

# EXCLUDED

## **PAYE Freelancers: Excluded from Meaningful Government Covid-19 Financial Support**

### **Overview**

PAYE freelancers are individuals whose work takes the form of short-term contracts. However, their employers stipulate that they are paid through their clients' payroll system and taxed at source.

PAYE freelancers often do not have the same rights as employees. This is particularly common in the TV, film and live events industries. HMRC has very strict guidelines for this industry that state whether an individual is allowed to trade as a sole trader, dependent on the role that they are credited with. If the role is not an approved grade on their list<sup>1</sup>, the options are to set up as a limited company (which with IR35 changes imminent is unlikely to remain an option) or apply to HMRC for a Lorimer Letter. To be granted a Lorimer Letter, one must provide 12 months of work history with the grade (job title) included for every engagement. HMRC will not normally consider an application for a letter of authority unless one can demonstrate multiple short-term contracts of 10 days or less over a 12-month period. One must also show that there was a level of financial risk and/or provision of substantial equipment (other than what HMRC considers to be tools of the trade). The contract must be less than 11 months otherwise, regardless of job grade.

If one is working in a role not on this list then legally one must be paid by PAYE. Production companies normally send all invoices for sole traders out to an external company to validate as there are substantial fines for paying individuals the 'wrong way'. Some production companies refuse to pay any individuals as sole traders and instead put everyone on payroll to negate the risk. The majority of junior roles are not on the list. Others may straddle numerous grades and

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<sup>1</sup> Details of job roles at:

[www.hmrc.gov.uk/gds/esm/attachments/roles\\_normally\\_treated\\_as\\_self\\_employed\\_formerly\\_appendix\\_1.pdf](http://www.hmrc.gov.uk/gds/esm/attachments/roles_normally_treated_as_self_employed_formerly_appendix_1.pdf)

therefore may also fall into the exclusion relating to trading profits in self-employment needing to be at least 50% of total profits (the '50% rule') with regard to being excluded from the Self-Employment Income Support Scheme (SEISS).

Many PAYE freelancers were excluded due to the way their contracts fell. It is extremely common to either have many different clients that you work for at one time or to move from a number of slightly longer contracts back-to-back.

### How many are affected?

Based on ONS data for January-December 2019, in the Treasury Committee report of 15 June 2020, it is estimated that approximately 780,000 people fall into this category of PAYE freelancers<sup>2</sup>. How these freelancers are counted within the figures for those excluded depends on the proportion of their income from PAYE as opposed to self-employment.

There are three different scenarios:

- If paid 100% via PAYE, they would not be eligible for SEISS and would therefore be part of the 1.6m excluded self-employed - they could have tried to claim CJRS, but in many cases their employers have refused to furlough them
- If paid via a mix of PAYE and self-employment but total income was less than 50% from self-employment, they would not be eligible for SEISS and would therefore be part of the 1.6m excluded
- If paid via a mix of PAYE and self-employment but total trading profits was more than 50% from self-employment, they would be eligible for SEISS (therefore be part of the 3.4m included)

### Examples

In the film and TV industries, the following PAYE roles and scenarios are common:

1. Camera Operator – can only be paid as a sole trader if they are providing their own kit. Therefore, they can also easily fall under the 50% rule depending on the contracts available to them.
2. Day Runner – normally hired only for studio/shooting days. Numerous contracts per year often only a few days at each company, PAYE.
3. Assistant Producer – Works 6-week contracts back-to-back. Finished one end of February 2020, started a new contract at the beginning of March. He was unable to be furloughed by either company due to the government enforcing payroll cut-off dates – despite having contracts proving employment.

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<sup>2</sup> <https://committees.parliament.uk/publications/1446/documents/13238/default/>

4. Producer – taking a mixture of Assistant Producer and Producer roles dependent on what is available. Assistant Producer roles must be paid as PAYE, Producer roles can be sole trader, therefore, falling under the 50% rule.

5. Producer – worked for half the year for a company that would not engage sole traders and the rest of the year working for a client that would, and would therefore fall under the 50% rule.

6. Production Coordinator – hired for the duration of a production (could be a few weeks to a few months) and must be paid via PAYE.

7. Production Manager – Contract in 2018-2019 of +11 months and therefore paid as PAYE. 2019-2020 working as a sole trader and therefore excluded as classed as newly self-employed.

8. Reporter – works for 10 separate clients on average per month. Was not on payroll for the majority on the cut-off date as they are set up as a new employee every month. Therefore, was only entitled to minimal furlough (as little as a few days).

Other PAYE freelance roles include visiting university lecturers, bank nurses and other agency workers.

### **Potential Solutions**

In its report of 15 June 2020, The Treasury Committee put forward a recommendation to enable PAYE freelancers to be able to access support based on the first 11 months of the 2019-2020 tax year up to a maximum of £2,500, in line with CJRS and SEISS support.<sup>3</sup>

ExcludedUK fully supports this recommendation and also calls for backdated support to account for these freelancers having not been entitled to any support through either scheme throughout the pandemic.

### **Conclusion**

It is important to remember that all the tax records for PAYE freelancers were always readily available in real time as they had gone through payroll. They can be seen easily on the HMRC portal. It also mainly affected the more junior members of staff. In addition, it should be noted that PAYE payments already cause employees to lose the benefit of being able to claim certain expenses against their income to reduce overall tax liability, unless they have a Lorimer Letter.

PAYE freelancers were not able to access Bounce back Loans as they were not viewed as self-employed by the banks.

The exclusion of PAYE freelancers will have a significant effect on the future of the TV and film industries as well as other industries, and many have left unable to justify the uncertainty for minimal pay, leaving a skills shortage in these industries in the future.

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<sup>3</sup> <https://committees.parliament.uk/publications/1446/documents/13238/default/>

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