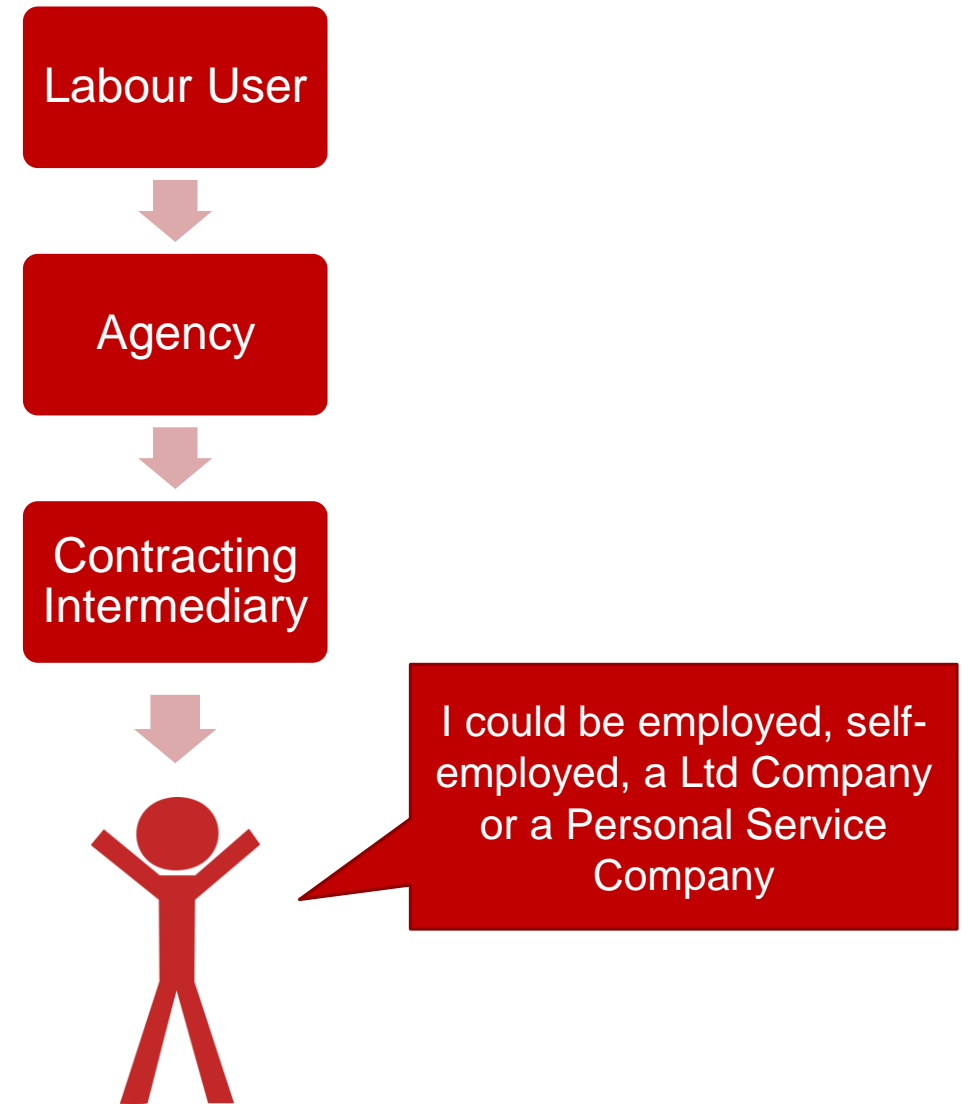




# Operation Compliance



# Labour Supply Chains



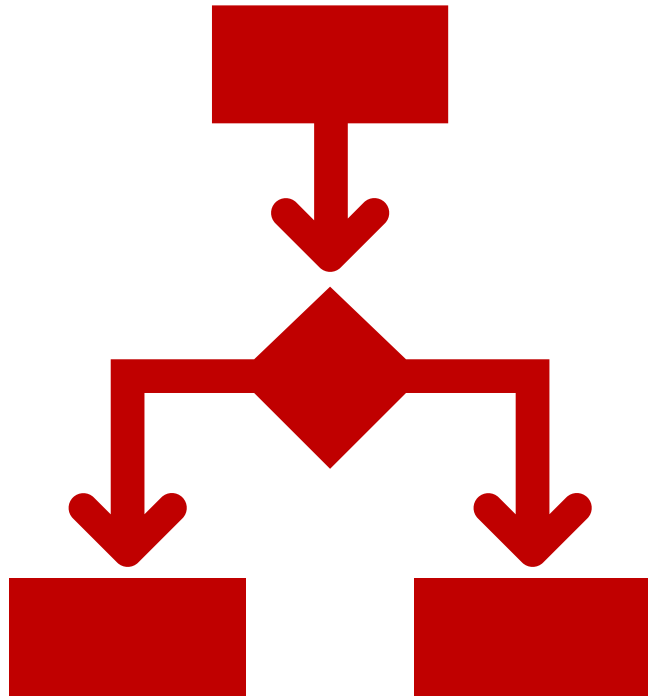


# What's on the runway?



# Off-Payroll Working Rules

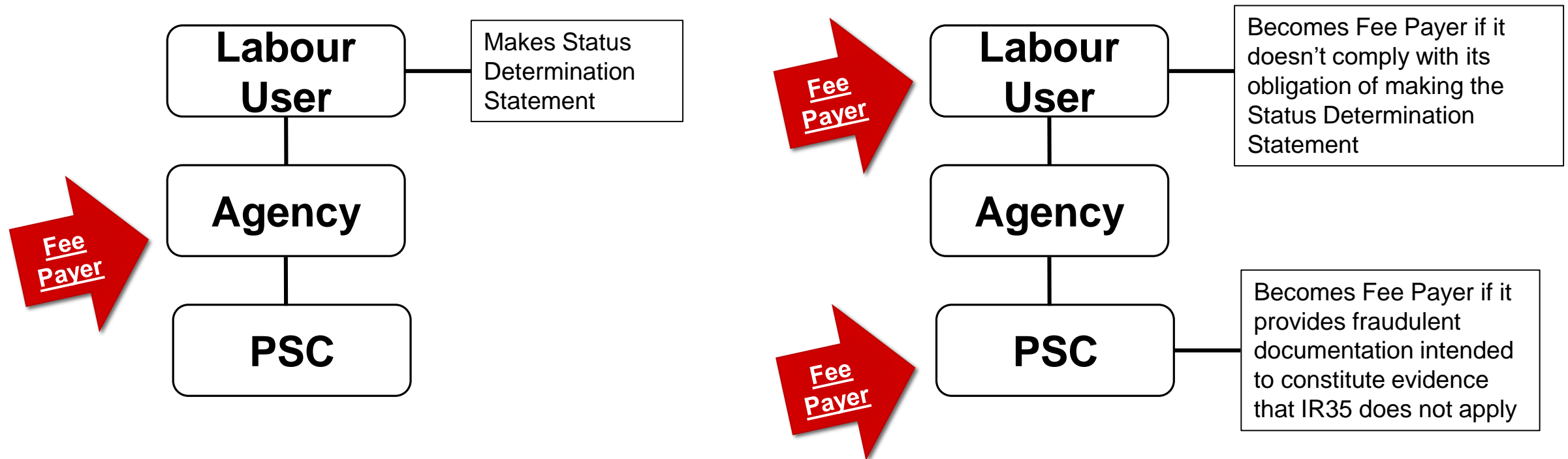
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- Public sector – April 2017
- Extension into the private sector
- 6 April 2020
- Labour User “Client” to decide whether the PSC looks like an employee



# Off payroll rules in the private sector



The "Fee Payer" is responsible for any PAYE/NICs liabilities



# Small Company Exemption

## 382 Companies qualifying as small: general

(1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year.

**[F1** (1A) Subject to subsection (2), a company qualifies as small in relation to a subsequent financial year if the qualifying conditions are met in that year.]

**[F2** (2) In relation to a subsequent financial year, where on its balance sheet date a company meets or ceases to meet the qualifying conditions, that affects its qualification as a small company only if it occurs in two consecutive financial years.]

(3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

- |                        |   |
|------------------------|---|
| 1. Turnover            | <b>[F3</b> Not more than £10.2 million] |
| 2. Balance sheet total | <b>[F4</b> Not more than 5.1 million]   |
| 3. Number of employees | Not more than 50                        |

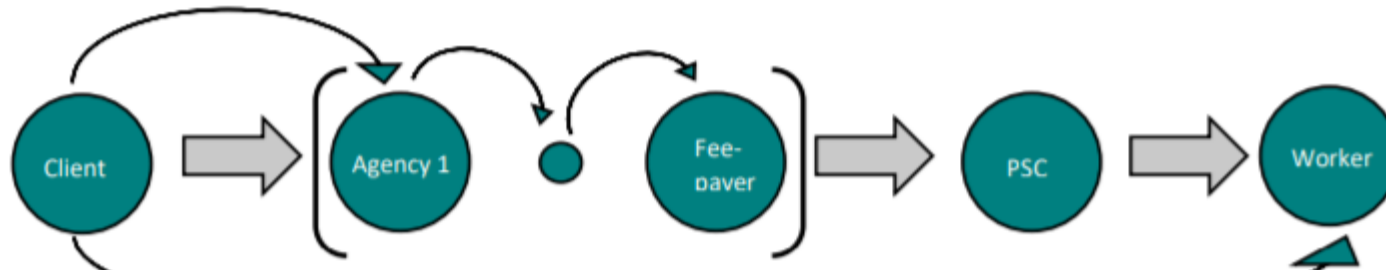
\*Companies Act 2006



Diagram: Flow of information through the labour supply chain

1. Client required to provide status determination together with the reasons for determination to party they contract with and the worker

2. Status determination and reasons for determination are required to be passed down the contractual chain



⇒ Contractual chain

⇒ Proposed change

3. Client required to provide status determination and reasons for determination to worker

# Status Determination Statement

- Reasonable Care
- Reasons to support decision
- Dispute process

\*Taken from HMRCs 'Off-payroll working rules from April 2020 - summary of responses' document



**Off-payroll working rules  
(IR35) apply**

**Unable to make a  
determination**

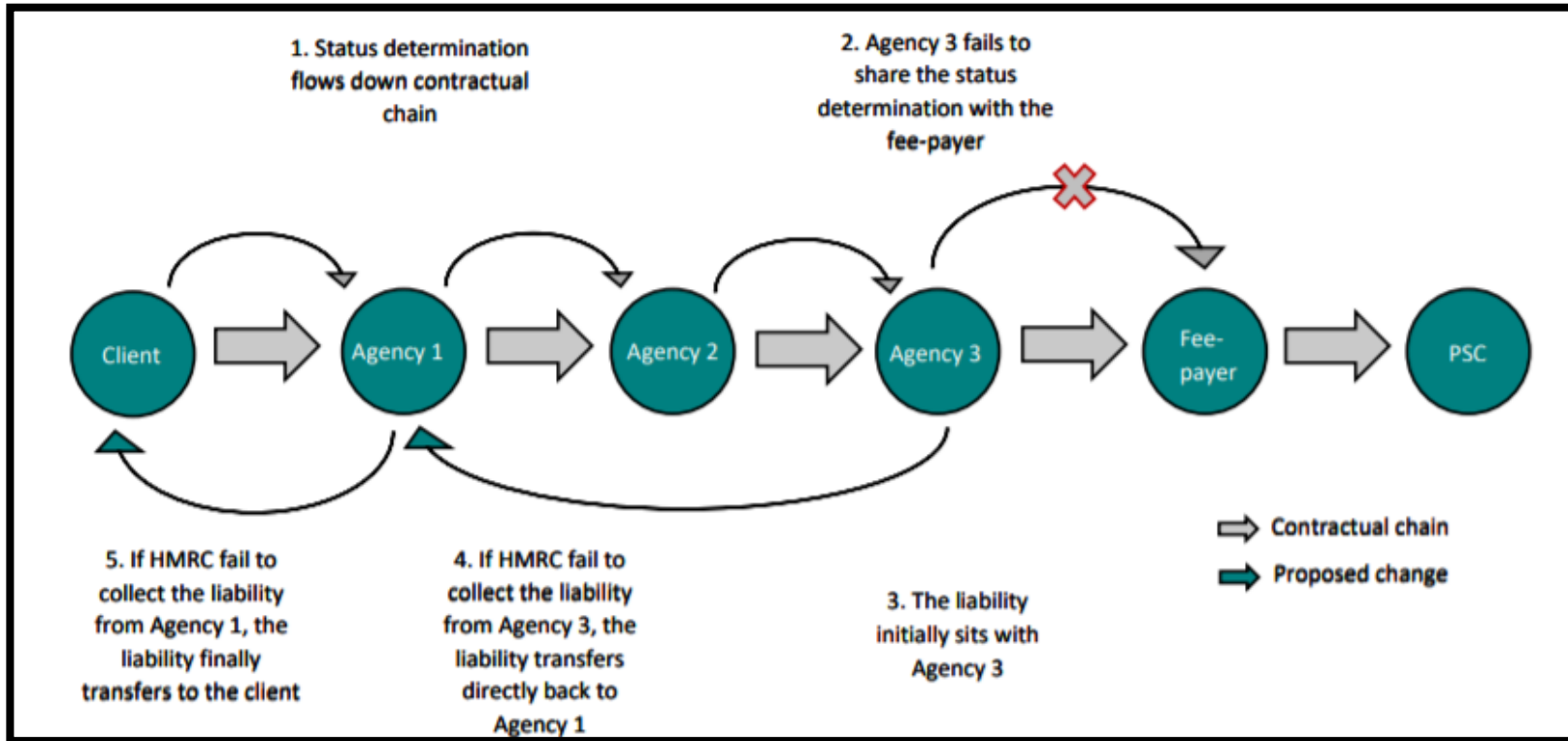
**Off-payroll working rules  
(IR35) do not apply**

# Enhanced CEST tool

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November 2019





\*Taken from HMRCs 'Off-payroll working rules from April 2020 - summary of responses' document

# Transfer of debt

- PAYE and NIC liabilities can be recovered from a third party
- No “realistic prospect” of recovering outstanding Income Tax and NICs from the deemed employer within a “reasonable period”



## Educational letters

### **Off-payroll working rules (IR35) due to be implemented from April 2020**

There are some **important changes to employment taxes due to come into effect from 6 April 2020.**

Based on information we hold about the size of your organisation, **it is possible that these changes may affect you.**

The changes will only affect you if you have, or will have, individuals (e.g. contractors) working for you off-payroll through their own intermediary, usually a limited company, and often known as a Personal Service Company (PSC).

This letter explains these changes, what you need to do and where you can find further guidance.



# Announcement – 7<sup>th</sup> February

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The rules, also known as IR35, will now apply only to payments made for services provided on or after 6 April 2020. Previously, the rules would have applied to any payments made on or after 6 April 2020, regardless of when the services were carried out. It means organisations will only need to determine whether the rules apply for contracts they plan to continue beyond 6 April 2020, supporting businesses as they prepare.



# Preparations

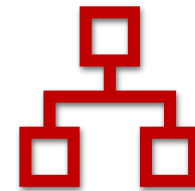
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Look at your current workforce and the Labour Users in the supply chain



Educate PSCs and the supply chain



Implement a SDS and dispute process



Review internal systems, such as payroll software, HR and onboarding policies, process maps etc

# Good Work Plan

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From 6 April 2020 –

- Regulation 10 contracts
- Right to a written contract from day one
- Holiday pay – 12 weeks to 52 weeks
- Key Information Document
  
- Consultations

# Good Work Plan





# National Living / Minimum Wage

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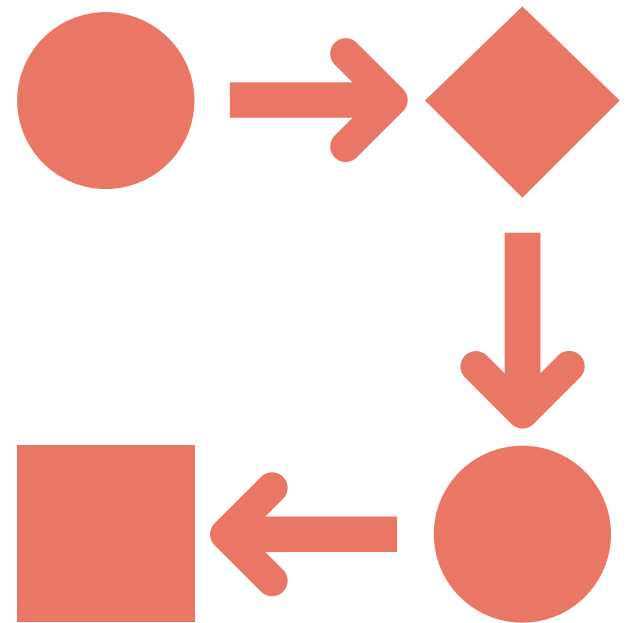
- HMRC enquiries
- Deductions
- Breaches
- Penalties
  - maximum penalty of £20,000 per worker
  - Naming and shaming

	From 1 April 2019	From 1 April 2020
Workers aged 25 and over (NLW)	£8.21	£8.72
Workers aged 21–24	£7.70	£8.20
Workers aged 18–20	£6.15	£6.45
Young workers rate for workers aged 16–17	£4.35	£4.55
Apprentices under 19, or over 19 and in the first year of the apprenticeship	£3.90	£4.15

# VAT Reverse Charge

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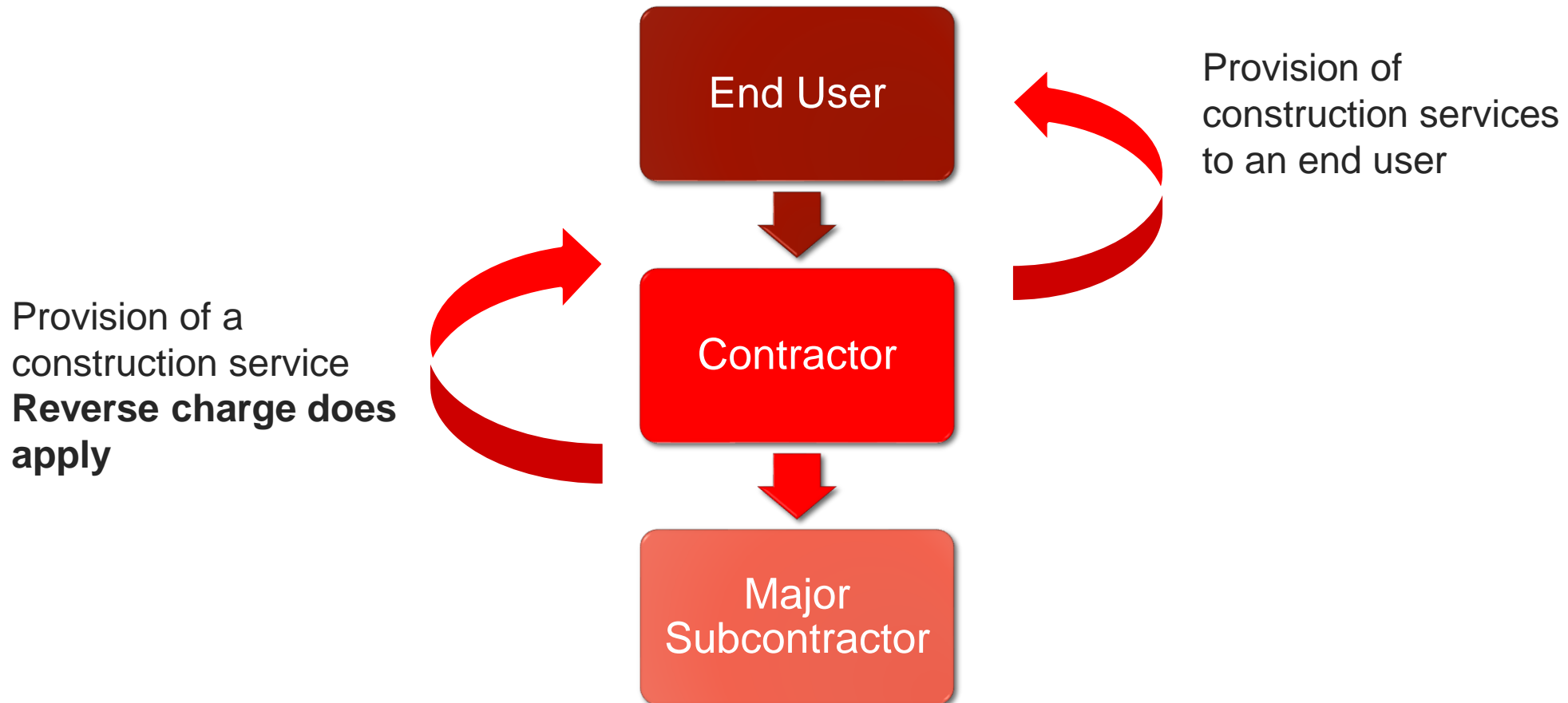
- 1st October 2020
- Avoid “Missing Trader Fraud”
- Scope of CIS - “Mixed Contract” provision applies
- Responsibility on recipient
- VAT invoice must state the reverse charge applies
- Administrative burden, cash flow and accounting systems
- Responsibility to educate subcontractors and customers
- Penalties for non-compliance





# VAT Reverse Charge – supply of a construction service

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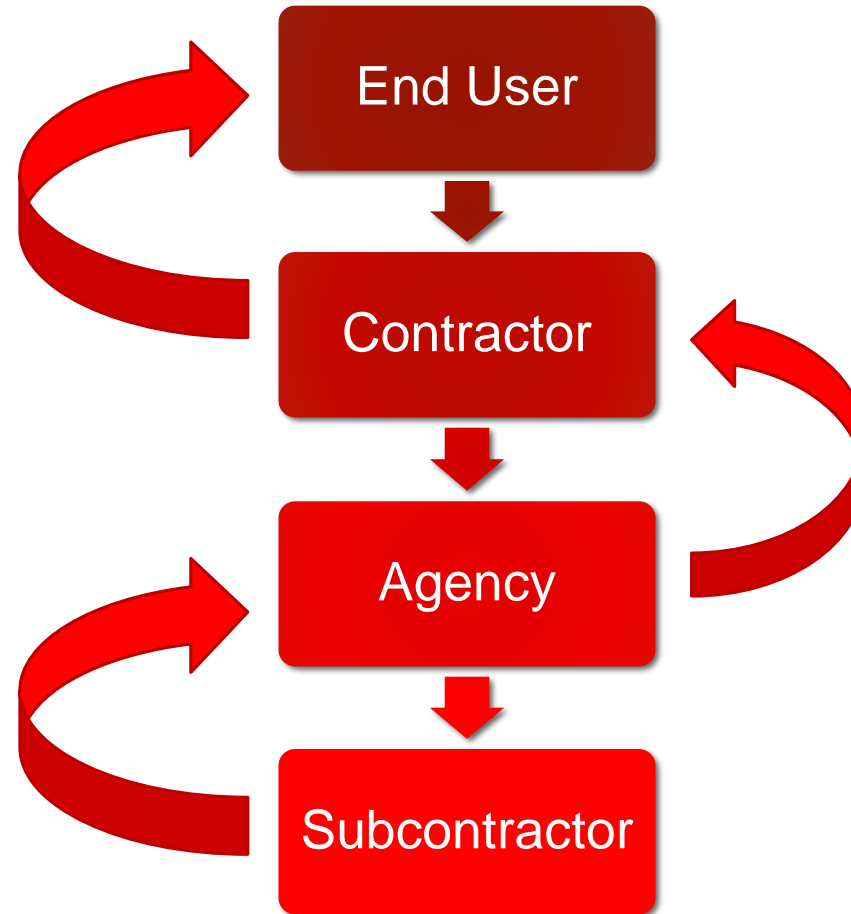




# VAT Reverse Charge – supply of staff

Provision of construction service to an end user

Supply of staff  
**Reverse charge does not apply**



Supply of staff  
**Reverse charge does not apply**



# Brexit and Right to Work

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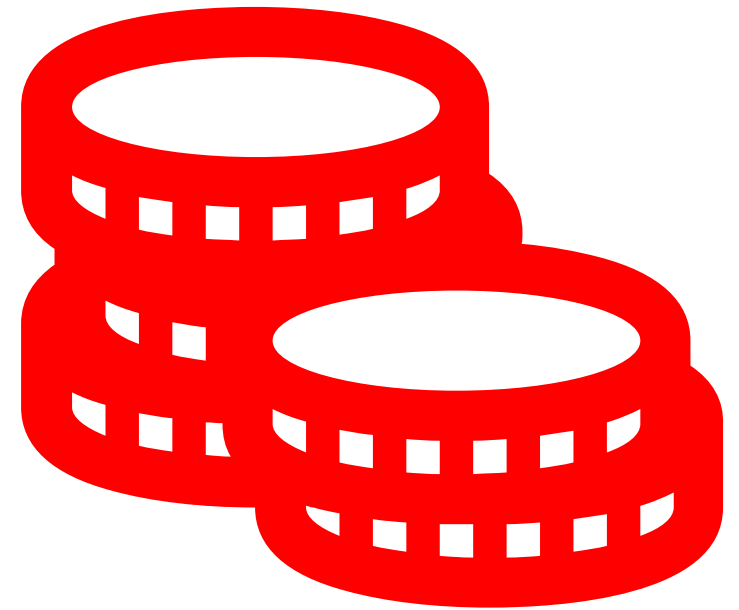
- Robust right to work check procedure
- No change to right to work processes until 1st January 2021
- Points Based System
- Skilled workers



# Employment Allowance

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- The Employment Allowance (Excluded Persons) Regulations 2020
- Secondary Class 1 National Insurance Contributions liability
- Less than £100,000 in the tax year immediately prior to the year of the claim



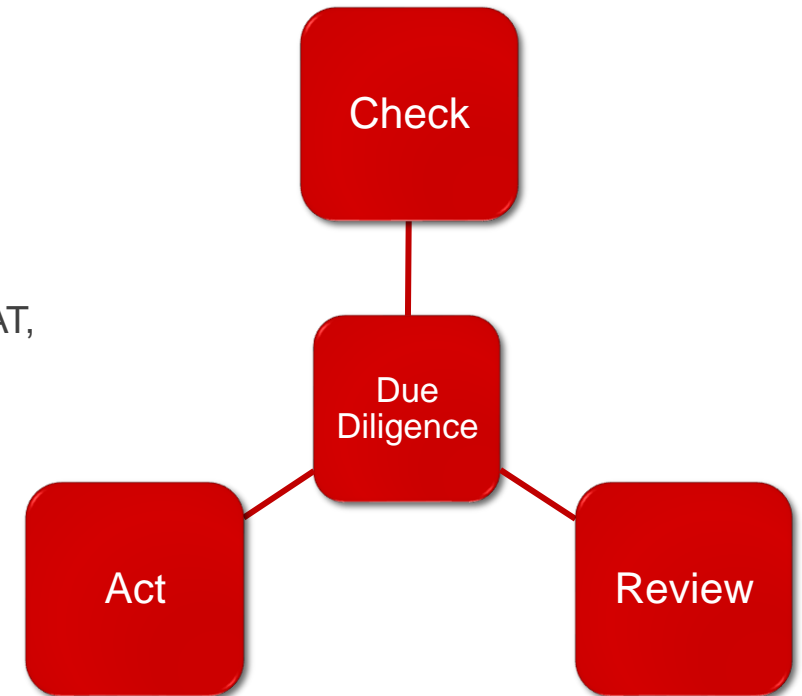




# HMRC guidance – use of labour providers: advice on due diligence

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- Published 19 May 2017
- Ongoing supply chain compliance
- How workers are engaged and paid
- NMW / NLW
- Right to Work checks/ID verification
- Contractual documents
- Audit of payslips
- Use of expenses
- Agency Workers Regulations
- Scope of CIS
- Control under the Agency Legislation
- Proof of making payments to HMRC – VAT, PAYE, CIS
- Compliance history
- Modern Slavery & Criminal Finance Act





# Due Diligence

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“HMRC cannot tell you what checks you should make”

“the extent of checks depends on individual circumstances”

Guidance = supply of ‘goods’

“Examples are only guidelines”

“Reasonable care” ... with no definition of reasonable



# Due Diligence

- Fraud in supply chain letters

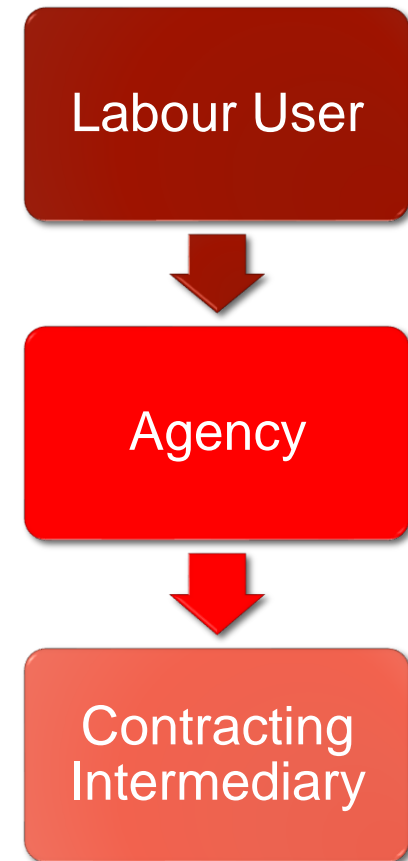
This letter is being sent to you as HMRC is experiencing problems with businesses in a number of trade sectors, including construction, labour supply and payroll.

HMRC is concerned that your business could be at risk of involvement in supply chains that are connected to fraud, which in turn could lead to your business being unable to recover the VAT it is charged on those supplies.

Additionally, companies which fail to prevent representatives acting on their behalf from criminally facilitating tax evasion can be prosecuted and if found guilty subject to an unlimited fine. More information about this offence and suggested prevention procedures can be found in 'Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion' which can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/672231/Tackling-tax-evasion-corporate-offences.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/672231/Tackling-tax-evasion-corporate-offences.pdf).

To help both your business and HMRC I would like to arrange a visit to your business

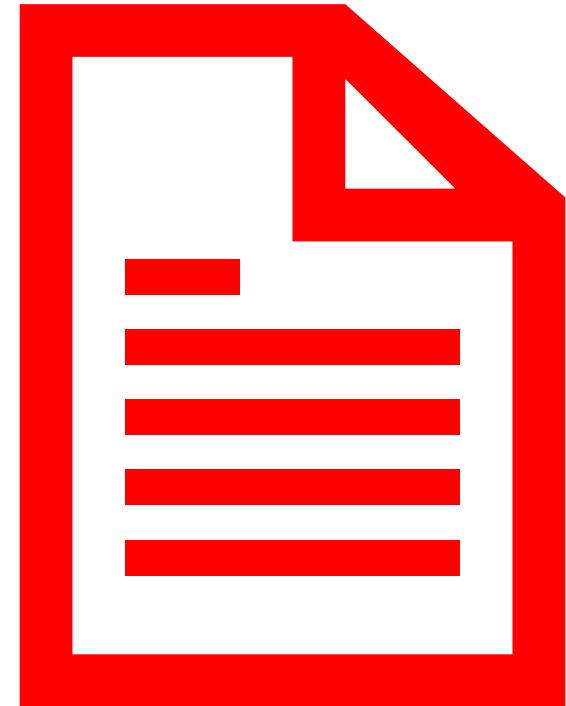




# Due Diligence

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- Kittel Principal
- Supply Chain Management Programme
  - Due Diligence Policy
  - Ongoing Management Review Process
- Mr Kamraan Hussain v HMRC





# Modern Slavery

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- The Gangmasters and Labour Abuse Authority
- S54 of the Modern Slavery Act 2015 – transparency in supply chains
- Modern Slavery Statement
  - Annual turnover of £36m or more
  - Steps taken to prevent Modern Slavery and human trafficking
- GLAA industry profiles
- GLAA action





## Key Questions to Prevent and Identify Labour Exploitation



- How do you ensure workers on site know how much they should be paid?
- Do you have a publicised reporting process for complaints by workers?
- Do you have access to translation services in your organisation?
- Do you have any additional due diligence checks for workers at risk of being exploited?
- Do you know and understand each level of your supply chain, including contractors? Do you conduct background checks?
- Do members of your organisation receive training on spotting the signs of modern slavery and labour exploitation?
- Do you have an internal escalation process if you identify an issue of exploitation? Do you know who to contact?
- Have you considered joining the construction protocol?

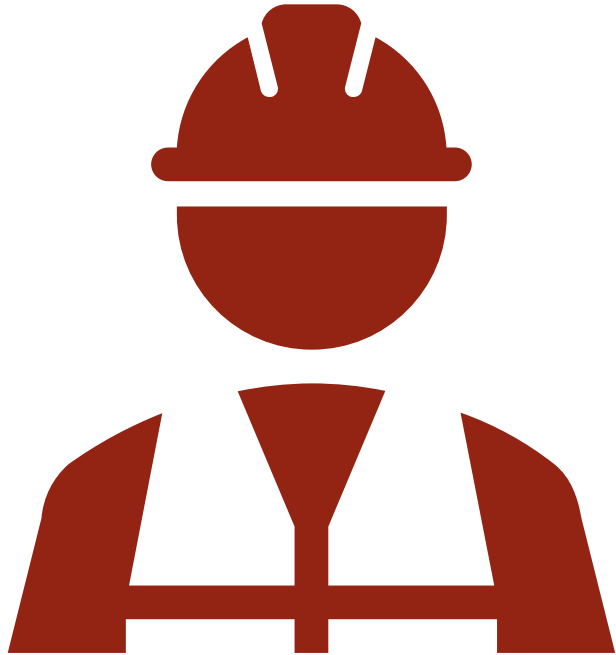
\*Taken from GLAA “Construction Industry Profile”

# Criminal Finances Act 2017

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- September 2017
- Companies and partnerships (relevant bodies) criminally liable where a person acting on their behalf (associated person) facilitates tax evasion. If these two elements exist, an employer will be guilty of failing to prevent tax evasion facilitation (in the UK or overseas) unless it can show it had 'reasonable prevention procedures' in place or that it was not reasonable to expect the organisation to have prevention procedures in place
- Penalties
  - Unlimited fines

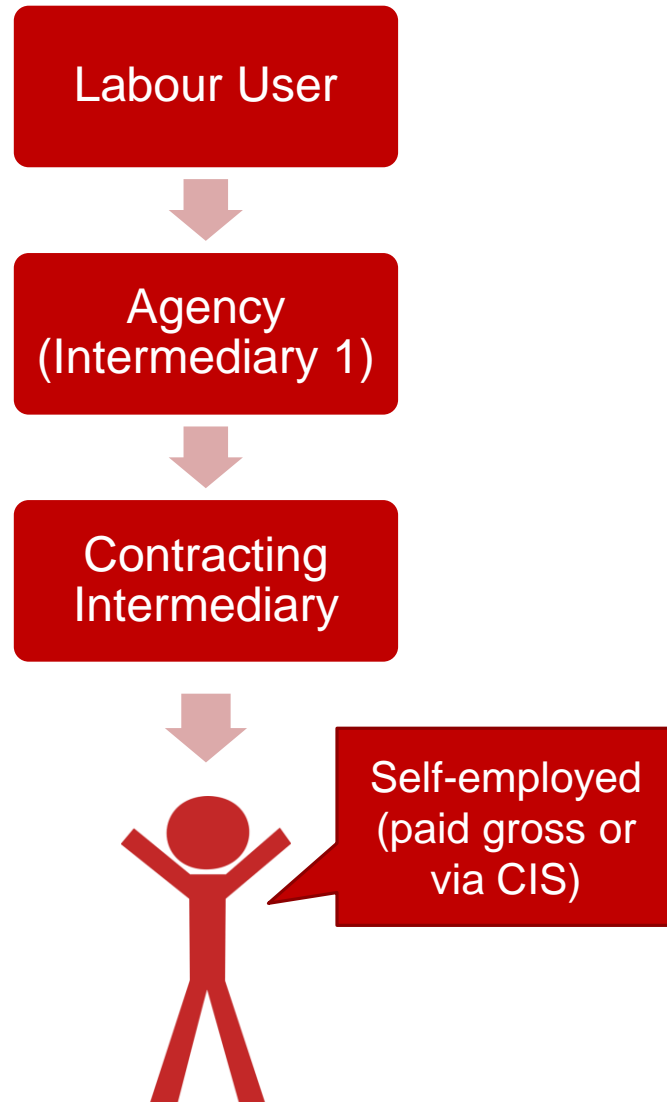




# CIS

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- CIS compliance is key
- Verification
- Scope
- Materials
- CIS returns
- Making deductions
- Removal of Gross Payment Status
- “Fraudulently” and “knowingly”
- Section 9 liabilities



# Employment Status

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- Self-employment status indicators
- Supervision, Direction and Control
- Employment tribunals – *Pimlico Plumbers*



# Expenses

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- “Wholly, exclusively and necessarily”
- Incurred and attributable to travel in the performance of the duties of employment
- Incurred and attributable to necessary attendance at a temporary workplace
- Tax deductible under s337 and s338 ITEPA
- Section 339A ITEPA – Finance Act 2016 - effective April 2016 and Section 289A ITEPA – Finance Act 2015 - effective April 2016
- Optional Remuneration Arrangements – Finance Act 2017
- Expenses Process / Audits

# GDPR

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- 4% of annual turnover or €20,000, whichever is higher
- Brexit Impact – Same rules will apply
- Cases –
  - International Hotel Group Marriott
  - British Airways
- Subject access requests
- Consent forms





# Key-Note Speech

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Alan Nolan







Reward Power	Promise reward for compliance
Coercive Power	To give or threaten punishment for non-compliance
Informational Power	The target's belief that HMRC has more information than oneself
Expert Power	The target's belief that HMRC has generally greater expertise and knowledge than oneself
Legitimate Power	The target's belief that the influencer is authorized by a recognised power structure to command and make decisions
Referent Power	Identification with, attraction to or respect for the source of influence



Arrange a visit to suit the business

Create a rapport

Ask who will be attending

Understand their experience

Ask whether a sample would be more appropriate

Know what is confined as a “statutory record”

Officers don’t necessarily know more than you

Offer lunch

Organise an external meeting room

Get a specialist tax professional in at the start of an enquiry to avoid any misunderstandings



Review the grounds set out in the determination

Ask the inspector to reconsider their decision

Provide additional, relevant information

“Reasonable care”

Request an independent review

Notify your appeal to the Tribunal

Enter into dialogue with the litigator



What does your supply chain say about you?

How much work have you done to protect your business?

Is it enough in the current environment?



All labour providers will be required to produce a documented mechanism for enforcing the highest level of integrity in their labour practices.

This will extend to reporting mechanisms addressing cases of unethical labour practices.

# Employment Agency Standards Inspectorate

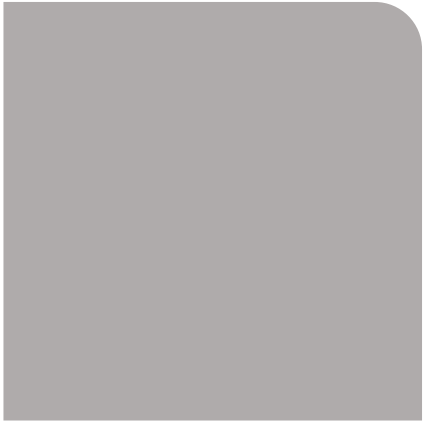
Kirsty Perryman – Inspector and Stakeholder and  
Publicity Manager

**Contact us:**

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