
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations 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 L 272, 13.10.2001, p.32) (“the Directive”). The Regulations also amount to the implementation, by the United Kingdom, of the option given by Article 14^{ter} of the Berne Copyright Convention (Cmnd. 5002).

Regulation 3 creates a new intellectual property right (“resale right”) to be enjoyed by the creator of a work of art (and that artist’s successors in title) for as long as copyright continues to subsist in the work. The right consists in the entitlement to claim a royalty on the resale of the work following its first transfer by the artist. The amount of the royalty is based on the sale price (denominated in euro), and *Schedule 1* sets out how that amount is to be calculated.

Regulation 4(1) defines the works of art which are covered by the Regulations. *Regulation 4(2)* lays down the conditions under which a copy of a work is to be regarded as a work covered.

Regulation 5 makes provision for works which are the joint product of two or more artists, and *regulation 6* lays down a rebuttable presumption that a signatory of the work is its creator.

Regulation 7 ensures that resale right may not be assigned or charged, but does not prevent the transfer of a resale right where it has been transmitted to a qualifying charitable body, provided that the transfer is to another such body. (See also *regulation 11* on trustees.) The relevant bodies are defined in *regulation 7(4) and (5)*.

Regulation 8 prevents resale right from being waived, and precludes any agreement to share or repay resale royalties; however, this does not prevent a collecting society from collecting resale right on the holder’s behalf in return for a percentage of the royalty (see *regulation 14*).

Regulation 9 enables a resale right to be transmitted, on the death of its holder, to a natural person or to a qualifying charitable body, and makes it clear that in the absence of any heirs it may pass to the Crown as “bona vacantia” (“ownerless property”).

Regulation 10 lays down certain nationality requirements. Resale right may be exercised only by an individual who is an EEA national (or national of a country listed in *Schedule 2*), or by a qualifying charitable body. Similarly, only such an individual may transmit resale right under *regulation 9*. It follows from the combined provisions of *regulations 9 and 10* that an individual who does not satisfy those requirements may none the less inherit resale right, but such an individual may not exercise it or further pass it on while the requirements continue not to be satisfied.

Regulation 11 enables any person to hold and to exercise resale right in the capacity of a trustee for a person entitled to the right, and enables legal title to the right to be transferred to such a trustee or to the beneficiary. Thus in particular the nationality and other requirements of *regulations 9 and 10* are to be satisfied by the beneficial owner of a resale right rather than by the trustee.

Regulation 12 defines when a sale is to be regarded as a “resale” for the purposes of the Regulations (thereby attracting the obligation to pay resale royalty). *Regulation 12(1)* makes it clear that a sale may be a resale, even though the initial transfer of ownership in the work was not itself a sale. Thus for example a “resale” following a gift by the artist would also qualify (and see also the examples in *regulation 3(5)*). *Regulation 12(3)* provides that an art-market professional must be involved in the sale, either as principal or agent, and imposes a minimum price threshold of 1,000 euro. *Regulation 12(4)* exempts certain sales where the work was recently acquired from the artist.

Regulation 13 makes a specified art-market professional involved in the sale jointly and severally liable with the seller. The art-market professional who is so liable is the agent of the seller, if any, or failing that the agent of the buyer, or (again if there is no such agent) the buyer. Thus where the agent of the seller is a professional, that agent will be liable; and a buyer who is a professional will be liable only if no professional is involved either as an agent of the seller or the buyer.

Regulation 14 imposes the requirement of compulsory collective management (an option permitted by Article 6(2) of the Directive). Thus resale right may be exercised only through an artists' collecting society (although the holder may select for those purposes any such society which manages copyright on behalf of artists).

Regulation 15 enables holders of a resale right to obtain the information necessary to enforce their rights. Information regarding a sale may be requested from any art-market professional involved in the sale; if the necessary information is not provided within 90 days of the request, an application may be made to the court. Such requests must, however, be made within three years of the sale in question.

Regulation 16 contains transitional provisions. By *regulation 16(1)*, the Regulations do not apply where the relevant contract of sale was made before the date that the Regulations come into force. But as regards contracts made subsequently, the Regulations apply notwithstanding that the work sold was made before that date. (However, by *regulation 3(1) and (2)*, resale right will exist only if the work is still in copyright.)

Regulation 16(2) to (5) provides for the case where the artist died before the Regulations come into force. In such circumstances, resale right cannot at that time have been transmitted to the artist's successors under *regulation 9*. Accordingly, *regulation 16(2)* provides a rule for determining who should then be regarded as the artist's successors for the purpose of holding resale right. Resale right is deemed to have passed with copyright in the work, if the copyright formed part of the artist's estate; or, failing that, to have passed with the work itself. If the artist owned neither the work nor the copyright in it, or if neither passed to a specific beneficiary, resale right in the work is deemed to have formed part of his residuary estate. The same rule applies where the deemed successor in turn died before the commencement of the Regulations.

Regulation 17 exercises the option under Article 8(2) of the Directive, which is available to member States such as the United Kingdom which did not have resale right at the date of entry into force of the Directive (13th October 2001). In accordance with that option, those to whom a resale right is transmitted (or deemed to be transmitted) after the death of the artist may not exercise the right until 1st January 2010.

A Regulatory Impact Assessment, and a Transposition Note setting out how these Regulations implement the Directive, have been placed in the libraries of both Houses of Parliament.

The Regulatory Impact Assessment and the Transposition Note are also available from the Patent Office, Intellectual Property and Innovation Directorate, Concept House, Newport, South Wales, NP10 8QQ (and are available electronically at www.patent.gov.uk/copy/).