

Notes on Serving a Valid Section 21 Notice



These notes cover:

- Serving s21 notices for a fixed term Assured Shorthold Tenancy (AST)
- Serving s21 notices for a Periodic monthly AST
- Serving s21 notices for a Periodic weekly AST
- Methods of serving notices
- The Accelerated Possession procedure
- Tenancy Deposit Scheme

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 intend to do this yourself, which is perfectly feasible for the layperson, you need to do your homework. If you are not prepared to do the study work, or you are not confident, you should pay an eviction specialist or solicitor to do this for you.

These notes are for guidance only – they are not a fully authoritative statement of the law – go to original statutes for definitive rules.

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 choose the correct statement.

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

In this latter case, breach of the tenancy during the fixed-term requires a Section 8 Notice followed by court proceedings, based on one or more of the **Grounds for Possession** under section 8. (See Notes on Serving a Section 8 Notice)

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*[see note below] 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 in court it was served **BEFORE** the tenancy, and is therefore invalid.

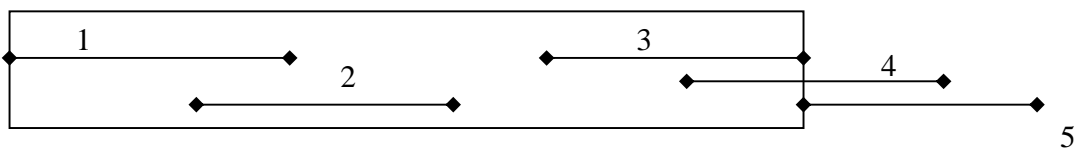
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***IMPOTANT NOTE: If you have taken a deposit it is important that you DO NOT serve a section 21 notice until AFTER the deposit has been protected and the statutory deposit protection notice has been served – should be served within 14 days of taking a deposit.**

Legal documents like tenancies use **calendar months** (month lengths vary between 28 and 31 days): so if the first day of a tenancy [date on the agreement] 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. So, the last day of a tenancy term is always the day in the month BEFORE the tenancy agreement date.

Fixed-Term: for example 6-month tenancy with **rent paid monthly** starts 1st May, ends 31st October.



- 1 Notice served on 1st day – seeks possession AFTER last day of fixed term.
- 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, you should give a **notice expiry date** AFTER which possession is sought, the date being a minimum of 2 months hence, allowing at least 3 working days for postage.*
- 5 Notice served on the last day of the fixed-term tenancy – seeks possession after the 31st of December.

Rent Paid Weekly:

When rent is paid weekly, a weekly **rent book** is legally required. The rules say the notice for a periodic tenancy must end on the last day of a tenancy period. With weekly tenancy periods serving a 2-month notice ending on the last day of a period can be confusing.

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This is best explained by example: A 12 month fixed-term AST with rent paid weekly ends on 20th April 2010 – therefore the fixed term ran 21st April 2009 to 20th April 2010.

Serving the s21 notice after 20th April 2010 would be a periodic notice s21 (4) (a) but what is the notice end date?

The tenancy ends on the 20th April so the next tenancy period runs Wednesday 21st April 2010 to Tuesday 27th April 2010. The weekly tenancy terms therefore run Wednesdays to Tuesdays. Two months from the 27th of April will be 27th of June, which is a Sunday.

Taking this to the end of that tenancy period will be Tuesday the 29th of June – that is the date you should use as the notice ending date. Note, 2 clear months' notice is the **minimum** period required – there's nothing to stop you giving more than this by way of a safety margin.

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 the preferred method and useful when time is pressing so there's no doubt about the actual date of service, but having a witness is important here. This method can be difficult when relations are strained. A professional **Process Server** will do this for you, but obviously there will be a charge.
- (2) **Service at the Property** through the letter box is also useful when time is pressing and again there is no doubt about the date of service but a witness would be vitally 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 **Proof of Postage (registered post)**. This latter means the Post Office will give a free receipt of postage indicating the address to which it is sent. This will be accepted by the court if you have a Post Office receipt.
- (4) **By e-mail or Fax** – though this is more uncertain as proof of receipt is essential

Recorded Delivery can cause problems if the intended recipient refuses to sign for the letter or is not at the property on delivery. 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 getting proof of postage. The thinking here is that it is conceivable that one letter could go astray but very unlikely that two would do so.

Service by Agent: Ideally, these notices should be signed by the landlord, though agents can sign provided it is made clear they are signed on behalf of the landlord - by his/her agent. Delivery / service can also be carried out by the landlord's agent.

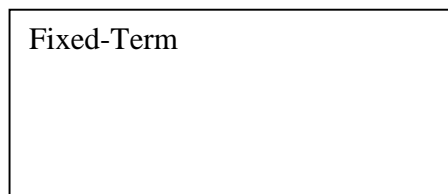
When is the notice deemed to have been properly served?

In the absence of any specific rules in the relevant Acts which apply – Housing Acts 1989, 1996 and 2004 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.

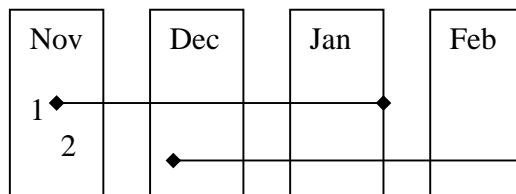
Periodic Tenancies: here dates are VERY important. There must be a **clear two-month notice period** which must end on the **LAST day of a period of the tenancy AFTER** which the landlord seeks possession.

The fixed-term notice does not need to specify a **notice expiry date** when the 2 months' notice expires within the fixed term. However, when it ends outside the fixed-term the notice must specify a **notice expiry date**.

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, even if the landlord gets the dates wrong. Not all judges will be aware of this, so don't rely on it, but be prepared to respectfully point it out should the occasion arise.

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

Tenant's Notice to Quit:

An **assured shorthold tenant** does not need to give a formal notice to quit if he or she leaves on the last day of the fixed term, though it is common courtesy to give at least one month's notice in writing.

However, if the tenant stays on into the next rental period (even for one day) the tenancy automatically becomes periodic, the terms being equivalent to the rent payment period – one month tenancy periods if the rent is paid monthly.

A **periodic tenant** must give one clear tenancy period's notice in writing ending on the last day of a tenancy period – for example a tenant paying rent monthly, with the periodic terms ending on the 28th of the month, today being the 5th of June, would need to give notice ending on the 28th of July. Where rent is paid weekly, the required notice period is 28 days.

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 – see *Protection from Eviction Act 1977*

It's best to avoid contact with your tenant if relations are strained – always have a witness present whenever you have personal contact. Alternatively, consider bringing in a professional to stand between you, such as a letting agent, an eviction specialist or a solicitor.

See **the Court Service Website** <http://www.hmcourts-service.gov.uk> for **Accelerated Possession Procedure** forms (N5 possession claim form or N5b accelerated possession claim form), (N215 Certificate of Service of Notice) and guidance notes.

NB: the landlord must sign the Court forms, NOT the agent.

Once you obtain a **Possession Order** you will need the court bailiffs to evict your tenant/s if they refuse to leave. Applying to the court bailiff to evict usually adds another 2 to 3 weeks to the process, but this can be much longer depending on how busy the court bailiffs are in your locality.

If your tenant seeks **re-housing by the council** he/she will be advised not to leave until you have the possession order and you may need to evict, otherwise he/she is deemed to have made himself or herself homeless and the council is then not obliged to re-house.

The **Accelerated Possession** procedure can be used where ALL your paperwork is in order – the Tenancy Agreement and copies of the s21 notice correctly served, plus Tenancy Deposit Scheme details and the statutory deposit notice, where a deposit was taken. If the house is a **Licensable HMO** you will also need to send these details as well. Here a judge will usually issue a **Possession Order** without a court hearing, providing

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the tenant does not challenge. The 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, if you need a bailiff to evict or when your local court is particularly busy.

Deposits: Don't forget: if you have taken a deposit you must now fulfill all the requirements of the **Tenancy Deposit Scheme (TDS)** otherwise you could lose your automatic right to a possession order. You must submit proof of this to the court.

The main advantage of the **s21 route** (as opposed to the **s8 route**) is the certainty of a possession order (this is mandatory when everything is in order and you don't need to give a reason to evict) and also the fact that a tenant cannot issue a defense or a counterclaim, thereby incurring the possibility of legal costs awarded against the landlord. **This IS a risk you take with the section 8 route.**

Although you can and often should serve both **s8 and s21** notices together, you cannot pursue both routes at the same time – you must choose one route or the other. (See Notes on Serving Section 8)

Once you start down one route you cannot change your mind. If you start down the section 8 route, for example, you cannot back-out without the agreement of the court and the defendant, and you may be required to pay any legal costs the defendant has incurred to do so.

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

These notes are for initial guidance only and do not constitute legal advice or an authoritative statement of the law. Never rely totally on these notes, which apply primarily to England & Wales. Before taking action or not, always do your own research and/or seek professional advice with the full facts of your case and all documents to hand.

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