

WILTSHIRE COUNCIL

LICENSING COMMITTEE

7 SEPTEMBER 2011

LICENSING ACT 2003
SELLING ALCOHOL RESPONSIBLY – AGE VERIFICATION SCHEMES

Executive Summary

This report has been prepared in response to a request from Cllr Mark Griffiths at the Licensing Committee of 5th April 2011 to consider the implementation of the Touch2id proof-of-age identification scheme in licensed premises across Wiltshire.

The report provides background and context to the age verification requirement under the Licensing Act in terms of the sale and supply of alcohol and considers the implications of adopting any single age verification system.

Recommendations

It is recommended:

That the Licensing Committee note this report and agree to the amended advice to Licensees.

Reason for Proposal

To ensure that licensees are aware of their mandatory obligations for age verification and to advise them of the nature and types of compliant schemes there are available to adopt.

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1. **Purpose of Report**

1.1 This report has been prepared in response to a request from Councillor Mark Griffiths at the 5th April 2011 Licensing Committee that the Committee considers the implementation of the Touch2id proof-of-age identification system in licensed premises across Wiltshire.

1.2 The report has also been prepared in response to a proposed notice of motion (subsequently withdrawn) also received from Cllr Griffiths to the 12th July Council meeting:

“That Wiltshire Council, specifically the Licensing Department, when in future writing to or having contact with licensed establishments use the term “preferred” when referring to Touch2id as a form of age identification”.

1.3 The purpose of the report is to provide background and context to the age verification requirement under the Licensing Act 2003 in terms of the sale and supply of alcohol and considers the implications of adopting any single (or ‘preferred’) age verification system.

2. **Background**

2.1 In October 2010 the Home Office introduced five new mandatory licensing conditions which relate to all premises licenses issued under the Licensing Act 2003. One of these mandatory conditions is that the licence holder must ensure that an ‘age verification’ policy applies to the premises in relation to the sale or supply of alcohol. The purpose of this condition is to tighten the law regarding underage sales and supply of alcohol. Prior to this change there had been no specific condition relating to proof of age.

2.2 The legislation and guidance requires that age verification policies must, as a minimum, require individuals who appear to the licensee to be under the age of 18 to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and a holographic mark. The choice of ID is one for the consumer not the retailer or local authority.

2.3 The requirement for age verification has come about in response to national concern regarding underage drinking and is enforced by both the police for on-sales and Wiltshire Council (Trading Standards) for off-sales. Both agencies take this matter seriously and regularly conduct test purchasing to ensure that licensees are complying with their obligations. For example, one such operation undertaken in November 2010 for off-sale activity by Trading Standard officers resulted in 1 underage sale from 15 premises tested. A further off-sale test purchasing operation carried out in July and August 2011 resulted in 2 sales from 11 premises tested. Results from joint police and council test purchasing activities for on-sale premises are illustrated later in this report. Such intelligence is fed into the Licensing Tasking group – a multiagency partnership group that meets monthly to consider and tackle issues arising from licensed premises.

3. Age verification schemes

- 3.1 Currently there are a number of commercial schemes that satisfy the mandatory criteria for age verification. The Retail of Alcohol Standards Group (RASG) promotes the use of Proof of Age Standards Scheme (PASS) cards which carry a photograph, date of birth and a hologram. Commercially known brands used under this scheme include Validate and CitizenCard. Other compliant forms of identification listed by the Home Office include photo driving licences and passports.

4. Touch2id

- 4.1 The Touch2id scheme uses biometric technology and whilst does not carry photographic ID, date of birth or a holographic mark has Home Office approval. Details of this scheme can be viewed on the following website: <http://www.touch2id.co.uk>. The scheme negates the need for identification cards although proof of age is required when young people initially sign up to the scheme. The use of cards is replaced by biometric reading devices located in licensed premises, which does mean a financial outlay for licensees.
- 4.2 The Wiltshire Community Safety Partnership with other partners working to deliver the Wiltshire Alcohol Strategy initially supported a pilot of the Touch2id system. The trial covered Trowbridge but was extended to Melksham in autumn 2010. The lead partner for the Touch2id trial is Wiltshire Police, with the Wiltshire Council Youth Service taking a lead role on behalf of the Council.
- 4.3 Touch2id is a commercial product which is freely available on the open market. It was installed in 17 licensed premises in Trowbridge during December 2009 as part of the pilot and more recently in 4 licensed premises in the Melksham area of Wiltshire. Some of the original reading devices were moved from licensed premises in Trowbridge and transferred to premises in Melksham. It is understood that the sign up process of young people in Melksham was part funded by the local Area Board.
- 4.4 There has been a mixed response to the system by the licensed trade and young people in Trowbridge and Melksham, and to date no formal evaluation of the pilot has been completed. In addition there has been no evaluation of this product comparing it with other age verification schemes.
- 4.5 Currently the only intelligence we have as to the effectiveness of the scheme is through the on-sale test purchasing activities led by the police in the Trowbridge area where a 50% failure rate (4 sales from 8 premises) was recorded. This was in premises both with and without the Touch2id system - an indication that any form of age verification system is only as effective as its use and management. In these cases the licensee was unable to explain why their age verification policy had failed.

5. The Use of the Term 'Preferred' Proof-of-age Scheme

- 5.1 There has been a suggestion that Wiltshire Council promotes the use of Touch2id as its preferred scheme of age verification.

5.2 It is the officer's view that it is the responsibility of the licensed business to demonstrate they have a robust proof of age policy, and not the role of Wiltshire Council to recommend any particular scheme. As mentioned above there are a number of compliant schemes on the market and the use of the term 'preferred' raises a number of concerns which are outlined in the risk and legal implications below.

6. Risk Assessment

6.1 One of the objectives of Wiltshire Council is to support the economy in a fair trading environment, one where consumers (licensees and customers) have freedom of choice in complying with the law. There is a risk that the endorsement of one product by Wiltshire Council over another will compromise this objective and give commercial advantage. In addition Touch2id requires some capital investment by the licensee that is not required for other schemes. Such a risk carries possible reputational and financial risks.

6.2 Other schemes are more flexible in their application. For example CitizenCard can be used for the sale of other age-restricted goods such as cigarettes, fireworks, knives, computer games, DVDs, videos etc all of which have varying age restrictions.

6.3. The scheme has yet to be evaluated and indications to date show both a limited take up and use. Whilst the effectiveness of the product is not doubted there is a reputational risk of adopting schemes that have not been properly and rigorously evaluated.

6.4. There is a risk that the promotion of one product over others fetters the discretion of the Licensing Authority in its enforcement activities which require proportionality and impartiality in application. Enforcement officers must work with businesses in a fair, clear, open and transparent way in accordance with the recently adopted Public Protection Enforcement policy and national enforcement concordat contained within it.

7. Legal Implications

7.1 The advice received from Legal Services confirms the mandatory requirement for an age verification policy. The legislation does not define the scope of this requirement but the Home Office does offer examples of compliant methods by way of guidance. However there is no requirement that either the policy or the system used must be approved by the Local Authority. Such a move would compromise the impartiality of the Council and Licensing Authority. Similarly, if the Local Authority were to seek to impose further conditions specifying a particular type of age verification system this could lead to an appeal on the basis that this is not necessary to promote the licensing objectives. Such an appeal may prove hard to defend.

7.2 There are also dangers in recommending a particular system to applicants as the Council's preferred system over and above any others that also meet the condition requirements such as Validate and Citizencard. Such a practice may risk a claim from other providers that the Council is unfairly favouring one scheme over another, similarly compromising the impartiality of the Council.

8. Financial Implications

8.1 There are no on-going financial implications. There are however financial implications in defending challenges and appeals as highlighted in the legal implications above.

9. Environmental Impact

9.1 None.

10. Equality and Diversity

10.1 None

11. Conclusion and Way Forward

11.1 Since October 2010 there has been a mandatory requirement for licensees to have in place a robust age verification scheme for the sell and supply of alcohol to persons under the age of 18. There are a number of schemes on the market that are compliant with Home Office guidance including Touch2id.

11.2 The Licensing Service has taken legal advice regarding the promotion of a single commercial scheme across the authority area and has been informed that this carries a number of reputational and financial risks as outlined above.

11.3 The Licensing service takes a proactive role in advising licensees of the age verification requirements but accepts that it can always improve its service to customers. The service has therefore reviewed its guidance given to licensees making the requirements of these mandatory obligations clear but also advising of all possible compliant schemes. This includes the Touch2id scheme but does not advocate that this is a preferred scheme. Such advice will be included in any written guidance to licensees and in information on our website. This advice is given in Appendix 1.

11.4 The Licensing Committee are now asked to note this report and agree to the amended advice to licensees.

Background Papers: None

Appendices: Appendix 1: Advice to Licensees

Appendix 1 Revised Guidance (to be included in guidance packs and on website)

Age verification

The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

This must as a minimum require individuals who appear to the responsible person to be under the age of 18 years of age to produce on request (before being served alcohol) identification bearing their photograph, date of birth, and a holographic mark.

Examples of acceptable ID include:

- A form of ID which meet the criteria laid out above such as Touch2id
- Photo card driving licences
- Passports
- Proof of age cards bearing the PASS hologram (E.g. Validate or CitizenCard)

The premises licence holder or club premises certificate holder must ensure that staff (in particular staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy applied by the premises.

This condition does not exclude best practice schemes such as Challenge 21 or Challenge 25 which require individuals who appear to be under an age which is greater than 18 to provide ID.