

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

CHILD SUPPORT (RECIPROCAL AGREEMENT WITH HAGUE CONVENTION COUNTRIES) ORDER 2021

Purpose

1. This paper proposes that Cabinet agree to the submission of the accompanying Order in Council to ratify and bring into force, the Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance (the Convention) 2021, to the Executive Council.
2. This will give effect to policy decisions made by Cabinet on 2 September 2019 [CAB-19-MIN-0447 refers] when it approved the signing and ratification of the Convention and the ensuing steps for entry into force.
3. Once made, the Order will recognise and give effect to the Convention under New Zealand law. The Order will modify the application of the Child Support Act 1991 for cases administered under the Convention to ensure reciprocity in respect of matters relating to child support and domestic maintenance.
4. The finalised list of declarations and reservations will need to be deposited alongside New Zealand's instrument of ratification. It should be noted that one of New Zealand's original declarations, regarding the procedure used on receipt of applications, is no longer required and that the standard process is preferable. It is proposed that Cabinet agree that New Zealand no longer makes a declaration to Article 24 of the Convention.

Background

5. 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. It:
 - 5.1. enables the recognition and collection of both administrative and court-ordered maintenance between member countries;
 - 5.2. includes rules on judicial and administrative co-operation that should improve New Zealand's ability to assess and collect child support when liable parents are residing in member countries; and
 - 5.3. enables Inland Revenue to assess child support for New Zealand children whose liable parent is not a New Zealand citizen or resident and who lives in a member country.

6. As at 30 April 2019, there were approximately 16,720 parents with New Zealand-assessed child support liabilities who live overseas, with the majority of them residing in Australia (about 12,500). Inland Revenue is currently reliant on voluntary compliance in collecting child support from parents living overseas outside of Australia (those in Australia are covered by an existing bilateral agreement) and voluntary compliance is very low. The Convention can be implemented with minimal administrative cost to Inland Revenue and should facilitate the recovery outstanding child support payments from liable parents living outside of Australia.

Benefits of ratifying the Convention

7. The main benefit of ratifying the Convention is the ability to refer assessments administered under the Child Support Act 1991 (and other forms of maintenance, such as spousal support) to other member countries for collection. This is a key advantage over other maintenance arrangements, which only allow for the collection of court-ordered maintenance.
8. The Convention will also enable Inland Revenue to carry out a formula assessment of child support for New Zealand children whose liable parent is not a New Zealand citizen or resident, so that more children receive the appropriate support. By doing this under the Convention, Inland Revenue could progress these cases outside of the court system via its more efficient administrative assessment processes.

Previous consideration

9. As noted, Cabinet approved the signing of the Convention in September 2019. In particular, Cabinet:
 - noted that the Convention will be incorporated into New Zealand domestic law through an Order in Council made pursuant to section 215 of the Child Support Act 1991;
 - invited the Minister of Revenue, following signature and completion of the Parliamentary treaty examination process, to instruct the Parliamentary Counsel Office to draft an Order in Council to give effect to the Convention;
 - authorised officials, following promulgation of the Order in Council, to bring the Convention into force by depositing New Zealand's instrument of ratification and list of confirmed declarations and reservations with the Convention depositary.

Entry into force of the Hague Convention

10. The Convention was signed by New Zealand on 26 November 2019. It has undergone Parliamentary treaty examination, with the Social Services and Community Committee who recommended ratification on 24 March 2020. The remaining steps are to:
 - 10.1. make an Order in Council recognising and giving effect to the Convention under New Zealand law; and

- 10.2. to deposit New Zealand's instrument of ratification, and statement of declarations and reservations, with the official Depository.
11. The original intent was for the Convention to enter into force in New Zealand at the same time child support transfers into Inland Revenue's new system as part of Business Transformation. This was expected to be in April 2021.
12. However, due to the impacts of COVID-19, it has been confirmed that the transfer of child support to Inland Revenue's new systems will be in October 2021. Therefore, the former Minister of Revenue agreed to align the date for the Convention to enter into force with Business Transformation.
13. I consider that the Order should take effect from 1 November 2021.

Reservations and Declarations

14. 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 refers] and were included as part of the Parliamentary Treaty Examination process.
15. Officials originally considered that New Zealand should make a declaration that New Zealand will use the Article 24 procedure rather than the Article 23 procedure on receipt of applications for recognition and enforcement. This is reflected in the reservations and declarations, as considered by Cabinet and the Parliamentary Treaty Examination process.
16. However, 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. Cabinet's approval is required to confirm that New Zealand no longer makes a declaration to Article 24 of the Convention.

Tokelau

17. Treaty-making with respect to Tokelau is carried out by the New Zealand Government, in consultation with the Government of Tokelau. In accordance with the Ministry of Foreign Affairs and Trade's recommendations, New Zealand is consulting with Tokelau on whether the Convention should also extend to Tokelau.

Timing and 28-day rule

18. The 28-day rule requires that regulations be notified in the *New Zealand Gazette* 28 days prior to their coming into effect. No waiver of the 28-day rule is proposed.

Regulatory Impact Analysis

19. A regulatory impact statement is not required for the order. The Child Support (Reciprocal Agreement with Hague Convention Countries) Order 2021 implements an international treaty for which an extended National Interest Analysis (incorporating the requisite regulatory impact analysis elements) has previously been approved by Cabinet.

Publicity

20. The new order will be notified in the *New Zealand Gazette*. I will arrange the appropriate additional publicity to announce the entry into force of the Order. The text of the Convention and the NIA are available to the public on Inland Revenue's Tax Policy website. The Social Services and Community Committee's report following Parliamentary treaty examination is available to the public on Parliaments website.

Proactive Release

21. I propose to proactively release this Cabinet paper, associated minutes, and key advice papers within 30 working days of Cabinet making final decisions, subject to minor redactions under the Official Information Act 1982.

Consultation

22. The Parliamentary Counsel Office drafted the Order in Council and have been provided with this paper. The Ministry of Foreign Affairs and Trade and the Treasury were consulted in the consideration of the Convention. The Ministry of Foreign Affairs and Trade have also been consulted on this paper.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that following previous consideration of and approval by Cabinet (CAB-19-MIN-0447), the *Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance* (the Convention) was signed by New Zealand on 26 November 2019.
2. **note** that the *Child Support (Reciprocal Agreement with Hague Convention Countries) Order 2021* will recognise and give effect to the Convention under New Zealand law.
3. **authorise** the submission to the Executive Council of the attached *Child Support (Reciprocal Agreement with Hague Convention Countries) Order 2021*.
4. **note** the Convention will enter into force for New Zealand on the first day of the month following the expiration of three months after New Zealand has deposited its instrument of ratification.
5. **note** the Convention will enter into force for New Zealand from 1 November 2021.

6. **note** this date aligns with the transfer of child support to Inland Revenue's new systems.
7. **agree** New Zealand no longer makes a declaration to Article 24 of the Convention.

Authorised for lodgement

Hon David Parker
Minister of Revenue