

Code B Notices - (Police and Criminal Evidence Act 1984)

Standard Operating Procedure No TFS - 019

Document Overview:-

This document outlines the procedure and application of Code B Notices under Police and Criminal Evidence Act 1984, when undertaking Technical Fire Safety audits.

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This document has been Equality Impact Assessed in accordance with Wiltshire FRS procedure. To view the assessment click [here](#).

1.0 Introduction

- 1.1 This document outlines the procedure and application of Code B Notices under the Police and Criminal Evidence Act 1984, when undertaking Technical Fire Safety (TFS) audits.

2.0 Background

- 2.1 The Police and Criminal Evidence Act 1984 (PACE) (1984 c. 60) is an Act of Parliament which instigated a legislative framework for the powers of Police Officers in England and Wales to enforce against crime, and provides codes of practice for the exercise of those powers. The aim of PACE is to establish a balance between the powers of the Police and the rights of members of the public.
- 2.2 Criminal liability may arise if the specific terms of the Act are not conformed to, whereas failure to conform to the codes of practice while searching or interviewing a suspect may result in the evidence obtained during the process found to be inadmissible in Court.
- 2.3 PACE clearly has focus on the provision of powers for Police Officers, however, Section 67(9) of the Act requires any person other than a Police Officer charged with the duty of investigating offences or charging offenders to have regard to any relevant provisions of the PACE Codes, and as an enforcing authority this includes Inspectors or Authorised Officers (Inspectors).
- 2.4 The Codes regulate Inspectors' powers and procedures in the investigation of crime and set down safeguards and protections for members of the public, providing a clear statement of the rights of the individual and the powers of the Inspectors. The Codes relevant to the responsibilities of Wiltshire FRS when carrying out Fire Safety inspections under the Regulatory Reform (Fire Safety) Order 2005 are:
- Code B relates to the searching of premises and the seizure of property and governs the exercise an enforcing authority's powers in the searching of premises and seizure of property found by enforcing authorities. The latest version of the Code B was released in January 2008.
 - Code E relates to audio recording of interviews, and deals with the audio recording of interviews with persons suspected of certain types of criminal offences and governs the way in which audio recorded interviews are carried out. The latest version of the Code E was released in January 2008.
- 2.5 To undertake our role as the enforcing authority of the Regulatory Reform (Fire Safety) Order 2005 (The Order) in Wiltshire, Inspectors undertake audits of premises in order to determine compliance with The Order. It is a criminal offence not to comply with the relevant articles of The Order and non-compliance may result in a fine, up to two year prison sentence or both. Code B applies as

the audit is being undertaken to enforce The Order where the information and evidence gathered may be used in criminal proceedings.

2.6 **Code B is not a caution** – but it details the powers to search premises and seize and retain property found on premises. A caution is given if there are reasonable, objective grounds for suspecting, based on facts or information relevant to the likelihood the offence committed, the person being questioned committed it. Due to the conditions applied to the caution, it is the current policy of Wiltshire FRS to withhold a caution until controllable and prepared interviews can be undertaken.

2.7 Code B applies to Article 27 (1) of The Order, which enables inspectors to “...do anything necessary for the purpose of carrying out this Order and any regulations made under it into effect and in particular, so far as may be necessary for that purpose, shall have power to do at any reasonable time the following—

(a) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned above and to inspect the whole or part of the premises and anything in them, where such entry and inspection may be effected without the use of force;

(b) to make such inquiry as may be necessary for any of the following purposes—

(i) to ascertain, as regards any premises, whether the provisions of this Order or any regulations made under it apply or have been complied with; and

(ii) to identify the responsible person in relation to the premises;

(c) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records (including plans)—

(i) which are required to be kept by virtue of any provision of this Order or regulations made under it; or

(ii) which it is necessary for him to see for the purposes of an examination or inspection under this article,

and to inspect and take copies of, or of any entry in, the records;

(d) to require any person having responsibilities in relation to any premises (whether or not the responsible person) to give him such facilities and assistance with respect to any matters or things to which the responsibilities of that person extend as are necessary for the purpose of enabling the inspector to exercise any of the powers conferred on him by this article;

(e) to take samples of any articles or substances found in any premises which he

has power to enter for the purpose of ascertaining their fire resistance or flammability; and

(f) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to the safety of relevant persons, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is, in the circumstances, necessary).”

2.8 Whilst the difference between the Article 27 (1) (e) and (1) (f) are not explicitly stated in The Order it is understood the former appears concerned with ascertaining the flammability or combustibility of materials and the latter with items presenting a risk through their operation, such as a heater.

3.0 The Code B Notice

3.1 A Code B Notice is **only** to be used when there is reason to suspect an offence has occurred and implemented by following the procedure in Appendix A. The procedure consists of 3 main sections:

- The top sheet is the Code B Notice (Appendix B), and should be completed once it has been determined a Code B Notice is required. This is handed to the responsible person or person having control (Responsible Person), after ensuring the ‘time the inspection was concluded’ has been completed before the original is separated from the carbon copy. The Code B Notice is retained by the Inspector and, when completed, kept with the audit form and additional material. The reverse of the carbon copy is the Inspection Record (Appendix C) and this is to be completed after the inspection has been concluded and retained.
- The Wiltshire FRS “Information on Powers and Rights” booklet (Appendix D) is to be provided and the details brought to the attention of the person served the Code B Notice, and if necessary read to ensure they are fully understood. The booklet provides sources of information and advice the Responsible Person may utilise. Ensure the recipient is aware of the name of the person dealing with their case to provide a point of contact. Copies of the booklet are carried by Inspectors, who should make themselves aware of the contents to expand on any specific points, if required. Visual Aid Technicians (VAT) carry additional copies.
- Disclaimer Notice (Appendix E) and Schedule of Seized Items (Appendix F) pads are part of the evidence gathering aspect of Code B, are held on VAT vehicles, but should be completed by Inspectors. The Disclaimer Notice is completed by the Responsible Person once the items have been detailed in the Schedule of Seized Items, and completed before the Disclaimer Notice is signed. The original of the completed Schedule should be left with the Responsible Person and the copy retained by the Inspector.

3.2 The form carbon copy's and items seized should then be passed to the VAT to ensure correct evidence procedures are adopted. An account of the procedure (detailed below) should be given to the Responsible Person to ensure they fully understand what is required of them and the likely outcomes, including any further action by Wiltshire FRS.

4.0 Procedures

4.1 Wiltshire FRS power of search is exercised as a Fire Safety Audit, as the term 'search' is intended for the police. An audit is not undertaken to 'search for evidence' but to determine compliance with The Order and is therefore not needed for every routine audit.

4.2 If the audit is a result of a complaint based on information from an external agency or a Wiltshire FRS member of staff, there may be reasonable grounds to suspect an offence has occurred and consideration should be given to issuing a Code B Notice at the beginning of the audit. A complaint from a member of the public should be investigated to determine an offence has occurred before a Code B Notice is issued.

4.3 It is necessary to provide proof of identity and authorisation before the audit is undertaken, but if this has not been done the Inspector must ensure the person likely to receive the Code B Notice has seen the identity card and is satisfied with it.

4.4 The procedure for issuing a Code B Notice is dependent on the circumstances of the audit. Current Wiltshire FRS policy is a Code B Notice will only be served if an offence is of such a nature, the likely outcome of the audit would be Enforcement, Prohibition or prosecution.

4.5 The Code B Notice is not a caution, and therefore, should a Code B Notice be issued, the practice of restricting questions to information about the offence must be strictly adhered to. Questions relating to the reasons, blame or circumstances of the suspected offence should only be conducted during recorded interview using the appropriate procedure and systems.

4.6 If the Responsible Person is not present during the audit and a Code B Notice is to be served, the Responsible Person should be present, if possible. However, a Code B Notice can be served on anyone with control of equipment or material under scrutiny. If the person present refuses to sign the Notice, the reason for the Notice should be explained. If they continue to refuse to sign the notice, then a note should be made to that effect in the Pocket Notebook, but the audit will continue.

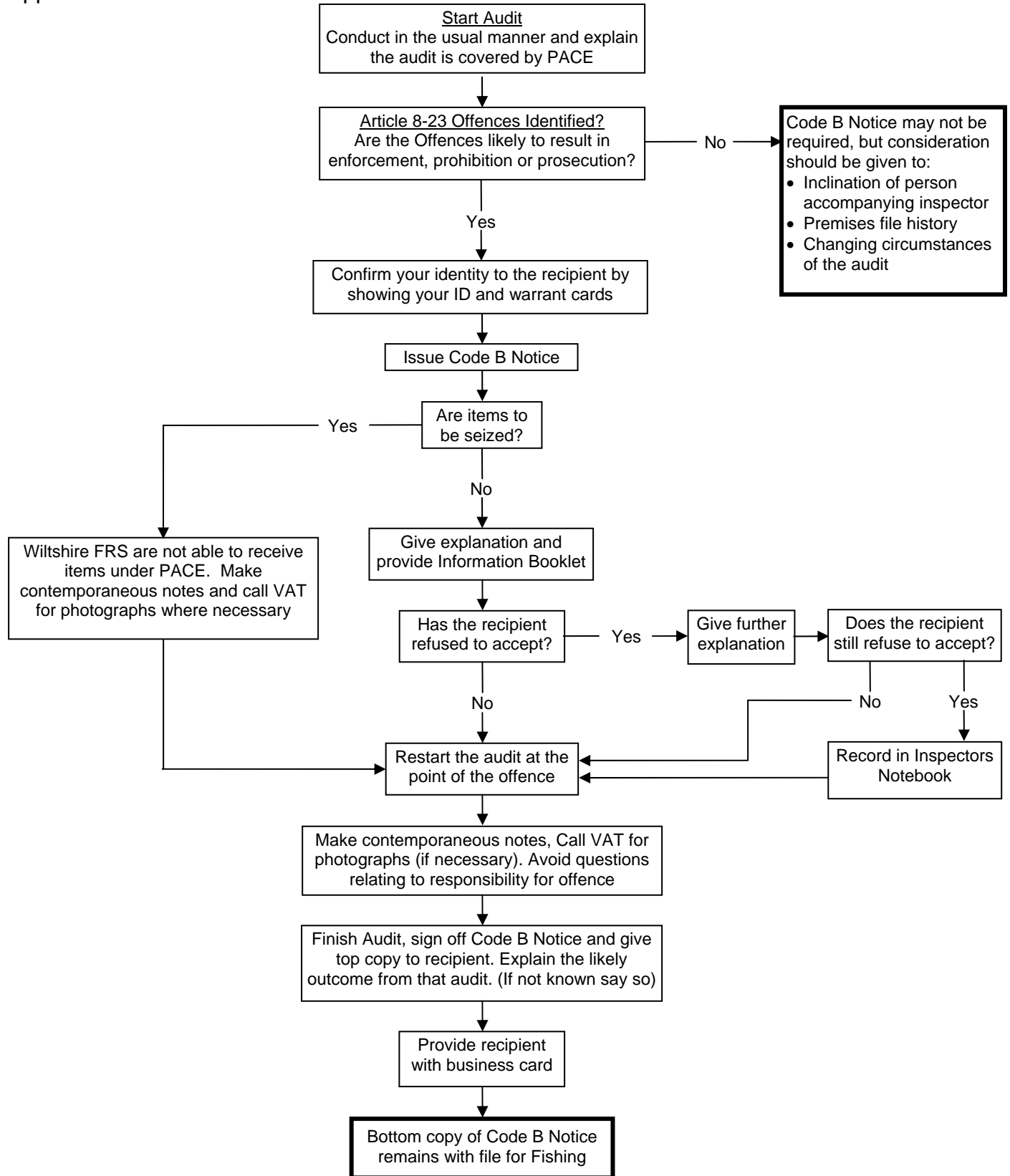
4.7 Contemporaneous notes should be taken during the audit, or as soon as practicable afterwards. Refer to [SOP 017 Pocket Notebooks](#) for further details.

5.0 Using Article 27(1)(e) Powers

5.1 Currently, Wiltshire FRS is unable to receive articles under PACE, therefore the following procedure should be followed:

- If there is an item or material which prompts the CSI to exercise powers under Article 27(1)(e) or 27(1)(f), it is likely the application, location and/or orientation of the item or material will have a greater affect on the risk rather than the flammability of the item or material. This can therefore be captured as evidence via photographic or contemporaneous notes in the Inspectors Note Book or both.
- In addition, Article 34 of The Order makes it the responsible person's duty to prove it '*...was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement*' and an Inspector can require the Responsible Person to demonstrate the standard the item adheres to rather than the Inspector to prove unsuitability. This can be obtained using an Article 27 Notice, or an Enforcement Notice relating to comments regarding the suitability and sufficiency the fire risk assessment.

Appendix A – Code B Notice Process





Serial Number:

Wiltshire & Swindon Fire Authority
Fire & Rescue Service Headquarters,
Manor House, Potterne, Devizes, Wiltshire SN10 5PP
Tel: 01380 723601 Fax: 01380 727000

NOTICE OF POWERS AND RIGHTS	
THIS NOTICE IS ISSUED TO ADVISE YOU OF YOUR RIGHTS, AND OF THE OFFICER'S POWERS, ON THIS INSPECTION OF YOUR PREMISES IN ACCORDANCE WITH PARAGRAPH 6.7 OF CODE B UNDER THE POLICE AND CRIMINAL EVIDENCE ACT 1984	
Address of Premises to be Inspected:	
Name of Person Receiving Notice:..... Status in Relation to Premises:.....	
Community Safety Inspector/Designated Manager: (Print Name and Role and Sign After it)	
Other Persons Present:	
Date:.....	
Time Inspection Commenced	
Time Notice Served	
Time Inspection Concluded:.....	

Appendix C – Inspection Record

For Office Use Only

Inspection Record

Notice of Powers and rights schedule given? YES/NO

Goods seized? YES/NO

Schedule of items seized attached? YES/NO

Schedule Reference Numbers:.....
.....
.....

Inspectors Notebook used? YES/NO

Additional Powers Which An Inspector/Authorised Officer May Exercise In Certain Circumstances

Powers in respect of books, documents & other records

Under the Regulatory Reform (Fire Safety) Order 2005, an Inspector/Authorised Officer may require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—

- (i) which are required to be kept by virtue of any provision of this Order or regulations made under it; or
- (ii) which it is necessary for him to see for the purposes of an examination or inspection under article 27 of the Order, and in addition to inspecting them, may take copies of the records, or of any entry in them.

An Inspector/Authorised Officer may take samples of any articles or substances found in any premises which he has power to enter for the purpose of ascertaining their fire resistance or flammability; and in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to the safety of relevant persons, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is, in the circumstances, necessary).

Summary Of Your Rights Under The Regulatory Reform (Fire Safety) Order 2005

An inspector/Authorised Officer must, if so required when visiting any premises in the exercise of powers conferred by Article 27 of the Order, produce to the occupier of the premises some duly authenticated document showing evidence of his authority.

Where an Inspector/Authorised Officer proposes to exercise the power under Article 27(1)(f) of The Order, to cause any article or substance, which appears to him to have caused or to be likely to cause danger to the safety of relevant persons, to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is, in the circumstances, necessary) he must, if requested by a person with responsibilities in relation to the premises and who is present at the time, cause anything to be done under the power given by 27(1)(f) to be done in the presence of that person. In addition, before causing the article or substance to be dismantled or subjected to any process or test, an inspector/authorised officer must consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power provided by Article 27(1)(f).

Summary Of Your Rights Under Pace

Persons whose premises are inspected have certain rights under the Police & Criminal Evidence Act, Code of Practice 'B', a copy of which is available for inspection at any Community Safety Office and at the Headquarters of Wiltshire Fire & Rescue Service at the address provided at the back of this booklet.

In summary:

1. The inspection should take place only at a reasonable hour (normally meaning when open for business) and only after the officer has told you the purpose of the inspection and shown his/her credentials, if requested.
2. Searches must be conducted with due consideration for the property and privacy of the occupier and with no more disturbance than necessary.
3. You may ask a friend, neighbour or other person to witness the inspection unless the officer in charge has reasonable grounds for believing that this would seriously hinder the investigation. A search will not be unreasonably delayed for this purpose.
4. No item may be seized which is the subject of 'legal privilege' (i.e. communications with a legal advisor).
5. You are entitled to a list or description of seized items, on request, within a reasonable time.
6. Seized property will be retained no longer than is necessary, (e.g. to test, photograph, produce in evidence) unless it is forfeited by court order
7. Where practicable, you will be allowed supervised access to seized property to examine, photograph or copy it (or you will be provided with photographs/copies) at your expense.
8. You may be entitled to compensation for loss or damage caused in entering/inspecting your premises or by seizing your property in certain circumstances. Apply to the address on the back of this booklet.

DISCLAIMER NOTICE

I,.....of
hereby disclaim all title to rights of ownership of:

(i)
.....

(ii) all property referred to in this Schedule (consisting ofpages) where the goods are found not to be in compliance with any legal requirement. I understand that subject to a Court order, any other goods will be returned to me after enquiries have been concluded, provided that the address which I have given is accurate and complete.

Code B Notice Serial Number:

Signed:

Witnessed by:

of:

Date:.....

Appendix F – Schedule of Seized Items



Wiltshire & Swindon Fire Authority
 Fire & Rescue Service Headquarters,
 Manor House, Potterne, Devizes, Wiltshire SN10 5PP
 Tel: 01380 723601 Fax: 01380 727000

SCHEDULE OF SEIZED ITEMS UNDER CODE B OF POLICE AND CRIMINAL EVIDENCE ACT

Address:

.....

Date:.....**Time Commenced:**.....**Time Concluded:**.....**Notice Serial N°**.....

I/D Ref N°	Description Of Property	Where Found	By Whom	Conversation–Yes or No. Any Details to be entered in Notebook	Signature

I certify that this is a true record of items seized and whether comments were made.

Signed (Subject).....

Signed (Inspector Completing Form).....