

## Online sales of age-restricted products

In the guide

Duty of retailers

Checks unlikely to satisfy 'due diligence'

Age verification checks

- Age verification on delivery

- Online age verification checks

- Follow-up offline checks

- Collect in-store

Further information

Penalties

Key legislation

### **This guidance is for England & Wales**

Selling age-restricted products via the internet presents particular issues and retailers must have effective systems in place for preventing sales to prospective customers who are underage.

This guide applies to all products that have age restrictions on sales, such as alcohol, tobacco, spray paints, fireworks, and video recordings and games.

### **Duty of retailers**

It is the responsibility of retailers to ensure they do not sell age-restricted products online to people who are under the minimum legal age. This means setting up effective systems capable of verifying the age of potential purchasers to ensure they are above the minimum legal age to purchase a product. When making an assessment of such systems account should be taken of legal requirements to take all reasonable precautions and to exercise all due diligence to avoid committing an offence. These legal requirements are a retailer's defence in consumer protection legislation.

Such systems should be regularly monitored and updated as necessary, to identify and rectify any problems or weaknesses in the system or to keep pace with advances in available technology.

Generally speaking, there is no definitive answer as to what constitutes taking all reasonable precautions or exercising all due diligence. However, past court case decisions in relation to other areas of consumer protection have established that a retailer's defence is more likely to fail if positive steps or precautions are not taken, resulting in a conviction.

Risk analysis, including the investigation of the options available to overcome risks, is required to identify and investigate what precautions and steps could be taken.

## Checks unlikely to satisfy 'due diligence'

Retailers should take positive steps to verify the age of the purchaser when selling age-restricted products. The following are examples that are unlikely to be enough to satisfy the requirements of taking all reasonable precautions and exercising all due diligence:

- relying on the purchaser confirming they are over the minimum age
- asking the purchaser simply to provide a date of birth
- using tick boxes to ask purchasers to confirm they are over the minimum age
- using a general disclaimer such as: 'Anyone ordering this product from our website will be deemed to be at least 18'
- using an 'accept' statement for the purchaser to confirm that they have read the terms and conditions and are over the minimum age
- using e-payment services such as PayPal, Nochex or Worldpay. These services may require a customer to be over 18, but they may not verify a user's age
- only accepting payment by credit card. Credit cards are not available to under 18s but certain debit and prepaid cards are. Your payment systems are unlikely to be able to differentiate between the different types of card so it is essential that you have additional age verification in place

Young people will seek to challenge conventions and test boundaries. In the case of online sales, young people could potentially evade the stringent proof-of-age checks that are required on the high street unless retailers make positive checks.

## Age verification checks

The following is a guide to possible steps and precautions that retailers could adopt to assist with age verification. However, it should be noted that these may not be suitable for some situations and retailers will need to assess what steps are suitable and appropriate to their individual circumstances. Retailers may be able to develop other methods of age verification.

Age verification concepts in a fast moving digital world are challenging in terms of effectiveness. No system is fail-safe and any service that relies on remote verification has the potential for errors.

Many websites now require purchasers to register details or to set up accounts for future purchases, which means that age verification checks may only be required for the initial set-up of accounts or on the first purchase from the website.

## Age verification on delivery

Retailers could use age verification checks at the point of delivery by ensuring that delivery drivers request valid proof of age to confirm that the purchaser is over the minimum age to buy the product in question. It should be noted that third-party couriers may not accept responsibility for age verification.

## Online age verification checks

Online age verification software is available that makes use of various sources of information in order to verify both age and identity during the ordering process. These checks include using the electoral register and/or credit reference agencies. There are also businesses that offer online access to electoral register

information, which could be used to verify a purchaser's age.

### **Follow-up offline checks**

In some circumstances, it may not be possible to verify a potential purchaser's age to conclude an online order. It is therefore suggested that further checks could be carried out, such as requiring the customer to provide a valid / acceptable proof of age, which can then be appropriately checked.

### **Collect in-store**

For some retailers that also have a high street presence, purchasers could view and reserve products online and then collect in-store, where age verification could be carried out by members of staff, as for a normal face-to-face transaction.

### **Further information**

It is the responsibility of the retailer to ensure that products are only sold to purchasers old enough to buy them. If there is any doubt the transaction should not proceed.

A PAS (publicly available specification) has been published, which was developed by the Digital Policy Alliance and BSI (British Standards Institution). PAS 1296: *Online age checking. Provision and use of online age check services. Code of Practice* is designed to help traders, particularly those that conduct age checks or provide age check services, to comply with the law.

For more general information about online sales, please see 'Consumer contracts: distance sales' and 'Internet auction sites & marketplaces'.

### **Penalties**

Failure to comply with trading standards law can lead to enforcement action and to sanctions, which may include a fine and/or imprisonment. For more information please see 'Trading standards: powers, enforcement & penalties'.

### **Key legislation**

Children and Young Persons Act 1933

Video Recordings Act 1984

Criminal Justice Act 1988

Children and Young Persons (Protection From Tobacco) Act 1991

National Lottery etc Act 1993

National Lottery Regulations 1994

Offensive Weapons Act 1996

Cigarette Lighter Refill (Safety) Regulations 1999

Anti-social Behaviour Act 2003  
Licensing Act 2003  
Fireworks Regulations 2004  
Gambling Act 2005  
Violent Crime Reduction Act 2006  
Pyrotechnic Articles (Safety) Regulations 2015

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## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

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