

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Child Support etc.

Miscellaneous

Section 38: Recovery of arrears from deceased's estate

357. *Section 38* inserts a new *section 43A* into the Child Support Act 1991, which gives the Secretary of State power to make regulations to enable arrears of child support maintenance to be recovered from the estate of a deceased non-resident parent.
358. *Subsection (2)* of new *section 43A* sets out that regulations made under *subsection (1)* may provide for:
- the arrears to be paid by the executor or administrator of a deceased non-resident parent out of the non-resident parent's estate, to the Commission;
 - how the amount of the arrears to be paid out of the estate is determined; and
 - the procedure by which claims for arrears against the deceased non-resident parent's estate are made.
359. *Subsection (3)* states that regulations may also provide for the executor or administrator to institute, continue or withdraw any proceedings. The regulations could, for example, enable the personal representative to exercise a right of appeal that the deceased might have had.
360. This change will enable the recovery of arrears of child support maintenance from the estate of a deceased non-resident parent where it is appropriate to do so. It is intended that arrears of child support maintenance will be treated in the same way as civil debt, and will be paid before the estate is distributed to the beneficiaries. Personal representatives will be required to deduct the arrears from the assets of the deceased. They will also have rights to appeal and dispute the arrears demand. Regulations will also make provision for the procedure to be followed in determining the amount of any arrears and for resolving any dispute that arises in relation to a claim against a deceased non-resident parent's estate.