



Serving notices can be tricky, so you must **understand the process** and take extra care – get it wrong and you will have your possession proceedings thrown out on a technicality.

If you are not confident you should have your agent deal with this or pay a solicitor or an eviction specialist to do this for you.

Our Section 21 Notice www.landlordzone.co.uk/agreements.htm doubles as (1) a **Fixed-Term Notice** s21 (1) (b) and (2) a **Periodic Tenancy Notice** s21 (4) (a). Make sure you delete the statement which does NOT apply.

Assured Shorthold Tenancies (ASTs) are most commonly drawn-up for 6 or 12 months (though they can be set-up for shorter terms or as periodic tenancies from the start). However, landlords cannot obtain a **possession order** to evict before 6 months is up, unless the tenant breaches the terms of his tenancy, when a s8 Notice is required.

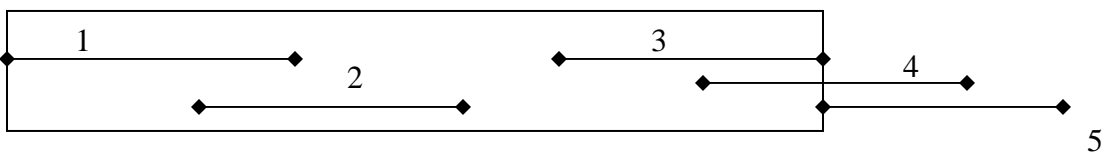
The s21 Notice gives 2 months' notice, AFTER which time the landlord seeks possession.

You can serve the Section 21 Notice (Notice Requiring Possession) at **any time during the fixed-term**, FROM and including the 1st day of the term TO and including the last day of the fixed-term.

If you serve the notice on the **first day of a tenancy** (when the agreement is signed) make sure you have the tenant sign an acknowledgement stating that the s21 was received **AFTER** signing the tenancy agreement. If the s21 and the tenancy agreement have the same date the tenant could claim it was served **BEFORE** the tenancy, and is therefore invalid.

Legal documents like tenancies use **calendar months** (month lengths vary between 28 and 31 days): so if the first day of a tenancy is the 1st of May (not necessarily the same day as the rent day – rent may be due on a different day if the agreement says so) the last day of a six-month fixed-term would be the 31st of October. With a twelve-month fixed-term the last day of the tenancy is the 30th of April.

Fixed-Term: for example 6-month tenancy starts 1st May, ends 31st October.



1 Notice served on 1st day – seeks possession **AFTER** last day of fixed term.

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- 2 Notice served mid-term – seeks possession AFTER last day of fixed term.
- 3 Notice served to end on last day of tenancy - seeks possession AFTER last day of fixed term.
- 4 Notice served within fixed-term but the full 2-month period runs outside the fixed-term - seeks possession AFTER 2 full months, e.g. notice served on the 25th of September (allow 3 working days for postage) seeks possession after the 25th of November. *In this case, although it is not technically necessary, it is a good idea to give a **notice date** AFTER which possession is sought, the date being a minimum of 2 months hence allowing at least 3 working days for delivery. (see Notes 1 and 2 below).*
- 5 Notice served on the last day of the fixed-term tenancy – seeks possession after the 31st of December.

Serving the Notice. Notices can be served (1) in person, (2) at the property (through the letter box) (3) by post. Remember to keep copies of everything.

- (1) **Serving in person** is perhaps the preferable method as there's no doubt about the actual date of service, but have a witness.
- (2) **Service at the Property** through the letter box is also a good method as again there is no doubt about the date of service but again a witness would also be important here.
- (3) **Service by mail** is an acceptable method (first class post - next day delivery) but allow at least 3 working days for delivery and use **Recorded Delivery** or **Proof of Postage**. This latter means the Post Office will give a receipt of postage and the address to which it is sent. This will be accepted by the court if you have a receipt. (see Note 1 below)

Recorded Delivery can cause problems if the intended recipient refuses to sign. This means it's returned to you, by which time you may have missed the trigger date and you may then need to give an extra month's notice.

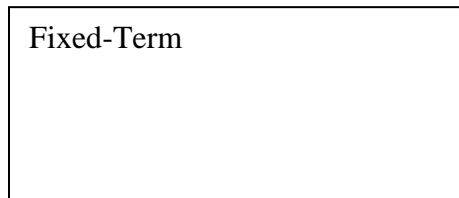
Two Letters as an extra precaution - some lawyers now recommend sending two notices from different post offices, again either recorded delivery or proof of postage. The thinking here is that it is conceivable in this day and age that one letter could go astray but very unlikely that two would do so.

Periodic Tenancies: Here dates are VERY important. There must be a **clear two-month notice period** which must end on the **LAST day of a period of the tenancy AFTER** which the landlord seeks possession.

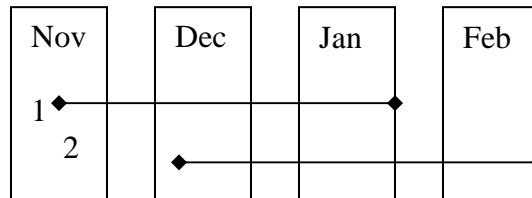
Therefore, unlike the fixed-term notice which does not need to specify a **notice date** (where the 2 months' notice is within the fixed term – see above), the periodic notice must specify an actual **Notice Date**.

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Fixed Term – ends 31st October



Periodic Terms



- 1 Notice served 15th November – Notice date is 31st of January AFTER which landlord seeks possession.
- 2 Notice served 5th December – Notice date is 28th of February (29th if a leap year) AFTER which landlord seeks possession.

Saving Words: in order to safeguard against an invalid notice if you do get the dates wrong, the LandlordZONE s21 Notice includes the saving words “*the landlord requires possession after the date stated in this notice or at the end of the period of your tenancy which will end next after expiration of 2 months from the service upon you of this notice.*”

A complicated phrase but this has been held [*Lower Street Properties Ltd v Jones 1996*] to satisfy the requirement that a tenant should be able to ascertain the correct date for himself. Not all judges will be aware of this, so be prepared to point it out – see note 2 below.

Possession Procedure: If your tenant does not leave voluntarily during or at the end of the notice period you will need to apply to the local county court (where the property is located) for a possession order.

Harassment: Do not be tempted to harass your tenant by threats or by interfering with the property in any way. This is a serious offence which could result in criminal proceedings against you. It’s best to avoid contact with your tenant if relations are strained - have a witness present if you must have personal contact.

See the **Court Service Website** <http://www.hmcourts-service.gov.uk> for **Accelerated Possession Procedure**, notes, forms (N5b claim form) (N119 particulars of claim) and guidance notes. Once you obtain a **Possession Order** you may need the court bailiffs to actually evict your tenants. NB: the landlord must sign the forms, NOT the agent.

If your tenant seeks **re-housing by the council** he will be advised by the council not to leave until actually evicted, otherwise he is deemed to have made himself homeless and the council is then not obliged to re-house.

The **Accelerated Possession** procedure is used where all your paperwork is in order – Tenancy Agreement and copies of the s21 notice correctly served. Here a judge will

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usually issue a Possession Order without a court hearing providing the tenant does not challenge. The AP claim can include costs but not rent arrears or dilapidations etc.

In all other circumstances where your paperwork is not in order, where the judge simply decides to, or where the tenant puts up a challenge, a court hearing will be required.

Don't be misled by the term Accelerated Possession – it's not quick.

The whole process of possession proceedings can take anything from 2 to 6 months or even longer if your tenant challenges causing delays, if you need a bailiff to evict and/or your local court is particularly busy.

Deposits: Remember also, if you have taken a deposit you must now fulfill all the requirements of the Tenancy Deposit Scheme otherwise you could lose your automatic right to a possession order.

Note 1 – When is the notice deemed to have been properly served?

In the absence of any specific rules in the relevant Acts which would apply – Housing Acts 1989 and 1996 or in s196 (general Regulations respecting notices) of the Law of Property Act 1924, Common Law Rules apply: i.e., the notice is deemed to have been served on receipt. It is therefore important to allow at least 3 working days for delivery where a notice is posted.

Note 2 – Judges sometimes get it wrong!

Judges in the county court are not always fully up-to-speed with the finer points of these notices. If you are represented by a solicitor they will often advise the judge of these points if he/she gets it wrong. So, if you represent yourself, be prepared to argue the point quite forcefully if you think the judgment is wrong, otherwise it could take weeks or months to either appeal or serve another notice.

A recent case in point: using the **Fixed Term** example, point 4 above (notice served within the fixed-term but ending outside it), a judge ruled the notice invalid because no date was specified – he took it that this was now a periodic tenancy and that therefore a notice date, being the last day of a period was required. In fact he was wrong. A notice served within the fixed-term and ending outside of it, does NOT need to specify a date; it just needs to be a full 2 months' notice. Beware!

See also: Frequently Asked Questions: www.LandlordZONE.co.uk/FAQ LandlordZONE Forums: www.LandlordZONE.co.uk/forums [Civil Procedure Rules - CPR 55 - Possession Claims](#)