Regulatory Management Indicators

SOUTH AFRICA, 2011

Introductory note

This country note presents the results of a survey undertaken in 2009 and 2010 of the systems for regulatory management in the new member and accession countries and other significant economies. The survey focused on 12 core regulatory governance issues: regulatory policy, regulatory management and policy coherence, forward planning, regulatory processes, access to regulation, consultation procedures with affected parties, regulatory impact analysis (RIA), administrative simplification of licences and permits, reduction and measurement of administrative burdens, central regulatory oversight authority, *ex post* review and evaluation, and number of regulations.

The OECD worked together with officials during the course of 2010 and 2011 to clarify the responses to the survey questionnaire to ensure consistency in the interpretation of questions across countries. The Secretariat used the information collected throughout this process to draft the text of country notes which puts the data into context. While the indicators reflect the regulatory situation at the end of 2009, the accompanying texts include more recent developments. OECD averages are based on 2008 data published in OECD (2009), *Indicators of Regulatory Management Systems*, OECD, Paris, accessible at *www.oecd.org/regreform/indicators*.

This work was prepared by Christiane Arndt, Gregory Bounds, Emmanuel Job and Helge Schröder. Laure Disario and Sara Kincaid provided editorial assistance. Jennifer Stein was responsible for the text layout and editing. We would like to thank in particular government officials and delegates for providing their time and the information used to prepare this country note.

Note: This map is for illustrative purposes and is without prejudice to the status of or sovereignty over any territory covered by this map.

1. Regulatory policy

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent "whole-of-government" policy to pursue high-quality regulation. A key part of the OECD 2005 *Guiding Principles for Regulatory Quality and Performance* is that countries adopt broad programmes of regulatory reform that establish principles of "good regulation", as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Among the first countries to adopt an explicit regulatory policy were the United States, where regulatory reform was pioneered in the 1970s, and Canada, which developed its regulatory reform strategy in 1986. In 2008, most OECD member countries had some form of published regulatory policy promoting regulatory reform. The main motives for regulatory reform were reported to be "need to boost competitiveness and growth", "reduce administrative burdens" and, to a lesser extent, the "domestic policy agenda". The groups lobbying or supporting the regulatory reform agenda mostly consisted of small businesses, the government itself and, to a lesser extent, international organisations as well as citizens (national opinion). The focus of regulatory policies however differs across countries. For example, some countries concentrate on administrative burden reduction while others have a more comprehensive approach.

Table 1.1. **Regulatory policy**

		South Africa answers 2009	OECD answers 2008, %
There is an explicit published regulatory policy promoting government-wide regulatory reform or regulatory quality improvement		No	Yes: 93.3
Main motives for regulatory reform	Need to boost competitiveness and growth	Yes	Yes: 96.6
	International commitment	No	Yes: 70
	Domestic policy agenda	Yes	Yes 83.3
	Improve social welfare	Yes	Yes: 60
	Reduce the burden on business	Yes	Yes: 93.3
	Other	No	Yes: 26.6
Groups lobbying for, or in favour of, the regulatory reform agenda	Government itself	Yes	Yes: 93.3
	Large businesses (or their associations)	Yes	Yes: 90
	Small businesses (or their associations)	Yes	Yes: 96.6
	Consumer organisations	No	Yes: 43.3
	Citizens, national opinion	No	Yes: 80
	International Organisations	Yes	Yes: 83.3
	Welfare groups	No	Yes: 23.3
	Environment groups	No	Yes: 23.3
	Think tanks	Yes	Yes: 56.6
	Other	No	Yes: 10

No comprehensive regulatory reform policy has been adopted by South Africa. However, South Africa reports that the Presidency, the Department of Trade and Industry and the National Treasury are active in advancing the regulatory reform agenda. It is envisaged to develop a framework for economic regulation and to introduce administrative burden reduction measures as well as the systematic use of RIA.

2. Regulatory management and policy coherence

The development and implementation of broad regulatory policies are essential to achieve key objectives such as boosting economic development and consumer welfare by encouraging market entry, market openness, innovation and competition. Achieving these goals requires links across all policy areas fostering policy coherence. It is therefore necessary to ensure a well-functioning consultation with all concerned government bodies when developing new regulations. In addition, promoting the adoption of international standards helps to limit the proliferation of country-specific rules, improving the situation for businesses operating in foreign markets.

In 2008, most OECD countries reported having a process of formal consultation within government on competition, trade and consumer policies. However, only about a third of the countries had formal requirements to consider international standards before setting new domestic standards and rules. Equally, only about a third of the OECD countries required regulators to justify diverting from international standards.

Table 2.1. **Consultation within Government**

	South Africa answers 2009	OECD answers 2008, %
Formal processes for consultation		
Exist when preparing new primary laws	In some cases	Always: 80 In some cases: 20
Exist when preparing new subordinate regulations	No	Always: 76.6 In some cases: 20 No:3.3
Bodies usually consulted on new regulation		
Body responsible for competition policy	In some cases	Always: 80 In some cases: 17 No: 3
Body responsible for trade policy	In some cases	Always: 73.3 In some cases: 23.3 No: 3.3
Body responsible for consumer policy	No	Always: 73.3 In some cases: 26.6

Table 2.2. **Provisions to promote the adoption of international standards and rules**

	South Africa answers 2009	OECD answers 2008, %
Formal requirement that regulators consider comparable international standards and rules before setting new domestic standards	No	Always: 36.6 In some cases: 36.6 No: 26.6
Regulators required to explain the rationale for diverting from international standards when country specific rules are proposed	No	Always: 36.6 In some cases: 33.3 No: 30

South Africa reports having in some cases formal processes for consultation within government when developing draft primary laws. The body responsible for competition and the International Trade Administration Commission (ITAC) are consulted when new regulations fall directly within their scope. There is no formal requirement to consider comparable international standards or justify diverting from them when developing regulation.

South Africa further reports that the extent of internal consultation depends on the public interest of the draft primary law in question. Usually draft primary laws are sent to the National Economic Development and Labour Council (Nedlac) before being approved by the Cabinet, checked by the State Law Advisors on its legal quality and then submitted to Parliament. It is at the discretion of the regulator not to submit a draft primary law for consultation within government, if this draft regulation is considered to be of little public interest. Primary laws of great public interest, however, go through a broader process of internal consultation, involving affected ministries and the Treasury.

Some government departments are reported to follow, selectively, the same or similar procedures when developing draft subordinate regulation, but this is less transparent and not obligatory.

3. Clarity and due process in decision-making procedures: Forward planning

An important element of clarity and due process in rulemaking is informing citizens and businesses of current and future regulatory developments, so that stakeholders can anticipate potential changes, prepare for consultation and highlight potentially adverse effects. An efficient way of forward planning is to periodically publish a list of regulations to be prepared, modified or repealed in the upcoming months. This document should be easily accessible and therefore available online.

In 2008, 20 OECD countries and the EU reported making a list of primary laws to be prepared, modified or repealed in the next six months or more, and be uploaded online. Only 14 countries, including the EU, reported having such a list for subordinate regulations.

Table 3.1. **Forward planning**

	South Africa answers 2009	OECD answers 2008, %
Periodical publication of a list of primary laws to be prepared, modified, reformed or repealed in the next six months or more	No	Yes: 66.6
It is available to the public via the internet to ensure its publicity	No	Yes: 66.6
Periodical publication of a list of subordinate regulations to be prepared, modified, reformed or repealed in the next six months or more	No	Yes: 43.3
It is available to the public via the internet to ensure its publicity	No	Yes: 43.3

South Africa reports that a cabinet calendar with schedules of upcoming regulation is available to senior government officials. However, it is not available to the general public. The only way to anticipate the introduction of new regulation is to read into the Government's Programme of Action (*www.info.gov.za/aboutgovt/poa/report/econ09.htm*).

4. Regulatory processes

Formalised processes for the development of regulations improve the quality of regulation and control excessive administrative discretion. Predictable and systematic procedures also contribute to regulatory transparency. External scrutiny is necessary to ensure compliance with standard procedures by all regulators and ministries and to guarantee the quality of draft regulatory proposals. In most countries, the Council of State or the Ministry of Justice check the legal quality of proposals and its compatibility with the constitution and existing law. In addition, a number of countries have given responsibility to regulatory agencies, oversight bodies or specific ministries to check the consistency of draft regulations with overall government directions and with established procedures and consultation requirements, including in some cases checking the quality of the underlying impact analysis.

In 2008, all OECD countries reported some form of standard administrative procedures for drafting primary laws and all but one had standard administrative procedures for new subordinate regulations. Almost all countries had some form of external scrutiny for draft primary laws.

Table 4.1. **Regulatory processes**

		South Africa answers 2009	OECD answers 2008, %
Primary laws	There are standard procedures by which the administration develops draft primary laws	No	Yes: 100
	Draft primary laws are to be scrutinised by a specific body within Government other than the department which is responsible for the regulation	Yes	Yes: 93.3
Subordinate regulations	There are standard procedures by which the administration develops draft subordinate regulations	No	Yes: 96.6

Standard government-wide formal procedures for developing draft regulation do not exist. Each ministry's approach is slightly different. Typically, ministries make use of the National Economic Development and Labour Council (Nedlac) and the State Law Advisors for legal checks when developing primary laws. The Treasury assesses the financial implications for the budget and ultimately the Cabinet reviews the draft.

The Department of Justice website (*www.justice.gov.za/legislation/legprocess.htm*) contains a broad outline of the legislative stages, without, however, stipulating the exact actions required from the ministry developing the regulation.

5. Access to regulation

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. One important element of transparency is access to regulation, i.e. how easy is it for citizens and businesses to find and receive relevant regulation, but also to understand it. Facilitating access to regulation therefore involves a range of actions such as codification, publication of regulations, and plain language drafting.

Public access to the text of regulations within OECD countries improved significantly between 1998 and 2005, and further slightly improved from 2005-08, mainly as a result of making laws publicly accessible via the Internet. Progress has also been observed in other areas. For example, over two thirds of the countries reported procedures for codifying primary laws, and had a general policy requiring "plain language" drafting and provided corresponding guidance. However, only half of the countries had provisions that only subordinate regulations in the registry are enforceable.

Table 5.1. **Access to regulation**

		South Africa answers 2009	OECD answers 2008, %
Primary laws	Codification	No	Yes: 86.6
	There is a mechanism for regular updating of the codes or codified laws (at least yearly basis)	No	Yes: 66.6
	Public access via the Internet to the text	No	Yes: 100
Subordinate regulations	Only subordinate regulations published in a consolidated register are enforceable	No	Yes: 50
	Public access via the Internet to the text	No	Yes: 100
A general policy requiring plain language drafting of regulation		No	Yes: 90
Guidance on plain language drafting is issued		No	Yes: 80

The text of all or most primary laws and subordinate regulations is available online, but the entire complement is only available via private websites that require the payment of a fee. No general policy or guidance on plain language drafting has been published.

Several websites allow accessing the text of regulation. *www.greengazette.co.za* contains the text of primary laws and subordinate regulation, but only from 2006 onwards. www.gov.za seems to contain only acts from 1991 and bills from 1996 onwards. South Africa reports that private websites (such as *www.sabinet.co.za/?page=netlaw and www.jutalaw.co.za*) contain the text of all or most primary laws and subordinate regulations. However, accessing regulation through these websites is not free of charge. Annual subscription via Juta Law, for example, costs about EUR 530 for South African Statutes and about EUR 340 for South African Regulations.

South Africa further reports that it is also possible to access paper copies of all primary laws and subordinate regulation for free at the two National libraries in Pretoria and Cape Town.

Figure 5.1. Access to regulation

Note: This figure summarises information on the existence of systematic policies to make regulations accessible to the public in South Africa (2009) compared with the OECD average in 2008. It does not gauge whether these policies have been effective. Detailed questions and an explanation of the scale and weights are available in OECD (2009), Indicators of Regulatory Management Systems, pp. 146-147. Data for OECD countries are also available in OECD (2009), p. 105. The report can be accessed at *www.oecd.org/regreform/indicators*.

6. Consultation procedures with affected parties

Participation of stakeholders in the regulatory process ensures that feedback about the design and effects of regulation is taken into account when preparing new regulations. It increases the likelihood of compliance by building legitimacy in regulatory proposals and may therefore improve the effect of regulations and reduce the costs of enforcement. Hence, formalised consultation processes are an important feature of regulatory transparency, and key in strengthening regulatory management systems.

In 2008, all OECD members and the EU had public consultation procedures as part of developing new primary laws and subordinate regulations. However, the consultation processes differed widely across countries with respect to formal requirements and to the types of consultation used. In general, there appears to be room for improvement concerning requirements to respond to consultation comments and to monitor consultation processes. Both can be effective tools to improve the quality of consultation practices.

Table 6.1. **Consultation procedures with affected parties: Primary laws**

		South Africa answers 2009	OECD answers 2008, %
Public consultation with parties affected by regulations is	Part of developing new draft primary laws	Always	Always: 73.3 In some cases: 26.6
	Mandatory	No	Yes: 80
Forms of public consultations routinely used	Informal consultation with selected groups	No	Yes: 96.6
	Broad circulation of proposals for comment	Yes	Yes: 86.6
	Public notice and calling for comment	Yes	Yes: 66.6
	Public meeting	Yes	Yes: 66.6
	Simply posting proposals on the internet	Yes	Yes: 86.6
	Advisory group	No	Yes: 86.6
	Preparatory public commission/committee	Yes	Yes: 73.3
	Other	No	Yes: 20
Requirements for consultations	Any member of the public can choose to participate in the consultation	Yes	Yes: 70
	Minimum period for allowing consultation comments inside government when developing draft regulation	No	2-4 weeks (average for 14 countries reporting minimum periods)
	Minimum period for allowing consultation comments by the public when developing draft regulation	No	4-6 weeks (average of 18 countries reporting minimum periods)
The views of participants in the consultation process are made public		No	Yes: 70
Regulators are required to respond in writing to the authors of consultation comments		No	Yes: 13.3
The views expressed in the consultation process are included in the regulatory impact analysis		No	Yes: 76.6
There is a process to monitor the quality of the consultation process		No	Yes: 20

South Africa reports that public consultation procedures, though not mandatory, are always part of developing primary laws and are also used routinely during the development of subordinate regulations. Consultations on both draft primary laws and draft subordinate regulations are usually open to any member of the public. Standard forms of open consultation are internet consultation and 'public notice and calling for comment' for both primary laws and subordinate regulations, as well as public meetings for primary laws. The views of participants are not generally made public, nor are regulators generally required to respond to them.

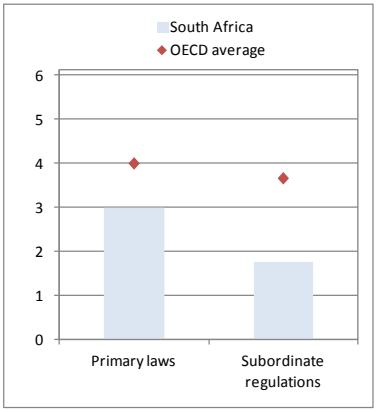
South Africa reports that government departments are not required to use a particular consultation method. Typically, they publish draft regulations online on a central website *www.info.gov.za/view/DynamicAction?pageid=530* and on their own websites to invite comments. Depending on the estimated level of public interest, they might also use other forms of public consultation, such as publication and calling for comment in national newspapers, public meetings, and preparatory public commissions or advisory groups, in particular for key primary laws. Informal consultation with stakeholders is reportedly mainly being used if the proposal is deemed to be of minor public interest.

Whereas no fixed minimum period for allowing consultation comments exist, there is a general guiding principle to provide a fair amount of time. The Promotion of Administrative Justice Act stipulates that persons concerned by proposed administrative actions must have a 'reasonable opportunity to make representations'.

Table 6.2. **Consultation procedures with affected parties: Subordinate laws**

		South Africa answers 2009	OECD answers 2008, %
Public consultation with parties affected by regulations is	Part of developing new draft subordinate regulations	In some cases	Always: 66.6 In some cases: 33.3
	Mandatory	No	Yes: 76.6
Forms of public consultations routinely used	Informal consultation with selected groups	No	Yes: 93.3
	Broad circulation of proposals for comment	No	Yes: 86.6
	Public notice and calling for comment	Yes	Yes: 56.6
	Public meeting	No	Yes: 53.3
	Simply posting proposals on the internet	Yes	Yes: 76.6
	Advisory group	No	Yes: 76.6
	Preparatory public commission/committee	No	Yes: 66.6
	Other	No	Yes: 20
Requirements for consultations	Any member of the public can choose to participate in the consultation	Yes	Yes: 56.6
	Minimum period for allowing consultation comments inside government when developing draft regulation	No	2-4 weeks (average of 14 countries reporting minimum periods)
	Minimum period for allowing consultation comments by the public when developing draft regulation	No	4-6 weeks (average of 19 countries reporting minimum periods)
The views of participants in the consultation process are made public		No	Yes: 63.3
Regulators are required to respond in writing to the authors of consultation comments		No	Yes: 16.6
The views expressed in the consultation process are included in the regulatory impact analysis		No	Yes: 66.6
There is a process to monitor the quality of the consultation process		No	Yes: 20

Figure 6.1. **Formal and open consultation processes**



Note: This figure summarises information on the existence of key elements of formal consultation processes in South Africa (2009) compared with the OECD average in 2008. It does not gauge whether these processes have been effective. Detailed questions and an explanation of the scale and weights are available in OECD (2009), Indicators of Regulatory Management Systems, pp. 47-148. The graph has been split into primary laws and subordinate regulations. Data for OECD countries are also available in OECD (2009), pp. 110-111. The report can be accessed at *www.oecd.org/regreform/indicators.*

7. Regulatory Impact Analysis

Regulatory impact analysis (RIA) is a key policy tool that can provide decision makers with detailed information about the potential effects of regulatory measures on the economy, environment and society. A full RIA looks at all possible impacts of regulation, taking into account costs and benefits. It assesses the capacity of government agencies to enforce regulation and the capacity of affected parties to comply with those. RIA processes should also include an ex post evaluation of whether regulations are functioning as expected.

RIA can assist decision makers to examine the implications of regulatory policy options and determine whether they will achieve their objectives more efficiently and effectively than alternative approaches. In addition, by strengthening the transparency of regulatory decisions and their justification, RIA may bolster the credibility of regulatory responses and increase public trust in regulatory institutions and policy makers.

Adoption of the use of RIA by OECD members has been rapid, especially between 1994 and 2002. Today, all member countries report having adopted procedures to assess the impact of at least some new regulations. Over the last decade, RIA systems have become more comprehensive across most countries. An increasing number of countries have adopted formal requirements to undertake RIA for draft primary laws and subordinate regulations, as well as formal requirements to identify impacts (including costs and benefits of new regulations). However, in 2008, only about half of the OECD countries reported a systematic requirement to quantify the corresponding costs and benefits for new regulatory proposals.

Table 7.1. **Use and requirements of RIA**

		South Africa answers 2009	OECD answers 2008, %
Regulatory impact analysis (RIA) is carried out before new regulation is adopted		No	Always: 53.3 In some cases: 46.6
RIA is required	By law or by a similarly strictly binding administrative instrument*	No	Always: 60 Only for major regulations: 23.3 In other selected cases: 10 No: 6.6
	For draft primary laws	No	Always: 70 Only for major regulations: 16.6 In other selected cases: 10 No: 3.3
	For draft subordinate regulations	No	Always: 50 Only for major regulations: 36.6 In other selected cases: 6.6 No: 6.6
Regulators	Are required to identify the costs of new regulation	No	Always: 70 Only for major regulations: 23.3 In other selected cases: 6.6
	Impact analysis is required to include the quantification of the costs	No	Always: 46.6 Only for major regulations: 30 In other selected cases: 20 No: 3.3
	Are required to identify the benefits of new regulation	No	Always: 73.3 Only for major regulations: 10 In other selected cases: 16.6
	Impact analysis is required to include quantification of the benefits	No	Always: 26.6 Only for major regulations: 23.3 In other selected cases: 40 No: 10
	Are required to demonstrate that the benefits of new regulation justify the costs	No	Always: 36.6 Only for major regulations: 10 In other selected cases: 23.3 No: 30
	RIA documents are required to be publicly released for consultation with the general public	No	Always: 43.3 Only for major regulations: 6.6 In other selected cases: 10 No: 40

RIA is still in the pilot phase in South Africa. South Africa reports that the National Treasury, the Presidency and the Department of Trade and Industry have collaboratively implemented some RIA studies.

The Government's Plan of Action 2009 includes the task to begin 'full roll out of RIA as a tool for policy and intervention development' and the Presidency Strategic Plan 2010/2011 foresees to gradually expand the use of RIAs from 5 in 2010/11 to 15 in 2012/13. Although a 2007 cabinet directive stipulated that RIA has to accompany major new regulations, RIA is so far only required on an ad-hoc basis. No government-wide methodology has been introduced yet, and there has been little progress in achieving the targets above.

* If the administration is able to evade the requirement, it will be considered as not strictly binding.

Table 7.2. **Extent of RIA and risk assessment**

		South Africa answers 2009	OECD answers 2008, %
RIA is required to include assessments of other specific impacts	Impacts on the budget	No	Always: 80 Only for major regulations: 6.6 In other selected cases: 3.3 No: 10
	Impacts on competition	No	Always: 63.3 Only for major regulations: 10 In other selected cases: 20 No: 6.6
	Impacts on market openness	No	Always: 53.3 Only for major regulations: 10 In other selected cases: 26.6 No: 10
	Impacts on small businesses	No	Always: 70 Only for major regulations: 10 In other selected cases: 13.3 No: 6.6
	Impact on specific regional areas	No	Always: 36.6 Only for major regulations: 13.3 In other selected cases: 26.6 No: 23.3
	Impact on specific social groups (distributional effects across society)	No	Always: 46.6 Only for major regulations: 16.6 In other selected cases: 26.6 No: 10
	Impact on other groups (not for profit sector including charities)	No	Always: 36.6 Only for major regulations: 6.6 In other selected cases: 26.6 No: 30
	Impact on the public sector	No	Always: 73.3 Only for major regulations: 13.3 In other selected cases: 13.3
	Impact on gender equality	No	Always: 43.3 Only for major regulations: 13.3 In other selected cases: 16.6 No: 26.6
	Impact on poverty	No	Always: 23.3 Only for major regulations: 6.6 In other selected cases: 30 No: 40
Requirements for risk assessment	For all regulation	No	Always: 6.6 Only for major regulations: 10 In other selected cases: 40 No: 43.3
	For health and safety regulation	No	Always: 10 Only for major regulations: 23.3 In other selected cases: 30 No: 36.6
	For environmental regulation	No	Always: 13.3 Only for major regulations: 23.3 In other selected cases: 26.6 No: 36.6

Table 7.3. **Quality control of RIA**

	South Africa answers 2009	OECD answers 2008, %
Reports are prepared on the level of compliance with the above requirements of RIA	No	Regularly: 16.6 Ad hoc basis: 33.3 No: 50
These reports are published	No	Yes: 33.3
Government body outside the ministry responsible for reviewing the quality of the RIA	No	Yes: 76.6

Figure 7.1. **Overall RIA processes**

Note: This figure summarises information on the existence of key elements of RIA processes in South Africa (2009) compared with the OECD average in 2008. It does not gauge whether these processes have been effective. Detailed questions and an explanation of the scale and weights are available in Jacobzone, S. *et al.* (2007), "Regulatory Management Systems Across OECD Countries", *OECD Working Papers on Public Governance*, No. 9, p. 28. Data for OECD countries is available in OECD (2009), *Indicators of Regulatory Management Systems*, pp. 112-116. The report can be accessed at *www.oecd.org/regreform/indicators*.

8. Administrative simplification: Licences and permits

Licences and permits are useful regulatory tools to ensure levels of service quality, counter market failures or to allocate scarce resources. However, unnecessary use of licences has a serious economic negative potential as it raises real and perceived barriers to new start-ups, and thus detracts from innovation and anti-competitive effects. The latter may arise because incumbent firms have strong incentives to lobby regulators to use licensing arrangements as a means to protect themselves from new entrants. Permits, too, can increase costs and mu ltiply barriers for businesses due to time and money required for compliance. Therefore, to reduce the burden on businesses, many governments aim to narrow the number of licences and permits, as well as facilitate the application and issuing process (e.g. via the establishment of one-stop shops)

In 2008, half of the then 30 OECD member countries used the "silence is consent" rule, which implies that licences are issued automatically if the competent licensing office has not reacted by the end of the statutory response period. Most countries (17) reported using "one-stop shops" to receive information on licences and notifications compared with 4 countries en years earlier. Eighteen countries had a programme underway to review and reduce the number of licences and permits required by the national government; nine had both undertaken a complete count of the number of licences and permits, and had a programme underway to review and reduce their number.

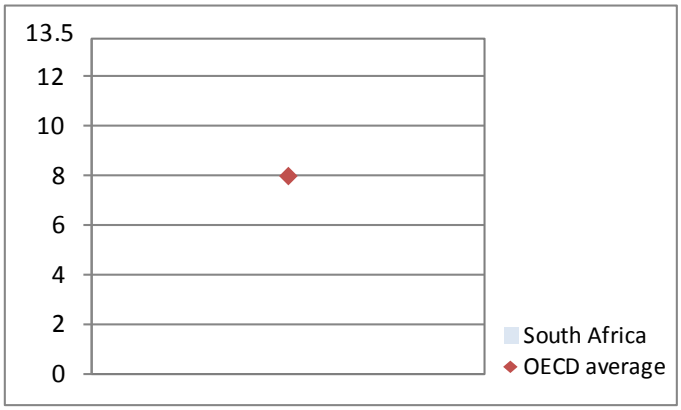
Table 8.1. **Facilitating licences and permits, one-stop shops**

	South Africa answers 2009	OECD answers 2008, %
"Silence is consent" rule is used	No	Yes: 50
Administrations have to provide the name of the person responsible for handling the application in any formal correspondence	No	Yes: 53.3
There are single contact points ("one-stop shops") for getting information on licences and notifications	No	Yes: 93.3
There are single contact points for accepting notifications and issuing licences (one-stop shops)	No	Yes: 56.6
There is a programme underway to review and reduce the number of licenses and permits required by the national government	No	Yes: 60
There is a complete count of the number of permits and licenses required by the national government	No	Yes: 36.6
There has been a decline in the aggregate number of licences and permits	No	Yes: 36.6
There is a programme underway to co-ordinate the review and reform of permits and licences at sub-national levels of government	No	Yes: 50

South Africa reports not using one-stop shops, neither for providing information nor for accepting notifications and issuing licences. No complete count of the number of permits and licences required has been undertaken and there is no broad programme to reduce their number. However, the problematic of too much regulation hampering growth has been acknowledged in the Accelerated and Shared Growth Initiative for South Africa (*www.info.gov.za/asgisa/asgisa.htm*).

Whereas the government has not undertaken a count of the number of permits and licences required, the World Bank reported a decline in the aggregate number of steps and time needed for starting a business (see the 2009 Doing Business Report, available at *www.doingbusiness.org*).

Figure 8.1. **Facilitating licences and permits, one-stop shops**



Note: This figure summarises information on the existence of key elements for administrative simplification programmes in South Africa (2009) compared with the OECD average in 2008. It does not gauge whether these programmes have been effective. Detailed questions and an explanation of the scale and weights are available in OECD (2009), Indicators of Regulatory Management Systems, p. 159. Data for OECD countries is also available OECD (2009), p. 117. The report can be accessed at *www.oecd.org/regreform/indicators*.

9. Reduction and measurement of administrative burdens

Measuring and then reducing administrative burdens is directed at improving the cost-efficiency of administrative regulations in order to reduce the burden on citizens, businesses, the non-profit sector and/or the public sector. Quantifying burdens also helps to sustain political momentum for regulatory reform. Burden measurement has been improved with the application by a growing number of countries of the Standard Cost Model (SCM) method to measure the burden of information obligations imposed by laws. This allows the setting of not only qualitative but also quantitative targets for burden reduction programmes, which can involve a variety of different strategies.

In 2008, 70% of the OECD countries had completed burden measurements, focusing mostly on businesses. All but one country reported having a programme to reduce administrative burdens imposed by government on enterprises and/or citizens. The number of countries with targets for their reduction programmes increased significantly over the last years. In 2005, only 10 jurisdictions had quantitative targets and 14 countries had qualitative targets in their programme. In 2008, 21 jurisdictions reported having quantitative targets and 21 jurisdictions reported having qualitative targets. Fifteen jurisdictions reported having both types of targets.

Table 9.1. **Reduction of administrative burdens**

	South Africa answers 2009	OECD answers 2008, %
Programme		
There is an explicit government programme to reduce the administrative burdens imposed by government on enterprises and/or citizens	No	Yes: 96.6
This programme includes quantitative targets	No	Yes: 66.6
This programme includes qualitative targets	No	Yes: 66.6
Strategies used		
Removal of obligations	No	Yes: 86.6
Modification and streamlining of existing laws and regulations	No	Yes: 93.3
Information and communication technologies for regulatory administration	No	Yes: 96.6
Other streamlining of government administrative procedures	No	Yes: 80
Reallocating powers and responsibilities between government departments and/or between levels of government	No	Yes: 60

South Africa has neither developed a government-wide programme to reduce administrative burdens nor undertaken a full measurement itself. However, some government departments are reported to take steps to reduce burdens and non-governmental surveys provide some quantitative information on administrative burdens in the country.

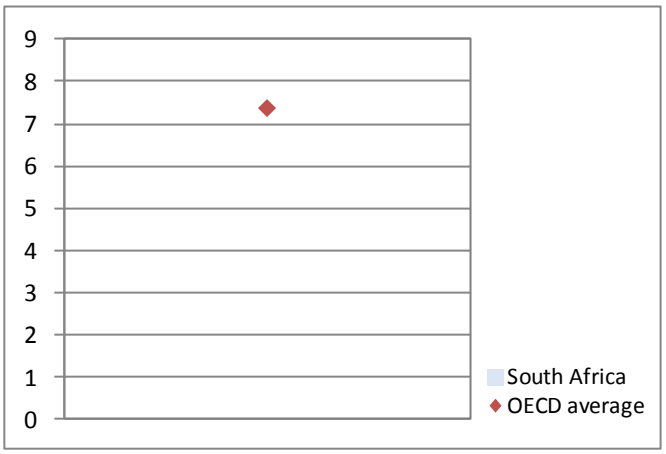
Efforts to reduce administrative burdens are reportedly being undertaken by the National Treasury and the South African Revenue Services (SARS) which have instituted a number of reforms: they facilitated tax registration forms and online tax returns, and reformed the value-added tax threshold.

South Africa reports that in 2004/05 a private research company, the Strategic Business Partnership (SBP), undertook a survey entitled "Counting the Cost of Red Tape in South Africa", sampling 1794 businesses of varying sizes and sectors across the country. Furthermore, the Department of Trade and Industry and the Department of Local Government commissioned a project measuring the impact of municipal level regulations on small businesses in 2008/2009. The latter study is – in the absence of a comprehensive government policy – the only government initiated study that informs government action on administrative burden.

Table 9.2. **Measurement of administrative burdens**

	South Africa answers 2009	OECD answers 2008, %
Measurement of administrative burdens has been completed	No	Yes: 70
Groups targeted		
Citizens	No	Yes: 30
Businesses	No	Yes: 86.6
The public sector	No	Yes: 23.3
Non-profit sector	No	Yes: 16.6
Methodology used		
Standard Cost Model (SCM)	No	Yes: 53.3
Adapted or modified version from the Standard Cost Model	No	Yes: 36.6
Other	No	Yes: 26.6

Figure 9.1. **Explicit programme for reducing administrative burdens**



Note: This figure summarises information on the existence of key elements for administrative burden reduction programmes in South Africa (2009) compared with the OECD average in 2008. It does not gauge whether these programmes have been effective. Detailed questions and an explanation of the scale and weights are available in OECD (2009), Indicators of Regulatory Management Systems, pp. 156-157. Data for OECD countries are also available in OECD (2009), p. 118 and p. 121. The report can be accessed at *www.oecd.org/regreform/indicators*.

10. Central regulatory oversight authority (administrative and political)

Appropriate regulatory institutions are a key element for the delivery of regulatory policy and to ensure the quality of regulation. An important feature of these institutional arrangements is the existence of regulatory oversight bodies, usually located at a focal point within the government administration, with a broad remit to advocate for regulatory quality. The functions of these bodies include assisting regulators in implementing elements of regulatory policy, undertaking quality control in areas such as RIA and administrative simplification and ensuring compliance with and reporting on overall performance in achieving regulatory policy objectives. Regulatory reform depends upon strong political leadership. Designating portfolio responsibilities for monitoring and reporting on progress in regulatory reform to a specific minister is one means by which OECD governments provide political leadership.

Over the last decade, significant reforms have been undertaken in most OECD countries to empower regulatory oversight bodies. In 2008, it was reported that most bodies in charge of promoting regulatory reform are consulted when new regulations are developed. The number of bodies that report on progress by individual ministries almost doubled since 1998. However, the authority to conduct their own analysis of regulatory impacts remained limited to about half of the regulatory oversight bodies. Around half of the OECD countries made use of an external advisory body with reference from government to review broad areas of regulation. Such bodies have the advantages of bringing an independent view and a store of acquired regulatory policy expertise to the review process and are often powerful agents to support reform. Accordingly, this suggests that there remains some room for further progress across OECD.

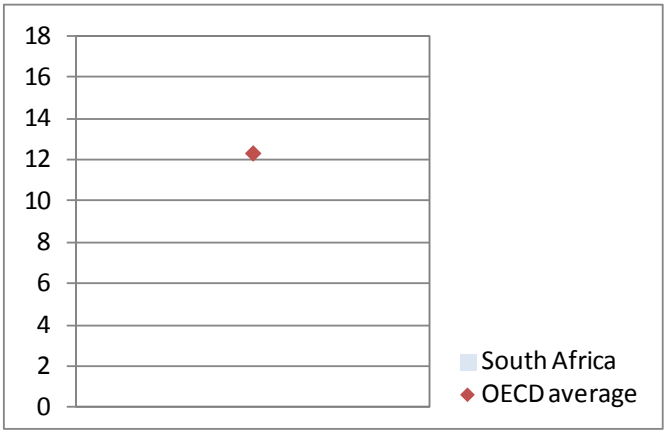
Table 10.1. **Central regulatory oversight authority (administrative and political)**

	South Africa answers 2009	OECD answers 2008, %
There is a dedicated body (or bodies) responsible for promoting the regulatory policy and monitoring and reporting on regulatory reform and regulatory quality	No	Yes: 96.6
This body is consulted as part of the process of developing new regulation	No	Yes: 86.6
This body reports on progress made on reform by individual ministries	No	Yes: 63.3
This body is entrusted with the authority of reviewing and monitoring regulatory impacts conducted in individual ministries	No	Yes: 56.6
This body can conduct its own analysis of regulatory impacts	No	Yes: 53.3
This body is entrusted with an advocacy function to promote regulatory quality and reform	No	Yes: 83.3
There is an advisory body that receives references from Government to review broad areas of regulation, collecting the views of private stakeholders	No	Yes: 43.3
This body has a degree of independence from government	No	Yes: 36.6
This body reports its findings publicly	No	Yes: 43.3
A specific minister is accountable for promoting government-wide progress on regulatory reform	No	Yes: 86.6
The Minister is required to report to Parliament on progress	No	Yes: 46.6

In 2009, South Africa has neither a central regulatory oversight authority nor an advisory body that reviews broad areas of regulation.

South Africa reports that the recently established RIA unit is to take on the oversight function. This unit was formed with members from the National Treasury, the Presidency and the Cabinet's Regulatory Policy units. However, no progress with this unit has been publicly visible.

Figure 10.1. **Institutional capacity for managing regulatory reform**



Note: This figure summarises information on the existence of key elements of institutional settings for managing regulatory reform in South Africa (2009) compared with the OECD average in 2008. It does not gauge whether these institutions have been effective. Detailed questions and an explanation of the scale and weights are available in OECD (2009), Indicators of Regulatory Management Systems, p. 145. Data for OECD countries are also available at OECD (2009), p. 123. The report can be accessed at *www.oecd.org/regreform/indicators.*

11. *Ex post* regulatory review and evaluation

Regulations can become obsolete over time, producing undesired side effects, and may no longer be the most efficient way of achieving the desired policy objectives. Systematic evaluation helps ensure that the policy aims of regulations are met, while maximising benefits and minimising costs. It is essential to evidence-based and accountable policy making. The benefits from systematic regulatory reviews are likely to be most apparent in sectors or areas where change is most rapid. The increasing inclusion of mandated review provisions in primary laws may reflect the rapidly changing legal and economic environment of industries such as communications and information technology (IT).

In some OECD countries, such as France and Italy, these reviews are also associated with the tradition of codification, where codification is also used as a tool for simplification, going beyond the mere consolidation of existing sets of rules. The number of countries adopting mechanisms for regulatory review and evaluation has evolved significantly over the last decade. In particular, most OECD member countries report now having mandatory periodical evaluation of existing regulation, automatic review requirements for specific primary laws and mechanisms by which the public can make recommendations to modify existing regulations. Sunsetting clauses, resulting in the automatic expiry of an act, are less popular, though still growing.

Table 11.1. ***Ex post* regulatory review and evaluation**

		South Africa answers 2009	OECD answers 2008, %
Periodic *ex post* evaluation of existing regulation is mandatory		Not required	For all policy areas: 20 For specific areas: 60 Not required: 20
There are standardised evaluation techniques or criteria to be used when regulation is reviewed		No	Yes: 36.6
Reviews are required to consider explicitly the consistency of regulations in different areas and take steps to address areas of overlap/ duplication/ inconsistency		No	Yes: 46.6
Mechanisms to recommend modifications	There are mechanisms by which the public can make recommendations to modify specific regulations	Yes	Yes: 93.3
	Electronic mailboxes	No	Yes: 73.3
	Ombudsman	No	Yes: 56.6
Sunsetting is used for primary laws or other regulations		No	Yes: 43.3
Specific primary laws include automatic review requirements		No	Yes: 70

Periodic *ex post* evaluation is not mandatory in South Africa. The public can make recommendations to modify specific regulations by addressing the responsible Member of Parliament. Some recent laws include periodic review requirements.

12. Number of new regulations

Changes in the number of new primary laws and subordinate regulations are a subject of policy debates on how to measure regulatory inflation and increasing regulatory burdens. In some respect, limiting the proliferation of regulation can be regarded as an accompanying measure to administrative simplification attempts. While measuring the number of legislative instruments may be helpful, there are limitations to comparing countries with different organisational structures and law-making traditions. Given these inherent limitations, an OECD average would be misleading and is therefore not presented.

Table 12.1. **Number of new regulations**

	Number of new laws at the national/ federal level	Number of new subordinate regulations (decrees, others)
2001	21	
2002	34	
2003	19	
2004	21	
2005	14	
2006	13	
2007	19	
2008	31	
2009	10	

The number of new primary laws at the national level has been deduced from the South African government website *www.info.gov.za/view/DynamicAction?pageid=544* that lists enacted acts. Not included in the statistic are amendments and supplementaries to existing acts and acts repealing other acts.

Information on the number of new subordinate regulation is not available.