

Small Self-Administered Scheme

SSAS

Guide to SSAS In-Specie Property Transfers



Guide to transferring property and land from another pension scheme to your SSAS

This guide covers some of the main practical issues that arise in the process of transferring property or land from another pension scheme into your SSAS. It does not cover the merits or pitfalls of investing in property or making these transfers.

Once you have decided to transfer property you will need to complete our Property & Land Questionnaire, this allows us to consider your proposal, taking into account likely fees and taxes.

Remember that there are two sides to this transaction, the current pension scheme trustees (for the transferring scheme) and the new pension scheme trustees (for the receiving scheme). Each will require their own legal representation, similar to a sale and purchase, even though no money will be changing hands. This guide is written from the point of view of the receiving scheme and you will need to liaise with your current pension provider regarding their process, requirements, and any costs for moving away from them.

Although the property is already owned by a pension scheme and therefore deemed acceptable to the transferring trustees, we will still require due diligence to assess whether the property is acceptable to the receiving trustees.

We cannot guarantee to accept a transfer of a particular property as there may be unforeseen issues that arise along the way. In some cases, we may decline a property transfer without giving a reason. For ease of reference, throughout this guide we will use the word 'property' to denote either property or land.

Due diligence

When transferring property to a SSAS pension scheme, the Managing Trustees and InvestAcc Pension Trustees Limited will usually be joint trustees of the pension scheme and consequently will become joint owners of the property. Therefore, we require sufficient due diligence to allow us to assess whether the property is suitable to be held by the receiving SSAS trustees.

At our discretion, we may offer a limited due diligence option for transfers of property between pension schemes. In these cases, we may agree to a more focused set of relevant enquiries from the transferring pension scheme, in some cases we may be able to avoid some searches, depending on which searches have previously been undertaken by the current owners.

The completion of a Property & Land Questionnaire for In-Specie Transfers allows us to consider various aspects of the proposal. We will require a copy of the most recent surveyor's valuation report; if this was produced more than 3 years ago we will require a side letter from the surveyor confirming the current value. There may be other circumstances in which we may require a new valuation. We will appoint a solicitor to act on behalf of the receiving SSAS trustees (see later).

The following are examples of aspects that we will consider:

- Is the property commercial and in the UK?
- Is the property freehold, or leasehold with at least 50 years remaining?
- Is it likely to be deemed a depreciating or wasting asset?
- Can the costs of the transfer be met by sufficient funds already in the SSAS, and if not, how is any shortfall being met?
- Can the property be insured for normal risks?
- Are the terms of any existing or proposed leases acceptable?
- Is there a reasonable deadline for the transaction to complete?
- What is the current VAT status of the property, and who will advise on that?
- Does the ownership structure cause any additional issues, such as multiple third-party owners that also own a share of VAT elected property?
- Are all transactions with connected parties being done on commercial terms?
- Are there any environmental issues?
- Are any conditions attached to the property, for instance a leasehold property with a high level of ground rent?
- Can the pension scheme's interests be protected via a limitation of liability clause?
- Are there plans to develop the property after the transfer? If so, do the proposals meet our requirements?

There are various other aspects that we will consider as part of our enquiries and we may need to raise issues with you along the way. Note that it is a requirement of Pensions Act 1995 that the trustees obtain written professional advice relating to investment transactions and consider diversification of the investments.

Financial considerations - transferring the property and on-going cashflow

You will need to work out whether the value of your receiving SSAS is sufficient to conduct the transfer, allowing for its element of expenses plus any applicable fees and taxes. This can include, but is not limited to, some or all of the following:

- Value Added Tax (VAT).
- InvestAcc SSAS fees.
- Financial Adviser fees.
- Solicitor fees and disbursements (including fees for searches and the appropriate Land Registry).
- Bank fees.
- Surveyor's valuation report fees.
- Insurance costs (normally recharged to the tenant).
- Business rates (where there is no tenant).
- Additional funds to meet the first 3 months loan repayments, if your SSAS is borrowing.

Where the underlying beneficiary is the same person, the transfer can usually be done on an 'in-specie' basis, meaning that the property should not have to be bought and sold; in most instances it is unlikely that the transfer will result in Stamp Duty Land Tax (England and Northern Ireland), Land and Buildings

Transaction Tax (Scotland) or Land Transfer Tax (Wales), although a solicitor will be asked to confirm the actual position.

You will also need to ensure there will be enough funds to cover one-off and regular outgoings. Operating your SSAS with a small or minimal cash balance can cause difficulty; we recommend a sensible buffer is maintained at all times.

While a regular stream of rent can help increase or maintain the fund value this is not guaranteed as tenants may vacate, fail or you may have to accept a lower rate of rent if the market has fallen, and your SSAS may ultimately have to bear the loss of income.

If there is a shortfall in the value of your SSAS then you will need to consider how to fund any shortfall, and if appropriate you may need to arrange any required borrowing (see later in this guide).

Value Added Tax (VAT) may apply on the transfer of certain properties

You will need to know the VAT status of the property, and whether you would like your receiving SSAS to register for VAT. Properties subject to VAT are sometimes referred to as 'VAT elected' or 'subject to an Option To Tax'. A specialist VAT adviser / accountant would have to advise you on the best course of action, we cannot provide advice. The SSAS cannot make an Option to Tax a specific property without also being VAT registered, and vice versa.

Properties not subject to VAT

Many of our SSAS schemes hold property which is not VAT elected; these pension schemes are not VAT registered and therefore do not require quarterly VAT returns. In some circumstances, you may choose to elect the property to VAT, such as when you are spending a significant amount developing the property; your VAT adviser / accountant will help you with that.

Properties subject to VAT

If the current pension scheme is VAT registered and the property/land opted to tax, it is possible to make a new VAT registration for the new pension scheme and opt to tax the property. You, or your current pension provider, will need to deal with the de-registration of the transferring scheme once the transfer has completed.

For VAT elected properties, it may be possible to treat the transfer as a Transfer of a Going Concern (TOGC) providing that it fits specific criteria. In this case VAT would not be payable on the transfer, but it would apply to future rents and on a future sale. You will always need a VAT specialist / accountant to confirm the VAT status; the consequences of getting this wrong can be severe.

For VAT elected properties you can nominate an accountant or VAT specialist to arrange to register the scheme for VAT, Option to Tax and submit quarterly VAT returns. Alternatively, InvestAcc can offer this service as part of our property administration service (see our SSAS Services and Fees guide for more details).

Minimum Energy Efficiency Standards (MEES)

Since 2008, property can only be sold or let with an Energy Performance Certificate (EPC) which assesses the energy efficiency of a property on the scale A to G, where A is the most efficient, and G is the least efficient. An EPC remains valid for 10 years unless the property has been materially altered during that time.

If you are considering the transfer of a property then you should consider how the regulations are likely to affect you, and whether this may impact your ability to let the property in future, and the costs involved in improving the property and/or complying with the legislation. This may have an impact on the marketability and value of properties, particularly for those in bands F or G. We encourage you to discuss this with an Energy Assessor (or a 'section 63 adviser' in Scotland) and to take legal advice.

MEES for property in England and Wales

From 1st April 2018 it became illegal for a landlord to let a property which falls within either of the two lowest bands, F or G.

The trigger for these regulations is the granting of a new lease or renewing an existing one, on or after 1st April 2018 (the first 'lease event' after this date). Where no lease event occurs after that date, the property must comply by 1st April 2023 at the latest.

Some properties will be exempt from the new requirements; properties that rely on exemptions will need to be added to the exemptions register from 1 April 2018.

You can find further information about the regulations and exemptions on the following page:
www.gov.uk/government/publications/the-non-domestic-private-rented-property-minimum-standard-landlord-guidance

MEES for property in Scotland

Since 1st September 2016, larger properties in Scotland with total floor area of more than 1,000 square metres, cannot be sold or let until the owner has a valid EPC and undertakes further assessment to produce an 'Action Plan' identifying targets for improvement of the carbon and energy performance of the building and how these targets would be met through physical improvements to the property.

The owner can then either implement that Action Plan within 42 months, or to defer by reporting operational energy ratings (displaying actual measured energy use via a 'Display Energy Certificate' (DEC)) on an annual basis.

All Action Plans and DEC's must be lodged here: www.scottishepcregister.org.uk

Some properties will be exempt from the need to obtain an EPC and / or the need to comply.

You can find further information about the regulations and exemptions on the following page:
www.gov.scot/Topics/Built-Environment/Building/Building-standards/S63

Leases

Property that is let should be subject to a 'fully repairing and insuring' occupational lease on commercial terms, incorporating our requirements and standard limitation of liability clause. We are happy to consider the continuation of an existing unexpired occupational lease; in some cases, an existing lease may need to be altered which would require the agreement of all parties.

Any new leases with a connected tenant must be on commercial terms, the level of rent matching that recommended by a RICS qualified surveyor. The lease must commence from the date the property is occupied. Rent payments are to be in advance, the frequency of payment may be monthly, quarterly, six monthly or annually. Rent reviews must be upwards only, the period between rent reviews must not exceed five years.

The lease should provide for the landlord to insure the property and for the tenant to reimburse the premiums and any Insurance Premium Tax. The policy should include cover for 36 months loss of rent, which is a standard commercial requirement, to cover scenarios such as the time it takes for a property to be rebuilt following a disaster.

If the lease is of an entire building, the tenant should be responsible for all repairs. If the property is let under two or more leases, the lease should enable the landlord to recover from the tenants the entire cost of the repairs through a service charge.

We do not accept expired leases that are holding over, especially to connected tenants, therefore you will need to decide whether to have the lease renewed before the transfer of the property completes, or have it dealt with at the same time as the transfer by the solicitors.

We will not accept a property where a tenant is in arrears, especially if the tenant is a connected party, therefore please ensure the rent is up to date and there are no arrears prior to completion of the transfer. In some cases, we may be able to accept the property if a rent repayment plan has already been put in place with the current pension provider to pay off any arrears.

The trustees have an obligation to HMRC to monitor that all rent is received when due and the terms of the lease must be enforced, particularly if the tenant is connected.

Unless an independent professional property management company has been appointed as agent to collect rent on the trustees' behalf, all rent must be paid directly into the designated pension scheme bank account.

Where the landlord and tenant are connected and rent is not being paid in accordance with the terms of the lease, this may result in an unauthorised payment, as defined in the Finance Act 2004. If such an unauthorised payment is made by your pension scheme, HMRC will impose a tax charge on the tenant (i.e. you or your business) of between 40% and 55% of the unauthorised payment. In addition, a scheme sanction charge of between 15% and 40% will be imposed on your SSAS. The scheme administrator is required to report to HMRC any unauthorised payments made.

Should you wish to sell the property in future, where a tenant is a connected party and there are rental arrears under the tenancy agreement, we will only start the sale process if the arrears are settled, or the buyer has agreed to purchase the arrears. Where a transfer of the property to another pension provider is requested, we will notify that pension scheme of arrears relating to the property.

Choosing a solicitor

A solicitor will prepare a report on title; obtain environmental and other appropriate searches; make relevant enquiries; prepare transfer documentation and register the change of ownership with the appropriate Land Registry. They may also need to examine existing leases, or draft new ones.

The receiving SSAS solicitor's costs and disbursements will normally be paid from your new SSAS funds, assuming it has sufficient funds to do so, or you may arrange to pay them directly and seek reimbursement from your SSAS at a later date if you wish (funds permitting).

Note that with property transfers between pension schemes, your cash funds will not usually be transferred until after the property transfer completes, which could be weeks or months later; this often means that there may be no cash in the receiving SSAS to pay fees when they are due.

In these cases you will therefore need to arrange for cash funds to be in your receiving SSAS before completion of the property transfer, either by a partial cash transfer from your previous provider (if allowed), or by making a contribution into your SSAS with us (you should speak to a financial adviser on the possible consequences of this). Alternatively, you may be able to enter into an agreement with the solicitors to pay their costs after the property transfer completes.

Appointing a good solicitor, with experience of dealing with pension scheme trustees and their requirements, can make the process of acquiring transferring property go much more smoothly. To help streamline this process we have created a panel of carefully selected solicitors. Please refer to our 'Guide to Panel Solicitors' for details of the panel and the specially negotiated terms. You may ask us to appoint a panel solicitor, or you may choose your own provided they are regulated by the Solicitors

Regulatory Authority (for properties in England & Wales), the Law Society of Scotland (for properties in Scotland) or the Law Society of Northern Ireland (for properties in Northern Ireland).

Please note that in-specie transfers will require solicitors to act for each side of the transaction.

Choosing a surveyor

A RICS qualified surveyor will be required to provide a valuation report.

We may accept a copy of the most recent valuation report produced within the last three years. If the most recent report was produced more than three years ago, we would require a side letter from the surveyor confirming the current values. Note that there may be some circumstances in which we will require a full new valuation report, even where one has been completed within the last three years, such as where the property has been materially altered since the last valuation.

If a bank is refinancing your loan due to the transfer between pension schemes, they may require a valuation report from their own panel; we are happy to use a copy surveyor's report which has been produced for the lender.

The report should include:

- A basic assessment of the condition of the property.
- A recommendation as to whether a full structural survey/environmental risk/contamination or asbestos survey is required.
- Colour photographs and OS plan showing the property in addition to street and location maps.
- The open market value of the property.
- A reinstatement figure for insurance purposes.
- A recommended current market rent.
 - For these purposes the surveyor will need to know how long you want the lease to run (it must normally be at least as long as the repayment period of any loan secured on the property) and whether there will be any break clauses (allowing the lease to be terminated before the end of the term but not before the end of the loan period).
 - Note that in cases where the tenant is you or someone connected to you, any new lease must reflect the level of market rent set by the surveyor. Existing leases can normally remain in place on their current terms, until expiry.

Where a new valuation report is being provided, the surveyor's report and invoice must be addressed in the name of your SSAS scheme and sent to our Carlisle Office. You may arrange for payment yourself, and you can request reimbursement from your SSAS funds later, if you wish (funds permitting). You can find a local surveyor at www.ricsfirms.com/commercial

Transferring or refinancing an outstanding loan

If your current pension scheme has an outstanding loan, it will almost certainly be secured on the property you are transferring. The loan will need to be transferred/refinanced to your new SSAS scheme. Your current lender will need to agree to the transfer/refinancing. A new loan account, and possibly loan servicing account, depending on your chosen lender's requirements, will need to be opened in your receiving SSAS pension scheme name.

You will also need to consider the amount that is outstanding, as some lenders will refuse to refinance the outstanding amount if it is below their minimum lending criteria.

You will need to discuss all of this with your current lender before proceeding with the property transfer.

If the property is owned jointly with a non-SSAS third party, and they have outstanding borrowing secured against the property, the non-SSAS third party will need to contact their lender and let them know that the land registry title is to be changed, and their lender will need to agree, and also enter into a division of liability with the new pension scheme to ensure the value of your shares are protected, should the non-SSAS third party default on their loan.

There may also be an option for you to refinance your loan with another lender at this point, if you should

wish, but again this is something you would need to discuss with your proposed new lender before proceeding with the property transfer.

We do not operate a panel of lenders so you will be responsible for arranging finance yourself. Although facilities are often negotiated locally, most banks will have a centralised lending unit and a specialist team dealing with loans to pension schemes.

Note that involving a commercial lender is likely to extend the overall timescale required to transfer the property.

Further specialist enquiries

Occasionally we may need to ask for specialist reports, structural surveys or risk management reports for contamination and environmental issues depending on the comments in the valuation report and all other documents submitted to us. These will not be undertaken without your agreement, but your receiving SSAS fund will be responsible for the cost and for any other fees that may be incurred if the proposed transfer is progressed whilst waiting for the report even if the result means we are unable to proceed with the transfer.

Where we feel that these additional reports are required, or indeed are advised by professionals such as solicitors or surveyors we will not be able to proceed with a transfer without them.

Property administration

We offer an optional property administration service for tenanted properties. You can read details of this service and the relevant costs in our 'SSAS Services and Fees' guide.

Note that the service InvestAcc offers is that of 'property administrator' rather than 'property manager'.

As property administrator we will handle all rental invoicing and collection on behalf of the pension scheme trustees, we will administer lease events, insurance renewals and payment of invoices. We do not offer services for debt collection, finding tenants, negotiation of leases or rental terms.

If you require anything further in the way of management of your property you can employ an independent professional property manager to administer the running of the property and InvestAcc will administer the other aspects of your SSAS. The costs of employing an independent and professional property manager can be paid from your SSAS funds.

Transfer of residential leaseholds

If the transfer includes a long leasehold interest in residential property, we will not be able to accept the transfer. In this case, the title would have to be restructured so that the pension scheme only owns a long leasehold in the commercial element. Alternatively, the residential element could be converted to commercial (see Frequently Asked Questions section at the end of this guide).

Timescale

We cannot guarantee any timescale for completion of the transfer as many aspects are simply out of our hands. In our experience and in normal market conditions it typically takes 3-6 months from instruction of solicitors, possibly longer if a commercial lender is involved. The timescales are not of our making but largely reflect the processes of other parties.

It is essential that the SSAS is set up before the transfer commences and to ensure that everything is in place for the transaction to be successfully completed. You can assist us by providing the information we require and ensuring that funding is available; we cannot be responsible for the consequences of such delay.

If there is a particular issue on timing, please raise this with us at the earliest opportunity.

What next?

TENTATIVE ENQUIRY	NOT YET A CUSTOMER, COMMITTED ENQUIRY	EXISTING SSAS
If your enquiry is tentative and you do not have a SSAS established with us yet, please complete the Property & Land Questionnaire and send any additional information you may have, such as a recently produced surveyor's report. We can give you an in principle view, prior to full due diligence being requested, to spot any obvious issues. If you then wish to proceed, you can submit your SSAS application with the Property & Land Questionnaire.	If you want to set up a SSAS to transfer this property or purchase another one, then you should complete the Property & Land Questionnaire along with a SSAS application form and copies of existing headleases and occupational leases (where applicable). Note that we will also require evidence of identity, as per the application form, your adviser or local post office will be able to certify documents.	If you already have your SSAS established, we will require the Property & Land Questionnaire and copies of existing headleases and occupational leases (where applicable).

For further information

You should speak to your financial adviser, and if you have any specific questions about the process or the suitability of a particular property you can contact our Property Team on 01228 538 988 or email property@investacc.co.uk

Note that InvestAcc does not provide advice.



Guide to SSAS In-Specie Property Transfers - FAQs

Q1. Can my SSAS receive a transfer of leasehold property?

Yes, provided there is at least 50 years remaining on the lease. A lender is likely to require an even longer lease in order to grant a mortgage.

Q2. Can my SSAS own a share of property?

Yes. This may be with other SSAS members, yourself personally, anyone connected to you or third parties. For more details, please see the section headed 'Joint Ventures' earlier in this guide.

Q3. Can my SSAS own residential property?

No.

Q4. Can my SSAS own mixed use property (e.g. a shop with a flat above)?

As the pension scheme cannot hold residential property, it will be necessary to split the title, with the freeholder selling a long leasehold interest in the commercial element to the pension scheme. In this scenario, we are only able to acquire the long leasehold, not the freehold, because the pension scheme would otherwise risk acquiring an interest in residential property in the future, possibly because of another party's actions such as the forfeit of the lease, which can trigger severe tax penalties for your pension scheme.

Q5. Can a property be developed after the transfer has been completed?

Yes, with our prior permission (see SSAS Guide to Development Works for more information).

Q6. Can my SSAS own things other than the land and fabric of the building?

No.

Q7. Can a tenant sub-let the property?

We may agree to this, depending on the scenario.

Q8. Can my SSAS own ground rents, self-contained assisted living flat/flatlets, holiday lets, log cabins or glamping pods?

No.

Q9. Can my SSAS receive a transfer of overseas commercial property or land?

No.

Q10. Does my SSAS have to insure land?

Yes, we expect a public liability policy to be put in place for any land transfers, whether agricultural, development etc.

Q11. Can commercial property and land investments be earmarked for a specific member?

We consider this on a case-by-case basis. Where we have agreed it, there will be additional fees. See our latest SSAS Guide to Services and Fees for more details.

Q12. Can I convert residential property to commercial property, so that my pension scheme can acquire it?

Three stages are required before we can consider acquiring it: 1. Permission must have been granted by the local authority for the change of use. 2. The property must then have been used commercially for that use. 3. There must be no residential element remaining.



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