.

4.—(1) Subject to sub-paragraph (2), where a statement or other document issued by a deposit taking institution, in respect of a banking service is required to be produced by a customer for the purposes of any enactment, that statement or other document (as the case may be) shall be provided to the customer free of charge.

(2) Sub-paragraph (1), shall not apply to any statement—

- (a) issued more than seven years before the date of the request; or
- (b) required to be supplied outside of Jamaica other than by electronic means.

5. A deposit taking institution shall not impose a charge in return for cashing or changing a cheque or other instrument of a similar nature.

6.—(1) A deposit taking institution may freeze a dormant account that carries a credit balance, after giving the customer concerned at least ninety days' notice in writing stating—

- (a) the cut-off date on which the account will be classified as dormant;
- (b) the manner and method in which a response to the notice is to be given;
- (c) the action that will be taken if the customer fails to respond to the notice;
- (d) the means by which a current statement of the account may be obtained by the customer free of charge; and
- (e) the options available for the reactivation of the account.

(2) Where a dormant account is frozen pursuant to sub-paragraph (1)—

- (a) no transaction shall be allowed in respect of the account;
- (b) the benefits attached to the account shall continue to be applied to the account;
- (c) no maintenance fee shall be applied to the account; and
- (d) statements of account shall be prepared and—
 - (i) published electronically in keeping with the statement cycle applicable to the account as if the account were not classified as dormant; and
 - (ii) transmitted electronically to the electronic mailing address specified by the customer, in any case where the customer opts to provide the deposit taking institution with an electronic mailing address for the receipt of the statements.

7.—(1) Where a dormant account held with a deposit taking institution carries a zero balance, the deposit taking institution may close the account if, after the customer concerned has been given not less than ninety days' notice in writing stating the matters specified in sub-paragraph (2), the customer does not respond to the notice or reactivate the account.

(2) A notice in writing given by a deposit taking institution to a customer for the purposes of sub-paragraph (1) shall state—

- (a) the cut-off date on which the account will be closed;
- (b) the manner and method in which a response to the notice is to be given;
- (c) the action that will be taken if the customer fails to respond to the notice;
- (d) the means by which a current statement of the account may be obtained by the customer free of charge; and

- (e) the options available for the reactivation of the account.

(2) No maintenance fee shall be charged to a dormant account carrying a zero balance.

8.—(1) A deposit taking institution shall not—

- (a) make any modification to the terms and conditions of any banking service provided by the deposit taking institution if the effect of the modification is that the customer would be placed at a material disadvantage when compared with the terms and conditions without the proposed modification; or
- (b) increase the rate of interest charges, or any other fees or other charges in respect of a banking service,

unless a written notice that complies with the requirements specified in sub-paragraph (2) is given to the customer within a reasonable period before the modification or increase takes effect.

(2) A notice under sub-paragraph (1) shall—

- (a) in the case of a modification—
 - (i) describe the modification; and
 - (ii) provide the customer with the option not to accept the modification;
- (b) in the case of an increase—
 - (i) state the amount or rate of the increase; and
 - (ii) provide the customer with the option not to accept the increase;
- (c) state the date on which the modification or increase (as the case may be) is scheduled to take effect;
- (d) state the manner and method in which a response to the notice is to be made; and
- (e) state the action that will be taken if the customer fails to respond to the notice.

(3) For the purposes of this section—

- (a) any question whether or not a modification has the effect described in sub-paragraph (1)(a) may be determined by the Supervisor;
- (b) a notice period shall be deemed to be reasonable if, in relation to the period between the notice and the implementation or application of the proposed modification or increase, the notice is provided by a deposit taking institution, either directly or through its agent, to a customer not less than forty-five days in advance of the proposed modification or increase; and
- (c) a notice for the purposes of this section may take the form of a general advisory prominently displayed, in a place where customers are allowed access for the purpose of banking services, at each place of business and all locations operated by the deposit taking institution and at its agent locations.

9. A deposit taking institution shall—

- (a) disclose to the customer prior to the completion of a transaction conducted by an automated teller machine, automated banking machine or any other medium (automated or otherwise), all fees and charges applicable to the transaction;
- (b) provide the customer with the option to choose whether to proceed with or terminate the transaction; and
- (c) where the customer chooses to terminate the transaction, shall not impose a charge or penalty (however described) for the termination.

10. (1) There shall be a seventy-two hour cooling-off period after the execution of any contract between a deposit taking institution and a customer for the provision of banking services.

(2) During the cooling-off period, the customer shall be entitled to terminate the agreement without incurring a charge or a penalty (however described).

(3) Prior to the execution of the contract referred to in sub-paragraph (1), the deposit taking institution shall inform the customer of the duration of the cooling-off period, the method by which the customer may terminate the contract during the cooling-off period, and of any other information relevant to the exercise of the option to terminate.

(4) Prior to the execution of any contract referred to in sub-paragraph (1), the deposit taking institution shall—

- (a) disclose to the customer the terms and conditions of the contract; and
- (b) provide the customer with a fact sheet explaining the key contractual terms.

(5) The requirements of this section shall not apply—

- (a) to transactions conducted using an automated banking machine; or
- (b) if the customer, upon being given a clear and precise explanation of the benefits of the cooling-off period, opts to waive the requirement for a cooling-off period.

11. A deposit taking institution shall clearly distinguish information about the terms and conditions of banking services provided by the institution from any promotional material about those services.”.

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 deposit taking institutions in Jamaica and, *inter alia*, made the following observations in its report—

- (a) the fees charged by state-licensed institutions on transactions of depositors discourages deposits and negatively impacts the savings rate of the country;
- (b) customers who do not have internet access would need to visit their deposit taking 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 the core banking activities is cause for concern.

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

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

FITZ A. JACKSON, CD, MP

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An ACT to Amend the Banking Services Act.

As introduced by Fitz A. Jackson, Private Member.

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(GOVERNMENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA.**