

CLC TASKFORCE: COVID-19 CONTRACTUAL GUIDANCE



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4: COVID-19 Impact Assessment Toolkit

SUMMARY

- Simple toolkit to demonstrate the high-level impact of COVID-19 disruption.
- Consistent approach to the assessment and presentation of data that can be sourced from site records.
- Uses key metrics for presenting data and framing discussions.
- Only to be used in the context of collaborative negotiations.

1. INTRODUCTION

- 1.1. The purpose of this toolkit is to present some simple tools to enable a construction business to demonstrate at a project level the high-level impact of COVID-19 disruption. These tools can potentially be used as part of a collaborative negotiation to demonstrate productivity and cashflow impacts of COVID-19 related disruption.
- 1.2. The Toolkit is not designed to be used to calculate the quantum of a claim. Well established methodologies should be used in this instance in line with the form of contract selected.
- 1.3. **This toolkit should only be used in the context of a collaborative negotiation. Where there is a potential for disputed negotiation, users of the toolkit should carefully consider how the data that they submit might be used in the course of the dispute. This includes the risk the data will be used to support any claim against them in a formal dispute resolution process.**
- 1.4. Those using the guidance should note that during a formal dispute resolution process, the terms of the contract will determine the rights of each party and what can or cannot, be claimed. Whereas in collaborative negotiations, the parties are free to decide the outcome and what is, or is not a relevant consideration, taking account of the factors that have affected the commercial position of the parties and the project.

2. THE PROBLEM

- 2.1. Most contracts did not have a provision for the effects of COVID-19. Many contracts have deleted clauses dealing with delays associated with access to materials or labour.
- 2.2. As a result, a number of clients, contractors and sub-contractors have chosen to negotiate and agree settlements which share to a greater or lesser extent the cost and time impacts of the pandemic. The Construction Leadership Council (CLC) supports this collaborative approach, which is in line with the suite of COVID-19 contractual guidance published.
- 2.3. The CLC is aware that smaller sub-contractors have less access to guidance and support associated with the presentation and negotiation of a settlement. This guidance focuses on a consistent approach to the assessment and presentation of data that can be sourced from site records. Reference should also be made to published guidance on record keeping.

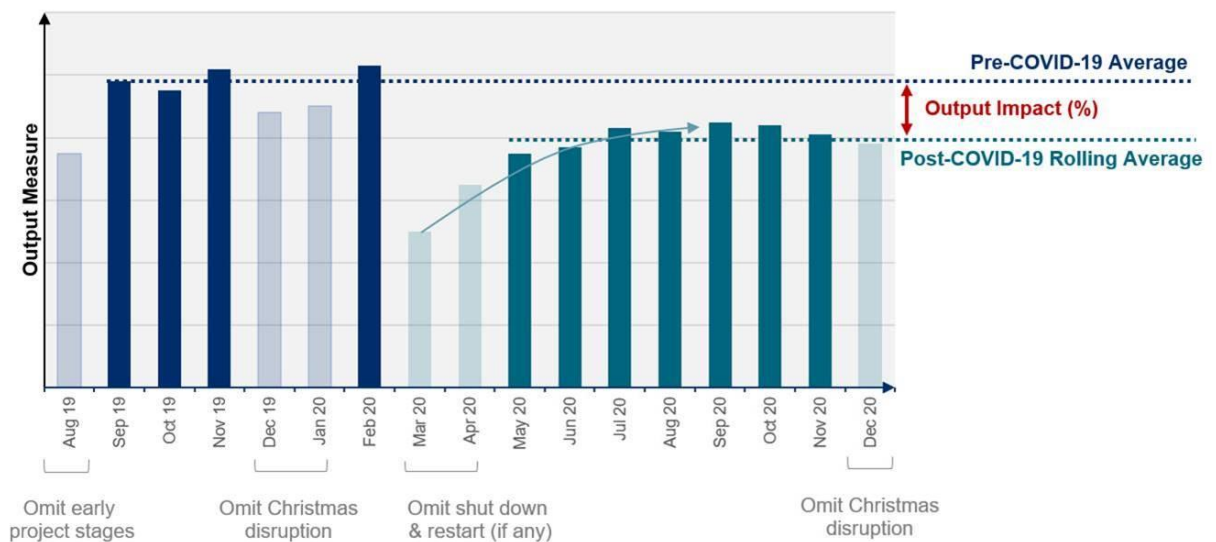
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3. THE TOOLKIT

- 3.1. The toolkit is derived from the [CLC COVID-19 Cost Assessment Toolkit](#).
- 3.2. The original COVID-19 Cost Assessment Toolkit takes a deliberately simplified approach to the collection of data, meaning that all of the metrics can be collected monthly, and sourced from site records.
- 3.3. The metrics are summarised below:

INDICATOR	MEASUREMENT	FREQUENCY	OUTPUT	USE
Workforce Indicator	Total Number of workers on site / Days in Month	Monthly	Average Number of workers on site per day	Demonstration of potential programme prolongation Indicative measure of changed output.
Output Indicator of Revenue	Total Revenue / Total Number of workers on site	Monthly	Revenue generated per worker per day (£)	Understand changes in GVA per worker (revenue) Indicative measure of changed output.
Productivity Indicator	Total Revenue / Total Operative Hours worked	Monthly	Revenue generated per operative hour (£)	Understand impact on output related to COVID-19 and Site Operating Procedures

- 3.4. There will naturally have been a variation in levels of activity from month to month. As a result, it is useful to demonstrate a pre-COVID-19 baseline for each output measure.



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3.5. The timing of data collection should follow these principles:

- To create a pre-COVID-19 baseline, the measures should ideally be collected for the months of September, October, and November 2019, along with February 2020. This will allow the data to be normalised over this period.
- From March 2020 onwards, data should have been captured on a monthly basis.
- Worked hours per month should be measured against the cost of works for the same month, so for example: worked hours in January 2020 should correspond with cost paid out in February – from certified value of works carried out in January 2020.

4. PRESENTATION OF DATA

- 4.1. None of the data collected using the toolkit can be used directly to support the calculation of a quantum of a claim.
- 4.2. All of the data captured is relative and is best plotted as a time series to demonstrate a change in performance that can be related through timing to events associated with the pandemic.

5. CONCLUSION

- 5.1. This document provides general guidance and does not constitute legal advice. A party's contractual rights will depend on the wording of its particular contract and the factual circumstances on its project. If in doubt advice should be sought.
- 5.2. If you have any comments or feedback please email:
construction.enquiries@beis.gov.uk

The Construction Leadership Council would like to express their thanks for the contributions made to the development of this guidance under the leadership of ECA by: Simon Rawlinson of Arcadis, Nick Rowe of Gardiner & Theobald, Paul Beeston of Ryder Levett Bucknall, Mark Williams of Mace and Malcolm Clarke of Baxall Construction.