

# Commercial Property Works Guide

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## Introduction

### What is this guide about?

This guide covers any property works transaction carried out by us. Once a property has been purchased by a James Hay SIPP, you or your tenant may wish to carry out works such as refurbishment, alterations, extensions or development. These must be documented and undertaken correctly to ensure that normal property requirements are fulfilled in respect of the SIPP.

This guide has been written to help you understand the processes involved. It is only a guide and we recommend that you read it carefully before deciding whether you wish to undertake works or when a tenant wishes to undertake works. You should also seek independent financial advice from a regulated financial adviser.

Property transactions must satisfy all HM Revenue & Customs (HMRC) and other regulatory requirements, as well as James Hay Partnership's scheme rules. These may vary from time to time.



If you have any further questions, please call your Customer Support Team or our general enquiry number 03455 212 414.

## Glossary

When the following words are used in this guide, this is what they mean:

**Connected party:** as defined under s 161(8) Finance Act 2004, ss 993 to 995 Income Tax Act 2007 and ss 450, 1122, 1123 and 1124 Corporation Tax Act 2010, connected parties are members, close relatives, partners or any company associated with a member or their family

**SIPP:** means any of the relevant James Hay SIPP products offered by James Hay Partnership

**Works:** refers to any item of alteration, refurbishment, development or physical change proposed for the property

**Valuer:** means a person who is a qualified member of the Royal Institution of Chartered Surveyors (RICS) or equivalent body

**We/Us:** refers to any of the Trustee Companies associated with James Hay Partnership

**You:** the SIPP member(s).

## Commercial property works form



Please complete the **Commercial Property Works Form** at the end of this guide to provide us with the information we need to progress your application for works to the property.



## Work at the property

There are many reasons why you, or your tenant, may wish to undertake works at the property. To comply with HMRC rules and regulations, these must be documented and paid for on an arm's length basis to safeguard the SIPP and to avoid the risk of creating an unauthorised benefit, triggering tax charges on you and scheme sanction charges on the SIPP.

At all times, we must make sure any risk to the investment or to us is identified and dealt with.

We will need to confirm if the works are tenant or landlord works before we can agree to the SIPP paying for the proposed works, as we will need to assess whether any consideration for the works is on an arm's-length basis. Tenant works will be works undertaken by a current tenant or a proposed tenant of the property. Landlord works will be works undertaken by the SIPP.

Works to improve the Energy Performance Certificate (EPC) rating or to comply with other statutory obligations will always be landlord works if the property is vacant. If the property is let, this will be determined by the terms of the lease. If the lease does not make the responsibility clear, the SIPP may be able to pay for such works subject to independent advice. It is important to ensure that there is a valid EPC at all times, depending on the legislation governing the location of the property.

### Landlord works

If you wish the SIPP to pay for the proposed works and there is an existing tenant, we must establish whether these would constitute landlord works. Such works may include extensions or major refurbishment.

We'd normally expect landlord works to increase the value of the property and/or the rental value (and in any event not to reduce either value). It may be possible to take out borrowing to assist with the payment for such works – please see the Funding section below for our requirements.

In the first instance, please provide a fully costed specification of the proposed works to us for an initial review. If the property is managed by our property manager, please send the specification to them.

If the contract value of the works is over £40,000, we will require a JCT (Joint Contract Tribunal) contract to be entered into, with the trustee(s) noted as the employer. Before signing the contract, we will need to ensure sufficient funds and/or agreed borrowings are in place. We will also need to include our standard limitation of liability wording in the contract to limit our exposure to the value of the SIPP.

Other than for minor improvements, a project manager (a qualified surveyor or architect) must be appointed. This can be our property manager or a suitably qualified alternative of your choice. Their fees will need to be agreed by you but will be paid from the SIPP.

If the landlord works are of a nature that require planning permission, you will need to arrange for the application to be submitted to the local authority. Any associated fees can be met from the SIPP. Please provide us with a copy of any application for planning permission. For properties in England please refer to the Use Class Order 2020 to ensure that any proposed works are compliant and that the property continues to be a suitable SIPP investment.

Alternative quotes for the works must be provided to us to ensure that normal commercial rates are being paid. The contractor must not be a Connected Party. All contractors' invoices for agreed landlord works will need to be addressed to the relevant corporate trustee and counter-signed by you to confirm your agreement to the amount being paid.

**The commencement of landlord works is not permitted until we have received all required works information detailed in this guide. We reserve the right to withhold the payment of contractors' invoices until works have been approved and our requirements met.**

Except in the case of repair works (where there is no tenant responsible for these) landlord works should add appropriate capital and/or rental value to the property and must not just be for the convenience of the tenant. The increased rent will be as advised by the Valuer (see below) and applied immediately once the works have been completed. If there is an existing lease in place, we will appoint one of our panel solicitors to draw up the relevant documentation to record the revised terms.

## Landlord works (continued)

Repair works will be tenant works if the lease is fully repairing and insuring (FRI), but in cases where the property is vacant or the lease is not FRI, repair works may be landlord's works. If the interpretation of an occupational lease is necessary or the property is subject to multiple lets, we may require the advice of a solicitor to determine this point. Any legal fees incurred are payable from your SIPP funds.

It is your responsibility to let us know the date of completion of the works and provide copies of the practical completion certificate (where there is one) and the Building Regulations completion documentation.

**Please note that for major works, the property insurer must be notified and contract works insurance must be taken out. It is imperative that the chosen contractor ensures that there are adequate controls in place particularly when there are any heat works being carried out. If there are heat works to be carried out, these must be done so under a hot works permit and insurers must be notified prior to any hot works commencing.**

Whilst major refurbishments are being carried out, it may be possible to de-list the property from non-domestic rate bills. If you feel this may apply, please seek confirmation from the professionals overseeing the works project.

Following the introduction of the Building Safety Act 2022, if the proposed works involve any new or existing buildings at least 18m in height, or has at least seven storeys and contains at least two residential units, you will need to review the Building Safety Act 2022 and take appropriate professional advice to ensure compliance.

## Valuation

Once you have notified us of the nature of the works, we will make a decision as to whether they are to be considered landlord or tenant works. In most cases, or if you disagree with our decision, we will need this confirmed to us by a Valuer.

The Valuer will need to acknowledge that their advice will be relied upon in the event HMRC audit the file. The Valuer will also need to advise the market value and rental value pre and post works, if the works are improvement rather than repair.

The valuer's invoice can be paid from the SIPP and will need to be addressed to the relevant corporate trustee.

## Funding

For landlord works, funds must come from the SIPP to pay for the works. Funds may be introduced by way of contributions, transfers from other schemes and/or secured lending. Funding must be in place before the works can proceed and must at least equal the value of the works plus any VAT payable.

If you intend to borrow money to pay for the works, the funds must be provided by a commercial lender acceptable to us and the loan offer must be addressed to the Trustee.

Legislation restricts the aggregate amount your SIPP can borrow to a maximum of 50% of the net value of your SIPP at the time the loan is drawn down. For example, if your SIPP has a value of £500,000 at the point of drawdown, the amount you can borrow is £250,000, less any existing liabilities.

We will check the value of your SIPP prior to drawdown and confirm whether the borrowing proposed is within the 50% limit. We will take no responsibility for a change in fund value after that point. If the fund value changes after that point, there may be tax implications if it transpires you have borrowed more than 50% of the net value of your SIPP.

All mortgage payments, both capital and interest, must come from your SIPP and must not be paid by you direct to the lender.

## Residential development

Works to convert property to residential cannot be carried out due to HMRC taxable property regulations.

The SIPP can pay for the cost of obtaining planning permission (if required) to convert the property to residential but the property will need to be sold before the planning permission is implemented.

## Value Added Tax (VAT)

If landlord works are being undertaken, and the property is not currently opted to tax for VAT, you will need to decide whether you wish to opt to tax so that VAT on the cost of the works can be recovered. Permission must be sought from HMRC to opt to tax the property and information must be provided along with the uplift in rent following the works. VAT cannot be reclaimed until consent is received from HMRC, which can impact cash flow and should be taken into consideration by you.

If the property is managed by our property manager, we will submit an option to tax upon your instruction. In other circumstances, you will need to do this yourself and send us a copy of the option to tax and HMRC's acknowledgement.

## Charges



If works take place within the SIPP, additional charges may be charged to cover the cost of our administration of the works. Please refer to your Charges Schedule for information.

## Tenant works

Under the terms of an existing lease, the tenant is usually responsible for certain repairs and redecoration works. These works do not usually require landlord's consent. It may be that the tenant has not carried out works which are its responsibility, and enforcement action may be needed. This is commonly referred to as "dilapidations". If a tenant does not repair during the lease term, liability for dilapidations can accrue which can be collected at the end of the lease term as financial payment. You will need to appoint surveyors to deal with this.

Tenant's failure to undertake works is not covered by this guide. We recommend that you contact us as soon as possible if you believe that your tenant has failed to undertake works it is obligated to do under the terms of the lease.

If the tenant wishes to carry out more extensive works such as its own improvements, it is usual for the lease to require the landlord's consent.

The tenant will need to provide a specification of the proposed works with the application and details of the solicitor who will act on their behalf in relation to the Licence for Alterations.

Once we have all the information from you regarding the tenant's proposed works and we are satisfied that our requirements have been met, we will appoint one of our panel solicitors to prepare a Licence for Alterations to document the landlord's consent to such works. A list of our panel solicitors can be found on the Commercial Property page of our website at [www.jameshay.co.uk](http://www.jameshay.co.uk). The costs for the preparation of this Licence are usually payable by the tenant.

## Retrospective consent

If works have already been carried out at the property (whether landlord or tenant works) please contact us as soon as possible and provide the information requested above.

We will need to ensure the correct retrospective treatment for documenting and paying for such works, as appropriate, to ensure HMRC regulations and scheme rules are adhered to.

## Asbestos

If there is an Asbestos Management Plan and you plan to undertake 'work' on a SIPP property then you will require a more detailed asbestos survey, known as a 'Refurbishment or Demolition asbestos survey'. Regardless, of the aforementioned, asbestos reports must be made available to Contractors on pre-2000 buildings prior to the commencement of any works at the property.

This also used to be called a 'Type 3' survey. This type of survey is generally valid for a period of up to 12 months, unless you have managed the asbestos in the interim.

Following removal of asbestos, any plan should be updated to reflect those changes and a copy of the certificate should be provided to us.

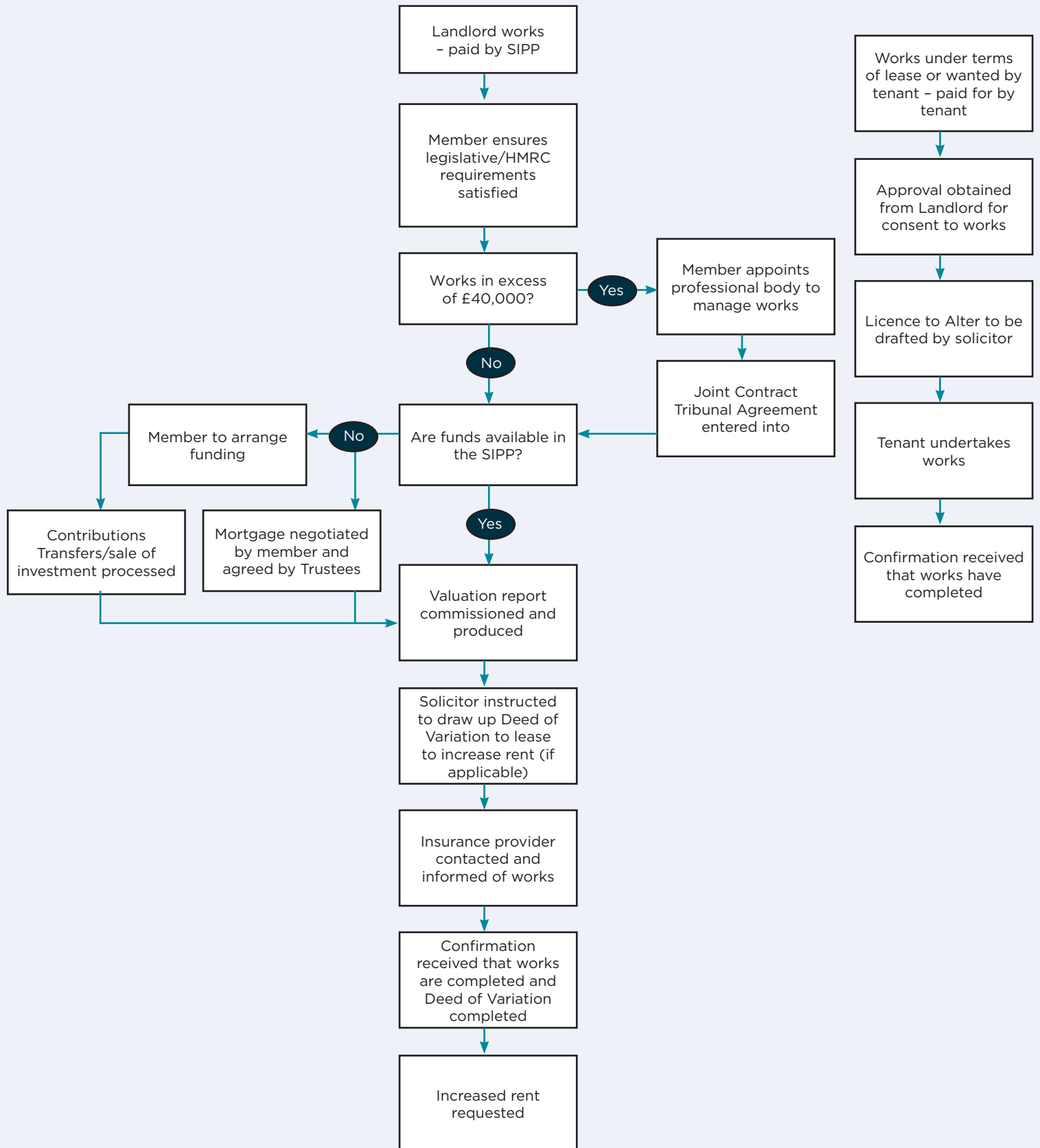
The management of asbestos outside of any planned works should be monitored on a regular basis.

## Reinforced Autoclaved Aerated Concrete (RAAC)

Careful consideration will need to be given by you and any professional bodies appointed to oversee the works. It may be that a structural engineer will need to be to assess the condition of the existing structure and advise on any remedial work and their input may be required into the design of the property to ensure compliance.

Please note that RAAC planks were used from the mid 1950s until the early 1990s, so buildings (or extensions) built before or after this period are unlikely to be affected.

# Our process flow for works on a commercial property held within a SIPP



## Commercial Property Works Form

### Application guide

Please complete this form in BLOCK CAPITALS and return it to the address below:



James Hay Partnership, Suite 202 Warner House, 123 Castle Street, Salisbury, SP1 3TB



If you need any help with completing this form, please call your Customer Support Team or our general enquiry number 03455 212 414.

### 1 Name of pension product in which property is held

Applicant to complete

- |                                              |                                                   |
|----------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Modular iSIPP       | <input type="checkbox"/> IPS SIPP                 |
| <input type="checkbox"/> Private Client SIPP | <input type="checkbox"/> IPS (2008) SIPP          |
| <input type="checkbox"/> Partnership SIPP    | <input type="checkbox"/> IPS Family SIPP          |
| <input type="checkbox"/> Wrap SIPP           | <input type="checkbox"/> IPS Pension Builder SIPP |

### 2 Property address

Applicant to complete

Property address

Postcode

### 3 Details of SIPP member

Applicant to complete

Member name	<input style="width: 750px;" type="text"/>
Reference number	<input style="width: 750px;" type="text"/>
Email address	<input style="width: 750px;" type="text"/>
Telephone	<input style="width: 750px;" type="text"/>

### 4 Proposed works on the property

Applicant to complete

I/We confirm it is proposed that works are carried out at the property and I believe these are:

- Landlord works  
 Tenant works  
 Mixed landlord and tenant work



**4 Proposed works on the property (continued)**

Applicant to complete

Please explain the reason for your allocation of the works in question 4:

**5 Property value and breakdown**

Applicant to complete

The value and breakdown of the works proposed are as follows:

Landlord works	<input type="text" value="£"/>
Tenant works	<input type="text" value="£"/>
Mixed landlord and tenant work	<input type="text" value="£"/>
Total	<input type="text" value="£"/>

Where a Deed of Variation or Licence to Alter is required, I acknowledge that James Hay will appoint a panel solicitor.

**6 Landlord works (if applicable)**

Applicant to complete

I/We will instruct: (name and address of Valuer):

to undertake a market and rental valuation of the property to show pre-and post works values. The valuation report and invoice will be addressed to the relevant trustee(s).

**6a Details of architect/surveyor (if applicable)**

Applicant to complete

My preferred architect/surveyor to act on behalf of the SIPP to oversee the works is:

Name of architect/surveyor	<input type="text"/>
Address of architect/surveyor	<input type="text"/>
	<input type="text"/>
	<input type="text" value="Postcode"/>

I/We confirm I/we have agreed fees with the above as follows:

£

This figure has/has not (please delete as applicable) been included in the works costs noted in question 5.

## 6b Lending requirements

Applicant to complete

Is lending required?

Yes  No

If Yes, please supply a copy of the offer letter, if available, and complete the following:

Bank or  
building  
society

Contact  
name

Contact  
address

<input type="text"/>
<input type="text"/>
Postcode

Amount of loan

£

Term

Periodic repayment amount

£

Repayment frequency

## 6c Balance of funds

Applicant to complete

Balance of funds will be provided from the following sources - transfers and/or contributions:

Source

<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

Amount

£ <input type="text"/>
£ <input type="text"/>
£ <input type="text"/>
£ <input type="text"/>

**6d** Details of work completed on the property

Applicant to complete

I/We enclose the following: (please tick)

Specification of works

Alternative quotes

My chosen contractor is

**My chosen contractor is:**

Connected

Unconnected

**6e** Value Added Tax (VAT)

Applicant to complete

Do you wish to VAT opt the property?

Yes

No

**7** Member(s) signature

Applicant to complete

**Member 1**

Print name

Signature

Date

**Member 2**

Print name

Signature

Date

We are able to provide literature in alternative formats. For a Braille, large print, audio or E-text version of this document call us on 03455 212 414 (or via the Typetalk service on 18001 03455 212 414).

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