



ASSET TRANSFER POLICY STATEMENT AND GUIDANCE



HISTORIC
ENVIRONMENT
SCOTLAND

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INTRODUCTION

Welcome to our policy and guidance on Asset Transfer under the Community Empowerment (Scotland) Act 2015. This document outlines our commitment to facilitating Asset Transfer Requests where they benefit communities and secure positive outcomes for the historic environment.

The Community Empowerment (Scotland) Act 2015 (the Act) brings new rights for community bodies and new duties on public sector authorities. Part 5 of the Act covers asset transfer requests (ATRs). It gives community bodies a statutory right to make requests to take control of publically owned and leased land or buildings.

The Act and The Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (the Regulations) set out how public authorities in Scotland will assess requests. Public authorities should agree to an ATR unless there are reasonable grounds for refusal.

The Act uses the term “relevant authority” to describe local authorities, public bodies and Scottish Ministers. Historic Environment Scotland (HES) is designated as a “relevant authority” under the Act.

What is asset transfer?

Asset transfer means transferring ownership, leasing, or granting rights to manage or occupy eligible land or buildings to community bodies.

We recognise that the transfer of assets to communities has a valuable role to play in the enjoyment and stewardship of Scotland’s historic monuments, buildings and landscapes, and in helping to regenerate communities. We believe that working together with community bodies to reuse assets provides opportunities for shared learning and creates stronger, more cohesive and sustainable communities.

We are the lead public body for Scotland's historic environment. Scotland's historic environment is part and parcel of our daily lives: it is our castles, standing stones and landscapes; our factories, mills and shipyards; our homes and streets; and our stories. It is a catalyst for economic growth, driving tourism, regeneration and sustainable development and fuelling improvements.

This document sets out our policy, procedure and guidance on how ATRs will be dealt with by HES. We recommend that you read this document in conjunction with the [Regulations](#) and accompanying [guidance](#) prepared by the Scottish Government.

This document is set out in three sections:

- **Policy Statement**

This section explains how we deal with ATRs, and what information we take into account in the process.

- **Procedure**

This section describes the process of asset transfer and sets out all of the key stages.

- **Guidance**

This section gives information about the wider context of asset transfers, and our role as Scotland's lead body for the historic environment. It also highlights information and advice available to help community bodies develop their plans for asset transfers.

LEGAL AND POLICY CONTEXT FOR ASSET TRANSFER

The Act is about enabling and supporting communities to deliver the benefits they need in their area. Community empowerment and asset transfers are not new concepts, as they derive from the Land Reform (Scotland) Act 2003.

Asset transfers have also been driven by a body of research and evidence in Scotland about the value of empowering communities to take control, have an equal voice, and participate in making decisions that affect them.

HOW WE MAKE DECISIONS

The Act and the Regulations provide that a relevant authority must agree to an ATR unless there are reasonable grounds not to. The presumption is in favour of the community body making the ATR, and we must consider all ATRs whether we think the asset is surplus or not.

When we consider ATRs, we need to decide whether the transfer would stop us performing our core functions. If an ATR would affect these core functions, the asset may need to stay in our, or Scottish Ministers', ownership or care.

We have four core functions in relation to properties that we look after (our Properties in Care), which have been delegated to us by Scottish Ministers:

- ensuring their conservation;
- articulating and safeguarding their cultural significance;
- providing public access for current and future generations; and
- managing the associated commercial operations.

What are reasonable grounds for refusal?

These will depend on the individual circumstances of each case but might include:

- where the benefits of the proposal are judged to be less than the benefits of an alternative proposal;
- where agreeing to the request would restrict our ability to carry out our functions; or
- where another obligation on our organisation prevents or restricts our ability to agree to the request.

If we decide to refuse an ATR, we will always explain why in our decision notice. This is a key requirement under the Act. There are options for review or appeal if we refuse an ATR, details of which are set out in our guidance.

Our policy on dealing with an ATR is set out overleaf.

PART I ASSET TRANSFER POLICY STATEMENT

To make an ATR, an organisation needs to be a Community Transfer Body (CTB) as defined under the Act. The Scottish Government has produced guidance for [Community Transfer Bodies](#).

There is a presumption in favour of agreeing to an ATR. In making our decision we will consider the extent to which the CTB has provided evidence in relation to the benefits of the proposal, its viability and community support. This will include whether it has provided:

Benefits

- a clear vision for how the CTB will use the asset and the outcomes it intends to achieve;
- information about how these outcomes are likely to promote or improve: economic development, regeneration, public health, social wellbeing, or environmental wellbeing; and
- information about how these outcomes would reduce inequalities resulting from socio-economic disadvantage.

Viability

- a credible business plan and evidence that the CTB has the necessary skills and capacity to manage the asset for the long term.

Community Support

- evidence that the proposal is supported by the community of interest represented by the CTB and, where relevant, the local and wider community.

In applying this policy we will also take into account:

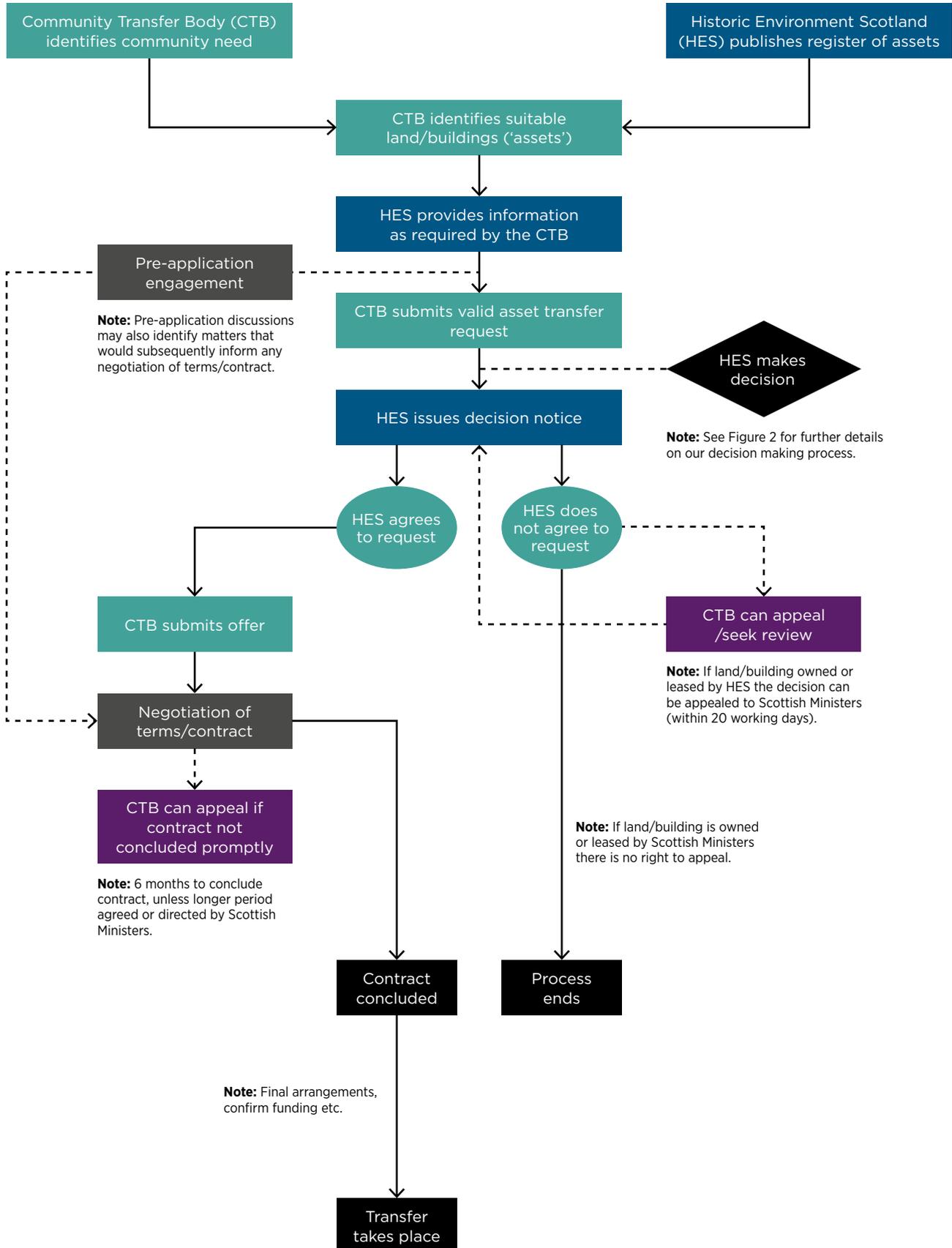
- any other information provided in support of the request;
- any other benefits or disbenefits that might arise if we agree to the request;
- representations made during consultation with owners, occupiers, tenants and the CTB;
- how the request relates to our duties under equality legislation;
- the extent to which agreeing to the request might affect our core purpose and functions;
- price, valuation and non-financial benefits; and
- any legal or other obligations that may prevent, restrict or otherwise affect our ability to agree to the request.

PART 2

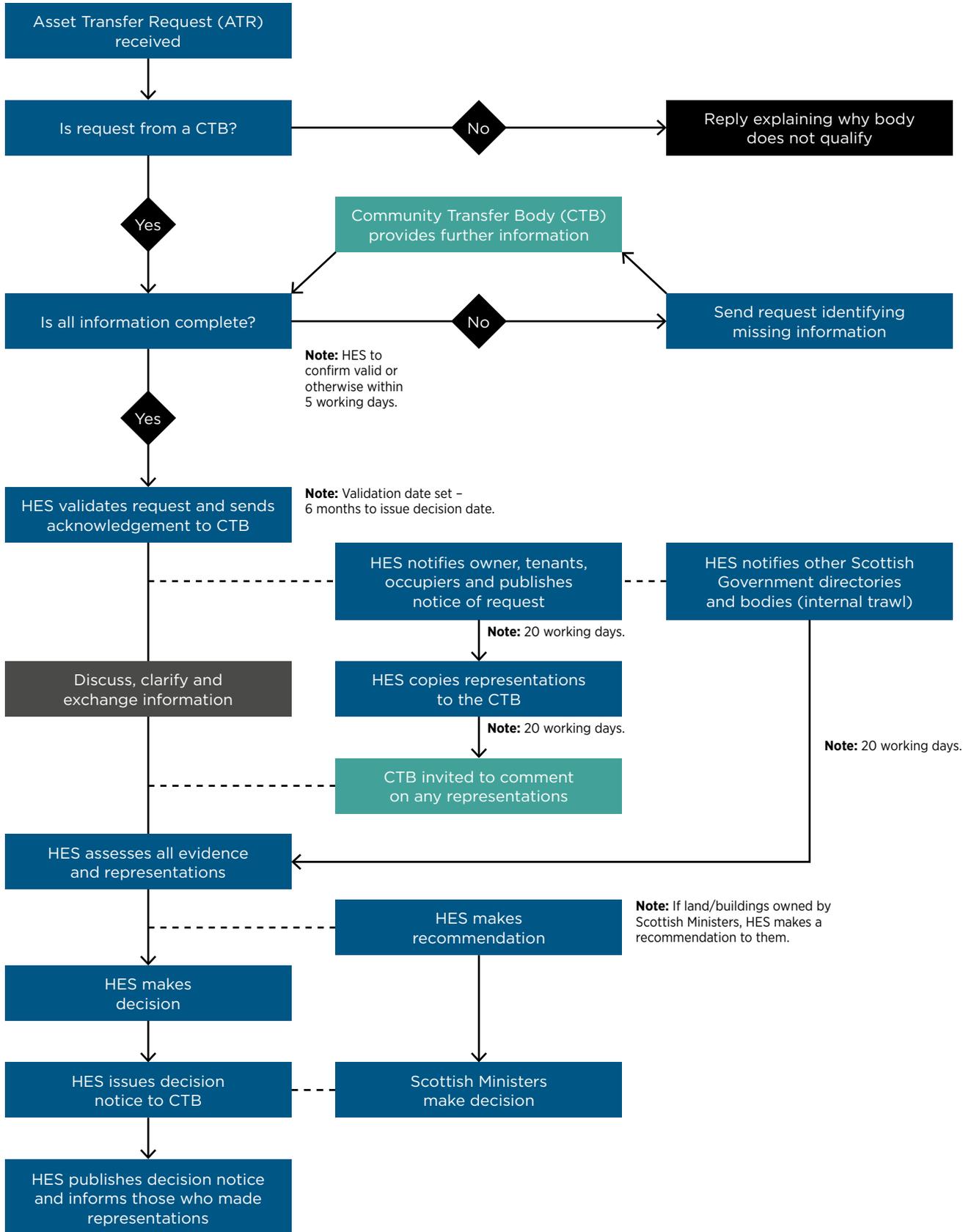
ASSET TRANSFER

PROCEDURE

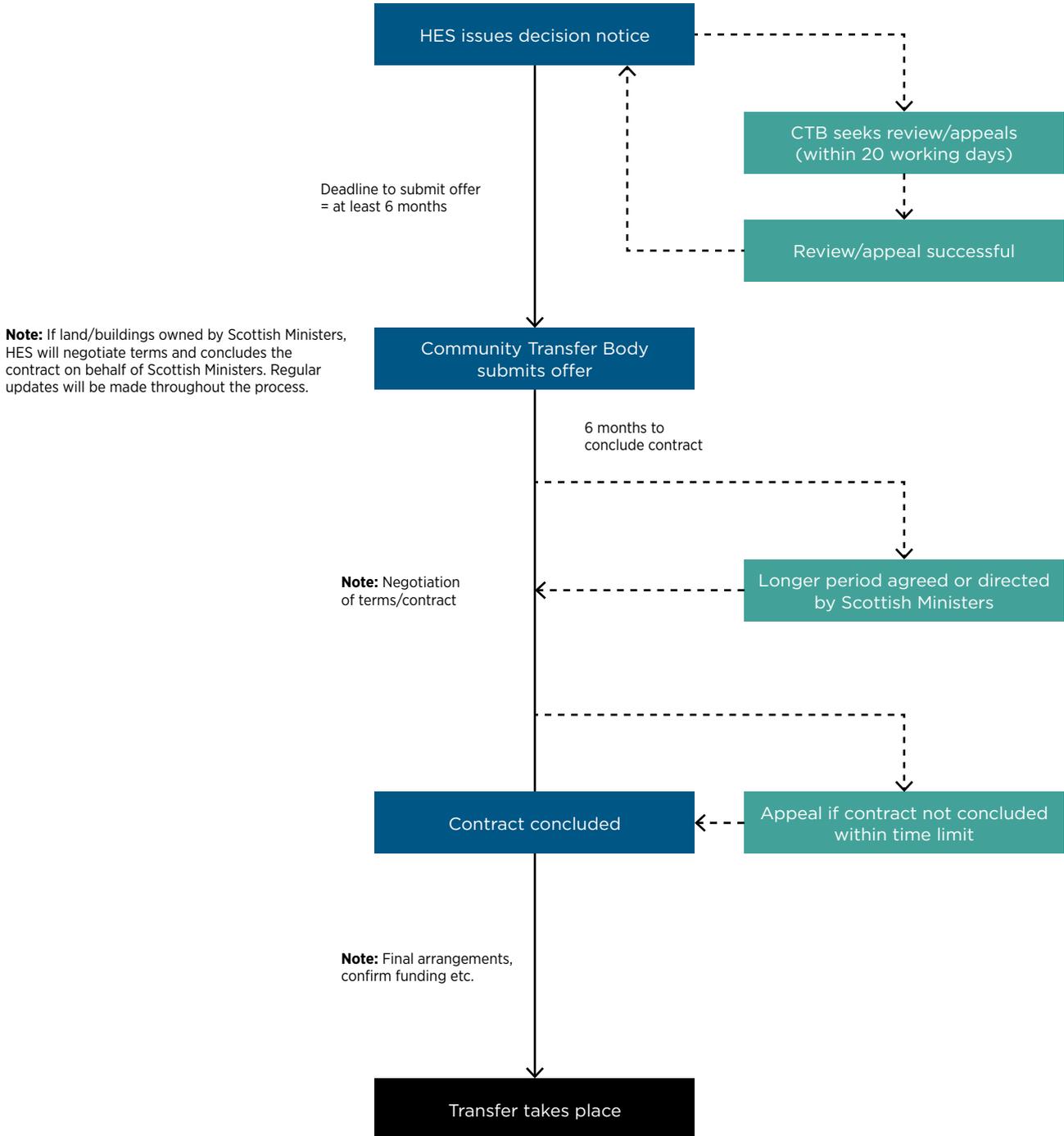
Summary of asset transfer request procedure (Figure 1)



Procedure following receipt of an asset transfer request (Figure 2)



Concluding an asset transfer request (Figure 3)



PART 3

ASSET TRANSFER

GUIDANCE

This guidance is a summary for CTBs thinking about making an ATR to HES. It details the process we use when considering ATRs. These might be for our assets or ones that we manage for Scottish Ministers – our “Properties in Care”.

The guidance sets out HES’s role and purposes in broader terms, with a particular focus on where this is relevant to the Regulations. It also specifically sets out what we will do to facilitate the ATR process.

We will engage positively with all enquiries from CTBs interested in making an ATR to us. We will be open and transparent in assessing applications and taking decisions on ATRs. We will work to support you as you develop your plans and your business case for managing the asset in the long-term. This guidance sets out how we will do this.

The Scottish Government has also produced detailed guidance: [Guidance for Community Transfer Bodies](#) and for [Relevant Authorities](#). We have used both of these documents in preparing our own guidance.

ABOUT HISTORIC ENVIRONMENT SCOTLAND AND OUR ASSETS

HES is a non-departmental public body and a registered Scottish charity, established by the Historic Environment Scotland Act 2014 as the lead public body for Scotland’s historic environment. HES is governed by a board of trustees. The trustees set our vision and strategic direction, and are accountable to Scottish Ministers and the Scottish Government. We work within the scope of the Scottish Public Finance Manual, the requirements of charity legislation and the Schemes of Delegation from Scottish Ministers.

Our [Corporate Plan](#) sets out our vision, values, strategic outcomes, objectives, activities and our performance measures. We receive an annual letter of guidance from Scottish Ministers, which sets out our wider policy objectives. Our [Framework Document](#) gives more details of our purpose and operating relationship with the Scottish Government.

Our purpose is to investigate, care for and promote Scotland’s historic environment and to manage its collections as a national resource for reference, study and research. We are the largest operator of paid visitor attractions in Scotland, and provide advice on the management of Scotland’s wider historic environment. We are the lead public body for delivering Scotland’s historic environment strategy ‘Our Place in Time’.

Through grant schemes, we contribute funding for the regeneration of Scotland’s town centres and the repair of historic buildings. We also support archaeological research and intervention projects, which help to deliver [Scotland’s Archaeology Strategy](#) and assist in the management of archaeological material. We employ many skilled craftspeople to maintain our Properties in Care, working with colleges and others to promote and support traditional skills. Our [funding legislation](#) gives the full details of our core functions.

We have an important enabling role in supporting, empowering and collaborating with others to secure a positive future for communities and the historic environment. Our vision is that Scotland's historic environment is cherished, understood, shared and enjoyed with pride by everyone. Access, participation and enabling others to care for their heritage are key objectives for us.

Our Corporate Plan Objectives that support communities include:

- growing the contributions the historic environment makes to the cultural, social, environmental and economic life of Scotland;
- empowering and enabling communities and others to care for their historic environment;
- providing expert advice and guidance to encourage informed decision-making;
- sharing information and expertise with others;
- enabling others to protect and conserve the historic environment through direct and indirect investment; and
- encouraging engagement, participation and enjoyment of the historic environment and improving access for all.

A significant part of our work is to care for more than 300 Properties in Care on behalf of Scottish Ministers. These include castles, tower houses, brochs, stone circles, abbeys and other historic or archaeological monuments in Scotland. We maintain and operate these sites as visitor attractions, and this is part of our core functions.

Eligible assets

Requests can be made in relation to land and buildings that are either owned or leased by public bodies. Those in private or charitable ownership are not eligible for consideration under the Regulations.

Scottish Ministers own or lease some of our Properties in Care. This means they are eligible for the purposes of ATRs. However, other properties are in private or charitable ownership and we look after these under a Deed of Guardianship. Those properties are not eligible for ATRs because they are not publically owned or leased. We provide details of all the eligible land and buildings in our [Register of Assets](#).

The land and buildings that HES owns or leases comprise most often of car parks and works depots, visitor centres and outbuildings. We normally use assets like these to operate, maintain and present our Properties in Care, as part of our core functions. These are eligible for ATRs and are listed in our [Register of Assets](#).

OUR ROLE IN ASSET TRANSFER

As a relevant authority, assets that we currently own or lease may be eligible for ATRs and we have a duty to agree to ATRs unless there are reasonable grounds for refusal. Properties in Care that are owned or leased by another relevant authority are also eligible for ATRs, and a request should be made to that relevant authority and not HES.

If we receive an ATR for land owned or leased by someone else, we will let you know and aim to provide you with any details that are available to us to help you make an ATR to the relevant authority who does own or lease the land. This may include directing you to Registers of Scotland if necessary.

Properties in Care that are in private or charitable ownership are not eligible for asset transfer and should instead be considered under Community Right to Buy legislation (the Land Reform (Scotland) Act 2003). Our [website](#) has more information on this.

A special feature of our governance is the [Schemes of Delegation](#) from Scottish Ministers, which provide details of how we should manage the Properties in Care. This is relevant to the Regulations because it means that the powers to acquire or dispose of Properties in Care stay with Scottish Ministers.

Because we manage the Properties in Care, it is practical for us to handle ATRs for Properties in Care on behalf of Scottish Ministers. When we receive an ATR for a Property in Care owned or leased by Scottish Ministers, we will assess the request in line with our policy and make recommendations to Scottish Ministers. They will then make the ultimate decision.

If an ATR would restrict our ability to carry out our specific functions, it may not be suitable to transfer the asset. Through early discussions with you, we can provide advice on this and potentially help your CTB find assets appropriate for your needs.

INFORMATION AND SUPPORT

Our Register of Assets is available on our [website](#). It includes all eligible land and buildings owned or leased by us, and all eligible land and buildings owned or leased by Scottish Ministers that we manage on their behalf. Our register will be kept up-to-date and it is available in other formats on request.

We have produced this 'Asset Transfer Policy Statement, Procedure and Guidance' to help CTBs find the assets appropriate to their needs and develop their plans.

We are a multi-disciplinary organisation that can assist applicants in developing their ATRs. This might include putting you in touch with the relevant people, both in and beyond our organisation.

We would be very happy to hear from you at an early stage to talk through your plans. A [pre-application enquiry form](#) is also available, and you can submit it to us at communityempowerment@hes.scot or by post. You can still submit an ATR without completing the pre-application enquiry form. However, the pre-application form is encouraged as part of early engagement between your CTB and HES.

Contact for enquiries/ATRs

Chief Executive's Office
Historic Environment Scotland
Salisbury Place
Edinburgh EH9 1SH

communityempowerment@hes.scot

Support to develop your proposals is also available from a number of other organisations and we have signposted some of these on our [website](#).

GOING THROUGH ASSET TRANSFER

The key stages in ATRs are set out in our Procedure flowchart overleaf, and there are full details in the Scottish Government [guidance](#). This section gives a summary of the key stages that you will go through in making an ATR, and provides advice on the matters you will need to consider at each stage. The five stages are:

- a) Development** – developing your plans and gathering the information you need for your request.
- b) Submission** – pulling together all your information into an application form and passing it to us.
- c) Assessment** – what we will take into account when we consider the request.
- d) Decision** – who makes the decision and how.
- e) Conclusion** – drawing up a legal agreement and transferring the asset.

(a) Development

This section highlights some of the key actions you will need to take in developing your project. It might be helpful to think of these as falling into three broad categories: your community, your asset and your project.

Your community:

- identify your community's need;
- engage your community of interest and the wider community;
- identify key partners and stakeholders; and
- establish appropriate legal structure for your CTB – this will depend on whether you want to own, lease, manage or simply use the asset.

Your asset:

- identify suitable land or buildings on our register;
- decide whether you want to take ownership or lease, or whether rights to manage, use or occupy would meet your needs;
- speak to HES about a valuation of the asset if you plan to take ownership; and
- consider the purchase price or rent you are willing to pay if you are seeking ownership or lease.

Your project:

- secure development funding if possible;
- set out the benefits of your proposal and how these will help your community; and
- test the feasibility of your plans – the end uses for the land or building.

We can help you develop your plans and will provide practical knowledge about managing the asset, where we have this information. This could include maps, plans of sites and buildings, annual maintenance plans or running costs. We can also give advice on finding funding for your project.

The benefits of your proposal will be key considerations in our decision-making process so we will need to know about these in detail. Getting your community on board and demonstrating that the proposed end-uses will fulfil clear needs will be important from the start, for you and for us.

Please contact us at communityempowerment@hes.scot if you require any assistance from us to develop your plans.

Where you are seeking to take over a service and use an asset solely for the purposes of delivering this service then it may be more appropriate to submit a participation request. Please refer to the relevant [participation request guidance](#) or contact us at the email address above if you are unsure.

(b) Submission

This section describes what information you will need. We provide an [application form](#) that takes you through this step by step, which can be accessed on our [website](#). The Act lists specific information that we have to have before we can validate your application. You may also use the [model application form](#) prepared by The Scottish Government, as this will ask for the same information.

You can find the full list of requirements in Scottish Government [guidance](#). The information you will need to provide to us falls into three categories:

- information about the asset and how you intend to use it;
- how your proposals are supported, both financially and in wider terms; and
- information about your CTB, such as its contact details and constitution.

The first thing that we will check when we receive an ATR is whether it includes all of the required information. An ATR will not be treated as having been made until all of the required information is provided by you.

If you have given us all of this information, we will validate your ATR within five working days and send you an acknowledgement. If information is missing, we will ask you to provide it before validating and progressing your ATR.

Once we have validated your ATR, we will publish the details on our website and notify anyone with legal rights over the land or buildings, such as tenants or contract holders. This is so that anyone can respond to the request as part of the statutory public consultation process.

(c) Assessment

This section sets out the factors we will take into account in making a decision. There are five key areas that we will look at, and you should provide supporting information for each. These are in relation to its benefits, viability and community support, price and best value.

BENEFITS

Your request should set out a clear vision for how the community will use the asset and the outcomes it intends to achieve. In assessing the benefits, we will take into account all kinds of benefit, including economic. Economic benefits might include jobs created by the management or operation of the asset, or reducing costs to the community by providing local services.

Other non-financial benefits could be described in various ways, and it may be helpful to look at the [Scottish Government's National Outcomes](#). Examples might include greater community cohesion, skills development and enhancement, voluntary opportunities, professional development, increasing population or educational benefits.

Key points to demonstrate:

- overall (net) benefit to the public;
- wider benefits for the whole community;
- no detriment to wider public interest;
- no unreasonable impacts on private, public or commercial interests; and
- benefits not outweighed by any downsides for the wider community, environment or the economy.

VIABILITY

When we assess your request, we will take into account whether your end uses are likely to succeed. For this to happen, it is important to get the assessment of need in your community area right at the beginning, and work out how your operating costs will be met once the project is up and running.

There is huge potential to re-purpose existing buildings and land for new uses, but if an asset is sensitive, there may be some additional things to consider. Some the assets that we own or lease have very high cultural significance, and anything that damages their significance may run into difficulties.

Projects that require works to culturally significant assets might need specific consents (for example, planning permission for change of use, scheduled monument or listed building consent). If the proposed work would damage the asset's significance, it may be impossible to get consents.

A building needs to be a good fit for the end uses. The end uses need to be realistic and not require unreasonable impacts on the land or building to realise the benefits you envisage.

Similarly, you will need to show how the project will bring in enough income to cover running costs. This will be in part defined by whether you are seeking ownership, a lease, or operational use of an asset.

To prove you can cover running costs, you should show that you have the resources and appropriate skills for the project. You should also explain how long term sustainable management will be achieved.

• **Resources and skills**

It is best if you can show us that you have thought about the costs of achieving the benefits you have identified. This applies to both initial set up costs and the daily running of your project. As part of this, we would expect you to show that you have considered appropriate and realistic sources of funding, such as grant aid.

• **Long term sustainable management**

If your project is large scale or complex, we will need to know about the governance arrangements of your CTB. We need to know that you have the appropriate mix of skills, experience and qualifications to deliver and sustain your project – or that you have a plan in place to get them. As part of this, it may help to think about the possibilities for working with other organisations, or involving specialist consultants (like architects).

We will not ask you for more information than we need to come to a decision. The bigger and more complex your project is, the more information we are likely to need.

A proposal to buy and redevelop a building to provide facilities for a range of uses will be a complex and long-term project that requires clear planning for several years and a range of professional skills. A smaller scale project, perhaps making use of an existing building or land on a temporary basis, may not require such significant long-term planning.

You will always be expected to have considered whether people with appropriate skills are available, and identify any additional costs. These might include affiliation to governing bodies or [Disclosure checks](#) for staff and volunteers.

If we agree to a sale or lease that is below the market value of the asset, it is very likely that we will apply conditions to this. Normally this would be a clawback condition – allowing us to take the asset back if the project fails. However, we may also consider other conditions as appropriate. Any such conditions will be proportionate and clearly set out in the transfer contract, which will detail the trigger points that entitle HES, for example, to recover the asset.

Agreeing to less than market value is the equivalent of a discount for the CTB, which is being paid for by public funds. This discount can only be justified by the other benefits of the project. If the project does not deliver the benefits expected, we might take back the asset to protect this public investment.

Key points to consider:

- think about the resources that will be required both now and in the future;
- think about the skills you might need to implement the proposal; and
- take advice on the long-term sustainable management of the asset.

COMMUNITY SUPPORT

When we assess your request we will look at the level of community support it has. This includes the support that is demonstrated by both your CTB and your local and/or wider community.

We will therefore need to see evidence that you have engaged with the local community, and details of the methods you have used, and the outcome. [The National Standards for Community Engagement](#) provide some helpful advice on different ways to go about this.

We will also take into account wider public interest in the proposals. This might include the interests of specific groups who are likely to be affected by the proposal and its outcomes. To help with this, you should explain whether key stakeholders or user groups have been involved, and to what extent they support your project.

Key points to present:

- evidence of support within the CTB;
- evidence of support from the local and/or wider community; and
- details of specific groups such as key stakeholders and their interest.

PRICE

When you submit an ATR, you have to tell us how much you would be willing to pay for the asset. This will be different depending if you are looking for ownership, a lease or occupation.

If you need a formal valuation of the asset to decide how much you are willing to pay, it may be helpful to speak to us before requesting it by contacting us at communityempowerment@hes.scot. We can help to write the brief for the request and in many cases it may be best to commission a joint evaluation with ourselves. This means that when we come to look at your ATR, the valuation will have been agreed in advance. Where we seek a joint valuation we will share the cost with you.

Valuations should be done in line with [RICS Valuation – Professional Standards \(the ‘Red Book’\)](#). They should be carried out by the District Valuer, or another suitably qualified and experienced independent valuer. It is best to get the valuation done well before you submit your ATR.

A valuation is usually valid for no more than six months. It is likely to take longer than six months to process and finalise a sale, so a further valuation may be required before the sale is completed. This will ensure there is a valid and up-to-date market valuation when the transfer happens.

By agreement between the parties (HES and the CTB), it may also be necessary to undertake a re-evaluation, for example, where there has been a change in circumstances which will affect the value of the asset.

BEST VALUE

We have a duty to secure best value when transferring one of our assets. This usually means accepting the highest price or full market value. However, we will also take account of other factors which are aligned with our organisational priorities where this will deliver best value for public money.

Wider public benefits that might justify a discount can include:

- promoting economic development or regeneration;
- improving health, social or environmental wellbeing; and
- reducing inequalities resulting from socio-economic disadvantage.

You will need to make the case that your project will have benefits like these for us to agree to a discount.

If your project involves commercial activity, we might not have the option to give a discount. Giving discounts for commercial activity could give you an advantage over any commercial organisations operating in the same area, which might distort the market.

We have to recognise these rules to comply with the [Scottish Public Finance Manual](#), and requirements around State Aid.

(d) Decision

In reaching a decision, or making a recommendation to Scottish Ministers, we will apply our policy on ATRs. We will consider all the information you have provided in support of your application. We have to compare this to any alternative proposals, and the benefits they might bring.

Alternative proposals may be another ATR, or another proposal made by us. If we do not think the property is surplus, we can argue that the existing use is an alternative proposal.

In support of the decision making process, feedback from our advisory evaluation panel will be used to inform the HES Senior Management Team in reaching a view on whether to agree to or refuse a request. The Senior Management Team will subsequently make a recommendation to the HES Board for decision.

Given the range of issues that will have a bearing on certain transfer requests, our advisory evaluation panel may need to convene small, more specialist, working groups to examine specific issues, drawing on external expertise where appropriate.

We may also ask for clarification or more detail if the panel consider this would assist with the decision-making process.

Where a request relates to an asset within the control of Scottish Ministers, the HES Board will not make the decision but will instead make a recommendation to them for decision.

If Scottish Ministers are making the decision, we will let you know when a recommendation has been passed to them for decision and will continue to be the primary point of contact with you throughout this time.

Once the decision has been made, we will publish the report of handling with the decision notice so you can understand the reasons why your request was agreed or refused. This will be within six months of the Validation Date for the ATR.

Normally your ATR will set out suggested terms and conditions. If we agree to your ATR, we might accept these conditions as they are. We also might alter or add to them if we think that is necessary.

We may refuse an ATR if it is the same or very similar to a previous request that has been refused. An ATR may be the same or very similar to a previous request where it relates to the same land and seeks the same type of transfer as a request made in the previous two years, which was refused.

APPEALS

You can appeal against decisions made by HES in relation to an ATR, details of which will be set out in our decision notice. You have the right to appeal our decision on an ATR on three grounds:

- we have refused your request;
- we have not made a decision within the required timescale; or
- the terms and conditions in the decision notice are significantly different from those in the request.

You have to appeal the decision within 20 working days of the date that the decision notice is published by HES. If no decision notice has been issued, you have to appeal within 20 working days of the deadline for notification of the decision by HES.

[Scottish Government guidance](#) gives further information on the appeal process.

If your request for assets owned or leased by Scottish Ministers is refused, there is no right of appeal, but you can ask for a review.

(e) Conclusion

Once you have been notified of the decision, we will work with you to submit your offer. Submitting your offer is the formal conclusion of the ATR process. The offer should reflect the terms and conditions set out in the decision notice, under which the request has been approved.

You will need to secure the necessary funding if you are purchasing or leasing the asset. You will also need to arrange any permissions or consents required for your project.

A legal agreement will need to be drawn up for you to make your formal offer. Once this has been made, the asset transfer will normally be concluded within six months.



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