

**2009 No. 2792**

**INTELLECTUAL PROPERTY**

**ARTISTS**

**The Artist's Resale Right (Amendment) Regulations 2009**

|                               |         |                          |
|-------------------------------|---------|--------------------------|
| <i>Made</i>                   | - - - - | <i>19th October 2009</i> |
| <i>Laid before Parliament</i> |         | <i>21st October 2009</i> |
| <i>Coming into force</i>      | - -     | <i>1st December 2009</i> |

The Secretary of State, being 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 works(b), in exercise of the powers conferred on him by that section, hereby makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Artist's Resale Right (Amendment) Regulations 2009 and come into force on 1st December 2009.

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

2.—(1) The Artist's Resale Right Regulations 2006(c) are amended by the substitution of "2012" for "2010" in regulation 17 and its heading.

19th October 2009

*David Lammy*  
Minister for Higher Education and Intellectual Property  
Department for Business, Innovation & Skills

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(a) 1972 c.68.  
(b) The European Communities (Designation) (No. 4) Order 2004 (S.I. 2004/1984).  
(c) S.I. 2006/346.

## 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 2 amends regulation 17 of the 2006 Regulations which exercised the option under Article 8(2) of the Directive 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.

Article 8(3) of the Directive permits a member State that has exercised the option in Article 8(2) to have up to two more years before it is required to apply the resale right for the benefit of those entitled under the artist after his or her death, if necessary to enable the economic operators in that member State to adapt gradually to the resale right system while maintaining their economic viability. Article 8(3) requires a member State exercising this further option to inform the EU Commission before 1st January 2010 and give its reasons so that the EU Commission can give an opinion, after appropriate consultations, within three months following the receipt of the information from the member State. The United Kingdom informed the EU Commission on 18th December 2008 that it intended to exercise the derogation in article 8(3) of the Directive. No opinion has been received from the EU Commission.

Regulation 2 exercises the option under article 8(3) of the Directive by amending regulation 17 of the 2006 Regulations. 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 2012.

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 the OPSI website.

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