

SERVE LEGAL RESPONSE TO THE GOVERNMENT CONSULTATION ON ALCOHOL AND AGE VERIFICATION.

Consultation description:

The government is consulting on whether to allow digital identities and technology to play a role in age verification for alcohol sales, as well as whether to amend legislation in order to specify that for sales of alcohol that do not take place face to face, age verification should take place at the point of delivery as well as sale.

The Licensing Act 2003 ('the act') covers the retail sale and supply of alcohol. One of the licensing objectives that the act seeks to uphold is the protection of children from harm, meaning that alcohol must not be sold to someone under 18. Currently, if anyone appears to be under 18, they need to produce identification which bears their photograph, date of birth and either a holographic mark or ultraviolet feature. In practice this means that currently only physical identity documents are permitted.

The government is keen to enable the secure and appropriate use of new technologies that can improve the experience of consumers and retailers. We are therefore consulting on whether to amend the act so as to allow digital identities and technology to play a role in age verification. The need for robust national standards for digital identities and technology remains paramount in order to provide confidence to retailers and consumers alike that they are fit for purpose. Any change would reflect the wider cross-government position on the use of digital identities and technology for the sale of age-restricted products and will only take effect once there are government approved national standards in place. We are also considering whether the act adequately covers transactions that do not take place face to face. Currently the act only sets out a requirement to verify age at the point of sale or appropriation to a contract, not at the point of delivery. We are reviewing whether this is still right and whether there should additionally be checks at the point of delivery and / or service. We are consulting on whether to amend the act so that it is explicit about when age verification must take place.

Overview on Serve Legal: www.servelegal.co.uk

Serve Legal are the leading provider of ID check and retail compliance auditing in the UK & Ireland. We provide extensive, independent audit services that enable national retailers, leisure operators and sports broadcasters to operate with confidence. Our highly accurate audits help clients protect revenues and improve operational and compliance standards; we are a highly trusted industry 'currency' of responsible retailing. We enable companies to pro-actively monitor their staff are checking the ID of young customers - an approach supported by regulation, local authorities and retail best practice. We are proud to perform over 200,000 audits a year through our nationwide team of over 6,000 auditors.

Our primary service involves conducting age verification checks, requiring specialist mystery shoppers of legal age to purchase age-restricted products, enabling companies to measure staff's compliance with their company age check policy such as Think 25. This enables retailers to bolster their age gated protocols and identify any potential vulnerabilities or non-compliant practices. By providing comprehensive reports and data analysis, we empower businesses to make informed decisions, improve their age verification processes, and mitigate the risk of penalties and reputational damage.

Digital ID and age-estimation:

Serve Legal's view is that option 3 would best serve all stakeholders, consumers, businesses, and regulators.

Option 3

Alongside traditional identity documents, also allow age estimation and other technology to be used for age verification for alcohol sales.

Q1. Do you agree or disagree that the Licensing Act 2003 should be amended to allow customers wishing to purchase alcohol to present a digital identity certified against the UK digital identity and attributes trust framework when needing to confirm their age?

Agree

Our auditor base of young people, those who will be most affected by the change are overwhelmingly in favour of being able to use digital ID. In a recent survey conducted by Serve Legal, 94% of respondents aged 16-25 reported wanting the option to use digital ID. The main blocker to adoption was stated as being non-acceptance, thus meaning that whilst the Licencing Act 2003 remains in its current form, it is unlikely that despite the huge demand, that digital identities will be widely adopted by this demographic.

It is, however, vital that access to digital identity and ease of use is equal for all, particularly in relation to any protected characteristics. Mechanisms such as liveness checks, which are fundamental in delivering digital ID, must not be prohibitive to particular user groups. As highlighted in a recent BBC article (<https://www.bbc.co.uk/news/technology-68655429>) there is the potential for bias and inadvertent discrimination, and external environmental factors can compound this bias, such as when checks are performed in dark conditions. Therefore, we must ensure that thorough and regular testing is conducted to ensure that the technology behaves equally across those characteristics, that all methodologies are accessible, and that bias is proactively monitored and mitigated.

Q2. If you answered 'agree' to question 1, to help us understand the extent of interest in the use of digital identity, which of the following settings do you think this should apply to? Please tick all that apply and use the free text box at the end of the questionnaire to explain any concerns you may have about use in particular settings.

All settings

No concerns about any settings so long as physical IDs are also accepted. It is also important that the person/business checking the identification either has access to the relevant technology (which is often just an app on a phone) to verify the digital identification is legitimate or is trained to be able to validate the digital ID themselves e.g. recognising the moving digital PASS logo and other key traits – This would be highly important in early adoption of the technology when businesses may not have the relevant technology ready and are adapting to the different vendors/interfaces of dID.

Q3. Do you agree or disagree that the Licensing Act 2003 should be amended so as to allow age estimation and other age assurance technology, certified against government-set standards, to assist with age verification?

Agree

Agreement to this statement is very much dependent on the robustness of the standards. Our feeling is that:

- Under-age sales should have to be tested regularly to zero-failure standards within industry/regulatory agreed standards. For example, the age estimation threshold may be set at 25 in line with widely adopted 'Challenge 25' measures in the UK. If this is so, then that technology must be able to demonstrate that it is capable of recognising that those aged under 18 are not over the age of 25 to the strictest degree of accuracy.
- The technology must be regularly tested to ensure there is no introduction of bias that negatively impacts any protected characteristic. Experience and access must be equal. It is also very important to note that the industry currently, has a habit of testing their solutions against The Fitzpatrick skin types classifications as a proxy for race. We feel it is a dangerous assumption to suggest that skin tone is equal to race and that it is important that standards, testing, and certifications are built to recognise this and test it accordingly.
- Providers of Age estimation should be able to demonstrate that their lab-based accuracy testing is replicated in real world scenarios, taking into consideration how external environmental factors such as lighting may influence their technology.
- The industry should stay abreast of spoofing and adversarial tactics to circumnavigate the technology. This can be from basic attempts of using a mask through to advance AI attacks. This is especially relevant when considering online applications whereby there isn't a human to oversee the technology being used.

- It's key to ensure that retailers do not become solely reliant on the technology and are empowered to challenge the technology and override the decision.
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- It's vital that there are rules in place to prevent challenge age thresholds being manipulated to a level which decreases accuracy to a level that significantly increases the risk of a minor accessing inappropriate content/products. Retailers and providers should be transparent about the use and thresholds, ensuring that the tool is in use on all transactions (not toggled on/off)

Q4. If you answered 'agree' to Q3, to help us understand the extent of interest in the use of age assurance technology, which of the following settings do you think this should apply to? Please tick all that apply and use the free text box at the end of the questionnaire to explain any concerns you may have about use in particular settings.

All settings

All settings, though it is important to realise that the risk of spoofing is much higher in an online setting and therefore standards must account for this. Equally, the technology must be tested in a range on environments to ensure external factors such as lighting are not impacting the accuracy of the solution. It is important that regular in situ auditing is carried out to ensure lab standards are replicated in the real world.

Q5. Currently, age estimation technology exists whereby if the technology detects that an individual looks younger than the age threshold that has been set, the system flags that another person needs to verify the age of that individual. If allowed, what minimum age threshold do you think age estimation and other technology should be set at? Please tick one.

Should not be prescribed

Our view is that this should be dictated by the performance of the technology within the defined standards. The standards should dictate that X degree of accuracy represents acceptable risk. This for example may be a zero-failure test on a sample size of X with a representative sample including X, Y and Z, against a challenge age defined by the technology provider.

The technology can then be tested against these standards and if it meets the required standards against the defined challenge age, then that technology should be able to be used with that challenge age set.

This will ensure that the technology is continuously improving, it creates an environment which allows for the lowest levels of friction and gives providers and opportunity to improve their competitive position. Ultimately, the more incentive there is to improve accuracy, the safer it will be for children and young people.

Q6. Do you agree or disagree that technology should only assist in age verification decision making? In other words, must a person always make the final decision for alcohol sales where technology suggests that an individual may be underage?

Neither agree nor disagree

It is our view that there must always be an option whereby a human is able to intervene because there may always be outliers where a person's age is misidentified to a degree where they are rejected access to a product or service to which they should have access and if for example that person is unable to access a digital ID, their only option to override that decision would be to show a physical ID to a human. It would be a very, very high threshold of accuracy and equality where a human would not need to be present.

Within the sphere of age assurance, there are many different mechanisms that can be deployed to estimate and validate the user's age, so we feel that this would depend on the application of the technology and the risk to the individuals.

Q7. If digital identities and age assurance technology is used to assist with age verification for alcohol sales, what impact do you think this would have on licensing objectives? Please tick one box for each licensing objective.

Licensing objective	Positive impact
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Prevention of crime and disorder	
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Public safety	
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Prevention of public nuisance	
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Protection of children from harm	
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Q8. Do you agree or disagree that any provider of digital identity services used for age verification for alcohol sales should be certified against government standards contained within the UK digital identity and attributes trust framework?

Agree

Q9. Part 7 of the Licensing Act 2003 sets out licensing offences that are committed by a person in the context of alcohol sales. Which of the following best describes how you think responsibility for these offences should be defined in the Licensing Act if digital identities and other technology are allowed? Please tick one.

Add clauses to the Licensing Act which require licence holders to be responsible for ensuring that equipment or technology is accurate and fully functioning.

As highlighted above, there are many factors, such as environmental, that can influence the performance of these technologies that need to be accounted for and licence holders must ensure that, in much the same way as they currently measure and demonstrate compliance, that they are ensuring the functioning and accuracy of the technology.

Licence holders cannot be permitted to have diminished responsibility and solely rely on the technology, they must be able to prove that the lab-based testing on their technology is reflected within their retail environment.

In addition to this, licence holders should be held accountable for ensuring that the technology is in constant use (not toggled on/off) and that in the case of age estimation, the thresholds set represent a safe accuracy level (e.g. 99% accurate in estimation) based on the technology they use.

Q10. If an individual works in a premises that allows digital identities alongside traditional identity documents, do you agree that there should be a requirement for staff to receive training?

Agree

It is very important that staff know how to validate the legitimacy of a digital identification. Serve Legal recently conducted a round of digital ID audits on (non-alcohol) age restricted products, which demonstrated a lack of awareness of how to interact and validate the ID. It cannot be permitted for basic spoofs. screenshot of someone else's ID to be used as fake IDs.

Q11. If an individual works in a premises that allows age assurance technology alongside traditional identity documents, do you agree that there should be a requirement for staff to receive training?

Agree

It is vital that staff are aware of any frailties in the technology, they must know when it is appropriate to intervene and be empowered to do so.

Q12. Do you agree or disagree that there should be a requirement for licensing officers to receive training in digital identities?

Agree

They must be able to demonstrate they are providing the relevant technology and training to staff to validate digital identities.

Q13. Do you agree or disagree that there should be a requirement for licensing officers to receive training in age assurance technology?

Agree

It is very important that licensing officers understand the technology, how it produces its results and consequently any frailties that may exist. The biggest risk that exists in our mind when a new technology is adopted is where it reduces the accountability that humans feel in the decision-making process.

Remote sales

Serve Legal's view is that option 5 would best serve all stakeholders, consumers, businesses, and regulators.

Option 5

Amend the Licensing Act so that age verification checks, checks to establish that an individual is not already intoxicated, and checks that a sale is not a proxy sale must take place at the point of sale/appropriation to a contract and also at the point of delivery/service.

Q14. Do you agree or disagree that the Licensing Act 2003 adequately covers age verification when alcohol sales do not take place face-to-face? Please consider remote transactions (telephone and online) as well as other occasions when a person may not initially be directly involved in the transaction, for example at supermarket self-checkout tills, when a self-scanner is used and when ordering from your table at a pub or restaurant.

Disagree

Q15. If you disagree that the Licensing Act 2003 adequately covers age verification when alcohol sales do not take place face-to-face, what would be the best way to address this?

Amend the Licensing Act 2003

Amend the Section 182 guidance which accompanies the Act

Industry produced guidance

All of the above

Other

Q16. If you disagree that the Licensing Act 2003 adequately covers age verification when alcohol sales do not take place face-to-face and agree that legislation and / or guidance should be amended, should this apply to all delivery models? Please tick all those to which you think this should apply.

Additional information	Yes	No
All delivery models	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Delivery takes place next day or later	Planned delivery using delivery drivers who are employed by the company which holds the alcohol licence.	<input type="checkbox"/>
Delivery takes place next day or later	Planned delivery using delivery drivers who are not employed by the company which holds the alcohol licence.	<input type="checkbox"/>
Fast delivery service	Delivery usually within an hour of ordering. Customer orders via an app. Business model is to sell and deliver alcohol via that app.	<input type="checkbox"/>

Additional information		Yes	No
Fast delivery service	Delivery usually within an hour of ordering. Customer orders via an app. The app does not have an associated alcohol licence and the business model is delivery only.		
Restaurants, pubs, bars and clubs offering direct order / delivery service	Driver is an employee of the licensed premises.		
Restaurants, pubs, bars and clubs offering direct order / delivery service	Third party delivery driver.		
E-commerce – selling from their own stock	Not including licensed specialist alcohol merchants. Driver is an employee of the licensed premises.		
E-commerce – selling from their own stock	Not including licensed specialist alcohol merchants. Third party driver.		
Dropship	E-commerce that does not have own stock and supplies via a third party.		

Additional information**Yes No**

Other – please specify

Q17. Do you agree or disagree that the Licensing Act 2003 should be amended to specify that it is an offence to deliver to/serve alcohol to someone who is already intoxicated?

Agree

Q18. Do you agree that the provision of Primary Authority would be beneficial to changes made to relevant sections of the Licensing Act?*

Agree

Q19. Please use the space provided below to tell us any comments you have on any matter covered in this consultation. If your submission is lengthy, please submit your answers to questions 1-18 via this form and email additional information and data to: alcohollicensingconsultations@homeoffice.gov.uk

Overview from Serve Legal regarding Remote Sales:

As the media, political and regulatory climate increased the focus on the impacts of alcohol consumption at the turn of the century, UK retailers became more focussed on their responsible retail approach including age gating the purchase of alcohol. Responsible retailers focussed on training staff to be vigilant with young customers and implement industry best practice age check schemes such as Think 21 / 25. Naturally, this took time to embed in the cultural habits, but our market data clearly shows an improvement in compliance levels over time. Serve Legal's data shows compliance as a percentage pass rate (Pass defined where staff requested to see the ID of a young customer). Our data confirms that the alcohol retailer sector pass rate reached 77% in 2023 (from 89,000 test purchase audits). With the combination of retailer focus and leveraging Serve Legal's data insight to help improve performance from UK high street retailers, access to alcohol for young customers is generally more robust and as such, restricted through commonplace age verification.

It is well documented that as UK consumers have pivoted into digital retail in the last 5 years especially, consumption of alcohol has consequently shifted into a multi-channel environment, where significant sales of alcohol are sold online (remotely) and delivered to customers addresses and/or at a collection points, such as nearest retail stores or remote lockers. Over this period, Serve Legal innovated to provide an award-winning audit solution that enabled licensed retailers to focus on age gated controls both at the point of sale (web order) and naturally the point of delivery to protect underage access to alcohol. In supporting UK retail, we have a unique and comprehensive archive of data for compliance at the point of delivery.

In 2023 we executed over 12,000 home delivery audits and the compliance pass rate (e.g. was ID requested at the point of delivery) was 49%, a significant drop in compliance compared to the 77% for alcohol sales in UK stores. This clearly suggests a much higher level of risk for minors accessing alcohol via a web-based purchase and delivery sales channel. Digging deeper into the data, the compliance falls slightly further for rapid delivery services with a 2023 pass rate of 47%. Considering Serve Legal are stress testing a Think 25 policy generally restricted to using auditors aged 18–19-year-olds, to have a situation where the majority of online age restricted purchases are not being age gated on delivery is significant.

With this data insight in mind, Serve Legal's recommendation for this consultation is to amend the Licensing Act 2003, the Section 182 guidance and any industry produced guidance, so frameworks are aligned to manage the contemporary risk landscape for all remote sales (e.g. not face to face) of alcohol. This is not an exhaustive list but would include all delivery and collection models (e.g. rapid, next day or later, all licensed retail offering delivery services, collection points).

Serve Legal has been consistent in this regard since it first started working with delivery sales channels and is aligned with retail industry guidance, exemplified by Retail of Alcohol Standards Group (<https://rasg.org.uk/online-sales-guidance/>; <https://rasg.org.uk/rapid-delivery-guidance/>) and the Office for Product Safety and Standards Expert Panel - Age Restrictions on Rapid Delivery Services

Serve Legal feels it's vital that the legislative frameworks not only reflect the ever-changing consumer purchase experience but also extends the compliance industry best practice and age gated disciplines from physical stores across to online sale and delivery channels. Importantly, we're aware from anecdotal intel that often it's not clear who ultimately owns the responsibility for age verification at the point of delivery, is it the retailer or their delivery partner? It is crucial any updates in legislation clarify where this crucial responsibility lies for relevant parties within different delivery models.