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STATUTORY INSTRUMENTS

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**2011 No. 2873**

**INTELLECTUAL PROPERTY**

**ARTISTS**

**The Artist's Resale Right (Amendment) Regulations 2011**

<i>Made</i>	- - - -	<i>29th November 2011</i>
<i>Laid before Parliament</i>		<i>2nd December 2011</i>
<i>Coming into force</i>	- -	<i>1st January 2012</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the right of artists to receive a payment on the sale of their work (b).

The Secretary of State makes these Regulations in exercise of the powers conferred by that section.

**Citation and Commencement**

1. These Regulations may be cited as the Artist's Resale Right (Amendment) Regulations 2011 and come into force on 1st January 2012.

**Amendment of the Artist's Resale Right Regulations 2006**

2. The Artist's Resale Right Regulations 2006(c) are amended as follows.
3. In regulation 2 (Interpretation) omit the definition of "qualifying individual".
4. In regulation 7 (Assignment etc.) for sub-paragraph (4)(c) substitute—  
    “(c) is a foreign charity.”.
5. For regulation 9 (Persons entitled on succession) substitute—

**“Transmission and vesting of resale right**

9.—(1) Where by virtue of this regulation resale right is transmitted to, or vests in, any person, it may be exercised by that person.

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(a) 1972 c.68.  
(b) S.I. 2004/1984.  
(c) S.I. 2006/346 amended by S.I. 2009/2792.

- (2) Resale right—
  - (a) is transmissible as personal or moveable property by testamentary disposition or in accordance with the rules of intestate succession but only to a natural person or a qualifying body; and
  - (b) may vest by operation of law in the personal representative of a deceased person.
- (3) Resale right may be further transmitted to a natural person or a qualifying body by any person to whom it passes under paragraph (2)(a).
- (4) Resale right may be transmitted as bona vacantia.
- (5) Resale right may vest by operation of law in an official receiver (or in Northern Ireland, the Official Receiver for Northern Ireland) or a trustee in bankruptcy.
- (6) Where resale right is transmitted to more than one person it belongs to them as owners in common.”.

6. For Regulation 10 (Requirements as to nationality), substitute—

**“Requirements as to nationality**

10. Resale right may only be exercised in respect of the sale of a work where its author is—
- (a) living at the date of the sale and is at that date a national of—
    - (i) an EEA state; or
    - (ii) a state the legislation of which permits resale right protection for authors from EEA states and their successors in title; or
  - (b) deceased at the date of the sale and, at the date of the author’s death, the author was a national of a state falling within paragraph (a)(i) or (ii).”.

7. In regulation 16 (Transitional provisions)—

- (a) in paragraph (2), after “qualifying individual” add “within the meaning of regulation 10(3) as originally enacted”; and
- (b) in paragraph (5), after “9(2) and (3)” add “as originally enacted”.

8. For regulation 17 (Sales before 1st January 2012) substitute—

**“Review of Regulations**

- 17.—(1) The Secretary of State must from time to time—
- (a) carry out a review of these Regulations,
  - (b) set out the conclusions of the review in the report, and
  - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Directive 2001/84/EC of the European Parliament and of the Council of 27th September 2001 on the resale right for the benefit of the author of an original work of art<sup>(a)</sup> (which is implemented by means of these Regulations) is implemented in other member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
  - (b) assess the extent to which those objectives are achieved, and

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(a) OJ No. L 272, 13.10.2001, p32.

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the 1st January 2012.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

9. Schedule 2 is revoked.

*Judith Wilcox*

Parliamentary Under Secretary of State for Business, Innovation and Skills  
Department for Business, Innovation and Skills

29th November 2011

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Artist's Resale Right Regulations 2006 ("2006 Regulations") that implement Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ No L272, 13.10.2001, p 32) ("the Directive"). The 2006 Regulations also amount to the implementation, by the United Kingdom, of the option given by Article 14ter of the Berne Copyright Convention (Cmnd. 5002).

Regulation 3 amends regulation 2 of the 2006 Regulations by removing the definition of qualifying individual. This amendment is consequential to the amendments to regulation 10.

Regulation 4 amends regulation 7(4)(c) by removing the requirement that a foreign charity needs to have its central administration in the specific countries previously listed in Schedule 2 in order to be a "qualifying body".

Regulation 5 amends regulation 9 so as to bring together all the provisions relating to transmission of resale right. It incorporates the provisions previously found in regulation 10 which provided that resale right may vest by operation of the law in personal representatives, official receivers and trustees in bankruptcy.

Regulation 6 amends regulation 10 so as to omit the reference to the countries listed in Schedule 2 and to make clear that resale right may only be exercised by authors of non EEA states where the legislation for that state affords resale right protection to authors of EEA states and to their successors in title. The amendments to Regulation 10 make it clear that there are no nationality requirements for heirs of artists who themselves qualify for artist's resale right.

Regulation 7 amends regulation 16. This amendment is consequential on the amendments made to regulations 2, 9 and 10.

Regulation 8 inserts into the 2006 Regulation a new regulation 17 which require the Secretary of State to review the operation and effect of the 2006 Regulations and publish a report within the period of 5 years beginning with the 1st January 2012 and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the 2006 Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the 2006 Regulations or to amend them. The old regulation 17 which is being replaced will no longer be necessary from the date that these Regulations come into force as it contains transitional provisions which will at that date become spent.

Regulation 9 revokes Schedule 2 of the 2006 Regulations which lists the countries outside the EEA whose nationals may enjoy resale right which is unnecessary in the light of amendments made to Regulation 10.

A full impact assessment of the effect that this instrument will have on the costs of business is available from the Intellectual Property Office, Room 3B46, Concept House, Cardiff Road, Newport, NP10 8QQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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