



International Oil Pollution Compensation Funds

# Update to Claims Criteria

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**The 7th edition of the 1992 Fund Claims Manual was published in March 2019.**

This latest edition incorporates the text approved by the governing bodies in April 2018 setting out revised assessment criteria for claims for compensation made by employees who have suffered a reduction in wages, been placed on part-time work or been made redundant as a consequence of an incident. The Guidelines for presenting claims in the fisheries, mariculture and fish processing sector (Fisheries Guidelines) and the Guidelines for presenting claims in the tourism sector (Tourism Guidelines) have also been amended to reflect the change in the criteria. The revised publications are available to download via the Publications page of the IOPC Funds' website.

The 7th edition of the Claims Manual and updated Guidelines are not currently available in hard copy. This explanatory note provides the wording of all the new and amended text.

## Update to Claims Manual

*New paragraphs from the 7th edition of the Claims Manual – Refined assessment criteria inserted as new paragraphs.*

**3.3.5 and 3.4.2** Claims for economic losses suffered by employees who have suffered a reduction in wages, been placed on part-time work, or been made redundant as a consequence of pollution damage qualify for compensation if there is a close link of causation between their loss and the pollution damage. The period for which the claimant may be compensated will not exceed the period for which the employer has, or would have had an admissible claim, since the employer theoretically would be in a position to re-employ the claimant at the end of the admissible period. When considering whether such a close link exists, consideration should be given to the employment practices, laws and regulations of the affected Member State, in particular, to the following factors:

- claimants must have a concluded contract of employment (either written, oral or implied) at the time of the pollution damage. Actual commencement of employment by the time of the pollution damage is not necessarily required, but mere expectation of employment is regarded as insufficient link of causation;
- claimants must have suffered economic loss as a result of a reduction in wages, having been placed on part-time work or having been made redundant by his/her employer for the reason that the employer's business was affected by the pollution damage (regardless of the status of the submission of any claim(s) by the employer);
- if alternative employment opportunities exist in the same geographical area, claimants must have tried to mitigate their losses by applying for such opportunities. The meaning of 'alternative employment opportunity' and 'same geographical area' should be determined on a case-by-case basis, taking into account the circumstances of the claimants, their employment and those of the areas affected.

**3.3.6 and 3.4.3** A Member State government may recover the amount of the social security paid to victims in relation to their economic losses suffered as a result of a reduction in wages, having been placed on part-time work or having been made redundant as a consequence of the pollution damage, if its national law allows it to recover the amounts paid from the paying parties.

**3.3.13 and 3.4.7** Claimants who have suffered a reduction in wages, been placed on part-time work, or been made redundant as a consequence of pollution damage, should disclose any compensation received from social security, contractually or non-contractually agreed redundancy payment, or any other source, whether determined by national law or otherwise, which provided extra income to remedy the loss. Compensation may be payable to the claimant for the unrecovered part of his/her loss, taking into account any such payments. A claimant should not receive double payment.

*Subsequent amendment to paragraph 3.4.4*

**3.4.4** Compensation is paid on the basis of lost profit, and so saved overheads or other normal variable expenses not incurred as a result of the incident have to be deducted from the loss in revenue. Such variable costs fluctuate depending on the level of business achieved. The nature of items to be taken into account would be business-specific but could include cost of purchases such as food, hotel toiletries and goods for sale such as souvenirs, utilities such as fuel and electricity, cleaning and maintenance costs. Any saved labour costs should also be deducted from the reduction in turnover, **but the employee may be eligible to claim separately.**

## Update to Fisheries Guidelines

*Insertion of new paragraph 2.5*

**2.4** If you work for somebody else, for instance as an employee in a fish factory, then your employer would usually pay you your salary and make a claim for full economic loss. Depending on your employer's circumstances, payment of your salary might be delayed in part or wholly until the compensation is paid. If your employer claims for full economic loss, the 1992 Fund will normally only compensate him fully if he is prepared to sign an agreement that he will actually pay you your salary (if he has not already done so).

**2.5** **However, if your employer reduces your wages, places you on part-time work or makes you redundant, the employer's claim will be deducted for the saved costs, and you may be eligible to claim separately if there is a sufficiently close link of causation.**

# Update to Tourism Guidelines

Amendments to paragraphs 2.6, 2.8 and 2.9

- 2.6** Businesses or organisations that rely on tourists or leisure visitors for all or part of their income are entitled to make a claim for economic loss where they can prove that their gross profit was negatively affected by the pollution. You will need to show that all or a significant part of the demand for your business services is generated by tourist or leisure visitors. Employees working for a business ~~are not~~ **may** be eligible to claim.
- 2.7** [No change]
- 2.8** Experience has shown that the impact of an incident usually lasts for a limited period. We recognise that the loss of key staff could be detrimental to the ability of your business to recover following the end of the incident. Therefore, if you employ personnel to work in your business, we would not expect you to reduce the number of full time staff in permanent employment. If, however, you choose to terminate employees' contracts, any saving you make as a result will be considered in the assessment of your claim. **In such a case, the employee may be eligible to claim separately.**
- 2.9** If you work for a business in a tourism-related industry, for example in a restaurant, then your employers would normally make a claim for economic loss, and continue to pay your salary. The conditions of employment would be regulated by your contract. The assessment of your employer's claim would therefore take into consideration the wage costs of the employees, and a separate claim for wages would therefore not be considered. **However, if you have suffered a reduction in wages, been placed on part-time work or made redundant as a consequence of pollution damage, you may be eligible to claim separately.**

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