

**POLICY AND REGULATORY STEWARDSHIP**

**Tax policy report:** **Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance: Amendment to declaration**

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<b>Date:</b>	21 April 2021	<b>Priority:</b>	High
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2021/186

**Action sought**

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Agree</b> to recommendations	5 May 2021

**Contact for telephone discussion (if required)**

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>
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Emma Hamilton	Senior Policy Advisor	

21 April 2021

Minister of Revenue

## **Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance: Amendment to declaration**

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### **Purpose**

1. This report seeks your agreement to amend one of New Zealand's declarations in relation to the Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance (the Convention). The declaration, which provides for an alternative process to be followed when an application is received, is no longer required. It has been identified that the standard process is preferable.

### **Background**

#### ***The Convention***

2. The Convention is a multilateral treaty that provides for the recovery of child support and other forms of maintenance (such as spousal support) when the liable person resides in a different country to where the maintenance payment was raised.
3. New Zealand is currently in the process of taking the necessary steps to ratify the Convention and bring it into force. The Social Services and Community Committee completed the International Treaty Examination in March 2020 and reported back to the House recommending ratification.
4. An Order in Council is needed to recognise and give effect to the Convention under New Zealand law and once this has been completed New Zealand will be in a position to ratify the Convention.

#### ***Reservations and declarations***

5. Any permitted reservations or declarations under the Convention must be made at the time of ratification. New Zealand's proposed reservations and declarations were attached to the extended National Interest Analysis approved by Cabinet [CAB-19 MIN-0447] and were included as part of the International Treaty Examination process.
6. Article 23 of the Convention details the standard process that needs to be followed for recognition and enforcement when an application made under the Convention is received. Article 24 details an alternative procedure that may be followed. A State must make a declaration if they intend to use the alternative procedure set out in Article 24. One of New Zealand's proposed declarations was to follow the Article 24 process, rather than the standard Article 23 process.
7. As part of more detailed work completed in preparation for implementation, it has been identified that the standard Article 23 process would be preferable to the alternative Article 24 process. This is because it would enable Inland Revenue to process applications more expeditiously and aligns with how it already processes other domestic and international applications.

8. The primary difference between the processes detailed in Article 23 and 24 is the order in which actions take place. Under the standard Article 23 process shown in figure 1, the decision is made and becomes enforceable before any challenge can be made. In contrast, under the alternative Article 24 process shown in figure 2, the recognition and enforcement of the decision only occurs after the applicant and respondent have been given an opportunity to make a submission.

Figure 1 – Article 23 process for recognition and enforcement

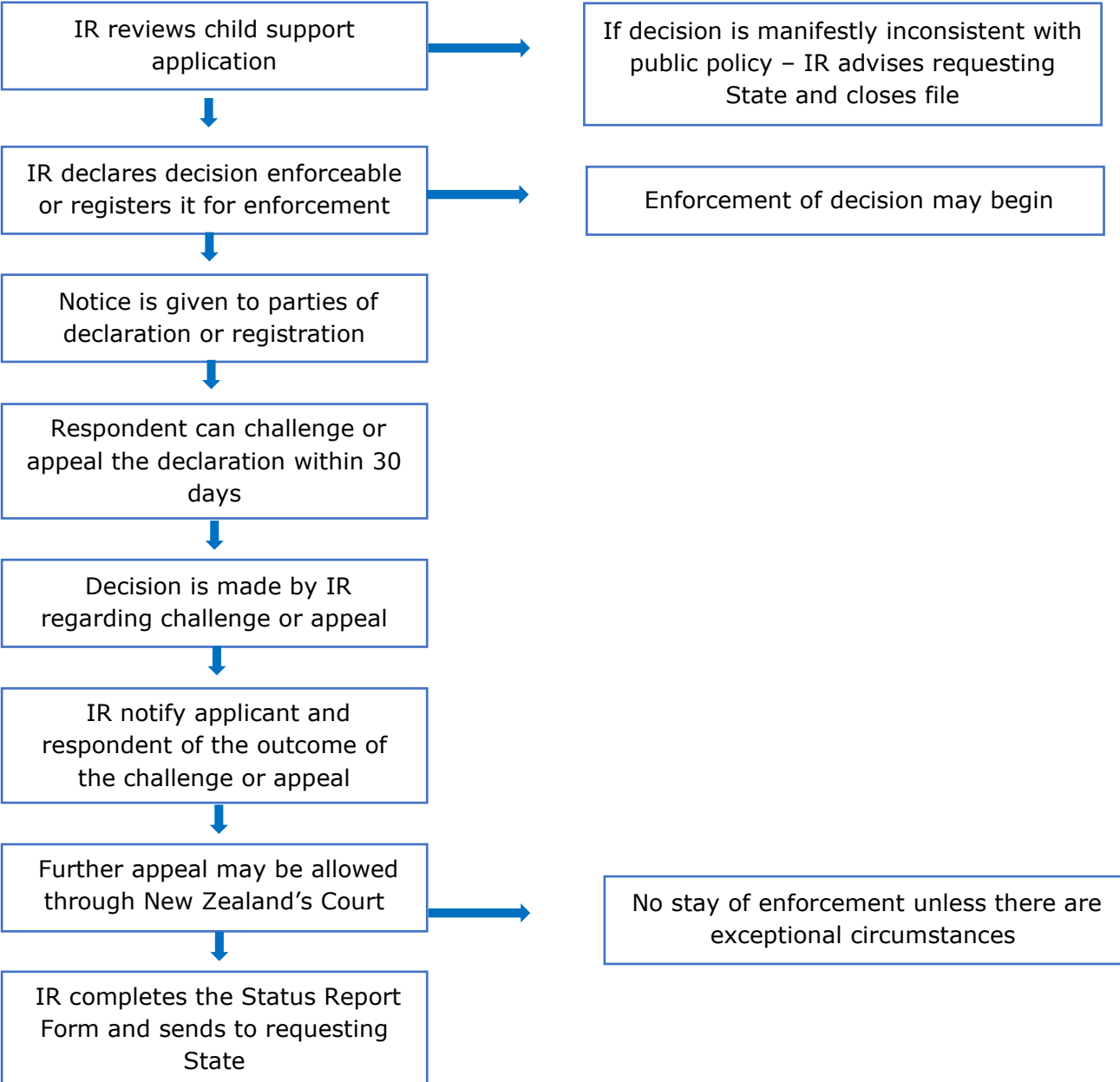
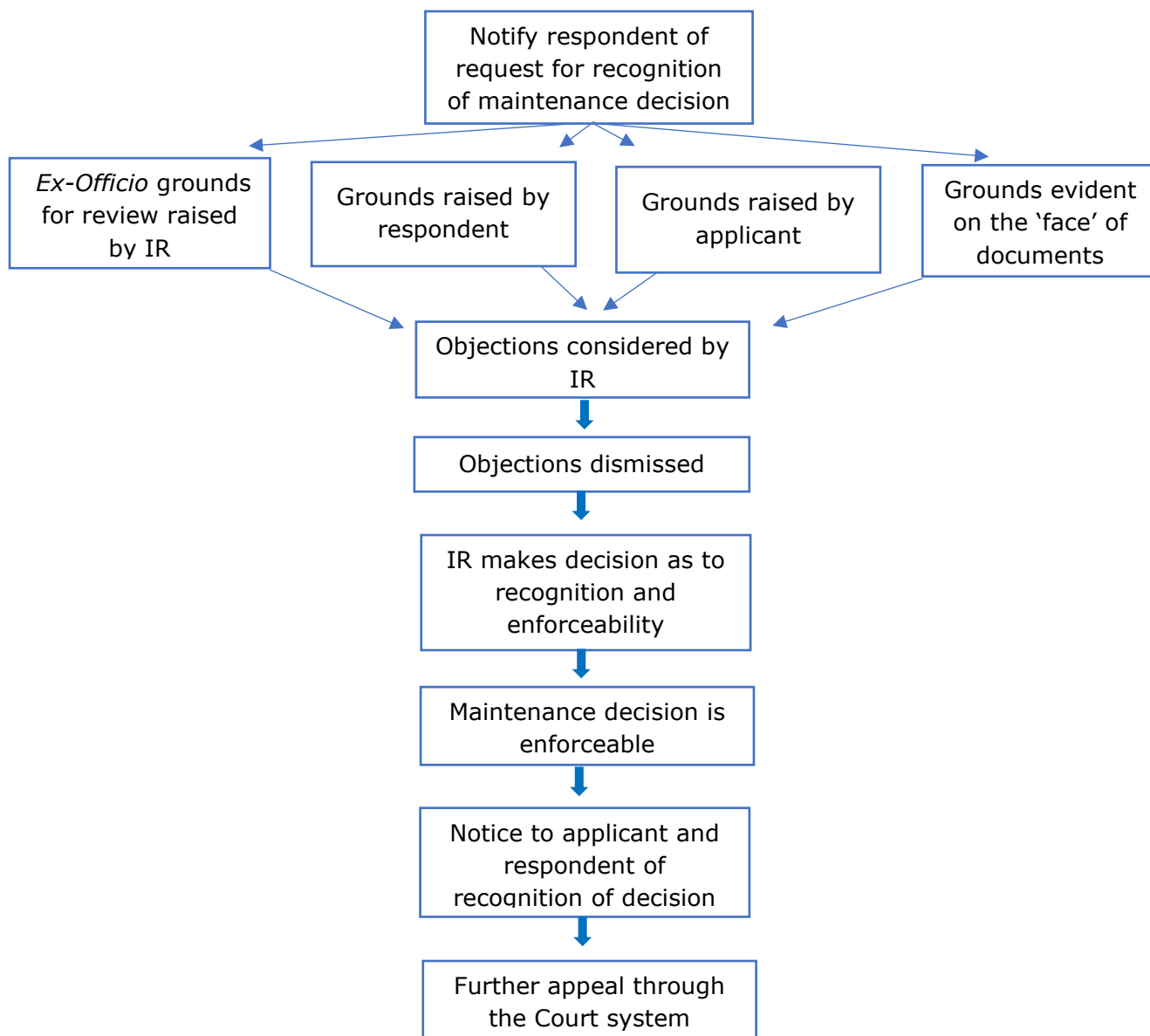


Figure 2 – Article 24 process for recognition and enforcement



9. The standard Article 23 process would be preferable to the Article 24 process because it would allow Inland Revenue to register cases and commence collection more quickly. This should result in faster transfer of payments to receiving carers.

### Authority to amend declaration

10. Cabinet delegated authority to the Minister of Revenue to make adjustments to the reservations and declarations that were needed in advance of ratification, if those changes were the result of changes in other jurisdictions' position.
11. However, since the change proposed is in New Zealand's position, rather than an overseas jurisdiction's position, it is not clear that the delegated authority would apply in this case.
12. Inland Revenue has consulted with the Ministry of Foreign Affairs and Trade (MFAT) on the appropriate process to follow to amend the declaration. MFAT advised that the authority to amend the reservations and declarations is not clear in this situation. They consider that because the change is minor, a full Cabinet paper is

not required. Instead, they recommend the change be taken to Cabinet as an oral item.

13. Alternatively, removing the declaration could be included in the LEG paper accompanying the Order in Council which will give effect to the Convention under New Zealand law. This is officials' preferred option as it would clearly record the change and therefore be more transparent.
14. MFAT also recommend a letter be sent to the Social Service and Community Committee to explain the proposed change, as they were the Committee who completed the International Treaty Examination. A draft letter is attached to this report.

### **Customer implications**

15. The proposal would significantly reduce the timeframe for registering Convention cases. The Article 23 process allows for collection to commence immediately instead of allowing up to 60 days for a challenge to be received and any additional time required to make a decision on that challenge. This means that Inland Revenue should be able to pass maintenance on to receiving carers in a more timely manner. It is expected that only a small proportion of registrations will be challenged, so it is not practical to delay all cases.

### **Administrative implications**

16. Following the standard Article 23 process would be administratively simpler for Inland Revenue. This is because it aligns with current practice for processing existing domestic and international applications and can be incorporated into current systems relatively simply. Following the Article 24 process would require development of new systems and processes which involves additional resources to create and implement.

### **Costs**

17. There would be no additional costs associated with the proposal. Implementation and administration costs would continue to be met within existing baselines.
18. There are no fiscal costs associated with ratifying the Convention and bringing it into force in New Zealand.

### **Consultation**

19. Officials have consulted the Ministry of Foreign Affairs and Trade about this proposal.
20. Treasury has been informed about this report.
21. The Ministry of Justice has also been informed about this proposal.

### **Next steps**

22. If you prefer to take an oral item to Cabinet, officials will prepare speaking notes.
23. If you prefer that the item be specifically included in the Cabinet Legislation Committee paper accompanying the Order in Council, officials will include this as a recommendation.

24. Following the Order in Council being made, New Zealand's instrument of ratification and list of confirmed reservations and declarations will be deposited with the Convention depositary. This is required to be completed at least three months before the Convention comes into force in New Zealand and is expected to be completed by July 2021, to align with the move of child support to Inland Revenue's new technology system, START.


### **Recommended action**

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We recommend that you:

25. **agree** to removing the declaration under Article 24 of the Convention by either
- 25.1 taking an oral item to Cabinet, or  
Agreed/Not agreed
  - 25.2 including the removal in the Cabinet Legislation Committee paper [officials' preferred option]  
Agreed/Not agreed
26. **agree** that you send a letter to the Social Services and Community Committee explaining the proposal  
Agreed/Not agreed

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**Carolyn Elliott**

Policy Lead

Policy and Regulatory Stewardship

**Hon David Parker**

Minister of Revenue

/ 05 /2021

**Hon David Parker** BCom, LLB

Attorney-General

Minister for the Environment

Minister for Oceans and Fisheries

Minister of Revenue

Associate Minister of Finance



Angie Warren-Clark  
Chair of the Social Services and Community Committee  
Parliament Buildings  
Wellington

Dear Ms Warren-Clark

**Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance: Amendment to declaration**

The Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance (“the Convention”) is a multilateral treaty that provides for the recovery of child support and other forms of maintenance when the liable person resides in a different country to where the maintenance payment was raised. New Zealand is currently in the process of taking the necessary steps to ratify the Convention and bring it into force.

As part of the ratification process, the reservations and declarations pertaining to the Convention are approved by Cabinet. One of New Zealand’s declarations provides for an alternative process to be followed when an application is received by Inland Revenue. Officials have reported to me that this declaration is no longer required. It has been identified that the standard process would be preferable. This is because it would enable Inland Revenue to process applications more efficiently and aligns with how it already processes other domestic and international applications.

The Social Services and Community Committee completed the Parliamentary treaty examination process on 24 March 2020 and reported back to the House recommending ratification. Therefore, I am writing to you to inform you of the proposed change to the declaration.

I intend to include this change in the Cabinet Legislation Committee paper accompanying the Order in Council that is required to recognise and give effect to the Convention under New Zealand law. Once the Order in Council has been completed New Zealand will be in a position to ratify the Convention. The Convention is expected to enter into force later this year.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Parker'.

Hon David Parker  
**Minister of Revenue**