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National Rivers Authority

Succession to Abstraction Licences

(Extract from Licensing Manual)

A Handbook for Water Resources Staff



NRA

Guardians of the Water Environment



NRA

National Rivers Authority

Succession to abstraction licences

[Extract from Licensing Manual]

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Chapter 11

Succession to abstraction licences

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1. INTRODUCTION

1.1. Concept

Licences to abstract relate very precisely to the source of supply and the area on which they authorise use of water. However, the authorisation relates only to the holder of the licence. It is a personal right. The succession rules enable new occupiers of land where use of water is authorised to become holders of the licence, so they may continue to abstract and use water lawfully. Where they occupy only part of that land, they have a right to have an appropriate new licence. The idea is to avoid going through the process of applying for completely new licences. The succession rules don't work where a licence has no "authorised land" (ie. water supply licences), but, as discussed below, other procedures may be available to achieve the same result.

The abstraction licensing rules overall, and the succession rules within them, are meant to make sure *water is controlled*. The NRA is better able to do this if, for each abstraction, there is someone it can identify as *the licence holder*. It can look to him as liable for breaches of the licence and for payment of charges.

1.2. Mechanism

The law covering successions is in:

- Sections 49 and 50 of the Water Resources Act 1991 ("the Act")
- The Water Resources (Succession to Licences) Regulations 1969 (SI 1969/976) ("the Regulations")

This Chapter of the Licensing Manual refers to this body of law collectively, where appropriate, as "the succession rules" or "the rules".

It is clear from the Parliamentary debates at the time of the Water Resources Bill in the early 1960's that these provisions were not well thought through. The government of the time admitted it! They said they would do something to improve the situation before the 1963 Act, but did not do so¹.

In an effort to overcome these problems, the NRA has developed policies on how the rules should be applied. The objective is to avoid unnecessary bureaucracy while not losing any control on water resources.

1.2.1. Impoundment licences

The succession rules simply do not relate to impounding licences. Ways of transferring responsibilities under impounding licences are considered elsewhere in the Licensing Manual².

1.3. How this Chapter is organised

This Chapter of the Licensing Manual is about how the succession rules work and the procedures the NRA adopts to make them work efficiently. It explains the rules so far as they are clear and sets out NRA policy on dealing with matters where the rules are less easy to apply. It is organised in the following sequence

- 2 — An outline of the way the rules work.
- 3 — Guidance on occupation problems.
- 4 — How to deal with other "problem" situations.

¹ The same was acknowledged when the 1969 Succession Regulations were introduced. It was said that the law would be amended "when an opportunity can be found". However amendments were not in fact made eg. in the Water Act 1989 or Water Resources Act 1991. In 1969 government guidance was to request river authorities to be lenient about people applying for new licences when they had lost their rights under the succession rules.

² See Chapter 8.

- 5 — What to do with successions that have failed.
- 6 — The structure of the law dealing with successions.
- 7 — Miscellaneous practical and administrative points.
- 8 — The legal texts, with detailed commentary.

The appendix section contains—

- The forms recommended for use with successions, including a summary sheet about what form to use in what situations.
- A self contained summary about how to handle successions, including flow charts.
- An extract from the NRA's Working Practice Notes on charging for abstraction licences, relevant to successions situations.

1.4. "Citizen's charter"

It is the responsibility of the parties (usually, the incoming occupier) to start the succession procedures moving. The NRA has no legal duty to do anything, even if it becomes aware of potential succession situations. On the other hand, you should tell owners and occupiers about the rules if you are in discussion with them, eg. as a result of an inspection visit. You should, of course, be as helpful as possible if an owner or occupier contacts the NRA specifically to ask about the implications of a change in ownership or occupation.

The succession rules as expressed by the Act and the Regulations can work harshly. They can result in people unwittingly losing licences which, due to water resources pressures, may then be difficult to recover. So far as the law allows, the rules in this manual should soften this harsh operation. Nevertheless it will still be possible for licences to be lost by the unwitting failure of parties to observe the rules. You should therefore—

- Not knowingly withhold information which would benefit an incoming occupier (ie. to succeed to a licence) if in contact with him.
- Be candid and helpful in explaining how the rules work.
- Not regard the workings of the rules as a way of clawing back or better controlling water resources. They can work that way. However, the NRA sees this as an incidental benefit, and not the reason for adopting a particular approach in a particular case³.

³ Subject, possibly, where the matter is otherwise finely balanced, to the operation of the NRA's environmental duties. See s.16 and 17 WRA 1991 and section 7.14 below.

The guidance here may occasionally still lead to cases where people lose a licence and cannot (eg. due to over-abstraction in the area) get a new one. However, there is a limit to which the NRA can be flexible. The responsibility for doing things right in the first place must eventually rest with the abstractor or his professional advisers.

2. OUTLINE OF THE RULES

2.1. Introduction: they're *not* that bad..

Though there are difficulties with successions, people have been unnecessarily scared of them. Recent NRA policies on applying the rules make the system quite straightforward. The new forms (see appendix section) also make matters easier.

2.1.1. The old problems

Some practical problems *used to* make the system genuinely complicated—

- *Different time limits*, resulting from a defect in the legislation, within which the successor to the licence should act. NRA policy, following advice from the Department of the Environment, is *to adopt a single time limit of 15 months* which will apply in all cases. This is therefore no longer a problem.
- Deciding whether occupation of land has changed or not. As explained below, *change of occupation triggers the succession rules*. The guidance here should make that question easier to answer in practice.
- What to do about situations where the succession rules do not apply. This can occur when there is no authorised land, a particular problem with private⁴ water supply licences. Similar difficulties arise with licences where the licence holder is not the occupier.

⁴ Public water undertakers can often overcome the problems by means of a transfer scheme under schedule 2 to the Water Industry Act 1991. See section 4.2.1.

2.2. The three basic succession situations

The law distinguishes:

2.2.1. "Whole of land" successions

This is where the succession is to the *whole* of the land included in the licence. This is the easiest case. Section 49 WRA governs. A *15 month time limit* from taking up occupation⁵ applies for *notifying* the NRA. The new occupier automatically becomes the licence holder when he takes up occupation, but will lose it unless he notifies the NRA in time. Until he occupies, the original licence holder is the holder of the licence and remains responsible⁶ for it.

2.2.2. "Remainder of land" successions

This is where the new occupier is taking over the licence (ie. has or will have the original licence document) but occupies less land than it covers. This may be because land has just been split up, or perhaps land was disposed of in the past but the holder did not vary the licence. The Regulations govern this situation. Sometimes the situation will involve others applying under the part succession rules (see below), sometimes not. In any event, a new occupier has *15 months for notifying* the NRA. If he does so, he simply takes over the existing licence. The same comments (see footnote 6, and section 7.1) apply to when change in occupation takes place in less straightforward situations.

Where land is being split up, the remainder holder will be the person who takes over the last part of the land given up by the old licence holder. If the split to different people occurs around the same time, the parties may agree who the remainder holder should be. This will be acceptable even though he may not actually be the last new occupier. Alternatively (see Regulation 5(3)) all the new parties may apply for part succession licences.

The remainder holder can apply for a new licence, or may wish to modify his existing licence so it includes only the land he occupies⁷. The NRA's policy is *not*

⁵ As to what this means, see section 3.2 below.

⁶ As to gaps in occupation, situations where the old licence holder remains in occupation after a sale, how to deal with charges on the licence, etc., see section 7.1.

⁷ It is probably best to go for a variation, but this is only due to what will usually be merely theoretical rights to compensation on revocation: see footnote 35.

to require advertising⁸ of a variation to a licence which involves a downwards variation in the authorised land, ***provided the variation includes an appropriate reduction in authorised quantity***. This should be to a level which is, at most, either in proportion to the reduction in authorised land, or to the amount which has in practice been used on that area of land, whichever is the greater⁹.

It is still open to a remainder holder not to have his authorised area varied downwards. For example, he may only have leased out the area which does not now occupy, and expects to occupy it again in the future¹⁰.

2.2.3. Part successions

This is where the new occupier occupies only *part* of the land included in the existing licence. The Regulations also govern this, but policy is to allow 15 months from taking up occupation to ***apply for a new licence***.

Usually, someone else (the remainder holder, see above) will take over the existing licence. Sometimes, eg. if the licence holder disposes of land on the same day and there is no agreement about who should hold the licence) there will be no remainder holder and two or more part successors will effectively be dividing up the licence between themselves.

A vital aspect of part successions is that, if there is still a holder of the original licence (now a remainder holder, see above), ***he must agree to the part successor taking part of his authorised quantity***.

⁸ Theoretically, in a straightforward remainder situation ie. without applications for part successions by other people (see below) the licence holder cannot (without advertising etc.) apply to modify the licence so it includes only the occupied land. On the other hand, in a situation involving other part successors, he *can* apply for a new licence without advertising. However, if he wishes to keep the old licence and simply vary it, he must advertise. A further twist is that while it is possible to vary the authorised quantity downwards without advertising, one should advertise to vary the authorised area of land.

⁹ This is consistent with the intention of Regulation 7(2)(b) — and with policy on dispensation with advertising: see Chapter 5 of the Licensing Manual.

¹⁰ Strictly speaking it is best to vary the area of land downwards before leaving occupation in favour of one or more new occupiers. That is because s.50 WRA 1991 only allows the making of regulations "where s.49 applies" ie. where the person giving up occupation is the occupier of the "whole of the land" specified in the licence. If he occupies less than the whole of the land, arguably the succession rules cannot apply at all. The 1963 Act said much the same thing, but less explicitly, with the result that the 1969 Regulations arguably go beyond what the primary legislation allows. If new regulations are made under the 1991 Act, they will presumably adhere more closely to the primary legislation. The Department of the Environment have recognised this problem and have said that s.50 went further than intended, and there will be retrospective legislation to restore the *status quo*. However this has not appeared at the time of writing.

Another proviso is that the part successor *must occupy the land within two years of the original holder ceasing to occupy*. This consideration seldom applies. However it may be important if eg. there is an intervening occupation by someone who does not exercise his succession rights. The new person then has 15 months from occupying to apply.

Note here the *automatic right* to a new licence. This means the new occupier does not have to go through the normal application procedure, nor advertise. Authorised quantities etc. are usually based on the amount of land held, in proportion to land covered by existing licence. In practice, the existing licence holder (if he is retaining any land) and any other part successors will usually agree between themselves how much of the authorised quantity each gets. The NRA has an overriding discretion in the matter and should not allow part successors to take more than the rules allow¹¹. You should make a note on the file which shows why you consider the quantity applied for is reasonable.

Note that failure by one part successor to give notice in time does not prejudice the rights of other part successors or the person with the right to the remainder of the licence.

Two part successions, or one remainder and one part?

In practice, it probably makes very little difference, when land is split up at around the same time, whether—

- Either, there is a remainder holder of the original licence and one (or more) persons entitled to a part succession licence.
- Or, the licence is simply split among part successors.

This is particularly so given the NRA's policy on reissue of licences when licences are varied, ie. rather than continuing with ancient documents¹².

What *should* happen in split up situations is that the parties agree between themselves what will happen to the licence, so there will be no problems. However, agents and solicitors are not always *au fait* with the rules and may not arrange this. The result in theory could be that someone comes into possession of the original licence document, regards himself as the remainder holder, and then does not cooperate in splitting the licence with the other part successor. *This is something for the parties to sort out*. However, the NRA could get into trouble if it grants a part succession.

¹¹ See Regulation 7 — section 7.10 and page 1150 below.

¹² See Chapter 8.

licence and the other party turns round and says that he did not give consent as a remainder holder. To avoid this, you should write to all the parties explaining what is going to happen (part succession licences to each), saying that you trust this reflects their understanding of what was agreed over the split and if there are any objections they should let you know within, say, 21 days.

2.3. Protection of rights

The rights protected under a licence continue after the original holder has ceased occupying, as he remains the holder of the licence¹³.

In *whole* of land or *remainder* situations, the rights will continue protected automatically. If the successor gives his notice in time, all well and good. If not, the licence, and the rights with it, will lapse.

In *part succession* situations, technically the successor only begins to enjoy protected rights after he has applied for a new licence, not immediately on taking up occupation. However, for resource planning purposes, *it is wise to assume these rights have continued protection*.

2.4. Series of successions

Sometimes land may change hands (ie. legal ownership etc. or just new occupation) within periods of 15 months. Thus there can be a series of occupiers without the NRA's knowledge, each change marking the beginning of a new 15 month period. This is possible because the succession rules do not require the original or prior holder to be someone who is *named* as such on the licence.

However inconvenient these situations may be, you should help a new occupier who asks to become the named licence holder to do so, if he has a valid claim. You may properly ask him to *trace* his occupation and the changes in occupation back to the original licence holder (ie. the person named on the licence). You should look for periods of occupation longer than 15 months (one month for periods before September 1st, 1989¹⁴) when the licence would have lapsed. You may ask for copies of conveyances, contracts, correspondence etc. as evidence. It is up to the claimant to prove the position. If he cannot do so to your reasonable satisfaction, the licence

¹³ As to charges, see section 7.11 below.

¹⁴ This was the transfer date under the Water Act 1989 when the 15 month period replaced the one month period.

will lapse.

Enter the names of the intervening occupiers on the Register and on the file. Thus the history of the matter will be clear.

2.5. Occupation

This key topic is discussed and explained in the next section.

3. OCCUPATION

3.1. Working out who the occupier is

Occupation is key to the succession rules, yet it can be difficult to work out what the occupation situation is. There is no definition of the term "occupation" or "occupier" in the rules. Legal decisions on what these mean (in other contexts) vary. In a recent case¹⁵ the House of Lords said "No useful progress can be made ... by looking up in dictionaries the words "occupy" and "occupier", or by enquiring what meaning the courts have given them in reported cases, for they draw their meaning entirely from the purpose for which and the context in which they are used". They went on to observe that the word clearly had two different meanings in the same Act of Parliament which they were then considering.

The NRA's policy here, therefore, is to adopt an approach which it believes gives sensible meaning to the concept of occupation considering the background and intention of the legislation.

3.1.1. Occupier as controller

A sensible first approach is to regard an occupier as *the person or entity that is in practice controlling the property*. Note that companies, partners, trustees etc. can be occupiers, like individuals. So can an individual, even though he may have a receiving order against him.

A common situation (and problem) is where the occupier is not the same as the licence holder, or there may be no occupier (as with water supply licences). Transferring licences in these situations is dealt with in section 4.

¹⁵ *Southern Water Authority v. Nature Conservancy Council* [1993] Journal of Environmental Law 109.

Sometimes land can be unoccupied, even though someone will always own it¹⁶.

If in doubt, look to the owner

It may be difficult to tell whether anyone, and if so who, is in occupation. Occupiers also may change frequently eg. short term tenants, contract growers etc. In such cases ie. where it is not clear who the occupier is, the NRA's policy is to regard the **owner** as the occupier unless someone else claims to be the occupier and hold the licence.

Such an owner can always say that he is not the occupier and not interested in holding the licence. The NRA might wish to point out the advantages of being the holder of the licence (eg. retaining the licence as a valuable aspect of the landholding).

... but not necessarily

There is no reason for the new occupier to be the person to whom the original holder directly transfers his legal interest. For example, A may sell to B, with the intention being for C to occupy, as lessee of B.

Note it is the **occupier, not the owner, who has the right to claim the licence** under the succession rules.

3.2. When does occupation start?

This can be difficult to tell. Normally the NRA relies on when the successor says that he has taken up occupation. If there is a dispute about the matter, the date to look for is the ***date of first physical occupation by the successor***.

3.3. Gaps in occupation

There can be a gap between an old occupier leaving the land and a new occupier taking it over. The succession rules reflect this, by referring to successors becoming occupiers "immediately" (after the original holder ceases to be the occupier) "or subsequently"¹⁷. The licence remains valid, with the original holder remaining

¹⁶ As to what to do with licence charges in these situations, see section 7.1.1.

¹⁷ See s.49 WRA and Regulation 4(1) allowing for an indefinite gap; also Regulation 5(1) regarding part successions, expressed somewhat differently, allowing for a two year gap.

responsible for it until the new occupier takes up occupation. Whether it is however practical to raise charges when there is a gap situation will depend on circumstances: for guidance, see section 7.1.1.

3.4. Fuzzy situations

The guidance below is designed to help with situations where it is not obvious from a straightforward meaning of the words "occupation", "occupier" etc. whether occupation has changed or not. Bearing in mind the water resources management context, and in particular the way abstractions are often done by family businesses with different structures (partnerships, companies etc.), the NRA's policy is to consider there has been no change in occupation in the following circumstances. There are two types of situation, which can be found on their own or together—

- One is where there has been an overlap between different occupiers, so it is difficult or impossible to tell which has been in practice controlling the property (see above) at any given moment. Examples are given below under the heading "concurrent occupation".
- The second is where the legal status of the occupier in relation to the property may have changed, but the person in practice controlling the property has remained the same. Examples are given below under the heading "substantively the same occupation".

A further difficult situation, where the person holding the licence is anyway not the occupier, is considered in section 4 below. These rules can, as explained, also apply by analogy such situations as well.

3.4.1. Concurrent occupation

The NRA does not regard occupation as having changed eg. when a husband is the holder of the licence, but his wife lives with him, and his son also works on his land. When the husband dies, the wife (widow) should somehow take the licence, likewise when she moves on and the son takes over completely.

Taken literally, the succession rules do not account for this situation. They require the new occupier to give notice etc. only after the old occupier/licence holder has ceased to occupy. They do not cater for occupation *before* that time, when it is artificial to say that only the licence holder was in occupation. Hence the NRA's policy is as follows:

- ☺ To allow changes of licence holder's name (additions, deletions) without

regard for time limits.

- ☺ To allow an eventual successor (ie. where there **has** been a complete change of occupation) to succeed as if the necessary changes had been made by previous concurrent occupiers. Thus, when the new occupier moves in he can expect to succeed to a licence which the occupier(s) before have held "properly". Change of occupation for the purposes of applying the succession rules occurs only where there is a clean break. For regularising the position up to then, use minor variation form WR-2.

3.4.2. Substantively the same occupation

This often happens when an individual incorporates his business. One may argue that in theory there is a change of occupation may (or may not) occur, but in reality you can look at the situation and say "the person in practice controlling the property is the same as before". There may or may not be an overlap in occupation which would also bring in the considerations discussed under "concurrent occupation", above.

- ☺ NRA policy is to allow the licence to be regularised¹⁸ to show the current occupier as the licence holder *provided the occupation has remained substantively unchanged*.

Note that in company take-over or restructuring situations this rule may not apply. Even though the individuals involved (eg. directors) may remain substantially the same, the legal occupation *does change* ie. from company A to B etc.

3.4.3. Concurrent occupation — examples

The key question is whether there has been an identifiable moment when the chain of occupation (described here as "concurrent occupation") has been broken. At that point the succession rules with applicable time limits etc. should apply.

- **Example:** *Husband holds licence. In occupation with wife. Son not living with them but working on farm. Husband dies. Wife carries on full time for a couple of years, then retires to cottage on farm but still helps. Son now manages. Son applies to have licence. Recommended decision: allow it. Do not be concerned when the husband's death or wife's retirement took place, or that the widow still works on the farm.*

¹⁸ Again, use minor variation form WR-2.

- ▶ **Example:** Above situation, but son does not tell NRA of his desire to hold licence. Son sells property to third party. Third party applies to succeed within time limits. **Recommended decision:** allow it. Regard family situation as capable of having been regularised immediately before sale. (If third party is late in applying to succeed, disallow succession.)
- ▶ **Example:** Above situation, but son dies leaving property to cousin from another part of the country who stayed on the farm and helped son manage during the last two months before son's death. Cousin is late in applying to succeed. **Recommended decision:** probably disallow, because it will be difficult for the cousin to show that he was in occupation as such before the son's death (he was not in practice controlling the property as a concurrent occupier), and there has really been a complete change of occupation. However, a decision in this sort of situation will depend on the facts in each case.
- ▶ **Farm split up on death of licence holder "A", to "B" who used to live with him and to "C" who is a distant relative inheriting part. Clear new separate occupations, with abstraction points on each part of property which new occupiers respectively use. Recommended decision:** Regularise situation for "B" but not "C"; "C" is in much the same position as if he had purchased the land from "A's" estate. He is in every sense a different and new occupier.

Business partnerships

The same principles apply to business partnerships. It may help to ask yourself whether there has been a complete **change of occupation by the "business"** which has held the abstraction licence¹⁹.

- ▶ **Example:** Three partners A, B and C in small industrial business with abstraction licence. A and B are shown as holders of the licence. A leaves, D takes his place. B leaves. C and D review documentation outside time limits and tell the NRA of succession. **Recommended decision:** grant it, as C was a concurrent occupier with A and B (so was D).
- ▶ **Example:** Above situation, but C just an employee of A and B. A and B retire, selling the business to C. C takes D into partnership. C dies. D tells NRA of his succession to the licence. **Recommended decision:** disallow it, because being employed somewhere is not the same as being in occupation. Thus there was a moment when there was a complete change of occupation

¹⁹ Here the "substantially same occupation" policy overlaps.

(A and B's retirement).

Companies and entities other than individuals

Companies and other entities (eg. trustees) may often apparently share occupation with similar entities or individuals. It is possible, but unlikely, that the occupation is really concurrent in the sense outlined above²⁰.

3.4.4. Substantively the same occupation — examples

This policy is helpful in the following sorts of situations where the "concurrent occupation" rule does not always apply:

- ▶ **Example:** *Individual farmer with licence formed farming company some time back. Farmer now retired, son-in-law inherited farm (assets of farming company) and farms it. Recommended decision:* Allow licence to be regularised into farming company's name.
- ▶ **Example:** *Full change of trustees technically occupying a school, hospital etc. Recommended decision:* Allow licence to be regularised into names of new trustees (preferably, in terms "trustees for the time being of..." to avoid problems arising in the future).
- ▶ **Example:** *X holds an abstraction licence at an industrial site which he owns. His business is successful and he forms a company, XYZ plc, which rents the site from X. X remains in full and daily control of XYZ plc. X pays the abstraction charges. Several years later EFG plc buys the site from X and buys all the assets of XYZ plc. It tells the NRA of the change within the time limit. Recommended decision:* Allow the succession to EFG plc because XYZ plc and X were substantively the same occupier. For the purposes of succession to EFG plc, the licence can be regularised in the name of XYZ plc.
- ▶ **Example:** *similar situation to above, but XYZ plc relates only to part of X's multifarious activities. X shows to your satisfaction that he is as much the occupier as XYZ plc. EFG plc eventually buys and tells NRA of succession in time. Recommended decision:* allow succession, both on the basis of concurrent occupation and substantively the same occupation rules.

It is easy to think of borderline situations, but it should usually be easy to work out

²⁰ Conceivably the occupation may genuinely be shared — possibly between two companies who jointly occupy a site, or even between an individual and a company who may jointly occupy a site.

an answer to the question, "has the occupation substantively changed?". Company takeover situations are probably the most difficult.

- ▶ **Example:** Company "A" holding licence is taken over by company "B". "B" buys a controlling interest in the shares in "A". "A" continues to exist for a while, but is subsequently wound up and the premises are then clearly occupied by "B". "A's" business and employees remain substantively unchanged during process of control by "B", though directors and shareholders change. **Recommended decision:** "A" can quite properly continue to hold the licence before it is wound up. However, there is clearly a substantive change of occupation at that point. "B" should give notice of going into occupation and becoming licence holder at least by 15 months after the time "A" is wound up.
- ▶ **Example:** Licence holder "A" forms a joint venture company "B" with partner "C". "A" drops out and "B" becomes in effect purely part of "C's" assets. Arguably there is some sort of concurrent occupation here but if "A", "B", and "C" are distinct organisations it seems likely that a change of occupation occurred when "B" was formed and/or when "A" dropped out. **Recommended decision:** consider whether "B", particularly after the departure of "A", is substantively the same occupier as "A" was. It seems likely that this would not be so.
- ▶ **Example:** Company restructuring. Licence holder company "A" transfers assets to new company "B" but shareholders, directors and employees of "A" and "B" substantively the same. "A" is wound up. **Recommended decision:** As per above, a change of occupation occurs when "A" is wound up and "B" becomes the occupier. Disallow succession unless notice given within due time.
- ▶ **Example:** Trust asset transferred from (non-occupying) trustees to beneficiary; beneficiary in occupation beforehand. **Recommended decision:** Allow beneficiary's position to be regularised, but on the basis of the "non occupying licence holder" rules set out in the next section, ie. using the minor variation form rather than the succession rules.

In doubtful cases, the NRA should leave it to the person who claims no substantive change in occupation to explain what has happened and why he takes this view.

3.5. Guidance on occupation in particular situations

3.5.1. Company takeovers

Where a company holds a licence, you may need to work out (see above) what has happened to that company. Ask the company secretary. For example:

- Has the new company simply bought the shares of the occupier who continues as the same business? This would not involve a succession.
- Has the acquiring company itself moved into occupation of the land in question? This would be a succession.
- Has the name of the company simply changed? No succession, same occupier.
- Has the name of the company changed and is the new company clearly a different entity from the old one? If so, there is a succession.

A good rule to follow here is to look at the certificates of incorporation. Check whether the **company number** of the company that now claims to be in occupation is the same as the company which was in occupation before. If the number has changed, there has been some sort of change of occupation which should prompt you to look further into the matter; if not, there is no need to as you are dealing with the same company.

Note that for these purposes a company includes private companies, public limited companies (plc's), and (rare creatures) unlimited companies. On the other hand an organisation calling itself "Co." may well just be a partnership to which different considerations apply.

3.5.2. Executors etc.

Executors and administrators of estates will usually be acting on behalf of the licence holder. They will also be unlikely to have entered into occupation themselves. Thus there will be no change of occupation to trigger the rules until the estate passes out of their hands²¹. If it passes to beneficiaries who have occupied with the licence holder, one could apply the concurrent occupation guidance, ie. without concern for the beneficiary notifying out of time.

The property may pass to a party (beneficiary or purchaser) who has never occupied before. Then time starts to run from the date of the new occupation. Sometimes executors etc. will move into occupation themselves, in which case the normal occupation rules apply. Note however that eg. the widow may be an executor, in

²¹ The succession rules do (obliquely) anticipate this.

which case the guidance on concurrent occupation should apply anyway.

3.5.3. Bankruptcy

Property entering the hands of liquidators and receivers would not amount to a change of occupation. These people effectively act on behalf of the business which they are administering. Note that charges must still be paid under the licence, and if not it may be necessary to revoke it. (As managers of the holder's affairs, they will also be in a position to revoke or vary the licence themselves.)

3.5.4. Short term tenancies

A genuine short term tenant (ie. not eg. someone working under contract to the landowner) is as much an occupier as anyone else. Thus, the succession rules can apply. However, if a tenant is in and out within 15 months, then there is no *need* to give notice etc. to the NRA. The new occupier following will automatically take over the licence. If the tenancy involves less than all the land on the licence, it will probably be best for the licence holder owner to allow the tenant to use the licence with his permission, rather than have a part succession.

3.6. Administrative results

The above guidance on occupation is intended to combine straightforward application of the succession rules, with pragmatic and defensible suggestions on how to proceed when the way forward is not always clear. In all situations you should satisfy yourself that you have applied the rules and guidance fairly. It is worth making a short note on the file to justify the decision reached.

4. PROBLEM SITUATIONS

The succession rules simply do not apply properly in certain situations—

- Non-occupying licence holders.
- No authorised land (water supply licences).
- Unwanted remainder situations where transfer of the licence relating to the whole of the land is desired.

The NRA has developed policies to cope with these, as follows.

4.1. Non-occupying licence holders

Confusingly, there are many situations where non-occupiers can be holders of licences. These include—

- A licence holder who occupies but then eg. rents out his land. Regulation 4(3) of the Regulations (partly) anticipates this situation. This regulation allows the parties to agree that the holder should continue to hold a licence relating to land he no longer occupies (eg. he has rented it out), providing he can still make use of the licence (eg. for supplying his own or other houses). However the regulation does not explain how the licence should be transferred later (eg. to someone who buys the land subject to the tenancy).
- A licence holder who has acquired a licence without ever occupying the land, possibly under licence of right rules, also the modern law²².
- Bodies such as trustees and similar bodies (eg. local authorities) holding licences in relation to land occupied by someone else (eg. the beneficiaries of the trust, a school, a hospital). In some of these situations the legal occupier may be the owning body, in other cases the beneficiary of the trust will be the occupier.

The NRA's policy is to allow these licences to be transferred through the mechanism of "minor variation" using form WR-2, also invoking rules analagous to those relating to concurrent and substantively the same occupation, see above. Otherwise, you should stick as closely as possible to the rules as apply in normal situations. This will generally mean that—

²² You do not have to occupy authorised land to be entitled to apply for a licence: see s.35 WRA 1991.

- For the licence to be transferred from one non-occupying licence holder to another, the parties may use minor variation form WR-2 and request a change of name. Technically the succession rules are not being invoked, all one is doing is changing the name on the licence at the request of the licence holder. The occupier uses the water with the permission of the non-occupying licence holder.
- Where the licence is transferred from a non-occupying licence holder to the person who is already in occupation, then the transfer may similarly be made by using minor variation form WR-2. From then on, when changes in occupation occur, the normal succession rules apply.
- Where the licence is transferred from a non-occupying licence holder to someone who is newly moving into occupation, the same rule applies²³.

In the following examples, A is the licence holder and T the current occupier—

- ▶ **Example:** *A holds a licence but T already occupied the land when the licence was granted. T is technically using water with A's permission. A sells to another non-occupier, B. A should request variation of the licence holder's name to B. Alternatively, he can request that it be transferred to T's name, but after that the normal succession rules apply if T moves out of occupation.*
- *Same applies if T purchases from A: A may request variation into T's name.*
- *The rule applies whether A is holding the licence as a result of a Reg.4(3) agreement, or otherwise.*

Note there is no time limit for A to request the variation. However, he remains liable for charges etc. unless and until he does so, so it is likely that this will happen sooner rather than later.

- ▶ **Example:** *A owns and occupies, holds a licence, and then occupation changes with T becoming (for example) tenant. T has the right to succeed within the time limit. If he fails to do so, the licence will lapse in the normal way.*

²³ The new occupier does not have a right to the licence under the succession rules because the existing holder of the licence is not an occupier, which is the pre-requisite for the succession rules to operate.

Note that the above should not cause confusion with *short term tenants*:

- Where the 15 month rule applies, the tenant will likely have been and gone within that period, with the owner (or a new tenant) resuming occupation.
- If the short term tenant is merely taking part of the land, the owner can simply supply him with water. The original licence can continue as before. A variation of the licence for change of purpose to "water supply" is not necessary in this (or other) situations involving supply to someone occupying part of the authorised land. Such variation will only be necessary where the supply is to an area outside the authorised area.

The same rules may apply to bodies (eg. trustees, local authorities) holding land that others (eg. beneficiaries, schools, hospitals) occupy.

- ▶ **Example:** Trustees A and B, not occupying land but holding a licence, retire in favour of trustees C and D, but take no action on the licence. The "substantively the same occupier" rule, can, by analogy, be applied so that as between these two sets of trustees, the licence can be regularised. (A and B should originally have transferred the licence to C and D using WR-2.) C and D subsequently release the property to beneficiary X, who has all the time been in occupation. The licence should be transferred using minor variation form WR-2, but from then on if X ceases to occupy the normal rules apply.
- ▶ **Example:** Similar to above, but the land is rented out to X. X goes and the land is sold by C and D to Z. Z claims the licence. **Recommended decision:** Allow Z to have the licence, but on the basis that C and D request a minor variation to that effect.

Note that in the above two cases C and D may not be the named holders and therefore not in theory in a position to request the necessary variation. However, by analogy with the rules above relating to substantively the same occupation, you may regularise the licence up to their holding of the licence for the purpose of transfer on to the third party.

- ▶ **Example:** Same situation, but rather than a complete change in trustees A gets replaced by C and later B replaced by D. **Recommended decision:** Allow succession by analogy to "concurrent" rule (see section 3.4.1).
- ▶ **Example:** A obtains a licence for his farm. Subsequently, he rents the farm out to B on a long tenancy. A dies and the farm is sold by A's executors to C subject to the tenancy. B never applied under the succession rules. C tells

the NRA of his purchase from A and wish to take over the licence, in due time. Recommended decision: disallow the succession. B did not succeed when he could have done and the licence lapsed at that point. Advise B to apply for a new licence. (Or C may apply, if he satisfies the normal entitlement to apply rules.)

- *Example: Same situation, but A and B make a Regulation 4(3) agreement. Recommended decision: Allow C (or, if C agrees, B) to succeed.*

There is no application charge for minor variations using form WR-2.

4.2. Water supply licences — no occupier, no succession

Water supply licences need not specify the area over which the water will be used²⁴. There is no prohibition against this, but in practice there is usually no specified area. However, even if it is specified, this does not make the holder of the licence the "occupier". Occupation is key to the operation of the succession rules.

The effect of this is that it is ***not possible to succeed to water supply licences*** under the succession rules. One has to consider other mechanisms. These are set out below. Note the NRA's policy of trying wherever possible to enable private water supplies to continue operating lawfully.

4.2.1. Transfer schemes

The Water Industry Act 1991²⁵ provides for these. They apply to statutory water undertakers and effectively mean that one water undertaker taking over another can also transfer its abstraction licences.

Note that these schemes do not apply where a water undertaker simply takes over a particular abstraction licence of another. In that situation the new company may either—

- Apply for a new licence.
- Have the original holder vary the licence to show the new company as holder.

²⁴ See s.46(4) WRA 1991.

²⁵ See WIA 1991 sections 10, 23 and schedule 2.

This must be advertised²⁶ and the same rules as relate to consideration of an ordinary licence application apply²⁷.

- Have the original holder continue to hold the licence as the new company's agents.

4.2.2. Licence variation

As described above for other situations involving concurrent or substantively the same occupation, it is possible to vary the existing licence to show a new name as the holder. This can be by an existing licence holder or eg. his administrators or executors. The NRA's policy on advertising these is—

- ☺ It will not require advertising of variation of a change of name provided there will be *no substantive change of use* of the water under the new name. This will normally mean that private water supplies would not need to advertise, whereas water companies would need to do so.

Situations arise where the named licence holder and/or his executors are long gone. The NRA's policy here is to be pragmatic—

- ☺ These licences should be regularised, and the practice should be for the name of the licence holder to be changed to the person or group who agree to be the licence holder and responsible for it. In practice enquiries will in the first instance be made of the person currently paying the charges.

There will be no application charge in either of the above cases. The variation should be documented using form WR-2.

4.2.3. Making use of authorised land

One may do a normal succession "on the back of" authorised land. A licence may be for water supply and other (eg. agricultural) purposes. Thus there will be some occupation of land by the supplier of the water (though it may be supplied to off the authorised land). You can regard the water supply aspects as ancillary to the occupation of the authorised land. Thus, such licences are readily succeedable,

²⁶ Note the distinction here between private and public water undertakings. The reason is partly one of scale. Logically, however, it is due to the fact that the *use* of the water in private supplies will remain unchanged (and if that is not the case, then these variations should be advertised too), whereas a new public water undertaker is much more likely substantially to change the use of the water abstracted ie. by feeding it into its own supply system rather than where it went before.

²⁷ See s.51(3) WRA 1991.

provided the normal rules are followed.

4.3. Unwanted remainder situations

This situation commonly arises, as follows. The holder of a licence wishes to hand it over to an incoming occupier, but cannot do so because he still occupies part of the land (eg. he has retired to a cottage on his old estate). The problem with the new occupier applying for a part succession licence is that it cannot cover more land than he in fact occupies, even though the original holder may let the incoming occupier have the entire quantity allowed by the licence. When the original licence holder eventually goes, or dies, the new licence holder may wish to use the water on that parcel of land. In theory this will require variation of the part succession licence to add the extra land. The administration and inconvenience for both the licence holders and the NRA may be avoided by keeping with and varying the one original licence.

☺ NRA policy is to allow variations²⁸ in these circumstances, without advertising and application fee²⁹. However you must explain, in writing, to the retiring holder what this variation implies for him and his remaining land³⁰. In particular he should understand the net result is that—

- The effect of the variation is to put the incoming holder fully in control of the licence as licence holder.
- This means that if the retiring holder wants water, he will either have to apply for a part succession licence (which depends on the incoming holder agreeing to let him have part of the authorised quantity, and which he is under no obligation to do) or have the incoming holder agree to supply him with water.

In practice this method should not therefore be used if the retiring holder is likely to continue to want water. The same goes for people who may move into the retiring holder's land when he goes.

Clearly, in many situations retiring holders would be put off from following this course, ie. where they retain a substantial amount of land where the licence may be of use to a future occupier, and/or there is no firm intention that the incoming licence

²⁸ Using form WR-2.

²⁹ This is justified on the basis that there is no net effect on water resources and that the succession rules could apply (ie. without need for advertising) though in two rather cumbersome steps.

³⁰ For possible text of letter, see section 7.15.

holder should eventually take over that parcel too.

However, the situation where this approach is potentially helpful is sufficiently common that the suggested policy is likely to be a useful option for both the NRA and its customers.

5. FAILED SUCCESSIONS

If there clearly *has* been a change of occupation, the normal procedure for a new licence will apply where a succession fails due to notice not being given within the required 15 months (or a part succession licence is not applied for within that period). For quantities of not more than 20 m³/day, the presumption will be that advertising will be waived³¹.

6. STRUCTURE OF THE LAW

This section explains the way the succession rules as described fit into the law.

6.1. Whole of land successions

Section 49 of the Act governs whole successions. Key aspects are—

- There needs to be change in occupation of all the land on which the licence authorises use of water.

AND

- The need for the NRA to be told within 15 months of the new occupier beginning to occupy.

To determine whether one is dealing with a "whole of land" or "remainder" situation, one should consider what land the licence covered after the date of its last variation, and whether that is the land one is dealing with now. Note there may well not have been a variation (ie. effectively to convert a remainder holder into a whole-of-land

³¹ For details, see Chapter 5 of the Licensing Manual under heading *Dispensation with advertising*.

holder) because this (has) required advertising³².

The law makes it difficult to handle the problems of concurrent and substantively the same occupation. Hence, the policy guidance in Sections 3.4.2 and 3.4.3.

6.2. Other situations - remainder and part successions

Section 50 of the Act gives power to make Regulations to deal with situations where there is less than the whole of the land specified on the licence involved. These are remainder or part succession situations. The key point here is that the Regulations rather than the Act apply, though the one month time limit mentioned in the Regulations is treated as being 15 months.

6.3. Regulation formalities

Regulations 1 to 3 of the Regulations are formalities - (1) is the title; (2) is more important, dealing with interpretation of words; and (3) deals with service of documents. As to (3), note that service of notices etc. should be in writing and verbal information is not good enough³³.

6.4. Remainder situations

Regulation 4 deals with remainder situations. This works like s.49, and the time limit for notifying the NRA is 15 months.

6.5. Non-occupying owner continuing to hold licence in remainder situation

Regulation 4 also contains a provision (4(3)) where the parties intend that the original holder should continue to hold the licence, providing certain formalities are satisfied. This regulation was presumably intended for situations eg. on an agricultural estate where all of the authorised land is changing occupation, but the owner remains eg. in the main house and is entitled to use the water there, or is obliged to supply it to other land or houses. However this provision is unsatisfactory, as it does not provide for the transfer of the licence on from the non-occupying

³² Subject to dispensation in cases involving quantities of less than 20 cubic metres per day: see Chapter 5 of the Licensing Manual and above section 2.2.2.

³³ See s.221(1) WRA — "notice" means notice in writing.

holder. Nor does this regulation or any other regulation suggest how to deal with non-occupying holders in other situations. Hence the policy guidance in Section 4.1 above.

6.6. New holder's position in relation to part successors

Regulation 4 also provides (4(4)) for how the new holder of the remainder of the licence stands in relation to part successors to land which was part of the originally authorised land. He takes the place of the original holder. If the latter has not released any quantities to the part successor, he can control what the part successor gets.

6.7. Part successions

Regulation 5 deals with part successions — where someone takes over land which is less than that covered by the original licence yet does not have the licence itself. The part successor has an automatic right to a licence appropriate for the land he now occupies. However, he has to apply within 15 months of taking up occupation or else he will lose that right. Also, the NRA will not allow him a new licence unless the original licence holder (or the holder of the remainder of the licence under Regulation 4) *agrees to release water from the authorised quantity on the original licence*. (This will involve a variation of that licence or the issue of a new one³⁴.)

A further condition with part successions is that the licence cannot lie dormant for more than two years in part succession situations. A new occupier coming in more than two years after the original occupier has ceased to occupy has no right to apply for a licence. Note that you do not add together the two years and then the 15 months in working out the time limit. They are entirely separate questions.

6.8. Original holder's rights in part successions

Regulation 6 confirms the original holder's right to apply for a new licence (as opposed to varying or revoking the existing one) when he reduces his own authorised quantity when a part succession occurs, as described above. Owing to possible compensation implications, it is probably in the original holder's interests not to

³⁴ Which is chosen may be relevant to a possible right to compensation is the licence is revoked or varied: see below note 35.

apply for a new licence, but rather to vary the existing one³⁵.

6.9. Provisions of a new part succession licence

Regulation 7 deals with what a new licence granted to a part successor can say. Most importantly, it deals with apportionment of authorised quantities. In practice, the NRA should try and leave this to the parties. However, the NRA has an overriding responsibility to see that apportionment is done according to the guidelines in the Regulations. These are that the apportionment should be proportional to the areas involved. Alternatively, where the original licence holder in fact used a different quantity on the area in question (or would have used it if he had abstracted the authorised quantity in full) then that latter quantity may apply. This provision may well apply eg. in crop rotation situations. Sometimes the NRA's environmental duties will apply in making a proper decision³⁶.

Part successor Y may be applying for a licence when there is another area of land which the licence used to cover, but original holder A has sold this to another potential part successor Z. Z does not apply for a licence. On the other hand, a purchaser from Z could apply for a licence, provided that is within two years of A ceasing to occupy:

- (a) As between A and Y, Y may have as much as the rules entitle him to have.
- (b) A may not want to release as much as Y could in theory take. In the future, A may agree to release a quantity to Z's purchaser, but he does not have to.
- (c) The NRA need not be concerned about Z or Z's purchaser *unless* A has released more than Y either has, or is entitled to, take. In such case it should reserve the surplus quantity for two years following A ceasing occupation.

³⁵ This is because when a licence is revoked or varied otherwise than by the holder, the holder may be entitled to compensation (see s.61 WRA). However s.61(3) WRA does not allow compensation for work carried out before the grant of the licence. Thus if there is any chance of a holder having his licence revoked or varied after the succession when he might still possibly be affected, he may not wish to apply for a new one, instead he should vary his existing licence. (The NRA can presumably issue a new document (if that is administratively convenient) which is stated to be a variation of an existing licence.) In view of the policy on dispensing with the need for advertising where such variations are involved, provided any reduction in land is accompanied by a commensurate reduction in quantity, it will often be best to vary the existing licence as this will achieve the same result as issuing a new one and avoids the complications about understanding the compensation issue. See Chapter 5 of the Licensing Manual on dispensation with advertising, also above section 2.2.2.

³⁶ See section 7.14 below.

The point is that provided a part successor does not get an improperly large quantity, there is no need to worry about reserving quantities for other part successors in the "carve-up" between the original holder and the first part successor. The "carve-up" is conclusive: see Regulation 7(4).

Regulation 7 also provides that the total of the quantities authorised by the original licence (as modified) and the part succession licence(s) cannot exceed what the original licence authorised before the changes in occupation took place. There is also a provision enabling changing quantities authorised from different points of abstraction where that would be appropriate.

Aside from these points about quantities, provisions should "correspond as nearly as may be to the provisions of the original licence". Thus, although they may be in modern form, conditions should not be more restrictive than those of the original licence.

6.10. Modifications to the normal licensing provisions of the Act

Regulation 8 modifies the normal provisions of the Act to reflect the right of a part successor to have a new licence. Thus, it modifies the "entitlement to apply" provisions (right of access to a borehole/other groundwater source is sufficient). There are no advertising requirements. The NRA does not have to consider matters such as effects on river flows and derogation.

Note that the overriding environmental duties in the Act³⁷ still apply. In rare situations they may be relevant³⁸.

6.11. Interim rights of part successors

Regulation 8 also gives the part successor the right to abstract although he does not yet have a licence. However, he technically³⁹ does not get *protected rights* until he actually *applies*. Peculiarly, it seems that the part successor must merely be entitled to apply for a licence, even though he cannot be granted one unless the original holder consents. It is not clear what the position might be in the case of a combined over-abstraction.

³⁷ See s.16 and 17 WRA.

³⁸ See section 7.14 below.

³⁹ See section 2.3 for the practical approach on this.

6.12. Part succession licence applications

The Schedule to the Regulations sets out the detail of information required in part succession applications — whether from the part successor or from the remainder holder modifying his needs. The new succession forms reflect these requirements.

7. PRACTICAL POINTS

7.1. Date of change of occupation

As explained earlier, *arrival of a new occupier* triggers the succession rules.

The *legal position* is that until there is a new occupier the original holder of the licence remains the holder of the licence. He remains liable for charges under it. The NRA can revoke the licence if they are not paid. However this may not be the most practical line to adopt and in practice you can usually regard the date of change of *ownership* as the date when the new occupier succeeds to the licence. It is likely that the parties (especially the old occupier) will want to transfer responsibility for the licence as soon as the sale etc. takes place. This makes practical sense, including for billing purposes.

However, the date of actual change of occupation may be important, eg. if there is a time limit problem or, as sometimes happens, the original owner continues to occupy until he crops the land.

7.1.1. Gaps in occupation and charges

Sometimes there is a gap in occupation, or the new owner may not wish to become the licence holder until he actually takes up occupation. Although there may be some theoretical considerations in relation to protected rights (see section 2.3), the NRA is really only affected so far as charges are concerned. The NRA regards the charges as legally continuing due, but may in practice write off charges⁴⁰ for the period of the occupation gap. For further details and worked examples, see Scheme of Abstraction Charges, Working Practice Notes⁴¹.

⁴⁰ Using the procedure set out in the NRA's *Scheme of delegation*.

⁴¹ Version 1, March 1993, Section 1, pages VI/9-11. See extract in appendix section.

7.2. Use the right forms

The forms in Appendix II will help you get the information you need to deal with any succession application. However, avoid sending an applicant all the forms without any indication which ones he should fill in. This may be confusing and unhelpful. Instead—

- Try to identify what the succession situation is, and then send the **right** form(s), with a covering letter explaining which one to fill in.
- Failing that, send all three forms **together with** the explanatory sheet WR-5.

7.3. Dates

Time limits are important, so you must **date** (*stamp* if possible) all communications from new occupiers, applicants in part successions, etc. as soon as they arrive at **any** NRA office.

Note that (subject to the comments in 7.1 above) the critical date in all cases is the date the new occupier occupies. 15 months runs from then.

7.4. Premature notifications and applications

The wording of the law is such that it is acceptable for notification to be given **at any time before** the expiry of 15 months after the date of new occupation in whole of land situations and remainder situations. Hence it is impossible for such notices to be premature.

By contrast, in theory part succession applications cannot be given before the date the new occupier occupies. If you get such an application, you *could* return it to the applicant telling him to re-apply after he occupies. However, if the applicant then forgets to do so, you would then have to reject the application. This would be unfortunate. You should instead write back saying you will hold the application. You will regard it as received as at the time of the change in occupation, but will not act upon it until the part successor writes to say that has happened.

7.5. Style of notification

Although it is desirable that parties use the NRA forms (WR-6, 7 and 8), this is not

essential, especially for initial notification. You should be lenient with any form of written⁴² notification that may preserve time limits, for example—

- The back of a bill saying "I am now responsible for this licence" is enough. One would write back asking for further details.
- Similarly, in a part succession situation it will be acceptable for an applicant to write in before the time limit is up and say "I have bought this land and want to have the piece of paper about the water that comes with it".
- An original holder X may write back eg. in response to a bill saying "no longer responsible, land sold to Y". Strictly speaking this is not "the new occupier" giving notice. However one can construe it as X giving notice on behalf of Y. Write to Y with the form(s).

7.6. Description of land

You must be clear what land the original licence (ie. since last variation, if any) covered and what land the new occupier has taken over. Even in (apparently) "whole of land" situations, the forms require the new occupier to send a map in showing what land he now occupies. Compare these against the NRA's records. The two may well be different and provoke enquiries!

There may be no map attached to the licence. If so, make appropriate enquiries with the new occupier and original holder, if available, to check what land is being taken over.

7.7. Occupation and ownership

To make a proper decision on the application, you must be clear about who exactly owns and/or occupies what parts of the relevant land. In certain cases you need to know what the history of that has been. If the answers on the forms do not make this clear, make further enquiries. Only by having, and understanding, a full picture can you sensibly decide the matter. It will usually be best to make enquiries by writing a letter and insisting on a written reply. However, notes of a telephone conversation or personal visit may suffice. However ***do not accept anything not in writing as the formal notification or application.***

⁴² See section 6.3 above.

The following text may be useful in writing to people to find out the occupation position especially in "concurrent occupation" or "substantively the same" occupation situations—

In order for us to consider whether the abstraction licence which you now have is valid or not, it would help us if you were to explain *exactly* who has been occupying the land on which water is authorised to be used and which you now occupy since the licence was granted {or varied} in favour of the person named as holder of the licence. Please explain the relationships between the different individuals and organisations involved. We need to be satisfied that the occupation has not, in substance, changed since the named licence holder. Please give *full* details and provide supporting documents which may assist.

7.8. Water supply licences

As explained above, the succession rules cannot operate. If you get an application to succeed to a water supply licence (whether public or private), write back explaining the options⁴³. Exactly what you say will depend on the circumstances of the case — use discretion based on the guidance in this section of the manual.

7.9. Part successions

As the forms make clear, it is desirable to gain a clear picture about the full ownership and occupation position of *all* the land involved, and how the parties intend to divide authorised quantities, before issuing new licence(s) to part successor(s) and a new or varied licence to the remainder holder.

Encourage the parties to gather and assemble this information. The forms make this clear. Technically there is no reason for the NRA to be pro-active. However it may wish to make enquiries itself to clear the matter up. Partly, this will be for internal administrative reasons (ie. to regularise billing, also OPM's). Another reason is that succession situations often get more complicated as time goes by, with new transactions taking place, etc.

Note the importance in part successions of clarifying the remainder holder's intentions (use form WR-8). There may conceivably be confusion if a remainder holder does not agree with what the original holder before him released to part successors (see Regulation 4(4), Appendix I, page 1146). The

⁴³ See above, section 4.2.

parties will probably have agreed this in contract. So, if the situation arises, the parties' solicitors should sort it out. Considering the wording of Reg. 4(4), there will have to be very good reasons to take into account objections from the remainder holder.

7.10. Division of quantities in part successions

The rules on this are clear: see Regulation 7, page 1151 below. You must satisfy yourself that the division of quantities is reasonable. Make a note on the file about this.

The total authorised quantity may be reduced. The remainder holder may not want much water, which could leave the part successor with too large a share. You need not allow him all of it, ie. if that would be excessive. Follow the guidance in Regulation 7(2)(b). Conceivably the NRA's environmental duties may come into play in arriving at a decision⁴⁴. See also section 6.9 above.

7.11. Charging

The parties will normally pro-rate charges between themselves so there is no need for the NRA to adjust bills that may already have been sent out and paid.

For an existing licence, the new holder will therefore simply receive the bill at the normal time in the billing cycle. If the parties request accounts to be prepared up to and from the change in occupation, however, this should be done.

For part successors, when the NRA determines the licence, charges should be calculated back to the date of beginning of occupation.

For gaps in occupation, see above section 7.1.1.

7.12. Land not on licence

Applicants may indicate they have land where they intend to use part of the water, but which is not shown on the licence. Warn them that they cannot do this without formal variation of the licence.

⁴⁴ See below section 7.14.

Consider informing enforcement officers of this.

7.13. Entitlement to apply

Unlike with a fresh licence application, right (or expected right) of access to a borehole, well or other groundwater source gives sufficient entitlement to apply for a licence in a succession situation. You should ask for the same evidence of this right (eg. copy of conveyance) as you would in normal cases. Note the provisions of Regulation 7(3) (appendix section, page 1152) concerning varying amounts from different sources if appropriate.

7.13.1. Form of new licence

NRA policy⁴⁵ is that, when a succession occurs, a new licence document should be produced, rather than making changes by hand. The fact that there has been a succession will be apparent from the Register⁴⁶ or from examining the licensing file, but this is unlikely in practice to be of much interest to the licence holder.

- Where the new licence document is a continuation of an old licence, the box at the bottom will indicate this. Usually it will have been varied to show the name of the new holder, although where it is a remainder licence it may show a reduction in land and authorised quantity.

Where possible, rewrite the licence according to the recommended modern format. This should usually present no problem in relation to standard conditions. It may be appropriate to repeat old special conditions verbatim.

- Where the new licence document is a "new licence", either granted to a remainder holder who has opted for this in accordance with Regulation 6, or is a part succession licence, then clearly you should use the new licence format and write conditions accordingly, though the effect of these should correspond as closely as possible to those of the original licence. There may be an opportunity here to resolve ambiguities which are sometimes found in older licences.

⁴⁵ See Chapter 8.

⁴⁶ See Chapter 10.

7.14. Internal consultations

With part succession licences, you does not have to consider matters such as minimum acceptable flows, derogation etc. Thus, it is likely that in straightforward cases one can deal with the matter on a purely administrative level. (Compare, for example, if the applicant also wants to increase the quantities: this will involve a formal variation.)

It may however be necessary for a field officer to sort out technical details, such as appropriate pump size, where quantities have been split and reduced.

7.14.1. Environmental duties

The succession process is always subject to the NRA's overriding environmental duties⁴⁷. There may be rare situations where there are different options for deciding an application (eg. over an agreed quantity split), one of which may be more environmentally desirable than others. In such case staff should act in line with the environmental duty.

7.15. Variations to avoid undesired remainder situations

You should write to the existing licence holder along the following lines—

In answer to your request etc.....

The rules relating to the transfer of abstraction licences are complicated. We can vary the licence to show XX as the new licence holder. However, you must understand that XX will be in full control of the licence. You will be unable to use the water abstracted under it on the land you are retaining unless XX allows you to use his abstraction. Anyone other than XX occupying the land after you will be in a similar position.

So we do not recommend this procedure unless either, XX is certain to occupy your land after you leave it, or, you do not foresee yourself or anyone else wanting to use water under the licence on the land you are retaining.

Please confirm you have read and undertood this by signing and returning a copy of this letter.

⁴⁷ See s.16 WRA 1991.

8. DETAILED COMMENTARY ON THE LAW

8.1. Water Resources Act 1991, section 49

(1) This section applies to a case where the holder of a licence under this Chapter to abstract water ("the prior holder") is the occupier of the whole of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used ("the relevant land").

Note the crucial "whole of the land" qualification for this section to apply. All other cases are dealt with by the Regulations (see below). The recommended interpretation is that the "whole of the land" means the whole of the land comprised in the licence since the last variation. There is no need to look further back than that to see what the licence might have said long in the past.

(2) If—

- (a) the prior holder dies or, by reason of any other act or event, ceases to be the occupier of the whole of the relevant land and does not continue to be the occupier of any part of that land; and**
- (b) either immediately after the death of the prior holder or the occurrence of that other act or event or subsequently, another person ("the successor") becomes the occupier of the whole of the relevant land,**

the prior holder shall cease (if he would not otherwise do so) to be the holder of the licence and the successor shall become the holder of the licence.

Note how the words in (b) "...or subsequently..." anticipates that there may be a gap between occupiers. However, until a new occupier takes up occupation, the original occupier continues to be the holder of the licence (and will remain liable for the charges). This is because both conditions (a) and (b) have to be fulfilled before the prior holder ceases to be the holder of the licence. Note (a) and (b) do not apparently contemplate the common problem of concurrent occupation. This enables the pragmatic guidance suggested in section 3 of this manual.

(3) Where the successor becomes the holder of a licence under sub-section (2) above, he shall cease to be the holder of the licence at the end

of the period of fifteen months beginning with the date on which he became the occupant of the relevant land unless before the end of that period he has given the Authority notice of the change in the occupation of the relevant land.

Note the mechanism — the successor automatically holding the licence as from the date he occupies, and then losing it if he does not notify in time. It is not essential, but notification is best given on WR-6. In any event notice must be in writing — see s.221(1) of the Act which says that "notice" means "notice in writing".

It should be the successor (or eg. his solicitor) who gives the relevant notice, rather than the prior holder. However it would be inappropriate for the NRA to fail a succession on the basis that a notice was given in time but by the wrong person. Try and construe one person giving the notice as agent for the other (though in due course one would want confirmation from the latter that this was acceptable).

(4) Where any person who becomes the holder of a licence by virtue of the provisions of this section gives notice to the Authority in accordance with those provisions, the Authority shall vary the licence accordingly.

"Vary" here means change the name on the licence.

(5) Where, by virtue of the provisions of this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.

This happens if there is a new occupier but he fails to notify within 15 months. It does not happen if there is no occupier for an extended period; the licence simply remains with the prior/original holder (who will remain liable for charges). If he does not want this liability, he can always revoke the licence.

(6) The preceding provisions of this section shall have effect without prejudice to any power to revoke or vary licences under this Chapter or to the powers conferred by section 50 below.

8.2. Water Resources Act 1991, section 50

(1) The Secretary of State may by regulations make provision, in relation to cases to which section 49 above applies, for conferring succession rights, in such circumstances as may be specified in the regulations, on a person who becomes the occupier of part of the relevant land after—

- (a) the death of the prior holder; or
- (b) the occurrence of any other act or event whereby the prior holder ceases to be the occupier of the relevant land or of part of that land.

This is an "enabling" section ie. primary legislation (the WRA 1991) allowing the making of secondary legislation. Presently that secondary legislation is the 1969 Succession Regulations which were made under an equivalent section in the then-primary legislation, the WRA 1963. It is possible that the government will make up-to-date regulations under this section, but this has not happened yet. Note that s.50 is more restrictive than its 1963 equivalent, with implications discussed above, page 2.2.2.

(2) For the purposes of sub-section (1) above succession rights are—

- (a) a right to become the holder of the licence, subject to provisions corresponding to sub-section (3) of section 49 above; or

This caters for remainder situations. It is necessary because the Act only applies to "whole of land" situations.

- (b) a right to apply for, and to the grant of, a new licence containing provisions (as to quantities of water and otherwise) determined, in accordance with the regulations made by the Secretary of State, by reference to the provisions of the original licence.

This caters for part succession situations.

(3) The Secretary of State may by regulations make provision for conferring on the prior holder, where he—

- (a) continues to be the occupier of part of the relevant land; but
- (b) ceases to be the occupier of another part of that land,

a right, in such circumstances as may be specified in the regulations, to apply for, and to the grant of, a new licence containing such provisions as are mentioned in sub-section (2)(b) above.

This caters for the need for the original holder to have a licence for land he may be retaining in part succession situations. Note that (under Regulation 5, see below) the original holder has a choice whether to apply for a modification to his existing licence or a new

one. By applying for a new licence he may give up certain rights to compensation, though that may well be of no consequence⁴⁸.

(4) Regulations under this section may provide that the provisions of this Chapter shall have effect in relation—

**(a) to an application for a licence made by virtue of the regulations;
or**

(b) to a person entitled to make such an application,

subject to such modifications as may be specified in the regulations.

This in particular refers to access/occupation rules⁴⁹. Under the present Regulations, the usual rule is modified so that mere access to land where a borehole or other groundwater source is situated, rather than occupation of the land, provides sufficient entitlement to apply. It also covers the advertising rules and the factors (eg. MAF's, derogation) which the NRA usually takes into account in determining licences. It also relates to the status of protected rights – different between whole/remainder, and part, succession situations – and makes it possible for a part successor lawfully to abstract without actually having a licence. See Regulations 7 and 8.

(5) Where any person who becomes the holder of a licence by virtue of the provisions of any regulations under this section gives notice to the Authority in accordance with those provisions, the Authority shall vary the licence accordingly.

The NRA must vary the licence if the new occupier so requests. It may administratively be more convenient for the NRA to issue a new licence but if it wishes to do this it should explain to the licence holder the possible implications for compensation⁵⁰. It may well be practical, if desired, to issue a new document which is stated to be a variation of the original licence.

(6) Where, by virtue of the provisions of any regulations under this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.

⁴⁸ For an explanation of the compensation issue, see section 6.7 in the manual and footnote.

⁴⁹ See s.35 WRA 1991.

⁵⁰ See section 6.7 in the manual and footnote for details about this.

This will not usually happen. Normally the licence will pass to a new holder. Even when land is split up different ways, someone will usually continue to hold the original licence as remainder holder.

(7) The preceding provisions of this section shall have effect without prejudice to the exercise of any power to revoke or vary licences under this Chapter.

8.3. Water Resources (Succession to Licences) Regulations 1969

8.3.1. Regulation 1 — Citation and Commencement

These regulations may be cited as the Water Resources (Succession to Licences) Regulations 1969, and shall come into operation on 6th August 1969.

These Regulations were made under the Water Resources Act 1963. They still remain fully in effect except that as a matter of policy and following DoE advice the 15 month notification time limit provided by the newer legislation is also to be applied to situations governed by these Regulations.

8.3.2. Regulation 2 — Interpretation

(1) In these regulations, unless the context otherwise requires,—

"the Act" means the Water Resources Act 1963;

References to the current Act, the WRA 1991, are given in italics.

"the Minister" means the Minister of Housing and Local Government or the Secretary of State, according to circumstances, as section 1 of the Act provides;

"The Minister" is now the Secretary of State for the Environment (the Secretary of State for Wales in Wales).

"river authority" includes, in addition to a river authority established under the Act, any other body having river authority functions under Part IV of the Act in any area, and references (however expressed) to the area of a river authority shall be construed accordingly; and "the river authority", in relation to any matter, means the river authority, or other body having Part IV functions as aforesaid, for the area in which that matter arises;

"The River Authority" now means the NRA.

"successor" means a person who becomes the occupier of any land formerly occupied by the holder of a licence under the Act to abstract water for use on specified land consisting of, or comprising, the land in question;

and, in relation to any successor and to his entitlement under the regulations,—

"the original holder" means the last preceding occupier of the land in question, who, immediately before he ceased to be the occupier, held a licence under the Act to abstract water for use on that land, with or without other land;

"the original licence" means the original holder's licence as it has effect for the purposes of the successor's entitlement at the time when he becomes the occupier of the land in question, or, if the relevant provisions of that licence are then contained in a new licence which has been substituted therefor in pursuance of the regulations, means that substituted licence;

"the original land" means all the land of which the original holder was the occupier immediately before the relevant event, in so far as it was, or formed part of, the land then specified in the original licence as the land on which water abstracted in pursuance of that licence was to be used;

Here "...formed part of..." caters for remainder situations.

"the relevant event" means the death of the original holder, or the other act or event by reason of which the original holder ceased to be the occupier of land consisting of, or comprising, the land of which the successor has become the occupier.

The expression "relevant event" is used with part successions (Regulation 5). It appears only to relate to the time when the clock starts running for the purposes of the two year period.

(2) A reference in these regulations to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment and as including a reference to it as applied by or under any other enactment.

(3) The Interpretation Act 1889 shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of

Parliament.

8.3.3. Regulation 3 — Service of documents

Any notice or other document required or authorised by these regulations to be given or served may be given or served in the manner prescribed by section 120 of the Act.

Section 220 WRA 1991 now deals with service of documents. Although this allows the proper service by sending "by post", if one is concerned about the arrival of the document it is always best to use recorded delivery. Notices should always be in writing⁵¹.

8.3.4. Regulation 4 — Rights of a successor on becoming the occupier of the whole of the original land

This is the most difficult section of the regulations to understand. It tries to explain the difference between succession under the Act (section 49) and successions where there is still the "whole of the land" involved, but succession has to occur under the regulations. This is because, as stated in paragraph (1), "the Original Land [is] only part of the land specified in the Original Licence" so that the Act itself does not apply. (Note — as suggested in the comments to s.49 of the Act, "the Original Licence" here means the licence as it stood after any variation that may have occurred in the past. There is no need to look further back than that.) This regulation provides an exactly equivalent system to that set out in the Act — including, as a matter of policy, a 15 month time limit.

(1) Subject to the following provisions of this regulation, where the original holder ceases to be the occupier of the whole of the original land and, whether immediately thereafter or subsequently, a successor becomes the occupier of the whole of that land but, by reason of the original land being only a part of the land specified in the original licence as the land on which water abstracted in pursuance of the licence is to be used, does not thereupon become the holder of the original licence by virtue of section 32(1) [now s.49] of the Act,—

(a) the original holder (except where, being an individual, he has died) shall cease to be the holder of the original licence, and

(b) the successor shall become the holder of that licence.

⁵¹ See s.220(1) of the Act.

This mechanism is identical with that provided in s.49 for "whole of land" situations, though for some reason the reference to the original holder's death is worded differently (though it is hard to see any difference in practice). Anyway, in such cases, the licence remains extant and held by the original holder's executors or administrators.

(2) Where the preceding paragraph has effect, the successor shall cease to be the holder of the licence at the end of the period of one month [read "15 months"] beginning with the date on which he became the occupier of the original land, unless before the end of that period he has given notice to the river authority of the change in the occupation of that land.

As with "whole of land" situations, note the mechanism — the successor automatically holding the licence as from the date he occupies, and then losing it if he does not notify in time. It is not essential, but notification is best given on WR-6. In any event the notification must be in writing⁵².

(3) Where, in the case of a change or proposed change in the occupation of land in the circumstances mentioned in paragraph (1) of this regulation, it is the intention of the parties, or of the one who is the original holder, that the original licence should be held by the original holder for purposes for which he could lawfully make use of it but for the operation of the said paragraph (1), then,—

(a) if notice of that intention is given to the river authority by both the parties, and is not withdrawn, before the change in occupation takes place, paragraph (1) of this regulation shall not apply in relation to that change; and

(b) if notice of that intention is given to the river authority by both the parties, and is not withdrawn, before the end of the period specified in paragraph (2) of this regulation (but not before the change in occupation takes place), or if such notice is given to the river authority by the original holder, and is not withdrawn, before the end of that period and the successor does not within that period give notice to the river authority for the purpose of the said paragraph (2), the original holder shall in either case become the holder of the original licence immediately after the successor has ceased, by virtue of that paragraph, to be the holder of it.

⁵² See s.220(1) of the Act; above page 1139.

This covers situations where occupation of all the land covered by a licence changes, but the licence also eg. involves an obligation to supply someone else with water, so the holder may wish to keep control of the licence and not have a succession. Note that these agreements can be made before or after the change in occupation. If notice is given unilaterally by the original holder after the change in occupation, the terms of paragraph (b) are such that the new occupier has control of whether to agree or not. (It is more satisfactory if this sort of arrangement can be done before the change in occupation, and presumably tied up in contract.) This type of agreement is also interesting because it contemplates a non-occupier being the holder of the licence. What happens to succession to the licence when he ceases to occupy (eg. dies and the land is sold, but the tenant remains in occupation)? For guidance on this see section 4.1 above.

(4) A successor who becomes the holder of the original licence by virtue of paragraph (1) of this regulation, and who does not cease to be the holder of the licence by virtue of paragraph (2), shall, in relation to any other person having a relevant entitlement under the next following regulation with respect to the same original licence, stand in the place of the original holder for the purpose of paragraph (3) of that regulation and shall for that purpose be entitled to apply for an appropriate new licence in pursuance of regulation 6 as if he were the original holder in the circumstances specified in regulation 6(1); and, if when the successor becomes the holder of the original licence as aforesaid there is an application made by the original holder with respect to the original licence for the purpose of regulation 5(3) which has not been disposed of, that application shall be deemed to have been adopted by the successor on becoming the holder of the original licence and may be determined accordingly: provided that reasonable notice shall be given to the successor before a decision is issued on the application as so adopted.

In this paragraph "a relevant entitlement" means an entitlement with respect to the original licence which a person acquires by becoming the occupier of land of which the original holder ceased to be the occupier on an occasion prior to the relevant event pursuant to which the successor becomes the holder of the original licence as aforesaid.

This relates to situations where the successor under this regulation is probably in the position which he is in (i.e. not having the whole of the land covered by the licence) because part of it has been sold on to someone else who is applying for a part succession licence under the next regulation (Regulation 5). The point of this paragraph is to explain that the successor to the original licence

stands in the place of the original holder towards the part successor(s). Note that if the original holder has already made an application eg. to reduce his quantity, and that application has not been finalised, the successor will be deemed to have agreed to it. However it appears ("provided that reasonable notice shall be given to the successor before a decision is issued") that the successor may have an opportunity to change what the original holder had in mind or at least make representations about the successor's application (subject presumably to contractual obligations).

8.3.5. Regulation 5 – Rights of a successor on becoming the occupier of a part of the original land

This regulation deals with part successions – ie. someone taking over part of the land which is covered either by the original licence, or the licence as it presently stands.

(1) Where the original holder ceases to be the occupier of the whole, or a part, of the original land and a successor becomes the occupier of a part of the original land within a period of two years beginning with the date of the relevant event, the successor, if he satisfies the conditions of section 27 [now s.35] of the Act (as modified by regulation 8), shall be entitled to apply, within a period of one month [read "15 months"] beginning with the date on which he becomes the occupier as aforesaid, for the grant of a new licence in accordance with the following provisions of these regulations.

The successor must apply for a new licence within 15 months after becoming occupier. Note this in theory means he cannot apply before becoming occupier but in practice NRA staff should hold on to a premature application and acknowledge it formally after the occupation (in practice, often this will be ownership) has changed, rather than rejecting it. (Note that notice with whole of land or remainder situations can be given at any time before the end of the 15 month period – there is nothing to stop it being given before.)

There are two further conditions. First, the successor must be entitled like anyone applying for an abstraction licence in the normal way to apply. However the normal rules are modified by the regulations to allow people simply with access to boreholes to have the right to apply⁵³. Secondly, the application must be made within two years of the original owner ceasing to occupy the land.

⁵³ See Regulation 8(2) below; the usual rule is in s.35 WRA 1991.

(2) Subject to the next following paragraph, a successor who accordingly applies for a new licence and who, when a decision falls to be made on the application, is the occupier of any of the land specified therein as land of which he has become the occupier in the circumstances mentioned in the preceding paragraph, shall be entitled to the grant of a new licence for the abstraction of water for use on land of which he is the occupier as aforesaid, containing provisions determined by reference to the provisions of the original licence in accordance with regulation 7 of these regulations.

This simply confirms the new occupier has the automatic right to a licence – but importantly subject to paragraph (3) below, effectively requiring the original holder's cooperation. It also points out he must still be the occupier when the new licence is granted. Regulation 7 sets out what the new licence can provide, especially concerning quantities – see below.

(3) It shall be a condition of the successor's entitlement under this regulation to the grant of a new licence that the original holder or, as the case may be, the holder for the time being of the original licence who stands in place of the original holder for this purpose by virtue of regulation 4(4), has duly made, and has not withdrawn, an application in pursuance of the next following regulation for the grant of an appropriate new licence in substitution for the original licence, or an application under section 42 [now s.51] of the Act for the revocation of the original licence or for its variation in such a manner as will secure that those of its provisions with respect to the abstraction of water which (with any modifications) are to be included in the new licence for which the successor has applied cease to have effect as provisions of the original licence⁵⁴.

This condition shall not apply where the original holder has ceased to be the holder of the original licence and there is for the time being no holder of that licence in the place of the original holder as aforesaid.

This paragraph says that the holder of the original licence, out of which the part successor is trying to carve a share, must in effect modify his own licence to allow that share to be carved. Note that where there is no holder of the original licence there is no need for this to happen. The latter situation might occur if all the land was sold on to different people at the same time. However usually someone will hold the remainder of the licence. Form WR-8 may be used for obtaining the necessary cooperation from the original holder.

⁵⁴ As to form of the part succession licence, see section 7.13.1.

(4) The Schedule hereto shall have effect in relation to applications for new licences in pursuance of this, or the next following, regulation.

The Schedule (see below) provides details of the mechanics of part succession licence applications. These are now set out in form WR-7, which is recommended for use and is itself annotated.

8.3.6. Regulation 6 — Rights of the original holder with respect to the grant of a new licence

This regulation complements Regulation 5 ie. where a successor to part of the land applies for a licence, the original holder is entitled to a new licence as well, reflecting what he now occupies. In fact, as regulation 5(3) makes clear, doing this or applying for a variation is a pre-requisite for the part successor to be able to apply for his licence. The two go hand in hand. Note however the possible compensation issue to consider when choosing which option to go for (see section 6.7 in the manual and footnote). This is less important given the policy of not requiring advertising for such variations.

(1) Where a successor duly applies in pursuance of the last preceding regulation for the grant of a new licence, and the original holder continues to be the occupier of a part of the original land, the original holder, if he satisfies the conditions of section 27 of the Act (as modified by regulation 8), shall be entitled to apply for the grant of a new licence, in substitution for the original licence, in accordance with the following provisions of this regulation.

(2) On the grant of a new licence on the successor's application, the original holder, if he has duly applied, shall be entitled to the grant of a new licence⁵⁵, in substitution for the original licence, giving effect as nearly as may be to the provisions of the original licence (including any provision relating to the use of water on land of which the original holder is not the occupier) in so far as effect is not given to those provisions in the new licence granted to the successor.

⁵⁵ As to form of the new licence, see section 7.13.1.

8.3.7. Regulation 7 — Provisions of a new licence granted to a successor

This is quite a complicated provision which sets out in detail what the new licence granted to a part successor under regulation 5 can say. The essence of it is that the conditions of any new licence will correspond to those of the old so far as possible. The most important is that in the end the total quantity of water authorised by the part succession licence and the modified original licence together cannot exceed what was on the whole of the original licence in the first place.

(1) Subject to this regulation, the provisions of a new licence granted on the application of a successor in pursuance of regulation 5 shall be such as appear to the river authority to correspond as nearly as may be to the provisions of the original licence, modified so as to provide for the abstraction of water—

(a) from any point of abstraction specified in the original licence which, having regard to section 27 [now s.35] of the Act (as modified by regulation 8) and to the provisions of the original licence, is available to the applicant for the purposes of the next following sub-paragraph; and

(b) for use on any part of the original land occupied by the applicant, and for a purpose of the original licence appropriate to that part.

In the following provisions of these regulations, "the applicant's land" means that part of the original land which is occupied by the applicant and to which his application relates, and any reference, however expressed, to a point of abstraction as is mentioned in sub-paragraph (a) of this paragraph.

This explains that the new licence can authorise abstraction from any point to which the part successor has access or occupies and water is used for one of the purposes that the original licence provided for. Note that the part successor can abstract by use of rights of access to a borehole or other groundwater source (which is not usually sufficient).

(2) Subject to the next following paragraph, provision as to any quantity of water authorised to be abstracted in pursuance of the new licence shall be made as follows, that is to say:—

This deals with the amount of water that a new part succession licence can authorise.

(a) where the original licence specifies or otherwise limits a quantity of water to be abstracted during a period or periods so specified from any point available to the applicant, for use on the whole or a part of the applicant's land and not also on any other land, the new licence shall make the like provision;

This says that the part succession licence shall contain the same provisions as the original licence where that provides for the water to be used only on the part successor's land and not on any other land. Presumably in this case the part successor is in fact entitled to the whole quantity of water authorised by the original licence and the matter could be decided under regulation 4. However the provision could also cover a situation eg. where the licence related to two boreholes each covering clearly identified parcels of land.

(b) where the original licence specifies or otherwise limits a quantity of water to be abstracted as aforesaid for use on the whole or a part of the applicant's land and also on other land, the new licence shall make the like provision with such modification as is required to secure that the quantity thereby authorised for use on the applicant's land, or, as the case may be, on the relevant part of that land, shall be an appropriate share of the relevant quantity provided for by the original licence, that is to say, either—

(i) an amount which bears to the whole of the relevant quantity provided for by the original licence the same proportion as the area of the applicant's land, or of the relevant part of that land, bears to the area of the land on which that quantity was to be used in accordance with the original licence, or

(ii) such other amount as the river authority (having regard to the provisions of the original licence, the manner in which any water abstracted has been used in accordance with that licence and any other material considerations) may determine to be the amount which would have been used on the land in question under the original licence if the original holder had continued to be the occupier of the applicant's land and had abstracted the whole of the relevant quantity.

This deals with the conventional part succession situation ie. where the original licence authorises water to be used both on the part successor's land and also other land. In this case the part successor gets an appropriate share either (i) by reference to area or (ii) by reference to what the NRA may determine would have been used on the part successor's land under the original licence if the original holder had continued to be occupier. Note the basic rule is that the water should be divided up according to area.

However sub-paragraph (ii) offers some discretion. As Form WR-7 makes clear, the preferred approach here is for the NRA to encourage the parties to sort out quantities by themselves by agreement and generally to approve whatever arrangement they come to unless that goes beyond the discretion offered by (ii).

Although it may be easy enough to sort out the annual quantities, dividing up the daily and hourly rates may be much more problematical for technical reasons eg. pump capacity. It may be possible to solve this by eg. allowing abstraction on different days; alternatively a sensible result may only be achieved by suggesting the parties apply for completely new licences ie. not under the succession rules.

(3) Where—

(a) the original licence authorises the abstraction of water from a source of supply at two or more points of abstraction, not all of which have become available to the applicant as mentioned in paragraph (1) of this regulation, and

(b) the river authority are satisfied that, if the original holder had continued to be the occupier of the applicant's land, it would have been his practice in accordance with the original licence to use on that land water abstracted at any point of abstraction which has not become available to the applicant,

the river authority may, if the applicant so requests, provide in the new licence for the abstraction, at any point or points of abstraction specified in the original licence and available to the applicant as aforesaid, of a quantity or quantities of water not exceeding whichever is the smaller of—

(i) the corresponding quantity which, in the opinion of the authority, would have been abstracted and used on the applicant's land as mentioned in sub-paragraph (b) of this paragraph, and

(ii) the capacity of the existing means of abstraction at the relevant point or points, regard being had to any quantity of water to be authorised in pursuance of the foregoing paragraphs of this regulation.

This deals with the situation where there is more than one point of abstraction and the part successor does not have access to all of them. Providing the NRA is satisfied that the original holder would have used water from the point of abstraction which is now inaccessible to the part successor on what is now the part

successor's land, the NRA may allow abstraction of corresponding amounts of water which are now available to the part successor applicant, subject to the capacity of the existing means of abstraction. The NRA's environmental duties may also be relevant.

- (4) In determining under this regulation what quantity of water is to be authorised in a new licence by reference to the provisions of the original licence, any relevant apportionment for the purposes of a licence previously granted hereunder by reference to the provisions of the same original licence shall (subject to the effect of any material revocation or variation) be deemed to be conclusive.**

The effect of this provision is that once an apportionment has been made between an original licence and another part succession licence, one cannot re-open that for the purposes of a new part succession application. Thus in a situation involving two or more part successions it is worth having a complete picture of the situation before granting new licences.

- (5) Any reference in this regulation to the river authority shall be construed as including a reference to the Minister on appeal.**

This is a reminder that applications for part succession can be appealed to the Secretary of State.

8.3.8. Regulation 8 – Application of provisions of Part IV of the Act

The normal provisions of the WRA 1991 apply to succession situations just like they do to normal applications for abstraction licences, except that in succession situations the grant of a new licence is a right, rather than a matter which may be in the discretion of the NRA. This is important, particularly in areas where new abstraction licences are not being granted owing to water shortages, full commitment of resources etc. This regulation sets out how the provisions of the Act are changed in order to allow for this concept of a "right" compared with something that is more discretionary.

- (1) In relation to an application for a licence made by virtue of these regulations, or to a person entitled to make such an application, the**

provisions of Part IV of the Act shall have effect subject to the exceptions and modifications specified in this regulation.

This means the normal provisions of the Act (now Part II of the WRA 1991) apply except as specified below.

(2) Section 27 [now s.35 WRA 1991] (which relates to entitlement to apply for a licence) shall have effect as if subsection (3) included a requirement that the occupation of, or right of access to, land mentioned in that subsection shall be such as to afford access to the relevant point or points of abstraction specified in the original licence.

The point of this is that, as mentioned elsewhere, right of access to a borehole etc. is adequate — occupation of land where the borehole is situated is not necessary.

(3) Section 28 [now s.37 WRA 1991] (which relates to notice of an application), section 29 [now see s.38, 39, and 49 WRA 1991] (which relates to the determination of an application by the river authority), section 38 [now see s.42 and 44 WRA 1991] (which relates to the reference of applications to the Minister) and section 41 (which contains provisions supplementary to sections 38 to 40) shall not have effect.

This means there is no need for public notice and the considerations that the NRA would otherwise have to take into account (eg. river flows, derogation) in determining the licence. Note that the provisions relating to appeals to the Secretary of State by a dissatisfied applicant remain extant (in s.43-45 WRA 1991). So does the general environmental duty (s.16).

(4) Sections 23, 31 and 49 [see now s.24, 47, 48 and 209 WRA 1991] (which relate respectively to the restriction on abstracting water, the effect of a licence and penalties) shall each have effect with a modification providing—

(a) that, during the period beginning with the time at which any person other than the holder of the original licence becomes entitled to apply under these regulations for a licence and ending on the relevant date (as hereinafter defined), that person shall be deemed for the purposes of the section to be the holder of a licence containing such provisions as, having regard to all the circumstances of the case, could reasonably be expected to be included in any licence granted to him in virtue of his entitlement under the regulations, and

(b) that, for the purposes of the section, any licence granted on an application accordingly made by that person shall be treated as not

having effect until the application has been disposed of.

In this paragraph "the relevant date" means, in a case where the relevant entitlement expires or is determined by virtue of a provision of these regulations, the date of that expiry or determination, and, in any other case, means the date on which the relevant application under the regulations for a licence is disposed of; and subsection (7) of section 56 of the Act (with the exception of paragraph (b) thereof) shall apply for determining when an application is to be taken to be disposed of for the purposes of this provision as it so applies for the purpose of section 56. *[Note s.56 is long redundant — it related to old licences of right — so ignore the last part of this paragraph.]*

This paragraph essentially allows a part successor who has applied for a licence the right to use the water while the application is being processed, providing that the way he uses it is such as might reasonably be expected to be permitted when the application is determined and the licence granted.

(5) The last preceding paragraph shall apply in relation to section 26 *[see now s.48(1)]* as it applies in relation to the sections specified in that paragraph, with the substitution therein, for the words "during the period beginning with the time at which any person other than the holder of the original licence becomes entitled to apply", of the words "during the period beginning with the date on which any person other than the holder of the original licence entitled to do so duly applies."

These mysterious words mean that one does not get a protected right in relation to one's part succession until one has actually made an application for a licence. This compares with the right to abstract which arises as soon as the succession takes place (see (4) above). For practical purposes however it is worth operating on the basis that these rights have continued protection.

8.3.9. Schedule to the Regulations

This schedule sets out the detail of the information which should be made in applications relating to part successions — both by the part successor and by the original holder who now requires less water. These requirements are incorporated in forms WR-7 (part successor's application) and WR-8 (original holder's application). The requirements are mostly common sense and/or follow the normal requirements of a licence application — the objective being to enable the NRA to make a sensible decision upon it. This includes the rather obscurely worded paragraph 5 which deals with the NRA's duties in determining licence applications as provided for

in the 1965 Licensing Regulations.

1.—(1) An application in pursuance of these regulations for a licence to abstract water from a source of supply in a river authority area shall include the particulars and be verified by the evidence hereafter prescribed, and shall be made to the river authority in accordance with the provisions of this Schedule.

(2) The application and any accompanying documents, together with such additional number of copies (not exceeding two) as the river authority may require, shall be addressed to the Clerk of the authority and posted to or delivered at the river authority's principal office or such other place as the authority may direct.

2.—(1) The application shall be accompanied by an ordnance map to a scale of not less than six inches to one mile for the purpose of showing the matters specified in the next sub-paragraph:

Provided that the river authority may dispense with this requirement, or may accept a map to a smaller scale, if on the request of the applicant they are satisfied in the circumstances of the case that a map is unnecessary or, as the case may be, that a smaller scale will suffice.

(2) There shall be shown clearly on the map (if any):—

(a) the point or points of abstraction specified in the original licence (each with a reference number) at which the applicant proposes to abstract water;

(b) as respects each point of abstraction, the relevant land for the purposes of section 27 of the Act (as modified by regulation 8);

(c) the applicant's land (as defined in regulation 7(1)), distinguishing as may be necessary between parts of that land on which it is proposed to use water abstracted in pursuance of the licence for different purposes.

(3) In this Schedule the expression "relevant land", used in connection with section 27 of the Act, means land contiguous to the existing point of abstraction at which the applicant proposes to abstract from an inland water, or land consisting of or comprising underground strata and with access to the existing point of abstraction at which he proposes to abstract from those strata, being in either case land in relation to which the applicant claims such rights of occupation or access, actual or prospective, as satisfy the relevant conditions of section 27 (as modified by regulation 8).

3.—(1) Subject to sub-paragraph (2) with respect to an application made by the holder of the original licence, the application shall include the following particulars:—

(a) The applicant's name and address, and the name and address of any other person authorised to act on the applicant's behalf in the matter.

(b) The source of supply to which the application relates.

(c) The serial number of the original licence by reference to which the application is made, and the name and address (if known) of the original holder.

(d) The name and address (if known) of any other person who to the applicant's knowledge has become the holder of the original licence.

(e) Particulars of the applicant's claim to be entitled to make the application, including—

(i) a description (by reference to the map, if any) of the applicant's land (as defined in regulation 7(1));

(ii) the date on which, and the manner in which, the applicant became the occupier of the relevant part of the original land, and (if different and so far as known to the applicant) the date on which, and the relevant event by reason of which, the original holder ceased to be the occupier of that part;

(iii) a statement showing how the applicant claims to be entitled to make the application in accordance with section 27 of the Act (as modified by regulation 8), with reference, where appropriate, to relevant land for the purpose of section 27 shown on the map.

(f) Particulars of the application, including—

(i) a brief description of the point or points of abstraction specified in the original licence at which the applicant proposes to abstract (with reference, where appropriate, to the point or points shown and numbered on the map);

(ii) the provisions which the applicant proposes the licence should contain, including provisions as to the quantity of water authorised to be abstracted during a period or periods specified at each point of abstraction or group of points of abstraction specified, and provisions as to the land on which and the purposes for which the water abstracted

is to be used, all being provisions framed by reference to the corresponding provisions of the original licence;

(iii) a statement showing how the quantities of water specified have been assessed in accordance with the provisions of regulation 7.

(2) In the case of an application by the original holder in pursuance of regulation 6, or by a person who has become the holder of the original licence and who is entitled to make such an application by virtue of regulation 4(4), sub-paragraph (1) of this paragraph shall have effect with the following modifications:—

(a) the particulars required at head (c) shall include the statement that the applicant is the original holder, or, as the case may be, that he has become the holder of the original licence by virtue of regulation 4;

(b) for the particulars required at head (d) there shall be substituted brief particulars sufficient to identify the application by a successor for a new licence (or, if there is more than one, each such application) in consequence of which the applicant is applying for a new licence;

(c) for the particulars required at head (e)(i) there shall be substituted a description of the part of the original land of which the original holder has continued to be the occupier, or, in the case of an application by a person who is the holder of the original licence by virtue of regulation 4(1), a description of the original land of which that person has become the occupier;

(d) the particulars required at head (e)(ii) shall not apply in the case of the original holder, and, in the case of a person who has become the holder of the original licence by virtue of regulation 4, there shall be substituted for those particulars the date on which, and the circumstances in which, he became the occupier of the whole of the original land;

(e) in head (f)(iii) for the words "in accordance with the provisions of regulation 7" there shall be substituted the words "having regard to the provisions of regulation 6".

4.—(1) The application shall be accompanied by evidence for the purposes of satisfying the river authority with respect to such of the following matters as are contained in the application, or shall include a statement as to the nature of any evidence which the applicant can produce for that purpose if the authority shall so require:—

(a) that the claim to have become the occupier of a part, or the whole, of the original land, and (in so far as material) to have done so at the time specified, is well founded;

(b) that the claim to be entitled to make the application in accordance with the provisions of section 27 of the Act (as modified by regulation 8) is well founded;

(c) in the case of a proposal that the new licence should authorise a quantity of water determined in accordance with regulation 7(2)(b)(ii), that the quantity proposed is the quantity which ought to be so determined;

(d) in the case of a request that, in accordance with regulation 7(3), there should be added to any quantity of water determined in accordance with regulation 7(2) a quantity which the original holder would have abstracted at a point of abstraction which has not become available to the applicant, that the circumstances are such as to enable the river authority to be satisfied with respect to the relevant matters specified in regulation 7(3).

(2) The application shall be accompanied by such information as the applicant is able to provide with respect to the following matters:—

(a) whether the holder (if any) of the original licence has applied, or is prepared to apply, for the grant of a new licence, or for the revocation or variation of the original licence, as mentioned in regulation 5(3);

(b) whether there is, or is likely to be, any related application for a new licence, made by another successor by reference to the same original licence, which might appropriately be considered together with the applicant's application.

5. Regulation 10 of the Water Resources (Licences) Regulations 1965 shall have effect in relation to the application as if it were an application for a licence of right and as if the period therein prescribed for dealing with the application were a period of 3 months; and regulation 12 of those Regulations shall have effect in relation to any appeal to the Minister in pursuance of the application, but, save as aforesaid, Part II of the said Regulations of 1965 shall not have effect in relation to applications made in pursuance of these Regulations.

Chapter 11: Appendix section

Succession to abstraction licences

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1. SUMMARY GUIDE WITH FLOW CHARTS

The following is a summary guide to successions. The three pages of flow charts following illustrate the main steps in situations where the rules apply clearly. See the main part of the chapter for detailed explanations, and for what to do if the situation does not seem to "fit" the rules.

STEP 1

Handling an initial communication about succession

Possible scenarios

- Communication is on proper form(s) (WR-6, W-7, WR-8) from the right person (ie. the person who will hold the licence or his agent/solicitor). **ACTION:** proceed to Step 2.
- Communication is in writing but is somehow defective eg. not from correct person (old licence holder?), sent in before change in occupation takes place, not saying precisely what is required (eg. asking to hold the old licence when part succession application is appropriate), etc. **ACTION:** accept this communication for purpose of the 15 month time limit. Send correct person correct forms to complete, unless communication gives all the information the form would have required, in which case that will suffice. Do not send superfluous forms eg. if clear a part succession, do not send WR-6. Form WR-5 (explanatory cover sheet) will be useful to send even if correct forms selected. Send all forms with WR-5 if situation unclear.
- Communication is verbal (in person, by telephone). **ACTION:** advise applicant that

communication must be in writing and submitted within the 15 month time limit, if possible on correct forms. Send forms. However, to preserve the time limit, an intital letter from applicant explaining situation will suffice. Suggest applicant contacts his solicitor, if at all confused.

STEP 2

Deciding what the application is about and whether it is valid

This assumes receipt of clear explanation of situation and what is required (preferably on correct forms, but this is not essential).

(a) Does the licence refer by map or wording to land, buildings etc. where use of water is authorised? **ACTION:** If yes, go to (b). If no authorised land (eg. water company or many private water supply licences) consider appropriate courses of action with applicant in light of guidance in main chapter (section 4).

(b) Is this a "whole of land", "remainder", or "part succession" situation?

- A **whole of land** situation is where the new occupier occupies all the land the licence refers to. **ACTION:** If a whole of land situation, check that the NRA received written communication within 15 months of the new occupier occupying. If no, write to applicant explaining that succession is not possible and he must apply for a new licence. If yes, make sure he has completed WR-6 (or has supplied equivalent information) and submitted it to the NRA with the old licence. Then vary licence to show him as new licence holder.
- A **remainder** situation is where the new occupier is taking over the licence (ie. has or will have the existing licence document) but occupies less land than it covers. This may be because land has just been split up. (The remainder holder will be the person who takes over the last part of the land to be given up by the old licence holder. If the split to different people occurs around the same time, the parties may agree who the remainder holder should be. This will be acceptable even though he may not actually be the last new occupier.)

Alternatively, perhaps some land was disposed of in the past, but the holder did not vary the licence. **ACTION:** If a remainder situation, check that the NRA received written communication within 15 months of the new occupier occupying. If no, write to applicant explaining that succession is not possible and he must apply for a new licence. If yes, proceed to Step 3.

- A *part succession* situation is where the new occupier occupies less land than the licence covers but someone else has, or will have, the licence document. Sometimes (eg. if the licence holder disposes of authorised land on the same day and there is no agreement about who should hold the licence document) there will be no remainder holder.) **ACTION:** If a part succession situation, check that the NRA received written communication (technically this is an application for a licence) within 15 months of the new occupier occupying and within two years of the holder of the licence which now covers the land ceasing to occupy. If the answer to *either or both* questions is no, write to applicant explaining that succession is not possible and he must apply for a new licence. If the answer to both is yes, proceed to Step 4.

STEP 3

Dealing with remainder situations

ACTION:

- Make sure the applicant has completed WR-6 (or has supplied equivalent information) and submitted this to the NRA with the old licence. Then, vary the licence to show him as new licence holder.
- Check new holder's wishes about reduction in quantity and reduction in land. If change desired, or required (see below) to accommodate part successors then he should also complete WR-8. Note that downwards reduction in quantity is always allowed without advertising. The NRA will allow downwards variation in land without advertising provided (a) there is also an appropriate reduction in quantity and (b) no land ie. not presently shown on the licence is added (even though the result might still be a downward variation in area). See main chapter about whether to issue a new licence or vary the old one. Variation is probably the best option.

STEP 4

Dealing with part succession situations

Here the applicant is getting a *new licence*. Although this is framed by reference to the original licence (eg. as to quantity, abstraction point, land), treat it as any other new licence application. That is, except for the need for advertising and consultation (except sometimes as to quantities). It should also be in modern style with modern conditions. Such conditions should not, however, be more onerous than those in the

original licence. **ACTION:**

- The applicant must complete WR-7 to explain his requirements, similar to a normal licence application.
- The holder of the original licence (now a remainder holder) or the new remainder holder must complete WR-8 to allow the part successor the required quantity. Without this the application cannot proceed.
- Check that the applicant occupies or has actual or prospective right of access to the point of abstraction. Remember that with part successions right of access to groundwater is sufficient. Without such right of access the application cannot proceed.
- The maximum amount of water allowed to the applicant part successor will usually be proportional to the area of land (ie. the authorised quantity on the original licence divided by the total area of authorised land multiplied by the area of land occupied by the part successor). This maximum can be increased if it is shown that the original holder used to use more than this proportion on the area of land in question. This may well occur where there has been crop rotation. In practice however the remainder holder may not wish to release as much as the part successor could take. Thus what the parties agree between themselves may well be acceptable.
- Note that these splits are conclusive so far as dealing with any other part successors who may apply later. Apart from the need to make sure a part successor does not take an excessive quantity (see above), the NRA is not concerned that another part successor may apply later. That will be a matter for the remainder holder to agree with the various part successors.
- If there is difficulty about dividing quantities between different abstraction points, refer to guidance in main chapter (Regulation 7 applies).

1.1. Occupation questions

This guidance applies to all succession situations

- (a) Usually, regard the date of *change of ownership* as the date when the new occupier succeeds to the licence. This makes practical sense including for billing purposes. Accept occupation as having changed at this date even though the new occupier may not actually have occupied.

(b) The date of *actual change in occupation* may be relevant—

- If there is a time limit problem. If so, the time limit runs from such date. The original licence holder remains responsible for charges. If someone does not pay, the NRA can revoke the licence. (However, in such a case the new holder may well agree to pay).
- If the original holder remains in occupation until after the completion of the sale. This sometimes happens in farming/cropping situations.

(c) If there is *no authorised land* on the licence, there can be no change of occupation. Hence succession cannot take place (but there may be other means of achieving the same ends: see main part of this Chapter). The new eg. water undertaker, private supplier may well have to apply for a new licence.

(d) If there is *some authorised land* on the licence, then this is sufficient to allow succession, even though the licence also covers other purposes (eg. private water supply) where the area of use is not shown. However, if eg. the supply arrangement does not continue, the person who was the beneficiary of it cannot apply as a part successor, as he does not occupy authorised land. He will have to apply for a new licence in the ordinary way.

(e) *Overlaps in occupation* — often, especially with individuals in families and small partnerships, often on farms, there will be overlaps in occupation. The main part of the chapter explains this under "concurrent occupation". The NRA's rule here is to regard there as having been no change in occupation such as to trigger the succession rules, until there is a clean break in occupation. (It may help to consider whether, in reality, there has been a change in the "business" which is occupying the land.) **ACTION:** the licence should be endorsed to show the person in occupation of the land immediately before that clean break as the holder. Then the new occupier may, or may not, succeed — depending on whether he complies with the time limits.

(f) In cases involving companies and other bodies (eg. trustees) the same rule *may* apply. The parties must show convincingly that they have in fact shared occupation with the original licence holder ie. there has been genuine concurrent occupation. However, it is much less likely than with individuals that this will actually have occurred.

(g) *Substantively the same occupation* — the NRA may not regard a change of occupation as having taken place even though eg. there may have been a restructuring of the holding of the land, if the person in control of the land is to all intents and purposes the same as the original licence holder (or someone

qualifying as such under the concurrent rule, see above).

- (h) **Executors, liquidators, receivers** — treat these as acting *on behalf of* the original licence holder. They do not have to succeed to the licence themselves. However, they are liable for the holder's charges.
- (i) **Short term tenants** — usually, succession can be avoided. If the tenant occupies the whole of the land, then provided he has been and gone within fifteen months, there is in practice no need for succession to take place. With part succession situations, it will be best for these people *to use the landlord's licence with his permission*.

Technically, however, such people have the same rights over succession as any other sort of new occupier. Thus in order for the landlord to keep control of the licence (though this also means he remains responsible for it) he may prefer to retain some authorised land in order to prevent the tenant obtaining full rights.

- (j) **Non-occupying licence holders** — the licensing rules allow such people to hold licences even though someone else occupies the land. There is (sometimes) no mechanism for succession. For details on what to do, see main chapter. A minor variation to change the name on the licence may be appropriate. The same rules may apply to bodies (eg. trustees, local authorities) holding land that others (eg. beneficiaries, schools, hospitals) occupy. In some of these situations the legal occupier may in any case be the owning body.
- (k) **Company takeovers** — the rules are the same here as for other cases. However, it may be difficult to work out whether the company in occupation is the same as the company shown on the licence (even though the name may have changed) or a different one. The NRA's policy is to examine the Certificates of Incorporation and see whether the *company numbers* on the certificates are the same, or not.

1.2. Failed successions

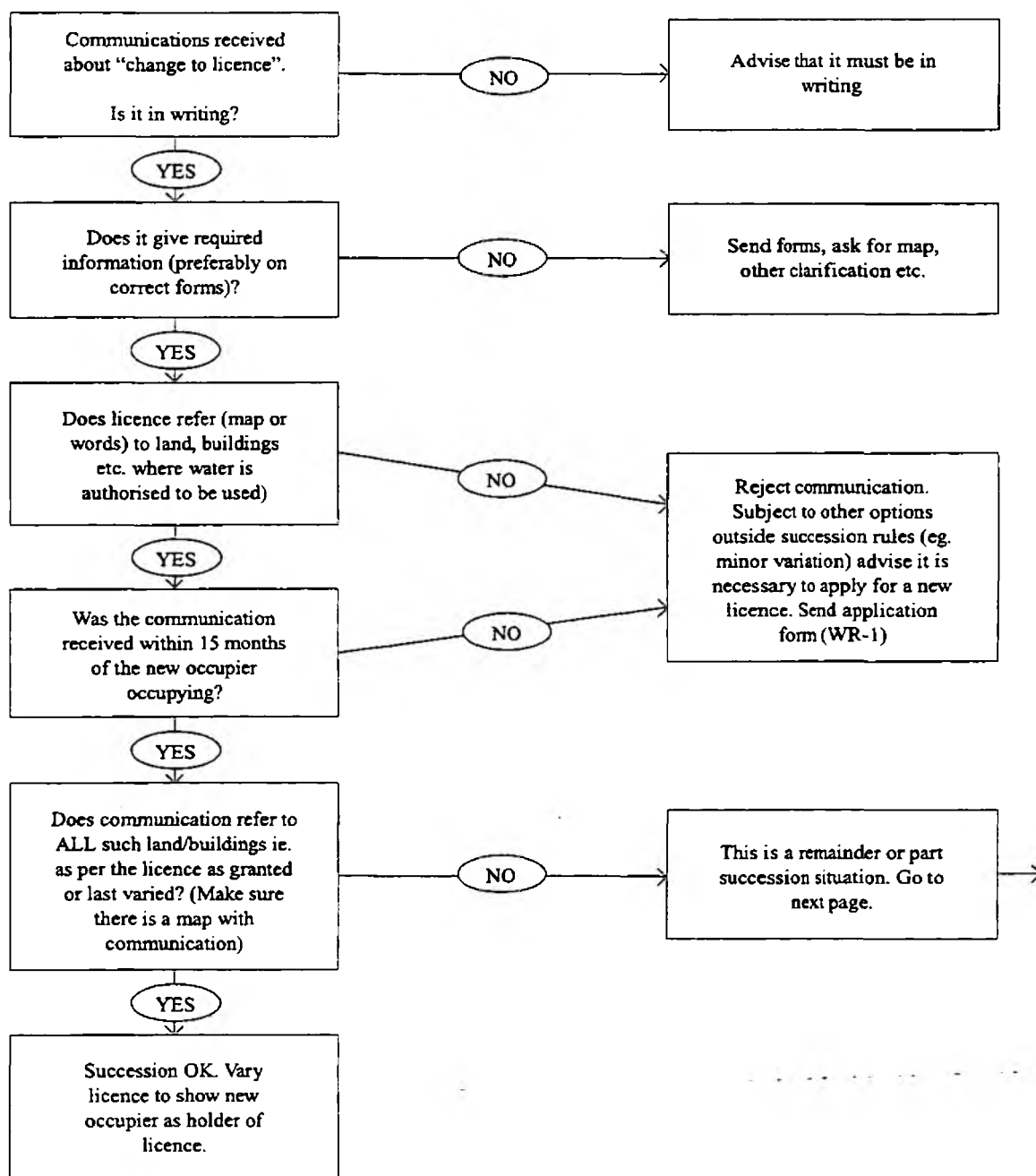
Applications for new licences resulting from failing the succession rules will need advertising in the normal way. Note there is discretion for quantities of less than 20 cubic metres a day. Check policy guidance on advertising for details.

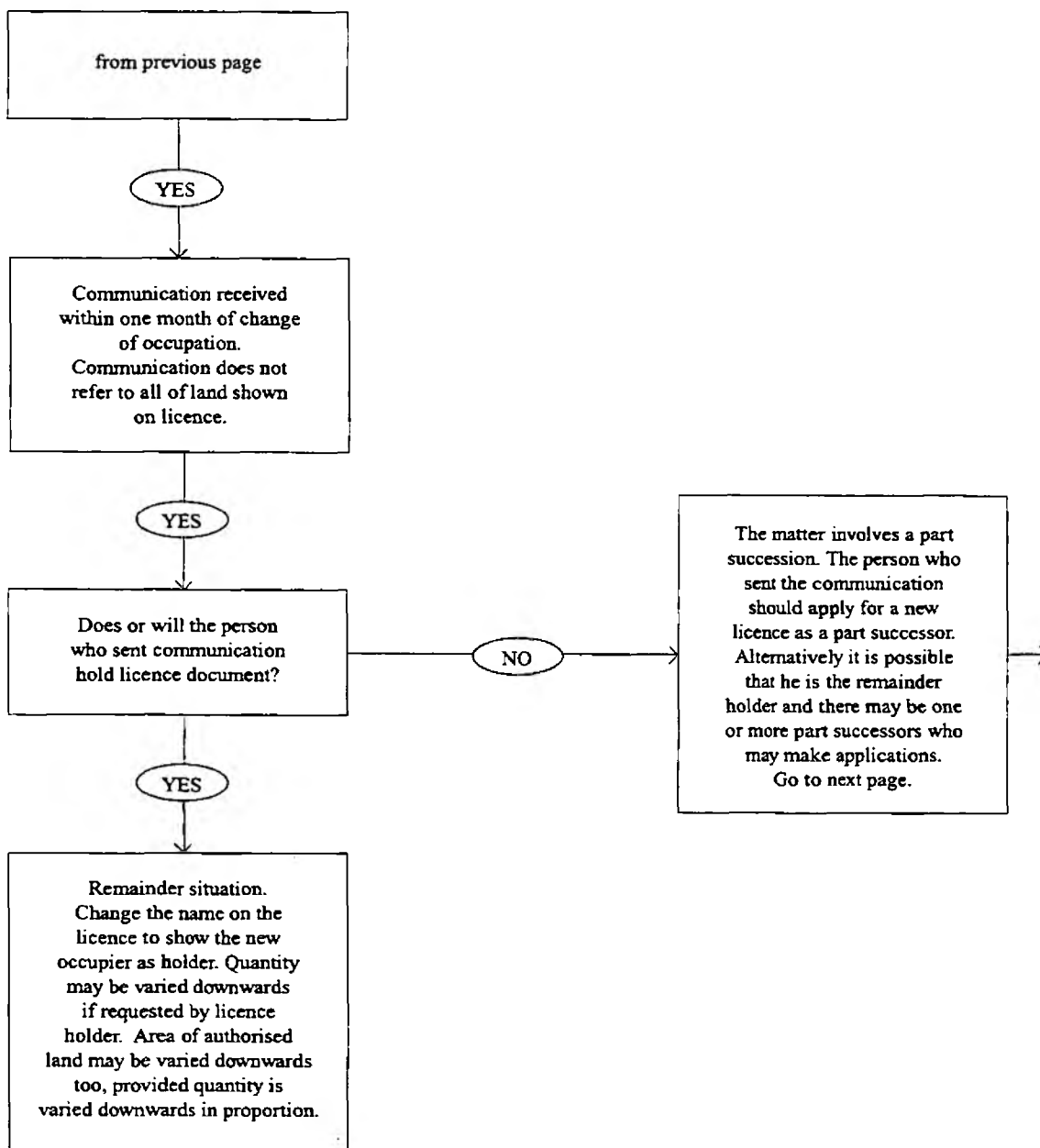
1.3. Flow charts

See following pages.

SUCCESSIONS FLOW CHART

The charts in the three pages following may assist with understanding what type of succession is involved in a particular case. The text refers to "communications" being received as it may well be that people do not make it clear what they are asking for ie. notifying their succession to the licence itself (whole or remainder) or applying for a new licence in part succession. Obviously it will be better if staff have the right forms (WR-6, WR-7, WR-8 as the case may require) completed as soon as possible.

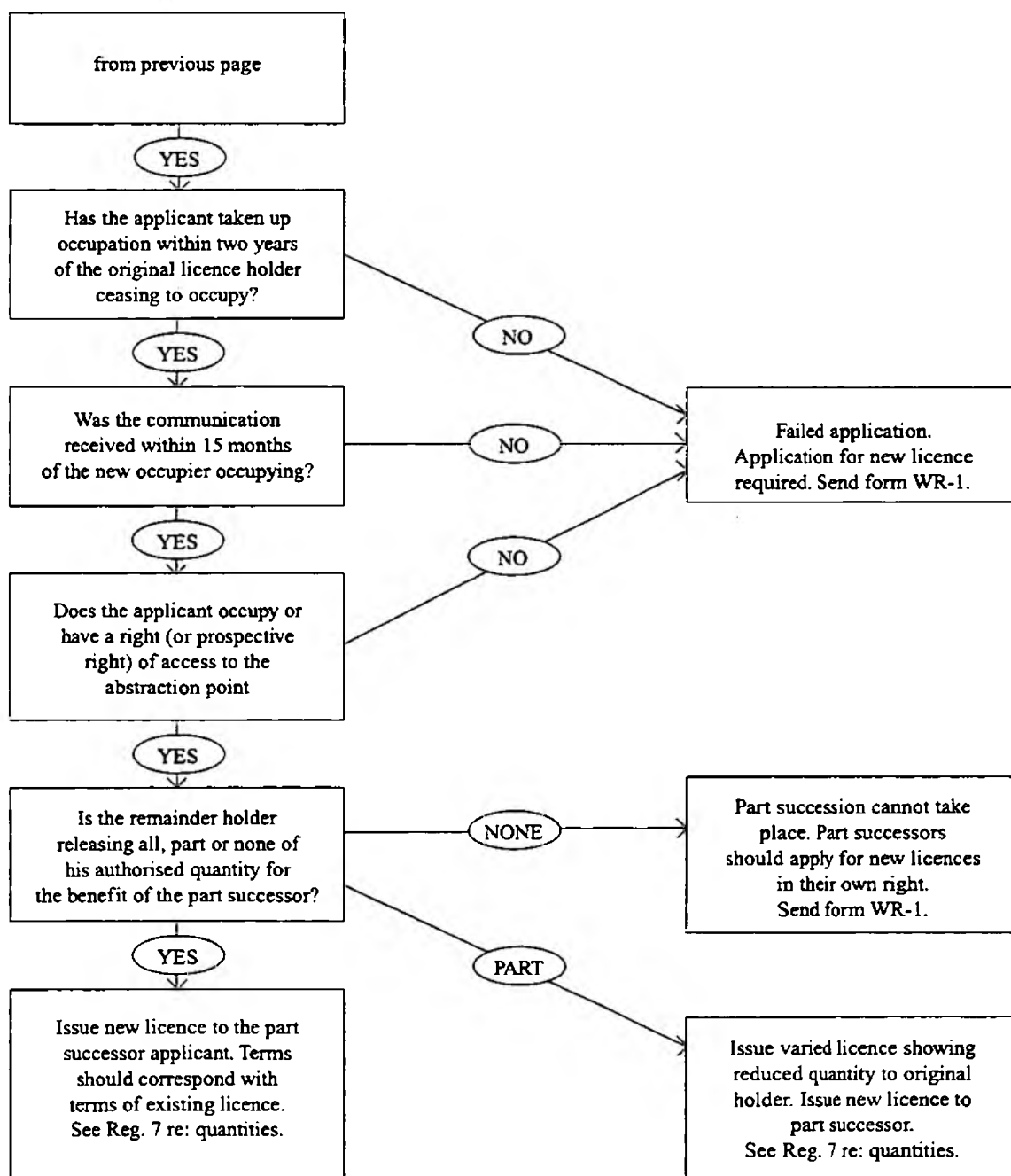


REMAINDER
SITUATIONS

PART SUCCESSIONS

Communication received about part of land to which licence presently relates. Licence continues held by someone else (original holder, remainder holder). This is a part succession application involving need (a) to issue new licence to part successor (b) to reduce quantity on original/remainder holder's licence and (c) to make sure all parties (eg. other possible part successors) are catered for.

Note: Where there are multiple part successors, each must satisfy the points about right of access, application within two years etc. to be successful. If not, their application is rejected (though the others can proceed).



2. STANDARD FORMS

Strictly speaking, there are only three forms for use in succession situations:

WR-6 Succession to whole of, or remainder of, and abstraction licence

WR-7 Application for a new licence in part succession to an abstraction licence

WR-8 Part disposal of land covered by an abstraction licence - existing licence holder's application and consent

In addition, these forms may be sent out with **WR-5** "Which form?" which will help people applying to succeed use the right form.

The minor variation form **WR-2** may also be used on occasion, as discussed in the text.

These forms are set out on the following pages.

WR-5



NRA

National Rivers Authority

Successions ~ Which Form?

**Use this to decide what form(s)
to use for your succession application**

If you occupy **all** the land which the licence now refers to, use form WR-6. Complete and submit it to the NRA with the old licence within 15 months of becoming the occupier of the land.

Ignore forms WR-7 and WR-8.

If you occupy **less than** the land the licence now refers to, but it is you (ie. rather than someone else who occupies another part of the land) **taking over** the old licence, use WR-6 and submit it to the NRA within 15 months of becoming the occupier of the land.

If you wish to **reduce** the quantity of water the licence authorises you to abstract and/or the area the licence covers, complete form WR-8 as well. You may not need so much water (and remember you will usually be charged on the full authorised quantity) and, if you are unlikely to occupy the rest of the land again, there is little point in having the licence cover it.

Complete question 3 on form WR-8 if you know who the other occupiers of the land are, otherwise ignore it.

It will anyway be necessary for you to revise your licence in this way if other people apply for licences over the land which the licence covers but you do not occupy. If such persons ask you to complete WR-8 after you have already done so, tell them so. There is no need to complete it twice.

Ignore form WR-7

If you occupy **part** of the land to which the old licence relates but **someone else is keeping, or will be having, that** licence then complete form WR-7. Send this to the NRA within 15 months of becoming occupier of the land. You will also need to have the holder of the old licence, which still covers the land, complete form WR-8 if he has not already done so.

In cases where there is more than one person in the same position as you ie. occupying part of the original land covered by the licence and applying for a licence in relation to that part, all parties should do their best to agree how the quantity of water authorised for abstraction should be split up.

Ignore form WR-6.

WR-6

Water Resources Act 1991 (s.49 and 50)

Water Resources (Succession to Licences) Regulations 1969



NRA

National Rivers Authority

Succession to an Abstraction Licence

Use this form when you want to take over someone else's abstraction licence. You must let us know **WITHIN 15 MONTHS** of taking up occupation of the land, (farm, industrial site etc.) over which the licence authorises use of water. If you do not notify us in time, **YOU WILL LOSE THE LICENCE**.

If you occupy less than the land the licence now refers to, but it is you (ie. rather than someone else who occupies another part of the land) taking over the old licence, you may also need to complete form WR-8. This will release water you are authorised to use to other occupiers. You may wish to do this whether or not others want the water.

1 Licence you are taking over

LICENCE SERIAL NUMBER	
-----------------------	--

2 Your details

Full names					
Address					
Telephone		Fax		SIC Category	
Contact person/ adviser					
Address etc. If different					
Telephone		Fax			

- If you are a company, give the address of the Registered Office
- If you are an individual, give your forenames and surname in full.
- If you are a firm or partnership, give (i) full names and addresses of all partners; (ii) the name the firm trades under; and (iii) its main address
- If you are a club or charity, give (i) the full names and addresses of all trustees; and (ii) the name and address of the person authorised to receive the licence on the club or charity's behalf
- With multiple names and addresses, put the first or trading name on the form and use a separate sheet for the rest.
- SIC - if you know it, give the Standard Industrial Classification of your organisation. This is important for VAT purposes.
- If you name a contact/adviser, all correspondence will be sent to that person unless you request otherwise.

WR-6

3 Type of succession

Do you occupy the whole of the land shown on the licence as land on which water is authorised to be used (ie. excluding supplies to others), or just part of it? (tick one)	WHOLE <input type="checkbox"/>	PART <input type="checkbox"/>
Please attach a map showing the land you actually occupy. DO NOT eg. just say "same as map on licence".	Tick to confirm map attached	

4 Details of existing licence holder

Name of existing holder	
Current address	
Current telephone (if known)	

5 Date of change of occupation

Give date when you began to occupy the land	
---------------------------------------------	--

DECLARATION

I/we enclose the above licence and request the National Rivers Authority to endorse it to show me/us as the holder(s) of the licence. The facts set out above are true.

Applicant's signature	Print name(s)
Authorised on behalf of	Date

It is an offence to make a false statement for the purpose of obtaining a licence

WR-7

Water Resources Act 1991 (s.49 and 50)

Water Resources (Succession to Licences) Regulations 1969



NRA

National Rivers Authority

Application for a new licence in part succession to an Abstraction Licence

FOR NRA USE ONLY	Existing licence No:	
Existing holder's position	New licence No:	
	Other new licence(s):	

Use this form if you now occupy part of the land (eg. part of a farm, or part of an industrial site) to which an existing abstraction licence relates but someone else is keeping, or will be having, that licence (ie. is continuing as, or has become, the holder). You normally have a right to a licence covering your land. However you must-

- Apply to us, using this form, within FIFTEEN (15) MONTHS of the date you begin to occupy the land to which the existing licence relates.
- Send a MAP on a scale of at least 1:10,000 with this application, completed as indicated in the questions in this form.
- Obtain the AGREEMENT of the HOLDER of the licence to let you have some of the quantity of water he is authorised to use (he should complete form WR-8).
- Occupy or have a right of access to the licensed abstraction point(s) you will be using (possibly in common with other people).

1 Your details

Full names				
Address				
Telephone		Fax		SIC Category
Contact person/ adviser				
Address etc. if different				
Telephone		Fax		

- If you are a company, give the address of the Registered Office
- If you are an individual, give your forenames and surname in full.
- If you are a firm or partnership, give (i) full names and addresses of all partners; (ii) the name the firm trades under; and (iii) its main address
- If you are a club or charity, give (i) the full names and addresses of all trustees; and (ii) the name and address of the person authorised to receive the licence on the club or charity's behalf
- With multiple names and addresses, put the first or trading name on the form and use a separate sheet for the rest.
- SIC - if you know it, give the Standard Industrial Classification of your organisation. This is important for VAT purposes.
- If you name a contact/adviser, all correspondence will be sent to that person unless you request otherwise.

WR-7

2 Details of existing licence

Name of existing holder	
Address	
Telephone	
Serial number of existing licence	

3 Details of the land

A. Please confirm that you occupy only part of the land on which the existing licence authorises water to be used and do not hold the existing licence. (If you cannot confirm these two points, contact the NRA before going any further.)	
B. Show on the map the land covered by the existing licence which you now occupy (say eg. "edged red")	
C. Show on the map land covered by the existing licence but which you do not occupy (say eg. "edged blue")	

- Please show relevant areas of land clearly, by drawing red, blue etc. lines around these areas.

4 Other part successors to existing licence

Are you the only new occupier (ie. besides the person who has the existing licence) of land covered by that licence?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
<p>If there are others, please give their names, addresses and any other relevant details so far as you can. If you do not know, please suggest who may know. Please show areas you refer to on the map, using different colours/shading etc.</p>		

- If eg. land is being sold off to different people, others may be applying to succeed partly to the licence, like you are. If so, it will be easier for us to process your application if we know who these other people are.

WR-7

5 Details of change of occupation

Give date when the holder of the existing licence ceased occupying the land which you now occupy	
Give date when you began to occupy the land	
If known, give reason (eg. "sale", "death of licence holder", "new tenancy" etc.) why occupation changed	

6 Entitlement to apply for a licence

To apply for a licence as a part successor, you must either occupy, or have a right of access to, one or more of the points of abstraction currently authorised under the existing licence. Please explain this by reference to the map. Also say what evidence you can produce to show your occupation or right of access.

Abstraction point(s) say eg. "marked P on the map", "between P and Q on the map"	
Access arrangements (if applicable) say eg. "dotted line between R and P"	
Evidence of right of access or occupation (say eg. "deeds", "tenancy agreement" etc.)	

7 Source and use of the water

Specify proposed use(s) of the water, quantities etc. For complex applications, use a separate sheet. Note that your requirements must relate to the provisions of the existing licence.

Use(s)*	Period of use†	Hours per day	Maximum quantities		
			Yearly* m³	daily m³	hourly m³

* eg. "spray irrigation for agriculture", "agriculture or horticulture other than spray irrigation" etc.

eg. "all year", "April 1st to October 31st" etc.

• or other authorised period.

See Question 8 below about quantities of water you may be permitted to take.

WR-7

8 Assessment of quantities required

How have you assessed the quantities in question 7? They will usually relate to the area of your land compared with the land originally covered by the licence. The amount may be different from this if eg. water has in practice mainly been used in a particular part of the area covered by the existing licence, or eg. crops are rotated in different parts of a farm. We must be satisfied you have divided the quantity up between yourselves properly. In any event the quantity allowed by the licence you want, plus the quantity remaining on the original licence, cannot add up to more than what used to be authorised by the original licence.

9 Existing licence holder and other new applicants

It is important for you, the existing licence holder and any other persons applying to succeed to part of the licence to try and agree between yourselves (i) proper split of authorised quantities and (ii) access arrangements to the abstraction point(s). Before we can process your application, the holder of the existing licence must release water for you from the authorised quantity on his licence.

Where you are the only part successor, we suggest you ask the existing holder to complete form WR-8, and give it to you to send to us with this form. In other cases, eg. where there are other part successors besides you, the existing holder may wish to apply to us separately. Please advise how the application is being handled and also give full details of what is happening by reference to the map on the licence, especially where the land is being split up between several different people.

APPLICATION/DECLARATION

I/we apply for grant of a licence to abstract water as set out in this application. I am/we are occupier(s) of land which forms part of land to which the existing licence specified in answer to question 2 above relates.

Applicant's signature	Print name(s)	
Authorised on behalf of		Date

It is an offence to make a false statement for the purpose of obtaining a licence

WR-8

Water Resources Act 1991 (ss.49 to 51)

Water Resources (Succession to Licences) Regulations 1969



NRA

National Rivers Authority

Part Succession ~ existing licence holder's application and consent

Use this form if you hold an abstraction licence and wish to vary or revoke it so that someone else who occupies part of the land to which it relates may have a licence using some of the water you are authorised to use.

1 Details of your existing licence

Holder's name	
Address	
Telephone	
Licence Serial Number	

- If you wish to continue to hold this licence, complete questions 2 and 3 below, delete Part B of the application/declaration overleaf, and sign the form.
- If you do not wish to continue to hold the licence, complete question 2 below, delete Part A of the application/declaration overleaf, and sign the form. Ignore question 3.

Send the form, your licence, and the map (if applicable) to the NRA at the address shown on this form.

2 Details of new applicant(s)

Name(s), address(es), telephone no(s)	Date(s) of change of occupation	Land marked on map

- Mark the area(s) of land occupied by the different new applicant(s) on the map. Say how you have done this (eg. "edged in green", "edged in blue", etc.)
- It is important to know the date(s) of change(s) of occupation for charging purposes. You will continue to have to pay charges under your licence until you cease to occupy the land in question.

WR-8

3 Your new requirements

	Existing provisions	Required provisions
Authorised total quantity	m ³	m ³
Daily quantity	m ³	m ³
Hourly quantity	m ³	m ³
Hours per day		
Area of use (refer to plan)		

- List the provisions of your existing licence you want to change and what you want them to say in the future. Remember you cannot increase the quantity authorised for abstraction.
- Use a map (scale: at least 1:10,000) to explain points of abstraction and area of use.
- If you need a right of access across land you are ceasing to occupy, show this on the map (eg. "the dashed line between A and B")
- Please use metric measurements (cubic metres) for quantities. 1 cubic metre is approximately 220 gallons.
- Please use another sheet if the above table does not explain your requirements fully.
- If you have more than one abstraction point or use the water for more than one purpose, please supply above details for each point and purpose, using a separate sheet if necessary.

APPLICATION/DECLARATION

- * A. I/we no longer occupy the land described in Question 2 above. Please vary the provisions of my existing licence as specified in Question 3 above.
- * B. I/we have no further use for the above abstraction licence on the land which I/we continue to occupy. Please revoke it in favour of the above applicant(s) with effect from the date(s) of change in occupation. I/we understand that once revoked a licence cannot be reissued without a formal application and even then there is no guarantee that a licence will be granted.
- * Delete as applicable

Applicant's signature	Print name(s)	
If signing on behalf of a company etc state your position in the organisation		Date

Form WR-2

Water Resources Act 1991

Licence Serial No:

REQUEST FOR MINOR VARIATION TO LICENCE

Note – use this form for variations to licences which the NRA does not require advertising. Most variations must be advertised. Dispensing with advertising minor variations is a matter for the NRA's discretion. In situations which require advertising, you should complete the licence application form WR-1. So, discuss what you want to do with the NRA before completing the relevant form so that at least a provisional view can be given on the need for advertising. There are special forms if the application is ONLY to reduce the quantity authorised for abstraction, or to revoke the licence entirely. These never require advertising and you should use form WR-3 (reduction) or WR-4 (revocation).

CURRENT PROVISION OF LICENCE	
NEW PROVISION REQUESTED	
REASON FOR CHANGE	

Please vary the licence as per the above. The original licence is enclosed.

NAME OF LICENCE HOLDER			
ADDRESS			
SIGNATURE		DATE	
IF SIGNING ON BEHALF OF A COMPANY, FIRM ETC. PLEASE PRINT YOUR NAME AND STATE YOUR POSITION IN THE ORGANISATION			

3. EXTRACT FROM CHARGES SCHEME WORKING PRACTICE NOTES

12. Charges When Licences Transfer

- 12.1 A land occupier's rights to succeed to all or part of a licence will have been dealt with prior to considering how to apportion/raise charges. This practice note does not address those rights except to clarify where necessary certain financial requirements in connection with billing.
- 12.2 Succession to licences will be dealt with in accordance with Section 49 of the Water Resources Act 1991 or the Succession Regulations of 1969. It must be remembered that for licensing purposes the NRA generally deals with occupiers and occupation of land and premises, not owners and ownership.
- 12.3 It will be the responsibility of each region to ensure that when a licence becomes available for succession, the 'outgoing' abstractor is sent a revised account, or a refund made, depending upon the payment status of the original account.
- 12.4 If there is succession to a licence then the new licence holder must be billed from the date his occupation commences. When there is an immediate change of occupation of all the licensed land, the new occupier is liable to pay for 15 months even if he does not submit a claim for succession.

Example 1

An area of land, the subject of a licence to abstract water is vacated on 30th June 1993 and a new person takes immediate occupation of all the licensed land.

In this instance the licence automatically transfers to the new occupier who has 15 months to advise the NRA that he is the new occupier. The outgoing occupier will be liable for charges from 1st April 1993 to 30th June 1993. The new occupier will be liable from 1st July 1993 to 31st March 1994 (and onwards until some other change takes place).

Example 2

As Example 1, but the use is spray irrigation purposes and charges are raised on a two part tariff basis.

In this instance, as well as apportioning the first part charge of the bill between the outgoing occupier and a successor, as above, consideration must also be given to dealing with the second part charge bill which is calculated on the actual quantity taken. The original licence holder should be asked to make a return showing the quantity he has abstracted during the period 1st April to 30th June 1993. A NIL return will need to be made if no water has been taken. A second part charge should then be raised against the outgoing occupier, based on the return figure.

The new occupier will only be entitled to take the difference between the licensed quantity and the quantity which was taken by the outgoing occupier. This should have been explained to the new occupier when dealing with the transfer of the licence. The new occupier will need to be sent a return form for notifying the quantity he has taken. A NIL return will need to be made if no water has been taken.

- 12.5 In practice, the licence holder and the successor may make their own arrangements for apportioning charges already paid to the NRA. In which case the NRA has no financial interest in the matter and will bill the successor in the normal way when Annual Charges are next due for payment.
- 12.6 Problems may arise where land becomes vacant and is not immediately occupied by a successor. In such circumstances every case should be considered individually, but the over-riding principle must be to ascertain the legal successor as a matter of urgency.
- 12.7 Where there is no immediate successor, there will be a void period from the date the present licence holder ceases to occupy the land and a new occupier takes up occupation. When it has been established that entitlement to succeed has been lost and the licence is no longer valid regional procedures should be used to remove the licence from the charge register. Any charges which have accrued during and because of the void period will have to be cancelled.

Example 3

A licence authorises 3,000 Mla during the period 1st April to 30th October each year for spray irrigation purposes. Charges are raised on a two part tariff basis. Occupier A vacates the land on 30th June 1993 and his actual take during the period is 800 Ml.

Occupier B does not take up occupation until 29th September 1993 and his actual take up to the end of the abstraction period is 50 Ml.

Occupier A's revised Charge -

Occupation period is 01/04/93 to 30/06/93 which is 91 days out of 214 days in the abstraction season.

Revised 1st part bill is $\frac{\text{Licensed quantity} \times \text{Factors} \times 91 \times \text{SUC} \times 50\%}{214}$

2nd part bill is $\text{Actual quantity} \times \text{Factors} \times \text{SUC} \times 50\%$

(Remember, the 2nd part charge is based on the actual quantity abstracted and does not need to be multiplied by 91/214ths).

The total due from Occupier A will be the sum of the Revised 1st part bill and the 2nd part bill. Note: SUC is the Standard Unit Charge for the region.

Occupier B's revised Charge -

Occupation period is 29/09/93 to 31/10/93 which is 33 days out of 214 days in the abstraction season.

Revised 1st part bill is $\frac{\text{Licensed quantity} \times \text{Factors} \times 33 \times \text{SUC} \times 50\%}{214}$

2nd part bill is $\text{Actual quantity} \times \text{Factors} \times \text{SUC} \times 50\%$

(Remember, the 2nd part charge is based on the actual quantity abstracted and does not need to be multiplied by 33/214ths).

The total due from Occupier B will be the sum of the Revised 1st part bill and the 2nd part bill.

There will be a void period of 90 days from 1st July 1993 to 28th September 1993. Charges for this period will have to be cancelled.

- 12.8 The above transfer examples have referred to land and spray irrigation use, but similar principles will apply (except for two part tariffs) when dealing with transfer of licences for premises and other uses.

- 12.9 Multiple successions can cause administrative delays, particularly when dealing with a large estate which is being sold or broken down into smaller units. However, each succession application should be dealt with when it is made, but care will need to be exercised to make sure that no more water is succeeded to by way of succession applications than there is water available from the original licence. Succession licences will be treated as new licenses and be brought into charge from the date when occupation commenced. Bills will be calculated according to the licence conditions and charge scheme factors.