

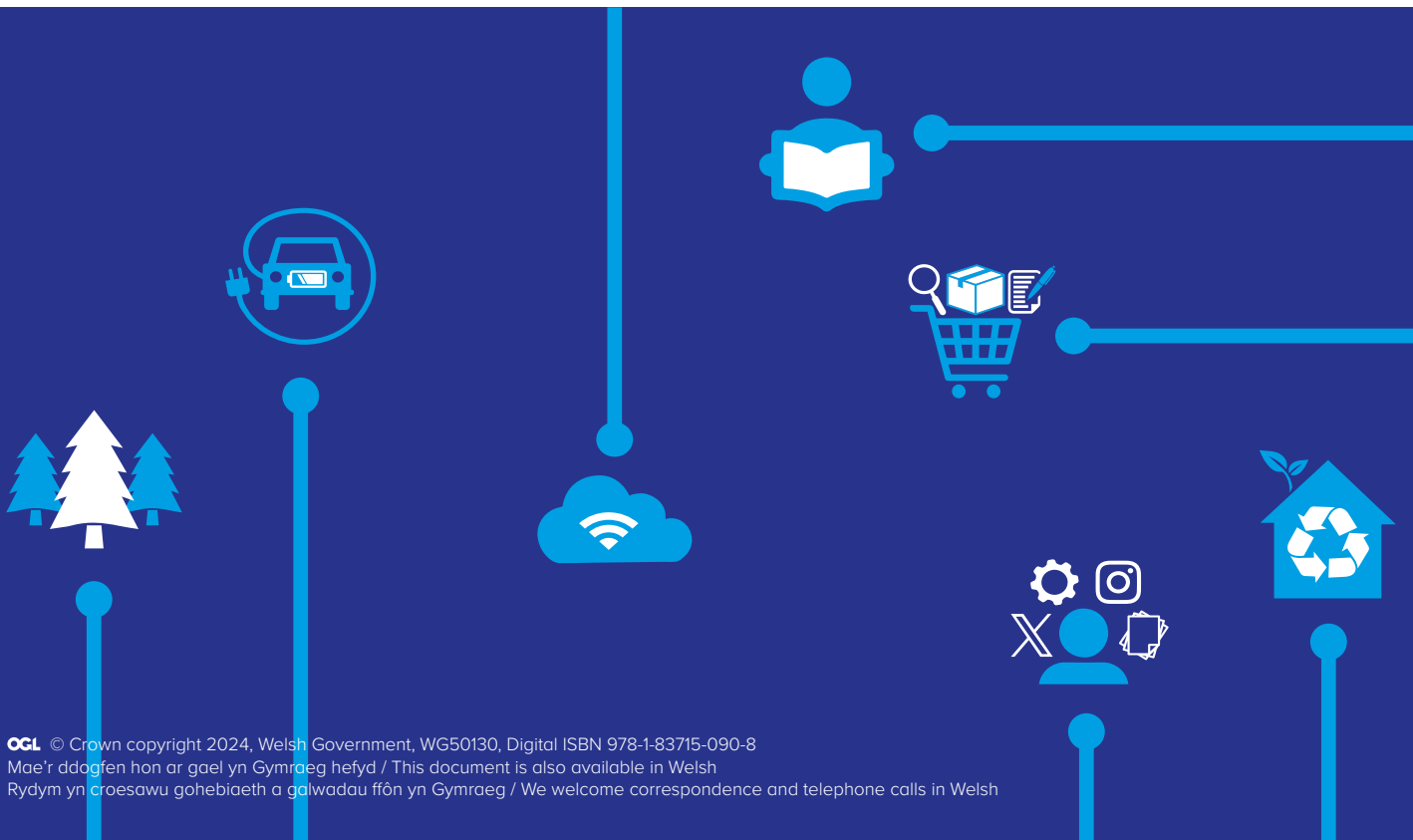


Llywodraeth Cymru  
Welsh Government

# Guidance

# Key Performance Indicators

December 2024





## Guidance: Key Performance Indicators

### What is a key performance indicator?

1. A key performance indicator (KPI) is defined in the Procurement Act 2023 (the Act) as a factor or measure against which a supplier's performance of a contract can be assessed during the life cycle of the contract.
2. By setting targets for the desired level of performance against KPIs, a contracting authority can measure and demonstrate a supplier's progress against those targets. Where KPIs apply, they will be set out in the contract between the contracting authority and the supplier. By working closely with bidders and suppliers the KPIs can be jointly shaped and understood.
3. By agreeing the definition(s) of poor performance, the escalation process for managing poor performance, and the contractual measures and timescales that will be put in place to rectify poor performance, contracting authorities can provide clarity and help to reduce the risk of disputes.

### What is the legal framework that governs KPIs?

4. Section 52 of the Act defines a KPI and sets out the circumstances in which a contracting authority must set and publish KPIs. Section 71 sets out when the contracting authority must assess the supplier's performance against the KPIs set and the information to be published in relation to that assessment.
5. Regulation 33 of the Procurement (Wales) Regulations 2024 (the Regulations) requires at least three KPIs to be published in the contract details notice where KPIs were set in accordance with section 52(1) of the Act.
6. Section 71(2) of the Act requires contracting authorities to assess performance against all the KPIs set in accordance with section 52(1) and to publish certain information about that assessment. Regulation 40 of the Regulations requires contracting authorities to publish assessment information with respect to all KPIs set out in the contract performance notice.
7. When a devolved Welsh authority uses a reserved procurement arrangement, the Welsh regulations will not apply, and they should therefore refer to the UKG guidance.



## What has changed?

8. This is the first time that KPIs have been legislated for in UK public procurement legislation. Contracting authorities should be aware of the new discretionary exclusion grounds in Schedule 7, paragraphs 12(3) and (4) of the Act which permit exclusion on the grounds of poor performance. This places more emphasis on the setting of KPIs and assessment of performance than has previously been the case. See guidance on exclusions for more information.

## Key points and policy intent

### Setting and publishing KPIs (sections 52 and 53 of the Act)

9. Before entering into a public contract with an estimated value of more than £5 million, section 52(1) of the Act generally requires that a contracting authority must set at least three KPIs in respect of the contract.
10. The obligation to set at least three KPIs does not apply if the contracting authority considers that the supplier's performance could not appropriately be assessed by reference to KPIs. This might include, for example, where the contract is for a one-off delivery of, or off-the-shelf, goods.
11. The requirement under section 52(3) of the Act to publish any KPIs set under section 52(1) is to be met by publishing the KPIs in the Contract Details Notice. Regulation 33(2)(r) of the Regulations requires that a Welsh contracting authority must publish a description of all KPIs and the frequency of assessment.
12. The obligation to set and publish at least three KPIs does not apply in relation to certain types of public contracts:
  - a. a framework (although it does apply to call off contracts under frameworks where these are over £5m);
  - b. a utilities contract awarded by a private utility;
  - c. a concession contract; or
  - d. a light touch contract.

### Assessment and publication of contract performance against KPIs (section 71 of the Act)

13. Where a contracting authority has set KPIs under section 52(1) of the Act, section 71 requires that it must assess the supplier's performance against those KPIs at least once in every twelve-month period during the lifetime of the contract and on termination of the contract, and to publish certain information in relation to



that assessment in the contract performance notice. A contracting authority may choose to assess performance (and publish information) more frequently.

14. Where a contract is terminated in full for poor performance, certain performance information must also be included in the contract termination notice. The information to be published in the contract performance notice is specified in regulation 40 of the Regulations and requires the contracting authority to publish an assessment of performance against all KPIs set under section 52(1) of the Act.
15. The KPIs included in the contract performance notice must be assessed in accordance with the ratings set out in regulation 40(5) of the Regulations and include the time period to which the assessment applies. The ratings are replicated in the table below. If a contracting authority has an internal rating system in place, it may still internally assess its suppliers against that rating system. However, it must use the ratings set out in regulation 40 when completing the contract performance notice. See the guidance on contract performance notices for further information.

<b>Rating</b>	<b>Description</b>
Good	Performance is meeting or exceeding the KPI
Approaching target	Performance is close to meeting the KPI
Requires improvement	Performance is below the KPI
Inadequate	Performance is significantly below the KPI
Other	Performance cannot be described as good, approaching target, requires improvement or inadequate

16. The ratings allow for an assessment of 'Other' to be recorded where performance does not fall within any of the other four descriptions. This rating could be used, for example, where no KPI data has been recorded by the contracting authority for that KPI for the relevant reporting period, for example, where the contracting authority publishes the contract performance notice quarterly but measures performance against a specified KPI on a six-monthly basis.



17. Contracting authorities may (provided this would be a permitted modification under section 74 of the Act) consider introducing a new KPI or amending an existing KPI. In this instance, the contracting authorities should use the free text box in the KPI description field to indicate which KPIs included in the contract performance notice are new or amended.

What other guidance is of particular relevance to this topic area?

- Guidance on contract performance notices
- Guidance on contract details notices
- Guidance on contract termination notices