

Regulatory Impact Statement

Customs and Excise Act Review: Minor Legislative Changes – Business Records and Customs Areas

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the New Zealand Customs Service (Customs).

It provides an analysis of options to address a problem identified in relation to business records and Customs areas as part of the Customs and Excise Act 1996 review. The following are constraints on the analysis:

Business Records

- The scope of potential reform is limited to the Customs and Excise Act 1996. Harmonisation with the Tax Administration Act 1994 regarding implementation is discussed below, however any change to the TAA is beyond the scope of this RIS.
- We do not know what percentage of businesses currently use cloud computing technology and how many more businesses might take up this option if the legislative barrier identified in this RIS is removed. It is therefore difficult to quantify the likely outcomes of maintaining the status quo and the cost savings for businesses that are likely to result from the proposed changes.

Customs Areas

- The magnitude of the problem with the fit and proper person requirement for Customs Controlled Areas (CCAs) is considered to be minor. The analysis is constrained because the magnitude of the problem and its impact was difficult to quantify.

Signed by Michael Papesch on 14 September 2015

Michael Papesch
Group Manager Policy, Legal and Governance

14 September 2015

Crown Copyright © 2015



This work is licensed under the Creative Commons Attribution 4.0 New Zealand licence. In essence, you are free to share, copy and redistribute the material for non-commercial use as long as you do not change it in any way and attribute the work to the Crown and abide by the other licence terms. To view a copy of this licence, visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>.

Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way that infringes any provision of the Flags, Emblems, and Names Protection Act 1981 (www.legislation.govt.nz/act/public/1981/0047/latest/whole.html#DLM51358). Attribution to the Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

Executive summary

1. This Regulatory Impact Statement (RIS) is one of a suite of RISs that assesses options as part of the review of the Customs and Excise Act 1996 (the Act). The regulatory impact analysis in this paper has contributed to, and informed, the advice provided to Cabinet on proposals relating to business records and Customs areas.

Business Records

2. Currently businesses are required to store business records of interest to Customs physically in New Zealand. In line with modern business practice, it is proposed that the Act enable business records to be stored offshore and in the 'cloud'. This will ensure that businesses have modern and cost-effective ways of storing business records, while allowing Customs easy access to records to undertake its audit and investigation functions. Scope exists for Customs to collaborate with Inland Revenue in approving offshore and cloud storage. Businesses have been overwhelmingly supportive of this proposal.

Customs Areas

3. A number of issues relating to Customs areas were reviewed. By and large, the system is working well, except for the absence of a fit and proper person requirement for Customs Controlled Area licensees. The scope of this RIS on Customs areas is limited to the problem relating to the fit and proper person requirement.
4. Currently, the Act provides for the suspension or revocation of a Customs Controlled Area licence if the chief executive of Customs considers that the licensee is no longer fit and proper to hold a licence. The Act does not explicitly require a Customs Controlled Area licence applicant to declare that he or she is a fit and proper person, nor does it offer a definition of who is considered to be a fit and proper person. This lack of clarity creates uncertainty for Customs in terms of assuring that the goods subject to Customs control are under the charge of fit and proper licensees. The proposals to clarify this requirement and to introduce a statutory declaration as part of the licensing application process will help strengthen assurance over Customs Controlled Areas.

1 Business Records

Status quo and problem definition

5. New Zealand's commercial environment is characterised by businesses and individuals employing new technologies to streamline and extend commercial activities. The Act requires traders within New Zealand to retain copies of business records relating to import and export processes. Regulations are used to specify which records are required to be held. The Act contains a sanctions regime for dealing with non-compliance related to the holding of records, as well as the failure to disclose information to Customs upon request.
6. This requirement for records to be kept in New Zealand under the current legislation is increasingly out of step with contemporary business practices. An increasing number of businesses actively take advantage advances in technology such as the use of 'cloud computing' for the storage of commercial data in remote servers. The lack of flexibility that exists in the current Act provides a basis for Customs to investigate a new approach to the regulatory framework for managing business records. An opportunity exists for leveraging the approvals process used by Inland Revenue to approve traders to store records of interest to Customs offshore or in the cloud.

Size of the Problem

7. 'Cloud computing' is reshaping the way computing is undertaken. Cloud computing provides traders and individuals with new, flexible, and efficient options for the management of commercial data including business records.
8. Users of cloud computing infrastructure and services do not have to make upfront, capital-intensive investments in Information Technology (IT) infrastructure and software any more but, instead, can pay for computing resources in a pay-as-you go model. According to the OECD, cloud computing holds significant benefits for small and medium enterprises (SMEs), including start-ups, as it allows immediate, on-demand access to information technology resources without the need for capital expenses in hardware and software and thus significantly decreases entry barriers.
9. Quantifying the likely outcomes of a continuation of the status quo is a complex undertaking in the context of a fast moving technological climate. It is, however, reasonable to expect that the current approach to business records – requiring records to be kept in New Zealand – will increasingly represent an imposition to the considerable number of New Zealand companies and individuals exporting and importing goods.
10. Inland Revenue has recognised that flexibility for traders relating to the storage of business records represents a future oriented approach and has implemented a business records approach which allows the Commissioner to approve traders and third party data providers to store tax records overseas and in the cloud. The

Inland Revenue approach has informed the formulation of the' proposals detailed within this Regulatory Impact Statement.

11. The status quo provides assurance that business records may be effectively managed and audited by Customs in line with operational requirements as necessary. It is clear, however, that the maintenance of the status quo will create practical difficulties for businesses. Maintenance of the status quo will also see Customs out of step with innovation within the public sector, such as the approach taken by Inland Revenue. It is important that business customers find government services easy to navigate and logically aligned.

Distinguishing between causes and symptoms of the problem

12. The overall policy objective has not changed – Customs requires access to business records. The root cause of the problem relates to the current design of the regulatory framework. Because the Act is prescriptive rather than principles based it specifies specific means for achieving the policy objective. The means for storing business records in New Zealand was stipulated at a time when paper based record keeping or local computerised storage characterised record keeping for New Zealand traders. Thus the requirement for the keeping of records in New Zealand was based on Customs' need to inspect paper records in a timely manner. The rigidity of the current requirements comes about as an unintended consequence of the development of the current regime in a highly different technological environment to that of the present. The status quo represents a framework for risk management that suited a particular context that has now shifted.
13. While the status quo does continue to fulfil Customs' requirements it is necessary to develop changes that will enable Customs to access information required for auditing processes while allowing traders to utilise technological solutions for record keeping that provide high levels of flexibility.
14. The problem presented by the current structure of the Customs and Excise Act's provisions is that the requirement for records to be kept in New Zealand is increasingly out of step with contemporary business practices that are underpinned by advances in technology such as the use of 'cloud computing' for the storage of commercial data in remote servers. The lack of flexibility that exists in the current Act provides a basis for Customs to investigate a new approach to the regulatory framework for managing business records.

Objective

15. The objective is to enable businesses to take advantage of modern and cost effective methods of storing business records, while balancing the ability for Customs to access records to conduct revenue assurance functions for the Crown.

Options and impact analysis

16. This section sets out three options relating to the storage of business records.

Option one: status quo

17. Retaining the status quo would require businesses to continue storing their business records in New Zealand. This would allow Customs to maintain confidence that we have access to records when required at all times, but constrain business from taking advantage of the opportunities that technological advances provide. This approach would be misaligned with Inland Revenue.

Option two: allow all businesses to store their business records offshore.

18. This option would allow all business to store their business records offshore if they decided to. This would enable businesses to take advantage of the opportunities provided by cloud storage and other technologies. However, there would be a risk that Customs would be unable to verify business records to safeguard Crown revenue.
19. If records are stored offshore they are effectively outside of the jurisdictional reach of the Customs and Excise Act. This means that if a person who is obligated to keep records stores them offshore and declines to give Customs access to them, Customs has fewer options available to gain access to the information. This means Customs cannot provide the same level of assurance to the government and the public that the right revenue is being collected and from the right businesses.

Option three: allow people, businesses and other persons on their behalf (eg data storage providers) to store business records offshore with the prior approval of Customs (preferred option)

20. This option is preferred. This option would allow people and businesses, and data storage providers on their behalf, to store their records offshore, but only if they have obtained the prior approval of Customs. This would allow flexibility for trusted people and businesses to take advantage of the opportunities offered by evolving technology.
21. This option would align the Act with the Tax Administration Act and provide possibilities for Customs and Inland Revenue to jointly provide a better customer experience for businesses trading in New Zealand.
22. The ability for data storage providers to successfully apply for authorisation to store clients' business records outside New Zealand will lessen compliance costs for people whose records are being stored. This is because the data storage providers can apply for authorisation to store records on behalf of multiple clients. This will result in administrative efficiencies for Customs, by replacing potentially multiple individual applications with one application by a data storage provider.
23. Where there are concerns about the reliability of a particular business they may be required to keep their records in New Zealand where Customs will have guaranteed access to them.

Conditions

24. Permission to store records overseas would be subject to an undertaking that the records would be provided to Customs on request. In addition, and similarly to the Tax Administration Act, records must also be:
 - in a form approved by the Chief Executive of Customs
 - accessible by the Chief Executive of Customs in a way approved by the Chief Executive of Customs, at no extra cost to Customs.
25. We recommend the Chief Executive of Customs also has the ability to impose additional conditions that are considered necessary and reasonable in the circumstances of the case. This will align with the Tax Administration Act.¹ As an example, to ensure access to information is not compromised when the relationship between a data storage provider and business ends, a reasonable condition could be that at the end of the service agreement, the storage provider will return the data to the business in a format that is meaningful to the business or can be readily exported into a meaningful format that the business can understand.

Enforcement

26. It is already an offence under the Act for a person not to make records available to Customs on request.² We envisage that this offence would also apply to a person that fails to provide access to records stored offshore. Section 205(3) will need to be amended so that it is clear that failing to operate any mechanical or electronic device that provides access to records is an offence.
27. We also propose that the Chief Executive of Customs should have the power to revoke an authorisation that has been given to allow storage of records outside New Zealand. This aligns with the Tax Administration Act.
28. An example of when authorisation may be revoked is when the conditions of offshore storage are not met, such as providing Customs access to records. The ability to revoke an authorisation will give Customs a range of options to respond to situations where access to records is not facilitated. This will help to address the risks associated with offshore storage.
29. The options described above are analysed against relevant criteria in the following table and a recommendation is made regarding a preferred option.
30. Ticks and crosses are used to indicate how well the projected outcomes of the alternative option meet the criteria, compared to the projected outcomes of maintaining the status quo. The analysis in the table below demonstrates that the alternative option three is our preferred option.

¹ Section 22(9) of the Tax Administration Act 1994

² Section 205 of the Customs and Excise Act 1996.

Restricted–Unclassified

✓	Projected outcome partially meets the criteria
✓ ✓	Projected outcome meets the criteria
✗	Projected outcome fails to meet the criteria in some aspects
✗ ✗	Projected outcomes fails to meet the criteria in all aspects

Analysis of projected outcomes against the criteria

Criteria	Option one: status quo	Option two: all businesses can store records offshore	Option three: businesses and others on their behalf can store records offshore with prior approval
Costs	✗ Does not support modern business operating models and restricts the uptake of new technology. This creates additional costs for businesses trading in New Zealand. Minimises costs for Customs.	✗ Introduces significant costs for Customs in terms of managing and auditing information stored offshore. However, potentially allows businesses to use more cost-effective methods or storage.	✓ Allows Customs to manage approval of offshore records. Allows approved businesses and data storage providers to manage the costs of storing records in a way that suits their operating model. Involves ongoing implementation costs - authorising people and businesses to store records offshore.
Future flexibility	✗✗ Restricts the ability of businesses to use technology such as cloud storage to better meet their changing operating environments.	✗ Does not restrict the ability of businesses to use technology such as cloud storage, but does not allow Customs to meet changing risks.	✓✓ Allows trusted businesses and their representatives to use technology such as cloud storage to better meet their changing operating environments, and allows Customs to meet changing risks.
Manages risk	✓✓ Allows Customs to effectively manage information and auditing practices as we have access to appropriate records and systems in order to adequately audit and risk manage business records.	✗✗ Does not allow Customs to effectively manage information and auditing practices as there would be limited access to the information we need to perform audits and risk management.	✓ Allows Customs to effectively manage information and auditing practices as we can allow trusted businesses and their representatives to store their records offshore but can still perform audits and risk management. There may be risks with some businesses due the inability of Customs to access the companies' systems. However, this would be a consideration in granting authorisation and there would be a power to revoke authorisation.
Practicality of implementation	✗ No issues for Customs in terms of implementation because the storage of records in New Zealand meets information management needs. However, this option creates practical difficulties for businesses and misalignment with Inland Revenue.	✗✗ Creates issues for Customs in terms of implementing because it is not practical for us to examine records held overseas or to rely on the voluntary compliance of all businesses to provide relevant access to these records. Also misaligns with Inland Revenue.	✓ Customs has the ability to approve businesses that we trust to provide relevant access to these records. This should mitigate any implementation concerns. We can also rely on implementation insights from the Inland Revenue experience.
Conclusion	Does not meet the criteria but allows Customs to maintain an effective management of information in New Zealand. However, restricts businesses from changing the storage of their business records to meet changes in their operating models. This is	Does not meet the criteria and creates significant issues for Customs in terms of our access to relevant information. There are benefits to businesses that have additional flexibility to manage their records. However these benefits are outweighed by the lack of risk	Alleviates the compliance burden for trusted businesses that can seek approval to store business records offshore, while maintaining Customs' ability to risk assess and effectively audit these records. Some businesses will still be restricted from alternative methods of

	especially evident as technology evolves and more businesses look to new ways of operating.	management and effective auditing that can be conducted on these records.	storing records. However we consider this is necessary to maintain our risk management and audit practices. This is the preferred option.
--	---	---	--

Consultation

20. Following public consultation on the discussion paper for the Customs and Excise Act review, there were 19 submissions made by businesses and accounting firms supporting the ability to store business records in the cloud and offshore. Not being able to store business records electronically off-shore was seen as an impediment to business, especially for international firms with headquarters or finance functions located offshore.
21. Most of the submitters agreed with consistent government treatment of records based on Inland Revenue's model. These submitters were comfortable with an approval process administered by Customs, similar to Inland Revenue's process. Some submitters wanted approval by Inland Revenue to lead to automatic approval from Customs to store records off-shore, to reduce compliance costs and avoid multiple applications.
22. Customs has identified two trade agreements (Korea, Thailand) that contain clauses relating to the holding of business records within New Zealand. Customs is working with MFAT and officials from Korea and Thai Customs to confirm the proposal is in line with these agreements or if an exchange of letters may be required for clarification. It will be necessary to ensure that the legislation is consistent with obligations set out in all of New Zealand's FTAs.

Conclusions and recommendations

23. Compared with the status quo legislative framework, the preferred option for change described above will open up opportunities for traders to utilise new technological solutions for the storage of business records while ensuring Customs retains the means to audit records in line with its responsibilities.

Implementation plan

24. If the preferred option is implemented, this would have ongoing resource implications for Customs. Implementation will involve at least the following:
 - educating the public, so that people know that they (or their data storage provider) need to apply to Customs to be authorised
 - establishing the process for people, businesses and data storage providers to apply to store records offshore
 - establishing the criteria that will determine whether a person or business should be authorised to store records outside New Zealand (including

Restricted–Unclassified

- developing the associated forms, guidance, and website material), and applying this criteria to applications
- establishing specific conditions that could apply to particular businesses or data storage providers
 - auditing to check that the conditions of offsite storage are being met (such as allowing Customs access to records)
 - establishing a process for Customs to withdraw the authorisation for people or businesses to store records offshore if the relevant conditions are not met, or if they no longer store records offshore.
25. Customs can gain value from Inland Revenue's experience implementing this policy approach.

Resource and capability required for implementation

26. The total amount of taxpayers using offshore record storage may be larger than the total amount of traders. The following advice received from Inland Revenue gives an indication of the resource and capability required to administer authorisation for offshore storage. Allowing data storage providers to apply on behalf of their clients will make the application process more efficient for Customs.
27. Inland Revenue advised that processing applications from data storage providers to store clients' records offshore takes a team of 5 to 6 people including operational, legal, and technical staff from the 'Large Enterprises' team approximately 2 to 3 months to consider a standard application. This is an estimate – it depends how straightforward or complex an application is. An application from an individual taxpayer may take 1 FTE one to three hours (this is a conservative estimate).
28. The time it takes to process an application depends heavily on how quickly applicants provide information. There is no response period required by the Tax Administration Act but the Commissioner can require the provision of information.

Approach to reduce compliance burden

29. During consultation, some businesses supported approval by Inland Revenue leading to automatic approval from Customs. Customs agrees with this approach. People, businesses and data storage providers would need to give consent for Inland Revenue to share application details with Customs.
30. If consent could be provided, this could allow Customs to authorise the same people, businesses, and data storage providers that have already been authorised by Inland Revenue to store records offshore. This approach could reduce potential costs associated with dealing with government. Such an outcome would align with *Better Public Services Result Area 9: Delivering better public services to business customers.*

31. Following direct consultation with Inland Revenue the approach suggested above would require a direct amendment to the Tax Administration Act 1994 due to the existence of legislative constraints on the sharing of information held by Inland Revenue.
32. Customs would administer processes separately from Inland Revenue unless a joint approach was agreed and legislated for.
33. Customs will engage a range of stakeholders (small to medium size enterprises, large firms, data providers etc) in a systematic way to ensure system design and the implementation approach taken is responsive to stakeholder needs and commercial realities. Such an approach will assist in meeting our primary objective.

Monitoring, evaluation and review

34. Regular reporting on programme uptake will be undertaken coupled with processes for gaining customer insights.
35. A review of the policy will be considered following a period of operation to ascertain if our primary objective is being met.

2 Customs Controlled Area licensees: fit and proper person requirement

Status quo and problem definition

36. Customs Controlled Areas (CCAs) are licenced areas that enable Customs to control and facilitate the movement of goods, people and craft to and from New Zealand, and provide controls over the manufacture and import of excisable goods. Examples include processing areas within airports and seaports, and areas where excisable goods are manufactured (eg, licensed manufacturing areas for alcohol and tobacco). Some CCAs are licensed by other agencies for different purposes (eg, some CCAs are licensed by the Ministry for Primary Industries as transitional facilities for biosecurity purposes).
37. As at August 2015, there are 1,109 CCAs (of which 816 are licensed for purposes relating to Customs' excise functions). Customs licensed 11 new CCAs between November 2014 and August 2015. CCA licences are issued to licensees for an indefinite period. Once licensed, CCA licensees maintain their licences unless they voluntarily surrender them or they are revoked by Customs. There is no licence renewal process.
38. CCAs licensees are in charge of the goods that are subject to Customs control in CCA areas³. CCAs at airports and cruise ship terminals are the passages that departing/arriving travellers and craft go through before they are cleared by Customs. The Act provides for the suspension or revocation of a CCA licence if the chief executive of Customs considers that the licensee is no longer fit and proper to hold a licence. However, the Act does not explicitly require a CCA licence applicant to declare that he or she is a fit and proper person, nor does it offer a definition of a 'fit and proper person'.
39. Although there has been no major indication that the absence of a fit and proper person requirement has caused significant risks, it creates uncertainty for Customs in terms of assuring that the goods subject to Customs control are under the charge of fit and proper licensees. In addition, there has been confusion among Customs officers and CCA licensees about the definition of 'fit and proper', and when a licensee is considered to be no longer fit and proper to hold a licence.
40. Although the magnitude of problem is considered to be minor, it has been difficult to collect quantifiable data on the issue. There have been cases where the suspension or revocation of CCA licences were considered by Customs, but were not issued due to a lack of clarity around the fit and proper person requirement. These cases have not been recorded. It has also not been possible to estimate how many CCA applications would have been rejected if there were clearer procedures and processes around meeting the fit and proper person requirement.

³ Goods are subject to Customs control for a variety of reasons in accordance with the Act, for example before they are lawfully removed from a CCA for home consumption.

41. A fit and proper person requirement and the use of a statutory declaration is common practice across a range of licensing regimes. For example, the Civil Aviation Authority requires a fit and proper person declaration for aviation-related licences, and Maritime New Zealand undertakes a fit and proper person assessment as part of an approval process for many maritime documents (this includes certificates and recognitions).

Objective

42. The key objective of addressing this problem is to increase assurance over CCAs (where goods subject to Customs control are stored and where travellers pass through before they are cleared by Customs) by ensuring that these areas are run by fit and proper CCA licensees. This assurance contributes to Customs' overall objective of providing effective border management and revenue collection.

Options and impact analysis

43. To address this problem, we have considered maintaining the status quo as well as two additional options:
- *Option one:* Specify fit and proper person criteria in the legislation and requiring applicants to declare whether they meet this standard as part of the CCA licensing process. The same fit and proper person criteria will be deemed to apply to existing licensees
 - *Option two:* Specify fit and proper person criteria in the legislation and require both new applicants and existing licensees to declare they meet the criteria.
44. The table on the next page assesses the projected outcomes of maintaining the status quo and the alternative options against the criteria as follows:
- **Effectiveness:** desired outcomes are achieved (ie, increasing assurance on goods and travellers as mentioned above)
 - **Transparency:** rules are clear and publically available
 - **Efficiency:** system is low-cost, minimising compliance costs for businesses
 - **Feasibility:** implementation is feasible
45. Ticks and crosses are used to indicate how well the projected outcomes of the alternative option meet the criteria, compared to the projected outcomes of maintaining the status quo. The analysis in the table below demonstrates that the alternative option one is our preferred option.

✓	Projected outcome partially meets the criteria
✓✓	Projected outcome meets the criteria

Restricted–Unclassified

x	Projected outcome fails to meet the criteria in some aspects
x x	Projected outcomes fails to meet the criteria in all aspects

Analysis of projected outcomes against the criteria

Options	Status quo	Option one	Option two
Effectiveness	There are assurance gaps due to the lack of a robust fit and proper person requirement.	✓ This option will ensure a robust fit and proper person process and therefore achieves the desired outcome. Under this option, the onus of meeting the fit and proper criteria will be on new licensees who have completed a statutory declaration. Customs may continue experiencing difficulties in suspending a license under the grounds of the fit and proper person requirement.	✓✓ This option will ensure a robust fit and proper person process and therefore achieves the desired outcome. Under this option, all CCA licensees will have completed a statutory declaration and the onus of meeting the fit and proper criteria will be on CCA licensees.
Transparency	Currently it is not transparent what criteria CCA licensees are subject to.	✓✓ This option will clarify the fit and proper person requirement by prescribing the relevant criteria in the Act. This will make the requirement clear and transparent for both CCA licensees and Customs officers.	✓✓ Achieves the same outcome as the alternative option one.
Efficiency: minimise compliance cost for businesses	Currently CCA licence applicants and licensees do not have to declare that they are fit and proper to gain a licence. There are minimal compliance costs.	x CCA licence applicants will need to declare that they are fit and proper under the fit and proper person requirement, incurring additional compliance costs. There may be ongoing compliance costs for CCAs licensees to ensure they maintain their fit and proper person status.	x x This option will incur compliance costs for more businesses compared to alternative option one, as both licence applicants and existing licensees will need to declare that they meet the fit and proper person requirements.
Feasibility	Not applicable.	x This option will be administratively feasible for Customs to implement for new CCA licence applicants. Existing CCA licensees will be subject to the same requirement without having to make a statutory declaration.	x x This option will be resource intensive for Customs to administer. It may even require Customs to introduce a new licence renewal process.
Conclusion	Retaining the status quo will not address the problem.	This option will effectively address the problem of assurance gaps and a lack of clarity around the fit and proper person requirement. This is our preferred option.	This option will be effective in addressing the problem; however it will incur considerable costs for both businesses and Customs. Given the relatively low magnitude of the problem, the costs of implementing this alternative option two is not justified.

46. Option one (our preferred option) will help to ensure that newly licensed CCAs are run by a fit and proper person. It will clarify the criteria for the fit and proper person requirement for existing CCA licensees and this will help suspending and revoking

their licences when they are considered to be no longer fit and proper. A CCA licence is normally issued to a business rather than a natural person. Therefore the fit and proper person declaration requirement will be applied to senior managers of a business. The onus of meeting the fit and proper person requirement will be on CCA licensees as they will need to declare that they meet the criteria under the Act, and by ensuring they maintain this status. This will make it easier for Customs to determine when a licensee is no longer considered to be fit and proper and can enforce the suspension and revocation provisions in the Act when necessary.

47. Given that some CCAs overlap with controlled areas as required by other border agencies, there was consideration by Customs of those other border agencies' criteria for a fit and proper person requirement. However, recognising the other agencies' fit and proper criteria was not feasible because each controlled area had different purposes/functions and therefore different sets of criteria for this requirement have been used.
48. Considering the functions and activities occurring in CCAs, and the overlap between some CCAs with controlled areas as required by other border agencies, the following criteria are seen appropriate in assessing whether an applicant is fit and proper to hold a CCA license:
 - a serious or repeated failure by or on behalf of the applicant entity to comply with Customs & Excise Act 1996, Biosecurity Act 1993, Hazardous Substances and New Organisms Act 1996, Immigration Act 2009, Civil Aviation Act 1990, and Maritime Transport Act 1994
 - previous bankruptcy under the Insolvency Act 1967 or the Insolvency Act 2006
 - any convictions in New Zealand or another country for crime, fraud, dishonesty, drugs or violence
 - being prohibited from being a director or promoter of, or taking part in the management of, a company (under sections 382, 383, 385, and 386A of the Companies Act 1993)
 - any other matters and evidence as may be relevant as prescribed.

Consultation

49. This issue was not included in the public discussion paper on the review of the Act that was published in May 2015. However there was one submission that supported making the fit and proper person requirement explicit and clarifying what 'fit and proper' means for CCAs licensees. The Stakeholder Reference Group⁴ was consulted on this proposal and had no objections.

⁴ Members of the Stakeholder Reference Group include: the Importers Institute, NZ Shipper's Council Inc, Port CEO Forum, Airports Association, Export New Zealand, Board of Airline Representatives, International Container Lines Committee, Customs Brokers and Freight Forwarders Federation and the Conference of Asia Pacific Express Carriers.

50. The following government agencies have been consulted on this paper and their views are reflected in its development: Ministry for Primary Industries; New Zealand Police, Ministry for Culture and Heritage; Ministry of Health, the Treasury, Ministry for the Environment; Department of Conservation; Ministry of Foreign Affairs and Trade; Ministry of Business, Innovation and Employment; Environmental Protection Authority; Department of Internal Affairs; Inland Revenue; Horticulture Export Authority; the Ministry of Transport; Maritime New Zealand; the Civil Aviation Authority; and the Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet has been informed.

Conclusions and recommendations

51. The lack of an explicit fit and proper person requirement creates uncertainty that CCAs are handled by fit and proper licensees. There is also a lack of clarity around the meaning of the requirement for CCA licensees and Customs officers. This has resulted in difficulties for Customs when making judgements about whether a licensee is no longer fit and proper and when the suspension or revocation provisions under the Act can be used.
52. We recommend that the Bill include a fit and proper person requirement with the following criteria for CCAs licensees:
- a serious or repeated failure by or on behalf of the applicant entity to comply with Customs & Excise Act 1996, Biosecurity Act 1993, Hazardous Substances and New Organisms Act 1996, Immigration Act 2009, Civil Aviation Act 1990, and Maritime Transport Act 1994
 - previous bankruptcy under the Insolvency Act 1967 or the Insolvency Act 2006
 - any convictions in New Zealand or another country for crime, fraud, dishonesty, drugs or violence
 - being prohibited from being a director or promoter of, or taking part in the management of, a company (under sections 382, 383, 385, and 386A of the Companies Act 1993)
 - any other matters and evidence as may be relevant as prescribed.
53. CCA license applicants will be required to complete a statutory declaration as part of the licensing process. The same criteria will be deemed to apply to existing licensees. This recommendation is consistent with comparable legislative regimes.

Implementation plan

54. If agreed to by Cabinet, the recommended proposals will be given effect by legislation amending the Customs and Excise Act 1996. A Bill is intended to be introduced to Parliament in 2016.

55. Customs is setting up a team of officials specifically tasked with developing an implementation plan as part of this review of the Act. This team will identify in more detail the areas requiring implementation, including putting in place a statutory declaration process for the fit and proper person requirements for CCA licence applicants.
56. Cost implications of implementing a set of procedures and processes including a statutory declaration for the fit and proper person requirement are considered to be minor and can be absorbed in the baselines.

Monitoring, evaluation and review

57. The recommendation made in this paper in relation to the fit and proper person requirement for CCAs will require appropriate review and evaluation processes. These will be established as part of the implementation programme for the review of the Act. Review and evaluation processes are likely to include a fixed review period.
58. The following factors can be monitored and used to measure whether the recommendations in relation to the fit and proper person requirement have achieved the objectives of enhancing Customs assurance over CCAs:
 - how easy/difficult it is for Custom to suspend or revoke a CCA licence when the licensee is considered no longer fit and proper, and
 - the cost the statutory declaration process incurs for CCA licensee applicants and Customs.