
STATUTORY INSTRUMENTS

2006 No. 346

The Artist's Resale Right Regulations 2006

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Artist's Resale Right Regulations 2006 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to the whole of the United Kingdom.

Interpretation

2. In these Regulations—

“author”, in relation to a work, means the person who creates it;

“collecting society” has the meaning given in regulation 14(5);

“contract date”, in relation to a sale, means the time at which the contract of sale was made (and “contract of sale” has the meaning given in section 2 of the Sale of Goods Act 1979⁽¹⁾);

“copyright” has the meaning given in section 1 of the Copyright, Designs and Patents Act 1988⁽²⁾;

“EEA state” means a member State, Iceland, Liechtenstein or Norway;

“qualifying body” has the meaning given in regulation 7(4);

“qualifying individual” has the meaning given in regulation 10(3);

“resale” is to be construed in accordance with regulation 12;

“resale right” has the meaning given in regulation 3 (and, unless the context otherwise requires, includes a share in resale right);

“resale royalty” has the meaning given in regulation 3;

“sale” has the meaning given in section 2 of the Sale of Goods Act 1979;

“sale price” has the meaning given in regulation 3(4);

“trustee in bankruptcy” means, in relation to Scotland, an interim or permanent trustee appointed under the Bankruptcy (Scotland) Act 1985⁽³⁾;

“work” has the meaning given in regulation 4;

“work of joint authorship” has the meaning given in regulation 5(4).

Artist's resale right

3.—(1) The author of a work in which copyright subsists shall, in accordance with these Regulations, have a right (“resale right”) to a royalty on any sale of the work which is a resale subsequent to the first transfer of ownership by the author (“resale royalty”).

(2) Resale right in a work shall continue to subsist so long as copyright subsists in the work.

(1) 1979 c. 54.

(2) 1988 c. 48. There is an amendment to section 1 that is not relevant to these Regulations.

(3) 1985 c. 66.

(3) The royalty shall be an amount based on the sale price which is calculated in accordance with Schedule 1.

(4) The sale price is the price obtained for the sale, net of the tax payable on the sale, and converted into euro at the European Central Bank reference rate prevailing at the contract date.

(5) For the purposes of paragraph (1), “transfer of ownership by the author” includes in particular—

- (a) transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession;
- (b) disposal of the work by the author’s personal representatives for the purposes of the administration of his estate; and
- (c) disposal of the work by an official receiver (or, in Northern Ireland, the Official Receiver for Northern Ireland) or a trustee in bankruptcy, for the purposes of the realisation of the author’s estate.

Works covered

4.—(1) For the purposes of these Regulations, “work” means any work of graphic or plastic art such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware or a photograph.

(2) However, a copy of a work is not to be regarded as a work unless the copy is one of a limited number which have been made by the author or under his authority.

Joint authorship

5.—(1) In the case of a work of joint authorship, the resale right shall belong to the authors as owners in common.

- (2) The right shall be held in equal shares or in such other shares as may be agreed.
- (3) Such an agreement must be in writing signed by or on behalf of each party to the agreement.
- (4) “Work of joint authorship” means a work created by two or more authors.

Proof of authorship

6.—(1) Where a name purporting to be that of the author appeared on the work when it was made, the person whose name appeared shall, unless the contrary is proved, be presumed to be the author of the work.

(2) In the case of a work alleged to be a work of joint authorship, paragraph (1) applies in relation to each person alleged to be one of the authors.

Assignment etc.

- 7.—(1) Resale right is not assignable.
- (2) Any charge on a resale right is void.
- (3) Paragraph (1) does not prevent the transfer of a resale right which was transmitted to a qualifying body under regulation 9 (or is deemed to have been so transmitted under regulation 16), provided that the transfer is to another qualifying body.
- (4) A qualifying body is a body which—

- (a) is a charity within the meaning of section 96(1) of the Charities Act 1993⁽⁴⁾ or section 35 of the Charities Act (Northern Ireland) 1964⁽⁵⁾;
 - (b) is a Scottish charity; or
 - (c) is a foreign charity, and has its central administration in an EEA state or a country listed in Schedule 2.
- (5) In paragraph (4)—
- (a) “Scottish charity” means—
 - (i) a body entered in the Scottish Charity Register under section 3 of the Charities and Trustee Investment (Scotland) Act 2005⁽⁶⁾; or
 - (ii) a “recognised body” within the meaning of section 1(7) of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990⁽⁷⁾; and
 - (b) “foreign charity” means a body which is established outside the United Kingdom for purposes similar to those for which a body within paragraph (4)(a) or (b) may be established, and which is subject to similar rules regarding the distribution and application of its assets.

Waiver etc.

- 8.—(1) A waiver of a resale right shall have no effect.
- (2) An agreement to share or repay resale royalties shall be void.
- (3) Paragraph (2) does not affect any agreement made for the purposes of the management of resale right in accordance with regulation 14.

Persons entitled on succession

- 9.—(1) Subject to regulation 10(2), resale right in respect of a work is transmissible as personal or moveable property by testamentary disposition or in accordance with the rules of intestate succession; and it may be further so transmitted by any person into whose hands it passes.
- (2) Resale right may be so transmitted only to—
- (a) a natural person; or
 - (b) a qualifying body.
- (3) Notwithstanding paragraph (2), a resale right may be transmitted as bona vacantia.
- (4) Where a resale right is transmitted to more than one person, it shall belong to them as owners in common.

Requirements as to nationality etc.

- 10.—(1) Resale right may be exercised in respect of a sale only by a person who, at the contract date, is—
- (a) a qualifying individual; or
 - (b) a qualifying body.
- (2) Resale right may be transmitted under regulation 9 only by a person who, at the time of his death, is a qualifying individual.

(4) 1993 c. 10.

(5) 1964 c. 33.

(6) 2005 asp10; section 3 comes into force on such day as the Scottish Ministers may by order appoint.

(7) 1990 c. 40; section 1 is amended by paragraph 7(a) of Schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005, which comes into force on such day as the Scottish Ministers may by order appoint.

- (3) A qualifying individual is a natural person who is—
- (a) a national of an EEA state; or
 - (b) a national of a country listed in Schedule 2.
- (4) Nothing in this regulation prevents a resale right from being exercised after it has been transmitted as bona vacantia.
- (5) Resale right may vest by operation of law in—
- (a) a personal representative of a deceased person; or
 - (b) an official receiver (or, in Northern Ireland, the Official Receiver for Northern Ireland) or a trustee in bankruptcy,
- and nothing in this regulation prevents a resale right from being exercised by any person acting in that capacity.

Trusts

- 11.** Nothing in regulations 7, 9 or 10 prevents a resale right from being—
- (a) held, and exercised in respect of a sale, by any person acting as trustee for the person who would otherwise be entitled to exercise the right (“the beneficiary”); or
 - (b) transferred to such a trustee, or from the trustee to the beneficiary.

“Resale”

- 12.—**(1) The sale of a work may be regarded as a resale notwithstanding that the first transfer of ownership was not made for a money (or any) consideration.
- (2) The sale of a work may be regarded as a resale only if the conditions mentioned in paragraph (3) are satisfied in respect of that sale.
- (3) The conditions are that—
- (a) the buyer or the seller, or (where the sale takes place through an agent) the agent of the buyer or the seller, is acting in the course of a business of dealing in works of art; and
 - (b) the sale price is not less than 1,000 euro.
- (4) The sale of a work is not to be regarded as a resale if—
- (a) the seller previously acquired the work directly from the author less than three years before the sale; and
 - (b) the sale price does not exceed 10,000 euro.

Liability to pay resale royalty

- 13.—**(1) The following shall be jointly and severally liable to pay the resale royalty due in respect of a sale—
- (a) the seller; and
 - (b) the relevant person (within the meaning of paragraph (2)).
- (2) The relevant person is a person who satisfies the condition mentioned in regulation 12(3) (a) and who is—
- (a) the agent of the seller; or
 - (b) where there is no such agent, the agent of the buyer; or
 - (c) where there are no such agents, the buyer.

(3) Liability shall arise on the completion of the sale; however, a person who is liable may withhold payment until evidence of entitlement to be paid the royalty is produced.

(4) Any liability to pay resale royalty in respect of a resale right which belongs to two or more persons as owners in common is discharged by a payment of the total amount of royalty to one of those persons.

Collective management

14.—(1) Resale right may be exercised only through a collecting society.

(2) Where the holder of the resale right has not transferred the management of his right to a collecting society, the collecting society which manages copyright on behalf of artists shall be deemed to be mandated to manage his right.

(3) Where there is more than one such collecting society, the holder may choose which of them is so mandated.

(4) A holder to whom paragraph (2) applies has the same rights and obligations, in respect of the management of his right, as have holders who have transferred the management of their right to the collecting society concerned.

(5) For those purposes—

- (a) “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the administration of rights on behalf of more than one artist; and
- (b) the management of resale right is the collection of resale royalty on behalf of the holder of the right in return for a fixed fee or a percentage of the royalty.

Right to information

15.—(1) A holder of resale right in respect of a sale, or a person acting on his behalf, shall have the right to obtain information by making a request under this regulation.

(2) Such a request—

- (a) may be made to any person who (in relation to that sale) satisfies the condition mentioned in regulation 12(3)(a); but
- (b) must be made within three years of the sale to which it relates.

(3) The information that may be so requested is any that may be necessary in order to secure payment of the resale royalty, and in particular to ascertain—

- (a) the amount of royalty that is due; and
- (b) where the royalty is not paid by the person to whom the request is made, the name and address of any person who is liable.

(4) The person to whom the request is made shall do everything within his power to supply the information requested within 90 days of the receipt of the request.

(5) If that information is not supplied within the period mentioned in paragraph (4), the person making the request may, in accordance with rules of court, apply to the county court for an order requiring the person to whom the request is made to supply the information.

(6) In Scotland, such an application shall be by way of summary application to the sheriff, and the procedure for breach of an order shall proceed in like manner as for a contempt of court.

(7) Information obtained under this regulation shall be treated as confidential.

Transitional provisions

16.—(1) These Regulations—

- (a) do not apply to sales where the contract date preceded the commencement of the Regulations; but
 - (b) apply notwithstanding that the work sold was made before that commencement.
- (2) Where the author of a work (or a person to whom the resale right in that work is deemed to have been transmitted under this regulation) died before the commencement of these Regulations, and was at the time of his death a qualifying individual—
- (a) if he was the owner of the copyright in the work immediately before his death, and on his death a qualifying person became beneficially entitled to that copyright (or to part of it), the resale right in the work shall be deemed to have been transmitted to that person;
 - (b) if he was the owner of the work (but not the copyright in it) immediately before his death, and on his death a qualifying person became beneficially entitled to the work, the resale right shall be deemed to have been transmitted to that person;
 - (c) otherwise, the resale right shall be deemed to have been transmitted to the qualifying persons who were beneficially entitled to the residue of his personal estate.
- (3) Where the author of the work was one of a number of joint authors, the right deemed to have been transmitted by the author under this regulation is one of that number of equal shares in the resale right.
- (4) Where a resale right is deemed to have been transmitted to more than one person under paragraph (2)(a), (b) or (c), the resale right shall be deemed to have been transmitted to them in equal shares as owners in common.
- (5) In this regulation, “qualifying person” means a person to whom a resale right may be transmitted under regulation 9(2) and (3).

Sales before 1st January 2010

17. Where a resale right is transmitted under regulation 9, or deemed to have been transmitted under regulation 16, it may not be exercised in respect of any sale where the contract date precedes 1st January 2010.

Sainsbury of Turville
Parliamentary Under-Secretary of State for
Science and Innovation
Department of Trade and Industry

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