EXPLANATORY MEMORANDUM TO

THE ARTIST'S RESALE RIGHT (AMENDMENT) REGULATIONS 2011

2011 No. 2873

1. This explanatory memorandum has been prepared by the Department for Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Artist's Resale Right (Amendment) Regulations 2011 ("the 2011 Regulations") amend the Artist's Resale Right Regulations 2006 (S.I. 2006/346) ("the 2006 Regulations").The 2011 Regulations further implement Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art ("the Directive") by making two amendments. The first change will enable artist's resale right to be exercised by heirs of deceased artists irrespective of their nationality. The second change consists of introducing a definition of non EEA countries the nationals of which qualify for artist's resale right based solely on a broad criterion of reciprocity rather than a list of such countries.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Directive was implemented in the United Kingdom in 2006 by the Artist's Resale Right Regulations 2006 ("2006 Regulations"), which introduced artist's resale right in the UK. This provides for the payment of a royalty to the artist on the resale of their work through an art market professional. This right lasts for as long as the copyright in the works subsists, which is normally 70 years after the death of the artist, and it may accordingly be inherited by the artist's heirs.

4.2 Article 7.1 provides that the artist's resale right is payable on sales of works by citizens of an EU member state. In addition, resale right is payable on the sale of works of other nationalities if their country applies artist's resale right to the sale of works by EU artists. So the system is based on reciprocity. Article 7.2 provides for the European Commission to publish an indicative list of those third countries which fulfil the reciprocity requirement. No list has been published.

4.3 Schedule 2 of the 2006 Regulations includes a list of "third countries" which at that time it was thought met the relevant criteria and applied the right. Regulation 10 provides that in order to qualify for the royalty payments the heir(s) themselves must be

nationals of an EEA country or one of the countries included in the list of third countries of Schedule 2.

4.4 The Directive has been extended to cover the European Economic Area by decision 171/2002 of the EEA Joint Committee of 6th December 2002

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The 2006 Regulations are simplified in two ways:

(i) to revoke the qualifying third countries list of Schedule 2 and to replace it by general wording that reflects the criteria of reciprocity provided by the Directive; and

(ii) to remove the requirement that an heir of an artist must be a national of an EEA country or one of the countries included in the list referred to above. From January 2012 artist's resale right will be extended to the sales of works of deceased artists. The right will pass on to the heirs of those artists and their successors . The 2006 Regulations as originally enacted would see resale right being payable only to heirs who also meet the additional criteria of citizenship – that is they themselves are citizens of an EEA state or citizens of a country which provides for this right to be paid to EEA citizens.

7.2 These changes will make the 2006 Regulations fully compliant with the EU law.

7.3 The detailed changes made by the 2011 Regulations to the 2006 Regulations are as follows:

(i) Regulation 3 deletes the definition of "qualifying individual" in Regulation 2 of the 2006 Regulations. This change is consequential on the amendments made to regulation 10 of the original Regulations which remove the nationality requirement for heirs.

(ii) Regulation 4 amends regulation 7 of the 2006 Regulations. It changes the definition of "foreign charity" to remove nationality requirements consistent with the amendments relating to heirs.

(iii) Regulation 5 recasts regulation 9 of the 2006 Regulations incorporating in that regulation material that was formerly in regulation 10 of the 2006 Regulations.

(iv) Regulation 6 recasts regulation 10 of the 2006 Regulations to provide that nationality requirements only apply in respect of the author of the work.

(v) Regulation 7 amends regulation 16 of the 2006 Regulations in consequence of amendments removing nationality requirements for heirs and the recasting of regulation 9 of the 2006 Regulations.

(vi) Regulation 8 removes regulation 17 of the 2006 Regulations and replaces it with a new regulation 17 which imposes requirements to review the 2006 Regulations. The former regulation 17 provided that artist's resale right was not exercisable in respect of the sale of works of deceased artists occurred before 1st January 2012. This is being removed as it will become spent on 1st January 2012. By virtue of sections 16 and 23 of the Interpretation Act 1978 this revocation will not affect the position that artist's resale right is not payable in respect of the sale of the work of deceased artists before 1st January 2012.

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

- Consolidation

7.4 There are no plans to consolidate the Regulations.

8. Consultation outcome

8.1 A consultation was not carried out because these Regulations follow the UK's obligations to comply with the EU acquis.

9. Guidance

9.1 The Intellectual Property Office has guidance on artist's resale right on its website. This will be updated to take account of the amendments made by the 2011 Regulations.

10. Impact

10.1 The impact on business is a simplification of the administration of resale right payments, with benefits as outlined in the attached impact assessments. There is no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 Impact Assessments are attached to this memorandum and will be published alongside the Explanatory Memorandum on the www.legislation.gov.uk website.
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11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The Regulations insert into the 2006 Regulations a provision requiring the Secretary of State to review the 2006 Regulations (including the amendments by these Regulations (and publish a report before the end of the period of five years beginning with 1st January 2012 .

13. Contact

Matt Cope at the Department for Business Innovations and Skills Tel: 01633 814274 or email: matthew.cope@ipo.gov.uk can answer any queries regarding the instrument.

Transposition Table

This Transpostion note, in tabular form, explains the elements of the Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art which are being re-implemented by the Regulations.

The table seeks to explain how these elements are being transposed in relation to the United Kingdom.

Directive Article	Objective listed	Implementation
6	Entitlement to resale right	Regulation 9 of the 2006 Regulations as inserted by regulation 5 of the 2011 Regulations and regulations 10 of the 2006 Regulations as inserted by regulation 6 of the 2011 Regulations
7	Third country nationals entitled to receive resale right	Regulation 10 of the 2006 Regulations as inserted by regulation 6 of the 2011 Regulations