

Alcohol team – age verification consultation
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28th March 2024

Dear Sir or Madam,

We welcome this consultation and the opportunity to provide a response.

We are a global trade body representing 27 leading suppliers of age verification and age estimation technologies for use both in person and online. We support an independent, standards-based approach to digital age assurance.

The UK leads the world in digital age assurance technology. A change to the law to permit certified forms of digital proof of age and effective age estimation to be used for the sale of alcohol would **give us the opportunity to showcase British solutions which can then be swiftly exported around the world.** It would also be welcomed by a smartphone generation, who often no longer carry wallets or purses when they go out, using their phones for payment, to display tickets and to prove their age for purchasing many other age-restricted goods apart from alcohol.

But there is a very limited window of opportunity. Delaying a change to the law here which creates a level playing field for healthy competition in this country will inevitably give the competitive advantage to very large global platforms, all established outside the UK, which are already seeking to set alternative de facto standards that favour their own dominance in the market.

We have over the past two years managed a process, in partnership with the Proof of Age Standards Scheme (PASS), to create a mechanism to enable **universal acceptance** of digital proofs of age (dPASS) from any approved issuer in any participating location. While it builds on the global mobile Driving Licence (mDL) standard 18013-5, it offers a more practical and privacy-preserving mechanism that will enable rapid adoption using existing equipment already available in the vast majority of licensed premises – QR code readers. Smartphone based readers can also be used anywhere. **A public key directory, open to all certified issuers, will facilitate this interoperability,** and drive the rapid adoption of reusable digital identities.

When this is complemented with the use of highly effective facial age estimation for customers who are a few years over the age of 18, these technologies will dramatically increase compliance levels and can reduce the level of conflict with staff, with aggressive behaviour and even assaults often precipitated by manual age checks.

And who will miss the minute or more waiting for a member of staff to type in their code when the yellow light comes on at the self-service check-out?

Representative groups

Our members are global but over half, indicated with an asterisk, have a UK base of operations:

AgeChecked*	Experian*	Opale
AgeVerifyUK*	FaceTec	Outdid
Aristotle Integrity	Fujitsu*	Privately*
Au10tix	IDVerse	Privo*
AVID Certification Scheme/ACCS*	incode	ServeLegal*
Bandio	Innovative Technology Ltd.*	Trustmatic
BlueCheck	Kids Web Services Ltd	Verifi.iD*
Envoc	Luciditi*	VerifyMyAge*
	OneID*	Yoti*

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?

We agree.

We agree with the overall principle of allowing digital methods for of age assurance to be used to buy alcohol. It may not be necessary to amend primary legislation to introduce this change, and we recommend using the existing Proof of Age Standards scheme’s published standards for digital proof of age (PASS 5) because the ‘Digital identity and attributes trust framework’ is not yet ready to replace this arrangement.

We are advised that this could be achieved by amending the statutory guidance relating to Section 182 of the Act and to the Mandatory Licensing Conditions, so it may not be necessary to amend the Licensing Act 2003. “Digital Proof of Age applications approved by the Proof of Age Standards Scheme” could be added to the descriptions of acceptable forms of proof in these two relevant pieces of secondary legislation:

The Guidance on Mandatory Licensing Conditions currently state:

“Identification which is accepted as proof of age must bear the holder’s photograph, date of birth, and either a holographic mark or ultraviolet feature. Examples of acceptable ID include photo card driving licences, passports, military identification or proof of age cards bearing the PASS hologram, although other forms of ID which meet the criteria laid out above are also acceptable.”

This Guidance could be amended to:

“Identification which is accepted as proof of age must bear the holder’s photograph, date of birth, and either a holographic mark or ultraviolet feature. Examples of acceptable ID include photo card driving licences, passports, military identification, proof of age cards bearing the Proof of Age Standards Scheme (PASS) hologram or digital proof of age applications approved by the PASS, although other forms of ID which meet the criteria laid out above are also acceptable.”

Section 182 Guidance currently states (Para 10.46):

“The Home Office encourages licensed premises to accept cards bearing the Proof of Age Standards Scheme (PASS) hologram as their preferred proof of age, while acknowledging that many other forms of identification meet the requirements of the mandatory condition.”

This 182 guidance could also simply be amended to read:

“The Home Office encourages licensed premises to accept cards bearing the Proof of Age Standards Scheme (PASS) hologram or a digital proof of age application approved by PASS as their preferred proof of age, while acknowledging that many other forms of identification meet the requirements of the mandatory condition...”

We agree with the OPSS Expert Panel on Age Assurance which states in its submission to this consultation:

“Other than the terms of the mandatory condition in secondary legislation, there is nothing in the Act itself that would prevent a seller of alcohol from relying upon a digital ID. It would be likely that a court would accept that examining a government-backed and certified digital ID would be regarded as taking reasonable steps to establish a person’s age (s.146(4)(b)(i)). In addition, it would be likely that a policy requiring a check against a government-backed and certified digital ID would be regarded as contributing to the exercise of all due diligence in avoiding the commission of an offence (s.146(6)).

“

The UK Digital identity and attributes trust framework is awaiting the passage of legislation to put it on a statutory footing. The framework itself is also exactly that – a framework – so it does not attempt to provide the level of detail required for a physical implementation of digital identity applications that can be verified as accurate and authenticated as owned by their present user.

This will need to be separately specified. The Data Protection and Digital Information Bill at Clause 54 makes provision for 'supplementary codes', known to industry stakeholders during the development of the Framework as 'overlay schemes'. But, with the informal exception of the existing right to work, right to rent and DBS arrangements, these schemes have not yet been established. Once the legislation has Royal Assent, the Department for Science, Innovation and Technology (DSIT) will need to determine who can operate such a scheme or schemes, and then must approve their content, which could be a lengthy and iterative process. We expect this to require, at best, two years after Royal Assent before a secondary scheme for digital proof of age is approved. An application process needs to be designed and run; schemes must be developed and approved. Issuers will still then need to develop their systems and applications to meet the requirements of the approved scheme(s) and central infrastructure will have to be funded, designed and implemented if there is to be universal acceptance of any digital identity certified under the Trust Framework that is part of the new scheme for physical presentation. *The Trust Framework is not going to lead to rapid implementation of a policy change agreed by following consultation.*

We are concerned that there could be a delay in implementation if there is a dependency on a secondary scheme under the Trust Framework, which could have a significant detrimental impact on the competitiveness of the UK age assurance sector in the global market. We do not doubt that DSIT will endeavour to move quickly but we have to be realistic about the necessary steps involved in such an important and novel process. When there is a robust standard already available, it is pragmatic to adopt it on an interim basis, with the understanding that there will be a transition to the new regime of the Trust Framework as soon as that is available, and a secondary scheme has been approved.

Fortunately, there is already an approved standard for digital proof of age, which has been established by the Proof of Age Standards Scheme. PASS-5 has been developed in consultation with issuers and relying parties, and issuers are already seeking certification. Those issuers must also be certified to PASS standards 0,1,2, and 3 which are long-established, rigorous requirements for the proofing of age before a conventional plastic PASS card is issued.

To avoid any delay through dependency on primary legislation and the subsequent approvals process for secondary schemes, we suggest that initially a digital proof of age application bearing the PASS mark be added to the list of approved forms of proof of age in secondary legislation and guidance. This would allow for the immediate implementation of any change to government policy to allow digital proof of age using reusable digital identities.

There are strong reasons to change the law and implement the change as quickly as possible.

Test purchasing is regularly carried out across a range of licensed premises. Pass rates where a young person aged 18-24 is challenged to produce a proof of age range between 50-70%. This is only a test of whether staff ask – test purchasing does not investigate how effectively staff who do ask then check the proof they are shown which may be borrowed, stolen or altered. The live trials of

age assurance technology in 2023 demonstrated compliance rates of over 99%. So, allowing the use of age assurance technology will increase compliance rates dramatically.

Age assurance technology will also improve the customer experience. On average, there is a 63 second wait for a member of staff to attend when a self-service till indicates an age check is required. For those who look over the test age (the legal age plus the buffer required to deliver a statistically acceptable level of accuracy e.g. 99.5%), this could now take only a couple of seconds, mostly to read the request for consent for facial age estimation to be used, and to grant it. For those who do not appear to be over the test age, or prefer not to use facial age estimation, the use of a digital proof of age will still only take around ten seconds. They open their digital proof of age app on their phone, biometrically authenticate to prove they are the rightful owner of that proof, and share an encrypted message via a QR code shown to the till to confirm they are at least 18 years old.

Research has shown that over 50% of conflicts between retail staff and customers are provoked by age checks. Giving the decision to the technology reduces the risk of that conflict, and where self-service checkouts are used, there may be no member of staff to direct aggression towards.

Consumers will also not need to carry valuable physical identity documents. This will reduce the level of loss and theft of such documents, which in itself improves the integrity of those ID ecosystems. It also saves consumers the replacement costs, as a lost or stolen phone while still needing a replacement device, can easily re-load the digital proof of age.

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.

There are significant benefits to be realised from the adoption of digital age assurance in any setting, so limiting the settings will reduce the overall benefits from this innovation.

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?

We agree.

We agree with the overall principle of allowing digital methods of age assurance to be used to buy alcohol. It may not be necessary to amend primary legislation to introduce this change, and we recommend using the existing Proof of Age Standards Scheme to facilitate the adoption and maintenance of standards for age estimation technology.

The UK leads the world in its age estimation technologies. By setting a test age above the legal age which mirrors the Challenge 25 policy, there are already a number of suppliers whose solutions have been tested to achieve an expected outcome accuracy rate above 99.5%.

This technology does not fit within the scope of the 'Digital identity and attributes trust framework' so an alternative governance framework is required. PASS is the obvious candidate, bringing together the technology providers as well as representatives of the relevant relying parties (Betting & Gaming Council, UK Hospitality, Association of Convenience Stores etc.).

Similar amendments to those required for digital proof of age applications could also be made to the Mandatory Licensing Conditions and related guidance documents to facilitate the introduction of facial age estimation (FAE) at the same time. To sell alcohol legally, proof of age is only required when the customer appears to the "responsible person" to be under 18. The licensee is a responsible person, and it is often current practice for the corporate entity to be named as licensee rather than a named individual. Thus, the customer can be assessed by the corporate entity to appear to it to be 18 or older using FAE technology, so no requirement to see proof of age arises. It may therefore also be possible to allow the simultaneous introduction of FAE with the use of digital proofs of age applications without requiring changes to the Licensing Act 2003.

We already have in place a testing and certification scheme, operated under the auspices of the UK Accreditation Service. As well as certifying the level of false positives, the testing already checks for presentation attacks to mitigate the risks of the technology being circumvented through the use of masks, fake beards, photos etc.

Government should define the required outcome in terms of accuracy and the ability to withstand presentation attacks but leave the detailed standards to industry experts contributing to standards bodies such as PASS.

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.

There are significant benefits to be realised from the adoption of digital age assurance in any setting, so limiting the settings will reduce the overall benefits from this innovation.

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.

The regulations should prescribe only the level of accuracy the technology must be tested and certified to deliver. That can then be achieved by adjusting the buffer between the legal age (18) and the test age. Providers who offer the most accurate predicted age will be able to set the test age closer to the legal age than others while maintaining the same legally required level of expected accuracy.

It is argued that a single age – say 25 to mirror the challenge 25 policy already applied in most premises – would be simpler. But when considered in practice, there is no obvious benefit, as a few examples can illustrate.

In the case of a facial age estimation algorithm which is proven to deliver >99.9% correct assessments that a customer is over 18 if the test age is set to 21 rather than 25:

- Take **Customer A** who is in fact 20 years old but is estimated by the AI to be 22 years old. He will correctly be allowed to make an alcohol purchase by the system without being challenged for an alternative form of ID – digital or traditional. There is clearly no compliance benefit to a staff member supervising the tills to over-rule that decision and say “stop, you appear to me to be under 25 so you must produce ID”.
- **Customer B** is 17 but is estimated by the AI to be 19 years old. She will be required to produce digital or traditional ID before a purchase can be made. Whatever challenge age above 21 that could be set is entirely irrelevant.
- And **Customer C** is 22 but is estimated by the AI to be 19. He will have to produce alternative ID, but would have to do so anyway assuming the challenge age policy was raised to 25.
- So finally, what of **Customer D** who is 17 but is estimated to be 22 by the AI. We know that he falls into the 0.1% of people where this AI gives a false positive. If the test age is increased to 25 it may be that he would be prevented from making the purchase, as the error rate would have been reduced still further, to perhaps 0.05% but this will vary from system to system. It is the accuracy of the estimation which is critical, not the arbitrary test age. A bad estimation tool might still get it wrong when testing for 25.

It is a far more effective regulatory intervention to define the maximum tolerable false positive level. This will allow for the test age to fall as the algorithms improve, giving more customers the most convenient method of proving their age.

The decision on what level of false positive should be tolerated should always be in the context of the reported compliance levels from test purchasing where staff are responsible for age checks. Leading supermarkets achieve around 75% pass rates; so, a technology which is proven to achieve

anything above 95% is a step-change improvement already. The level can be increased over time as the machine learning improves the accuracy of the algorithms.

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?

Disagree

There would be a significant reduction in each of the benefits already described if human intervention was still required. Retailers may still wish to supervise the self-service tills to provide customer support, deter theft and, in the unlikely event an intoxicated customer has not already been intercepted on entry to the store or when selecting alcoholic goods, to prevent them from making a purchase. But to require a specific approval for each age-restricted sale would add no value in its own right, given the technology will only have been approved by government if is convinced that it works. It would be a contradictory policy position to approve age estimation technology as effective, but then to require a secondary check by a member of staff.

It is also arguable that effectiveness would be *reduced* through human intervention, given the much lower level of success from test purchasing exercises than is proven to be delivered by technology.

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.

Prevention of crime and disorder - Positive impact on Licensing objective

Public safety - Positive impact on Licensing objective

Prevention of public nuisance - Positive impact on Licensing objective

Protection of children from harm - Positive impact on Licensing objective

We believe that the technology will have a positive impact on all the licensing objectives. The objectives themselves are not mutually exclusive so the technology can contribute to achieving each.

We know the efficacy of the technology is significantly higher than the level achieved by staff, so it will prevent the crime of underage purchasing more effectively and better protect children from harm. If the technology reduces moments of conflict between staff and customers, it will be reducing disorder, improving public safety and reduce public nuisance.

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?

We disagree.

As stated above, we are concerned that the trust framework is not currently on a statutory footing; that it lacks the detail required for this use-case; and that a supplementary code may take a long time to be selected and approved. The PASS has approved a standard that is fit-for-purpose and could be adopted immediately and added to the statutory list of approved forms of proof of age much more swiftly through secondary legislation.

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.

Do not amend the Licensing Act, meaning that offences are committed by the licence holder. Any liability on the part of the technology provider (for example errors) would be covered via standard commercial contractual arrangements.

The Explanatory Notes to the Act (Section 146) state that:

“Subsection (4) provides a defence if the seller believed that the purchaser was 18 or over and either he took all reasonable steps to establish the purchaser’s age, or nobody could reasonably have suspected from the purchaser’s appearance that he was under 18.

The second limb of that defence would cover a case where the purchaser who was under 18 looked exceptionally old for his age.

The defendant will be deemed to have taken ‘all reasonable steps’ if he asked the individual for evidence of his age. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence will fail.

Subsection (6) provides a further defence in circumstances where the sale or supply was made by someone other than the person charged with the offence (for example, where the manager of a pub is charged with the offence although the actual sale was made by a barman) if the person charged exercised all due diligence to avoid committing the offence.”

These notes already provide an adequate defence for sellers who rely on digital age assurance provided they are using suitably tested and certified technology, operating it as intended, and where the sale is “made” by a till not the manager. They even cover the case of underage customers who are false positives from an estimation process, permitted within tolerance levels we believe government should define.

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?

We agree.

Staff will need to be able to assist customers who are unfamiliar with the technology; to advise customers if their digital proof of age app is not one which is certified for use in those premises; and to prevent obvious circumvention by one underage customer asking an adult to facilitate proxy purchasing of alcohol by lending them a digital proof of age at the till.

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?

We agree.

To prevent obvious methods of circumvention – for example, a child asking an older shopper to lend their face for an estimation process - staff will need to have a basic awareness of how the technology operates. They will also need to be able to accept traditional proof of age for false negative outcomes, where someone legally old enough to purchase alcohol is estimated to be below the test age.

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

We agree.

Licensing officers will need to understand the technology and its legal operation, so time is not wasted on enforcement action where a legally permitted technical solution is operating appropriately.

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

We agree.

Licensing officers will need to understand the technology, its legal operation and the tolerances permitted for false positives, so time is not wasted on enforcement action where a legally permitted technical solution is operating appropriately.

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.

We disagree.

There appear to be a number of ambiguities in the current regime. Delivery services are not licensed themselves, so may not feel obliged to conduct age verification at the doorstep carefully or at all.

We believe the most effective regulation would be to require age verification at the point of sale – so when the online purchase is made. The delivery, whether that is within hours or days, is then not on the critical path for compliance because it has already been assured that an adult made the purchase.

Checks at the doorstep on delivery would realistically not be as comprehensive as those required when the purchase is made given the pressures on couriers to deliver at speed, and the disincentive that having to return goods to the depot if they cannot be delivered creates.

A second requirement to check age at the door before any delivery of alcohol can be made would inconvenience many who might have a regular delivery of wine that they have agreed can be left in a safe place when they are not at home.

An adult ordering alcohol for delivery who knows it will or may be received by a minor is no different from the adult receiving the order then closing the door and handing it to a child. The critical step in the process is when the order is placed, when an age check should be completed online, as this way it is guaranteed that an adult is involved from the outset.

Fast delivery services do carry an additional risk of minors making impulsive purchases of alcohol through this channel in the hope it is less likely to incur an age check. A check at the point of sale online can be to a high level of assurance to prevent children circumventing it (with a parent's credit card but no two-factor authentication check, for example), but there may still be merit in a double check at the doorstep for these higher risk modes of fast delivery.

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?

Clarification could be achieved through amendments to the statutory guidance which accompanies the Act and the licensing conditions. This could define more clearly the point of sale in an online purchase where an age verification is required.

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.

We would make a general amendment for all delivery models to require online age assurance at the point of sale.

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?

Neither agree nor disagree.

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

We agree.

We would support the extension of Primary Authority to other aspects of the licensing regime.

It is unrealistic to expect every authority to develop deep technical expertise in digital proofs of age and facial age estimation technologies. Primary Authority allows for certain authorities to develop a specialism, and because there is a strong level of trust between officers in differing authorities, other authorities are prepared to rely on that expertise.

Primary Authority will also therefore improve the supervision of the regime, because the technology will be tested by experts.

There is a degree of ambiguity at present as to jurisdiction when it comes to the sale of alcohol because certain aspects of licensing are excluded from the Primary Authority, but it is not always clear which. It makes sense for local circumstances to remain under local authority – but where a common technology is used nationally, then leaving the supervision of that to a single specialist primary authority will deliver obvious benefits. Those specialist authorities can also then afford, thanks to the extra income they gain from acting as a Primary Authority, to invest time in developing their knowledge, contributing to the development of industry standards, and ensuring they are consulted by the certification authorities such as PASS.

Thank you for the opportunity to contribute to this consultation which we believe can lead to the rapid implementation of digital methods of age verification within a matter of months, leveraging the existing role of PASS to set standards and certify issuers, and put the UK in the vanguard for the adoption of digital proof of age globally.

Yours faithfully

**Iain Corby
Executive Director**