

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 116: Meaning of "Gaming Machine" and "Gaming"

Summary

1. [Section 116](#) provides for the definition of “gaming machine” and “gaming” for the purposes of the Betting and Gaming Duties Act 1981 to be set out in that Act.

Details of the Section

2. Subsection (3) substitutes the meaning of “gaming machine” contained in section 25(1A) of the Betting and Gaming Duties Act 1981 (BGDA) and introduces new subsections (1A) and (1B).
3. New subsection (1A) provides that such machines which can be used for purposes other than gambling may be covered by the definition of a gaming machine, as well as those designed or adapted for the purposes.
4. New subsection (1B) excludes from the definition of gaming machine those machines that are designed or adapted to bet on future real events, for playing bingo on which bingo duty is or would be charged but for specific duty exemptions, or for playing a real game of chance on which gaming duty is or would be charged but for specific gaming exemptions.
5. Subsection (5) amends section 25 of BGDA by inserting new subsections (5) and (6).
6. New subsection 5(a) provides that a reference to gambling is to gaming or betting.
7. New subsection (5)(b) provides that “machine” includes a machine powered mechanically, by electricity, or by both means.
8. New subsection (5)(c) provides that a reference to a machine being designed or adapted for a purpose includes any alterations made to a machine which can reasonably lead it to be expected to be used for that purpose.
9. New subsection (5)(d) provides that the installation of computer software on a machine constitutes being adapted.
10. New subsection (5)(e) provides that “real” means non-virtual.
11. New subsection (5)(f) provides that “game of chance” includes a game that involves both an element of chance and an element of skill, a game that involves an element of chance that can be eliminated by superlative skill and a game that is presented as involving an element of chance, but does not include a sport.
12. New subsection 5(g) provides that a reference to bingo includes any version of that game, regardless of what it is called.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

13. New subsection (6) provides that the definition of gaming machine in section 25 of BGDA may be amended by Treasury order.
14. Subsection (6) of the section provides for the amendment of section 33(1) of BGDA (interpretation).
15. Subsection (6)(a) provides that in section 33(1) of BGDA, the definition of “gaming” is amended to remove the reference to the Value Added Tax Act 1994.
16. Subsection (6)(b) introduces a new subsection (1A) into section 33 of BGDA.
17. New subsection (1A)(a) provides that a reference to game of chance in subsection (1) when used in relation to gaming includes a game that involves both an element of chance and an element of skill, a game that involves an element of chance that can be eliminated by superlative skill and a game that is presented as involving an element of chance, but does not include a sport.
18. New subsection (1A)(b) provides that a reference to playing a game of chance in subsection (1) means participation in a game of chance whether or not there are other participants in the game and whether or not a computer generates images or data taken to represent the actions of other participants in the game.
19. New subsection (1A)(c) provides that a reference to prize does not include the opportunity to play the game again.

Background Note

20. There are two elements to this section; the first concerns the definition of gaming machine, the second the definition of gaming. At present both expressions are defined for the purposes of BGDA by reference to definitions contained in the Value Added Tax Act 1994 which in turn rely to a substantial degree on social legislation contained in the Gambling Act 2005.
21. This section amends sections 25 and 33 of BGDA so that they include their own statutory definition of “gaming machine” and “gaming” without the need to cross refer to the VAT legislation.
22. The changes are being made to simplify and clarify the betting and gaming duties legislation.