

# Article 31 Prohibition Notice – Serving of.

## Standard Operating Procedure No. TFS - 040

### Document Overview: -

Article 31 of the Regulatory Reform (Fire Safety) Order 2005 provides for a Prohibition Notice to be served “If the enforcing authority is of the opinion that use of the premises involves or will involve a risk to relevant persons so serious that use of the premises ought to be prohibited or restricted”.

This document outlines the procedure for the correct serving and monitoring of an Article 31 Prohibition Notice.

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## **1.0 Introduction**

- 1.1 An Article 31 Prohibition Notice (A31 Notice) is a Formal Notice served on the Responsible Person as defined by the Regulatory Reform (Fire Safety) Order 2005 (The Order).
- 1.2 The notice may restrict or prohibit the use of all or part of a premises or process when the risk of serious personal injury is or will be imminent.
- 1.3 A process flow chart is attached. (Appendix A).

## **2.0 Criteria**

- 2.1 An A31 notice must be served “if the enforcing authority is of the opinion that use of the premises involves, or will involve, a risk to relevant persons so serious that the use of the premises ought to be prohibited or restricted”.

## **3.0 Premises Incorporating Single Private Dwellings**

- 3.1 Single private dwellings incorporated within the premises are subject to prohibition restrictions under A31.
- 3.2 Works or installations cannot be required in these areas to rectify matters.
- 3.3 Works can be recommended but these cannot appear on the notice.

## **4.0 HiMO's (Homes in Multi-Occupancy)**

- 4.1 If the premises are a HiMO, where practical, the Local Authority Housing Officer should be notified (via control).
- 4.2 Failure to notify will not invalidate the notice.

## **5.0 Preparation of the Notice**

- 5.1 A Designated Manager (a suitably qualified manager who has been approved by the Group Manager Protection) and Visual Aids Technician must be requested. For a list of Designated Managers, [click here](#).
- 5.2 The duty Principal Officer must be informed.
- 5.3 A “Code B - Notice of Powers and Rights” must be issued to the perceived responsible person (or person present) to advise them of their rights and the inspector’s powers under PACE (The Police and Criminal Evidence Act 1984). For further information refer to “[Code B SOP](#)”.
- 5.4 Catalogue the offences or concerns in contemporaneous notes and support with photographic evidence.

- 5.5 Write the notice naming the responsible person. (If the responsible person has not been identified, refer to section 7).
- 5.6 The notice number is generated by the CFRMIS (Community Fire Risk Management Information System). If the notice number is not available (i.e. outside of office hours) then a temporary notice number must be used comprising of the initials of the person (or organisation) on which the notice is being served and the date, written in numeric format but without date separators. A contemporaneous note must be kept of the temporary notice number used and the reason for use.

Example: The Red Lion Hotel served on 25/07/09 would become "RLH250709". The notice number when generated in CFRMIS would then be added to the internal notice copies (i.e. RLH250709 -158) and a contemporaneous note made accordingly.

## **6.0 Designated Manager Authorisation**

- 6.1 The notice must be authorised and, where possible, signed by a Designated Manager (DM).
- 6.2 If the DM be unable to personally sign the Notice, the authority for a Notice to be signed remotely on his/her behalf may be given by telephone, text, fax email or any available means to the Community Safety Inspector (CSI).
- 6.3 The DM must review the circumstances requiring the Notice to be served with the CSI and agree that such action is necessary before the authorisation is given.
- 6.4 Remote signature authorisations will be at the discretion of the DM who still accepts the responsibility for the requirement to serve the Notice and may ultimately be required to justify this course of action in court.
- 6.5 The remote signature authorisation and other relevant actions agreed between the DM and the CSI must be recorded contemporaneously by both parties.

## **7.0 Responsible Person Not Identified**

- 7.1 If, after making reasonable enquiries at the time to identify the responsible person, such persons cannot be identified, annotate the notice "To the Responsible Person".
- 7.2 Make a contemporaneous note accordingly.

## **8.0 Serving the Notice**

- 8.1 The notice should be served on the responsible person and their signature requested on the notice as acknowledgement of receipt.

- 8.2 If the responsible person is not present, it may be served on any person present who is or appears to be resident or employed at the premises. Their signature should be requested on the notice as acknowledgement of receipt.
- 8.3 If no person with apparent responsibility is available, annotate the section "Signature of person on whom this notice is served" "No person available to receive notice".
- 8.4 In the case of 8.3 attach the notice to a conspicuous part of the premises, photograph the location and make a contemporaneous note. Save copies to FISH.
- 8.5 Refusal to sign should be recorded as a contemporaneous note and a copy saved to FISH.
- 8.6 A copy of the notice should be saved to FISH.

## **9.0 Distribution of Copies**

- 9.1 On completion, the yellow copy of the notice should be sent to Service Delivery (Protection) Central.
- 9.2 Service Delivery (Protection) Central to vet the notice and enter onto the Public Register.
- 9.3 The pink copy to remain in the Article 31 book.

## **10.0 Public Register**

- 10.1 The Environmental and Safety Information Act 1988 requires that a public register of relevant notices be maintained by the enforcing authority.
- 10.2 For the purposes of this Act, relevant notices are those served under article 29, article 30 or article 31 of the Order, other than notices which impose requirements or prohibitions solely for the protection of persons at work.
- 10.3 A notice that has been withdrawn (see section 10.4) must be removed from the public register within 7 days.
- 10.4 A notice that has been lifted (see sections 10.2 and 10.3) will be annotated on the public register accordingly and remain on the register for a further minimum period of three years following the date of lifting.

## **11.0 Withdrawing or Lifting the Notice**

- 11.1 A notice can be *withdrawn* at any time under Article 31 (9) of the Order.
- 11.2 The use of the word *withdrawn*, in the context of this article, is understood to mean that the restriction or prohibition to which the notice referred can now be removed.

- 11.3 In order to avoid confusion with the requirements of the Environmental and Safety Information Act 1988, restriction notices that have or will be *withdrawn* under article 31(9) of the Order due to the relevant serious risk now being reduced or removed, will be described as *lifted*.
- 11.4 A notice may be withdrawn if it has been incorrectly served or if it may be regarded as no longer valid for technical reasons. Withdrawn notices must be removed from the public register. (See section 9.2)
- 11.5 A copy of the letter lifting the restriction or withdrawing the notice must be sent to Service Delivery (Protection) Central.

## **12.0 Notice Monitoring Scheme**

- 12.1 Once served, it will be necessary to monitor compliance with the Notice conditions whilst the restriction or prohibition remains in force.  
([See Notice Monitoring flowchart](#))
- 12.2 The arrangements for such monitoring will vary dependant on the actual conditions imposed by the Notice, the current status of the premises and the perceived reliability and cooperation levels of the responsible person.
- 12.3 Routine monitoring will be inline with the Wiltshire FRS standard Operating Procedure number 027, Risk Based Inspection Regime, (section 6.0, Inspection Frequencies) or at a maximum review period of 6 months.
- 12.4 The initial monitoring programme will be decided by the area Office Manager (OM) in conjunction with the CSI and, where necessary, additional management or support resources from the Service Delivery (Protection) central office.
- 12.5 A scheme of monitoring will be agreed depending on the particular circumstances of the Notice. For example, a Notice prohibiting the use of an empty or derelict premises may require only casual monitoring, such as a periodic drive-by observation, whereas a restriction of use placed on sleeping accommodation above a shop may require a more formalised visiting programme.
- 12.6 Wiltshire FRS operational crews, or other personnel aware of prohibition or restriction measures imposed on a premises, can also inform the monitoring scheme (as can partner organisations or other agencies involved) by way of general observation of the premises where such observation would not infringe privacy laws or other legislation designed to protect human rights. For example, a fire crew routinely driving past a premises known to have a prohibition or restriction in place may observe activity, causing them to suspect a potential breach of the Notice conditions. (See section 13.5 below).
- 12.7 Any such potential breach must be reported to the Service Delivery (Protection) Department as soon as possible, either by direct contact or by reporting via the Service Control system.

12.8 All reports of potential breaches will be investigated promptly by a suitably warranted inspector or manager and the results of that investigation will be used where necessary to support further enforcement options.

12.9 Any monitoring actions completed as part of a monitoring scheme must be recorded contemporaneously to support the need for further enforcement activity should this become necessary.

### 13.0 Directed Surveillance (RIPA)

13.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides public bodies, including Fire Authorities, with various powers including the use of "directed surveillance" to obtain information as part of a covert operation. Full details on the Wiltshire FRS RIPA policy are available on the Wiltshire (FRS) website, including the process for the requesting and authorisation of surveillance operations.

13.2 Section 48(2) of RIPA defines "Surveillance" as:

- monitoring, observing, listening to persons, their movements, conversations, or other activities or communications.
- recording anything monitored, observed or listened to in the course of surveillance.
- surveillance, by or with, assistance of a surveillance device.

13.3 Section 26(2) of RIPA defines "Directed Surveillance" as conduct which is covert, but not intrusive, and undertaken:

- for a specific investigation or operation
- in a manner likely to obtain private information about an individual (whether or not the person is specifically targeted for purposes of an investigation) or
- not as an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable e.g. spotting movement in a prohibited premises and continuing to observe it.

13.4 Intrusive Surveillance is **not** authorised for use by Fire Authorities. This is defined in section 26(3) of RIPA as conduct which:

- Is covert and
- carried out in relation to anything taking place on residential premises or in a private vehicle; and
- involves the presence of an individual on the premises or vehicle or is carried out by a surveillance device.

13.5 For the purposes of section 12.6 above, the "Covert Surveillance Code of Practice" paragraph 4.4 states:

*Directed Surveillance does not include covert surveillance carried out by way of an immediate response to events or circumstances which, by their very nature, could not have been foreseen. For example, a police officer would not require an*

*authorisation to conceal himself and observe a suspicious person that he came across in the course of a patrol.*

Application of these principles means, for example, a fire officer who came upon a possible breach of a prohibition notice when passing a premises and stopped to take evidence covertly by observing the premises would be able to use this evidence even though no authorisation under RIPA had been granted.

- 13.6 It should be noted however that this will only apply in circumstance that were totally unforeseeable and were not subject to any degree of pre-planning. Any planned surveillance activity will require full RIPA authorisation.<sup>1</sup>

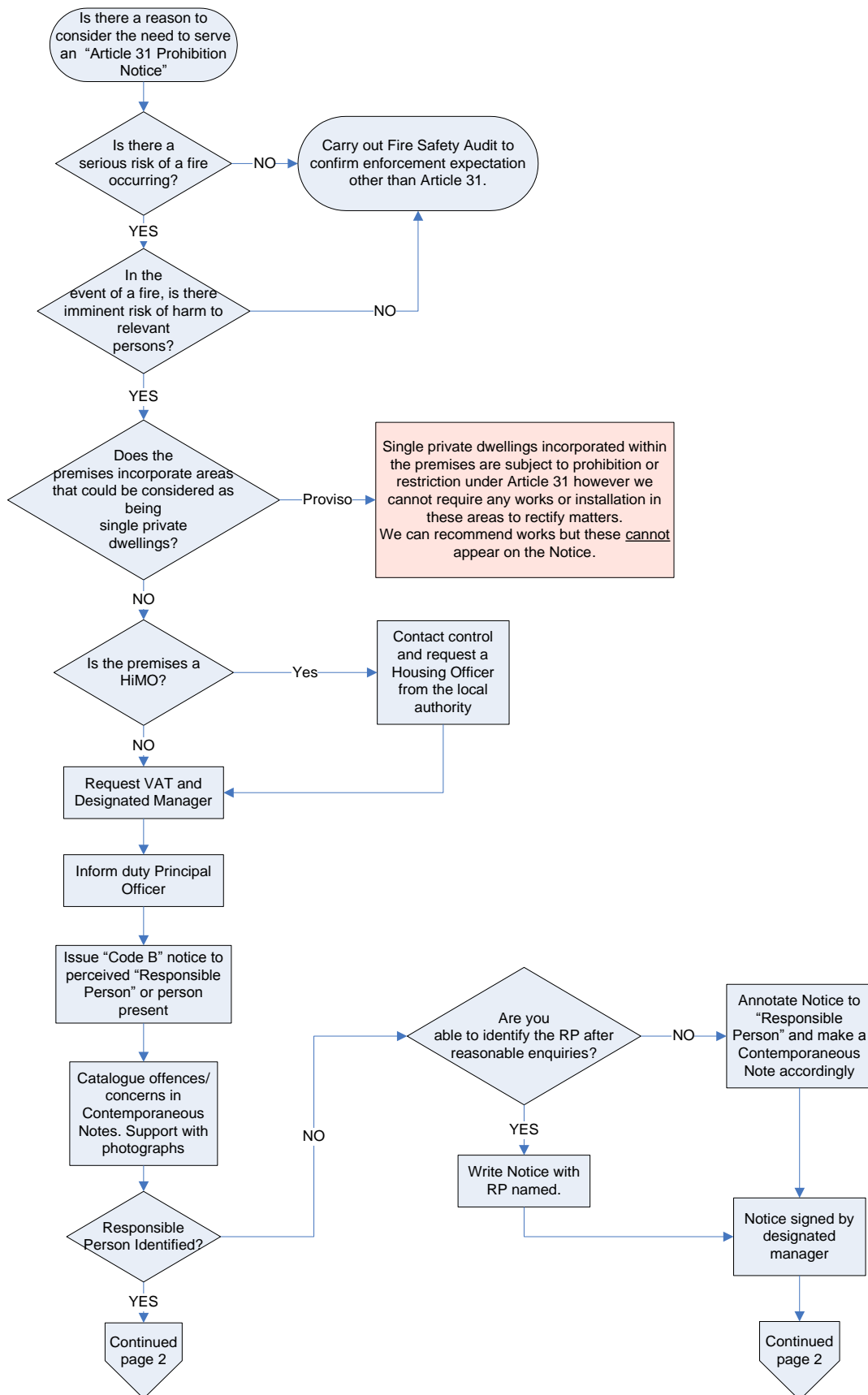
#### **14.0 CFRMIS Update**

- 14.1 The CFRMIS (Community Fire Risk Management Information System) prohibition pages must be updated as required.

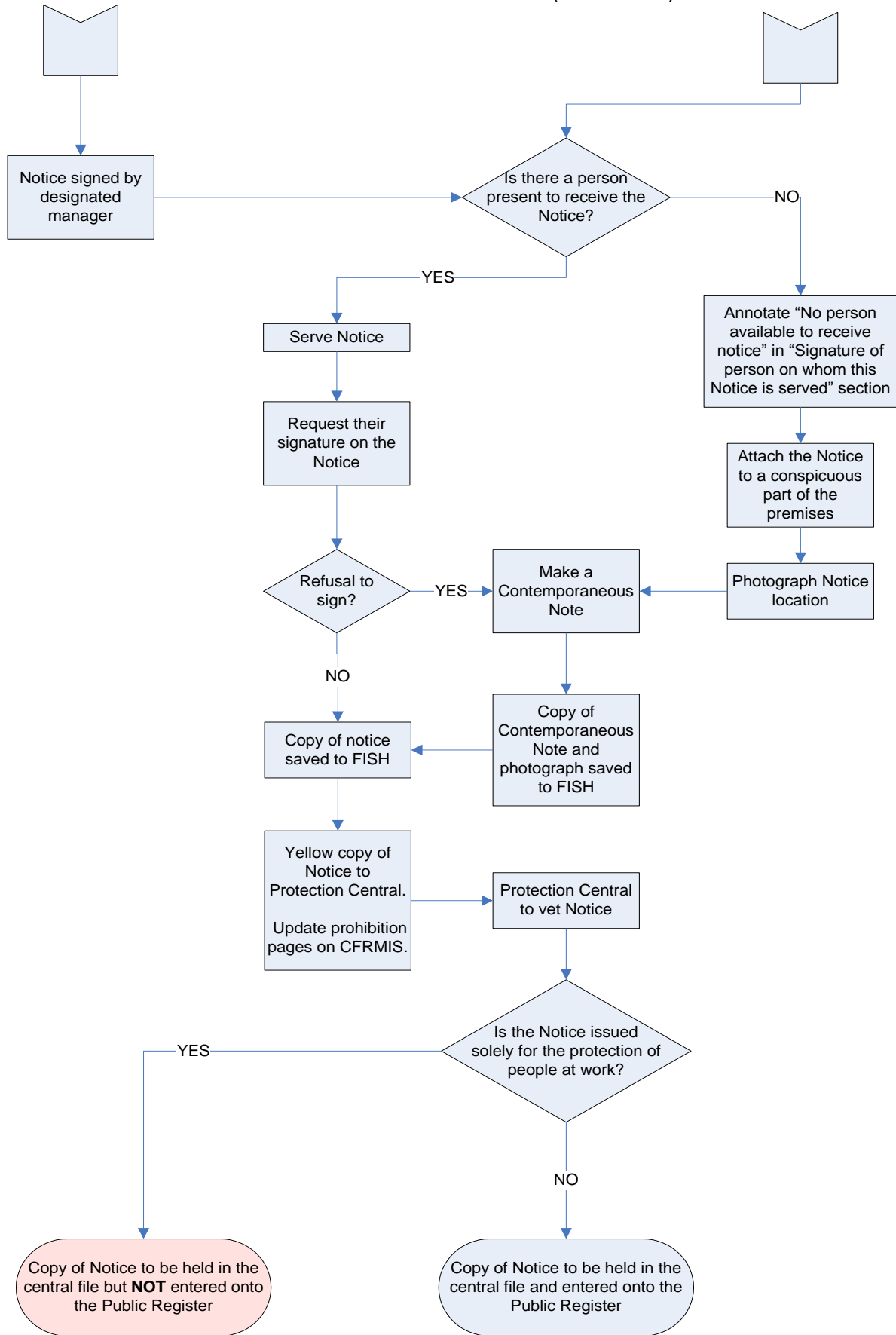
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<sup>1</sup> The information and examples used in section **13.0, Directed Surveillance (RIPA)** have been prepared from legal advice entitled "[In The matter of Enforcement of Prohibition Notices and Covert Surveillance](#)" dated 20 August 2010 provided in response to an instruction to Mr D. Stotesbury (Barrister) issued by Wiltshire FRS.

Article 31 – Prohibition Notice



## Article 31 – Prohibition Notice (Continued)



# Notice Monitoring

