



Gambling Act 2005

Transitional Provisions

Arcades – Existing Operators

1. Who needs to know about the changes to the law?

This information sheet is intended for existing operators of arcades with permits that have been issued under Section 34 of the Gaming Act 1968 and who want to continue to operate their business after 1 September 2007.

2. What do you need to do if your existing arcade permit expires before 1 September 2007?

You do not have to do anything under the current legislation. Your existing permit has been automatically renewed until 31 August 2007.

If you want a copy of the renewed permit you can contact the licensing office on 023 9283 4073 or email: Licensing@portsmouthcc.gov.uk.

3. What type of licences/permits are required under the Gambling Act 2005?

The Gambling Act 2005 (“The Act”) creates three new categories of arcade:

- **Adult Gaming Centres (AGCs)** – AGCs will be able to offer up to four Category B3 gaming machines in addition to an unlimited number of Category C and D gaming machines. These types of premises will be strictly for use by over 18s only, and children will not be allowed in any part of the premises.
- **Licensed Family Entertainment Centres (Licensed FECs)** – Licensed family entertainment centres will be able to offer an unlimited number of Category C and D machines. Children will be allowed to enter these premises but will only be able to play on Category D machines. Any Category C machines must be located only in over-18 areas.
- **Unlicensed Family Entertainment Centres (Unlicensed FECs)** – Unlicensed FECs will be allowed to offer an unlimited number of Category D gaming machines. Children will have free access and will be able to play on the Category D machines.

4. What do you need to do if you want to continue to operate your business after 1 September 2007?

If you currently hold a permit under Section 34(5E) of the 1968 Act, and you wish to operate your arcade as an AGC or a licensed FEC, you will need to make advance applications under the 2005 Act as follows:

- To the Gambling Commission for a ***gaming machine general operating licence*** for an AGC or FEC;
- To the Gambling Commission for any ***personal licences*** required by your business; and
- To Portsmouth City Council, as Licensing Authority, for an ***AGC or FEC premises licence***.

If you currently hold a permit under Section 34(1) of the 1968 Act, and wish to operate your arcade as an unlicensed FEC, you will need to make an advance application to Portsmouth City Council for a ***family entertainment centre gaming machine permit***. You will not need to apply for an operating licence or any personal licences.

PART ONE – PREMISES LICENCES

5. How long will the new licences last?

AGC and FEC operating, premises and personal licences will be of unlimited duration. You will not need to apply again unless your circumstances change.

However, you will have to pay an annual fee to the Gambling Commission in respect of your operating licence and to Portsmouth City Council in respect of your premises licence. You will also have to pay a periodic maintenance fee to the Gambling Commission in respect of personal licences.

FEC gaming machine permits will be granted for 10 years for a fixed fee but there is no annual fee payable.

6. How do you obtain your operating licence and personal licence (if necessary) from the Gambling Commission?

You must apply to the Gambling Commission between 1 January and 27 April 2007. The Commission has issued its own guidance on the application procedures, and what you need to submit with your application. You can find this information on their website: www.gamblingcommission.gov.uk

7. How do you obtain your premises licence?

You must apply to Portsmouth City Council between 21 May and 30 July 2007.

8. Will you qualify for “continuation rights”?

If you hold a valid permit issued under Section 34(5E) of the 1968 Act, and you submit your advance application before 31 July 2007, you will qualify for continuation rights. **This means that you will continue to be able to operate from 1 September 2007, even if your application has not been resolved by that date.**

It is important to note that you will still be expected to abide by the relevant mandatory and default premises licence conditions that come into force on 1 September 2007. You will also remain subject to the review provisions for premises licences set out in the Act.

9. How will you know if you qualify and what the mandatory and default premises licence conditions are?

When Portsmouth City Council acknowledge receipt of your application, we will notify you that your application has been received in time and therefore, if you hold an existing permission, you will qualify for continuation rights. We will also provide you with a summary of the mandatory and default premises licences conditions that will apply to the category of premises licence for which you are applying.

10. Will you qualify for “grandfather rights”?

If you are an existing operator and you apply for your premises licence before 1 September 2007, you will be guaranteed a premises licence (except in the circumstances described in the next question).

Your Section 34 (5E) permit will qualify you for grandfather rights either as an AGC or licensed FEC. **You will need to decide which category of new arcade you wish to operate as under the new Act.**

A single Section 34 (5E) permit will not entitle you to more than one grandfathered premises licence under the new Act.

11. Under what circumstances can the Licensing Authority refuse your application?

Portsmouth City Council, as Licensing Authority, can only refuse your application for a premises licence if:

- You have failed to submit any information that we need to process your application; or
- It is obvious to us from the plan of your premises that you will be unable to comply with any condition attached to the category of premises licence for which you are applying.

12. What information will you need to submit to the Licensing Authority?

More information about applying for premises licences or permits is outlined in

Appendices A, B and C. Alternatively the Department of Culture, Media & Sport (DCMS) website: www.culture.gov.uk has provided useful information for applicants.

In summary, an application will consist of the following:

- A completed premises licence application form;
- A plan of the premises which will include basic information about the situation and layout of the premises; and
- The prescribed application fee.

13. Will there be any special arrangements during the transitional period?

The application form to apply for a premises licence during the transitional period will give you the choice of the following two types of application:

- ***Fast track application*** – you can opt to accept in full the mandatory and default conditions that the government will attach to the type of premises licence you are applying for; or
- ***Non-fast track application*** – you can apply to vary any of the default conditions that apply to the category of premises licence for which you are applying.

However, you will not be able to make both a fast track and a non-fast track application. If you do make both applications, we will be required to refuse your non-fast track application.

14. What is the difference between the two procedures?

The key differences between the two procedures are summarised below.

Fast track premises licence application

- The Licensing Authority must grant the application;
- The new mandatory and default conditions will be attached to the premises licence and nothing more;
- The Licensing Authority will not be able amend the default conditions or attach additional conditions. (However, after issue your premises licence may be reviewed like any other);
- It will involve a straightforward administrative procedure with no requirement for a hearing, to publish a notice of the application or to notify responsible authorities;
- Responsible authorities or interested parties will not be able to make representations;
- The application will be subject to a lower fee which reflects the reduced amount of work for the Licensing Authority in dealing with the application.

Non-fast track premises licence application (i.e with a default condition excluded or varied)

- The Licensing Authority must ultimately grant at least a premises licence with the new mandatory and default conditions attached to it (as outlined above for fast track applications);
- The Licensing Authority may grant or refuse your request to exclude or vary a default condition;
- Where the Licensing Authority grants the request, it may attach other conditions. This may, for example, relate to the same matter dealt with by the default condition, but it does not necessarily have to be so limited;
- All the normal requirements relating to the making of an application for a premises licence will apply, including the requirements to publish a notice of the application and to notify responsible authorities;
- Responsible authorities and interested parties may make representations;
- There may be (but will not necessarily be) a requirement for a formal hearing;
- Your application will incur a higher fee to reflect the increased costs incurred by the Licensing Authority.

15. What will happen if you make a mistake in your application or on the plan?

We will not automatically refuse your application. We will notify you of any error or omission. However, if you fail to rectify any error we may have no alternative but to refuse your application.

If the application qualifies for continuation rights (i.e. it was made before 31 July 2007), we will give you a time period of not less than 14 days to rectify your mistake. If you fail to do this within the specified time then your continuation rights will lapse.

16. What will happen if the Licensing Authority believes that, on the basis of the plan of your premises, that you will be unable to comply with a condition attached to the licence under the new Act?

We will give you notice in writing indicating that we believe that, on the basis of your plan, the proposed premises is incompatible with a condition, what that condition is and will request information which will show how you will meet the relevant condition, including an amended plan.

You will be given a minimum of 14 days to comply with this request and we cannot grant the licence until you comply. If you qualify for continuation rights, we will specify a period of not less than 14 days for complying with the request. If you fail to comply within the given timescale, your continuation rights will lapse.

PART TWO - PERMITS

17. How do you obtain a family entertainment centre gaming machine permit?

You need to apply to the Licensing Section between 21 May and 30 July 2007.

18. Will you qualify for continuation rights and grandfather rights?

If you have a valid Section 34(1) permit, similar rules relating to continuation rights and grandfather rights that apply to premises licences will apply to FEC gaming machine permits.

19. What will you need to submit with my application?

Further information will be available from the Licensing Office or alternatively from the Gambling Commission and DCMS websites.

20. Will any special arrangements apply during the transitional period?

If you currently hold a valid permit and therefore qualify for a grandfathered FEC gaming machine permit, we will be required to grant your application. It will be dealt with in broadly the same way as a fast track grandfathered premises licence application and a reduced application fee will apply.

21. Are there any circumstances in which the Licensing Authority can refuse your application?

The same rules that relate to applications for grandfathered premises licence applications will apply.

PART THREE – PREMISES LICENCES AND PERMITS

22. What happens if your existing permit is cancelled before 1 September 2007?

In the rare event that an existing permit is cancelled before 1 September 2007, the following arrangements will apply:

- The Gambling Commission will continue to be able to resolve any outstanding applications for operating and personal licences, but you will lose your entitlement to continuation rights;
- If you have already been issued with a new premises licence or permit under the new Act, that licence or permit will lapse on the date on which your licence under the old Act was cancelled or revoked;
- If your application for a grandfathered premises licence or permit under the new Act is still outstanding, we must refuse your application.

23. What happens if you want to make substantial alterations to your premises during the transition period?

Grandfather rights only apply where the application for a premises licence under the new Act relates to the same or substantially the same premises as those to which the Section 34 permit relates.

If you are planning to make substantial alterations to your existing premises, you may want to consider applying first for a grandfathered premises licence for your existing premises. You would then subsequently need to apply to us to vary your new premises licence.

Guidance for making an application for a premises licence – Transitional Conversion

These guidance notes are intended to provide further information to applicants to enable them to submit an application which complies with the provisions of the Gambling Act 2005 (“the Act”) and the associated regulations. However, these notes do not constitute a full statement of the law and in cases of doubt applicants should seek further advice from their own legal advisor.

1. Where can I get the application form?

Copies of the application form and other notices (as and where necessary) required to be submitted with the application can be obtained from:

- The Licensing Authority (contact details below);
- Portsmouth City Council Website: www.portsmouth.gov.uk;
- Department of Culture, Media & Sport Website: www.culture.gov.uk.

2. How can I contact the Licensing Authority?

The contact details are provided in Table 1 below.

Table 1 – Contact details for the Licensing Authority:	
Portsmouth City Council Licensing Section Legal & Democratic Services Civic Offices Guildhall Square Portsmouth Hants PO1 2AL	Direct Dial No: 023 9283 4607 or 023 9283 4073 Fax No: 023 9283 4811 Answerphone: 023 9283 4811 Email: Licensing@portsmouthcc.gov.uk DX No: 2244 Portsmouth

3. What information must I provide when making an application?

The applicant must submit the following information to the Licensing Authority:

- a) The prescribed application form;
- b) A copy of the existing permission under the existing legislation¹. *(In cases where you have applied for but have not been granted a permission under the existing legislation, you must provide copies of the documents submitted when applying for the permission).*
- c) The prescribed fee (See Appendix B, Table 2 on page 13);

¹ “The equivalent permission” means the licence or permit under the Betting, Gaming and Lotteries Act 1963 or the Gaming Act 1968.

- d) An up-to-date scale plan of the premises (See Appendix C, Table 3 on pages 14 and 15 for details of the information to be shown on the plan);

Note: *If you are unable to produce a copy of the existing permission under the existing legislation because it is not reasonably practicable to do so, you must include with the application a statement explaining why it is not reasonably practicable to do so, and set out the nature of the permission, the date on which it was granted and by whom.*

4. What is the difference between a fast track and non-fast application?

A summary of the differences between a fast track and non-fast application is outlined on pages 4 and 5 of this guidance.

5. What do I need to do if I want to apply for a non-fast track application?

If you decide to apply for a non-fast track application then you will need to pay a higher fee and give formal notice of your application.

6. How do I give notice of my non-fast track application?

You must give notice of the application in the following ways:

- a) To each of the responsible authorities prescribed by the Act. This notice must be in accordance with the form set out in the statutory regulations. A copy of this notice can be obtained from the Licensing Office, the Portsmouth City Council website or the DCMS website.

The formal notice must be given within a period of 7 days beginning on the date on which the application is made.

(Those responsible authorities may make representations within a period of 28 days beginning on the date on which the application was made to us).

- b) You must also publish a notice of your application in a local newspaper or, if there is none, a local newsletter, circular or similar document, circulating within the Portsmouth area on at least one occasion during the period of ten working days starting the day after the application is made to us (this notice must also be in accordance with the form set out in the statutory regulations); and
- c) You must display the notice on the premises to which the application relates:
 - i) in a place at which it can conveniently be read by members of the public from the exterior of the premises;
 - ii) for a period of no less than 28 consecutive days starting on the day on which your application is made to us.

7. What will happen if I fail to give proper notice of my application?

If you fail to give proper notice of your application, the following statutory provisions will apply:

a) Failure to give proper notice to responsible authorities:

You will have to give further notice to all the responsible authorities which meets the statutory requirements as soon as practicable after the end of the period of 7 days when the original notice was required to have been given.

The relevant responsible authorities then have a further period of 28 days to make representations beginning with the day on which they receive the subsequent notice.

Portsmouth City Council, as Licensing Authority, cannot grant the application until you have given the notice and in any respect not before the period of 28 days has elapsed.

b) Failure to give proper notice of an application in the paper or on the premises:

You will have to re-advertise your application as outlined in 6(b) and (c) above as soon as practicable after the end of the period of ten working days when the original notice was required to have been given.

Interested parties then have a further period of 28 days to make representations beginning with the day on which the notice is published.

Portsmouth City Council, as Licensing Authority, cannot grant the application until you have given the notice and in any respect not before the period of 28 days has elapsed.

8. Who are the responsible authorities and interested parties?

When dealing with applications for and reviews of premises licences, the Licensing Authority are obliged to consider representations from two categories of persons, referred to as “**responsible authorities**” and “**interested parties.**” Representations made by persons other than responsible authorities or interested parties will be inadmissible.

“**Responsible authorities**” are public bodies that must be notified of applications by the applicant. They are as follows:

- the Licensing Authority in whose area the premises are wholly or partly situated;
- the Gambling Commission;
- the Chief Officer of Police;
- the Fire and Rescue Authority;
- the local Planning Authority;
- the Public Protection Service;

- the Directorate of Children, Families & Learning;
- HM Revenues and Customs; and
- Any other person prescribed by the Secretary of State

A full list and contact details of all the Responsible Authorities under the Act are available from the Licensing Section and can also be found on the Council's website: www.portsmouth.gov.uk.

“Interested parties” are persons who may make representations about licence applications or apply for a review of an existing licence. These parties are defined in the Act as follows:

“A person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person-

- lives sufficiently close to the premises to be likely to be affected by the authorised activities; or
- has business interests that might be affected by the authorised activities; or

represents persons in either of those two groups referred to above.

9. What happens if representations are made about my non-fast track application?

The licensing authority must hold a hearing to determine the application if an interested party or responsible authority has made (and not withdrawn) representations about the application.

A hearing must also take place if the authority proposes to attach a condition to the premises licence or propose to exclude a default condition

Notwithstanding the above, the licensing authority may determine an application for a premises licence without a hearing with the consent of the applicant and any interested party or responsible authority who has made (and not withdrawn) representations about the application.

A licensing authority may also determine an application for a premises licence without a hearing if the authority think that the representations:

- are vexatious;
- are frivolous, or
- will certainly not influence the authority’s determination of the application.

Where a hearing is required to be held, this will be arranged for as soon as is reasonably practicable after the expiry of any period for representations.

On considering an application for a premises licence (whether at a hearing or not) a licensing authority shall either grant or reject the application.

Appeal provisions exist in relation to decisions made by the licensing authority to the magistrates' court within the period of 21 days beginning with the day on which the appellant receives notice of the decision against which the appeal is brought.

10. Can I send my application by Email or Fax?

The regulations made under the Act prescribe that an application shall be given in writing. However, they do permit the receipt of applications by electronic means subject to the following criteria that the text of the application or notice:

- (a) is capable of being accessed by the recipient;
- (b) is legible in all material respects;
- (c) is capable of being read and reproduced in legible form and used for subsequent reference by the recipient; and
- (d) the person to whom the application or notice is to be made or given has agreed in advance that an application or notice may be made or given by the particular electronic means used.

Note for applicants: When the text for an application or notice is sent by electronic means, the application shall not be treated as having been made until:

- i) The prescribed fee has been received by the licensing authority, or
- ii) In cases where any document required to accompany the application has not been sent by electronic means, or has been sent in a form that does not meet the above requirements, have been received by the licensing authority in hard copy.

11. What are the mandatory and default conditions which will be attached to my premises licence?

Details of the mandatory and default conditions applicable to the various categories of premises licence are available from the Licensing Section or the Council's website.

12. How long will it take for my application to be processed?

Providing you have sent us all the necessary information required for us to consider your application and have submitted the relevant fee we will try our best to issue your licence within 4-6 weeks.

Dependent upon the number of applications that we receive during the transitional period, it may not be possible to grant the licence within this period of time. However, If you have submitted your advance application before 31 July 2007, you will qualify for continuation rights. **This means that you will continue to be able to operate from 1 September 2007, even if your application has not been resolved by that date.**

13. When does the premises licence take effect?

The new premises licence will come into force on 1 September 2007. In the interim, current existing permissions remain in force.

APPENDIX B

Table 2 – Prescribed fees for conversion applications & annual fee				
Licence Type:	Fast Track Application	Non-Fast Track Application	Annual Fee: <i>(Payable within 30 days of when licence is first issued)*</i>	New Application: <i>(except for where Provisional Statement has been issued)</i>
Converted casino premises	£300.00	£2000.00	£3000.00	N/A
Bingo premises	£300.00	£1750.00	£1000.00	£1200.00
Adult Gaming Centre premises	£300.00	£1000.00	£1000.00	£1200.00
Betting premises - Track	£300.00	£1250.00	£1000.00	£950.00
Family Entertainment Centre	£300.00	£1000.00	£750.00	£950.00
Betting premises - Other	£300.00	£1500.00	£600.00	£1200.00
*Notes re Annual Fees: For conversion applications before end of July 2007 - the first annual fee is payable on or before 1 October 2007.				

Table 3 – Information to be shown on scale plan:

An application for a premises licence shall be accompanied by a scale plan of the premises to which the application relates which complies with the following provisions:

1. The plan must show:

- (a) the extent of the boundary or perimeter of the premises;
- (b) where the premises include, or consist of, one or more buildings, the location of any external or internal walls of each such building;
- (c) where the premises form part of a building, the location of any external or internal walls of the building which are included in the premises;
- (d) where the premises are a vessel or a part of a vessel, the location of any part of the sides of the vessel, and of any internal walls of the vessel, which are included in the premises;
- (e) the location of each point of entry to and exit from the premises, including in each case a description of the place from which entry is made or to which the exit leads; and
- (f) any other matter required in accordance with the following matters;

2. Where the application is for a CASINO premises licence, other than a converted premises licence, the plan must also show:

- (a) the principle entrance to the premises of those identified in accordance with paragraph 1(e) above;
- (b) the location and extent of any part of the premises which will be a table gaming area;
- (c) the location and extent of any other part of the premises which will be used for providing facilities for gambling in reliance on the licence; and
- (d) the location and extent of any part of the premises which will be a non-gambling area.

2A. Subject to paragraph 2B, where the application is for a converted casino premises licence, the plan must show:

- (a) the principle entrance to the premises of those identified in accordance with paragraph 1(e); and
- (b) the location and extent of any part of the premises which will be used for providing facilities for gambling in reliance on the licence; and
- (c) the location and extent of any part of the premises which will be a non-gambling area.

2B. The requirement imposed by sub-paragraph (c) of 2A above only applies where the combined floor area of those parts of the casino identified in accordance with sub-paragraph (b) of that paragraph is 200 square metres or more.

3. Where the application is for a BINGO premises licence in respect of premises to which children or young persons will be permitted to have access, the plan must also show:

- (a) the location and extent of any part of the premises which will be used to provide facilities for gaming in reliance on the licence (other than those parts which include Category B or C gaming machines);
- (b) the location and extent of any part of the premises in which Category B or C gaming machines will be made available for use in reliance on the licence;
- (c) the nature and location of any barrier or other thing separating any part of the premises in which Category B or C gaming machines will be made available for use from any other part of the premises.

4. Where the application is for an ADULT GAMING CENTRE premises licence, the plan must also show:

- (a) the location and extent of any part of the premises in which gaming machines will be made available for use in reliance on the licence.

5. Where the application is for a FAMILY ENTERTAINMENT CENTRE premises licence, the plan must also show:

- (a) the location and extent of any part of the premises in which Category C gaming machines will be made available for use in reliance on the licence;
- (b) the location and extent of any part of the premises in which Category D gaming machines will be made available for use in reliance on the licence; and
- (c) the nature and location of any barrier or other thing separating any part of the premises in which Category C gaming machines will be made available for use from any other part of the premises.

6. Where the application is for a BETTING premises licence, OTHER THAN IN RESPECT OF A TRACK, the plan must also show:

- (a) the location and extent of any part of the premises which will be used to provide facilities for gambling in reliance on the licence.

7. Where the application is for a BETTING premises licence IN RESPECT OF A TRACK, the plan must also show:

- (a) the location and extent of any part of the premises which is a five times rule betting area;
- (b) the location and extent of any other parts of the premises which will be used for providing facilities for betting in reliance on the licence;
- (c) the location and extent of any part of the premises in which Category B or C gaming machines will be made available for use in reliance on the licence;
- (d) the nature and location of any barrier or any other thing separating any part of the premises in which Category B or C gaming machines will be made available for use from any other part of the premises.

