

GLA 33/8.3 Approach to Land Agents

18 January 2012

BOARD PAPER REFERENCE – GLA 32/8.3 Approach to Land AgentsIssue

1. To clarify the GLA's regulatory approach to Land Agents, restricted to those who are qualified Chartered Surveyors, removing the need for such Land Agents to apply for and hold a GLA licence.
2. It should be noted that Chartered Surveyors working in the rural economy generally refer to themselves as Rural Chartered Surveyors; some may also refer to themselves as Land Agents. However, the exact terms Rural Chartered Surveyor and Land Agent do not exist as formal RICS designations therefore the term Chartered Surveyors will be utilised throughout this document.

Recommendations

3. Chartered Surveyors, who are subject to existing regulatory control by their Professional Body the Royal Institution of Chartered Surveyors (RICS), are not required to hold a licence
4. A voluntary register of such individuals will be maintained to assist labour users who may be concerned as to whether a licence is required, assisted by support from the RICS.
5. A GLA Brief will be issued to explain the change (draft attached as **Annex 1**)

Background

6. The GLA has been considering its approach to a number of organisations/professions who may be defined as providing workers, and would therefore require a licence, but who are considered low risk, and caught by the regulations unintentionally.
7. These include:
 - Voluntary workers provided to wildlife trusts
 - Workers provided by organisations funded by Government as part of "back to work" schemes for the unemployed
 - Activities by Jobcentreplus's EURES equivalent organisations across EU states
 - Land Agents (restricted in this proposal to Chartered Surveyors)
 - Apprenticeship training agencies (ATAs)
8. It is likely that those outlined in point 6 above may fall under the future exclusion regulations proposed by Defra. However, until then, some Chartered Surveyors engaged in the forestry and agricultural sectors may require a licence, which would result in the deployment of resources to inspect for compliance.
9. Where a Chartered Surveyor is involved in estate management (and may refer to themselves as a Land Agent), they are generally defined as "a person employed to manage an estate on behalf of its owners."¹. In this context, "employed" is

¹ <http://oxforddictionaries.com/definition/land+agent>

taken to be someone providing services to a land owner for estate management. However, there may be situations where a Chartered Surveyor has a contract of employment with a land owner.

10. Chartered Surveyors may source workers, or companies that provide workers, to undertake work required on an estate for a land owner. Therefore, for GLA purposes, dependant on their contractual relationship with the land owner, they may either be classed as the labour user (where directly employed by the land owner), or a labour provider (where they source workers, and select sub-contractors.)
11. Where Chartered Surveyors are treated as labour users they are expected to fulfil their responsibilities in accordance with section 13 where the workers supplied to them are undertaking activities that are licensable.
12. Where Chartered Surveyors are treated as labour providers they currently require a licence. This is considered to be an unintended consequence of the drafting of the legislation. It is anticipated that this issue will be covered within the proposed revised exclusion regulations. However, the GLA considers that it is an area that the GLA can apply its discretion to under section 1(3) of the Act before legislative changes. The GLA aims to do so in a manner that provides assurance and does not introduce risk contrary to its mission statement.

Proposed approach

13. To achieve this the GLA will consider discretion not to require a licence by a Chartered Surveyor within the following classes of membership:
 - FRICS (Fellow)
 - MRICS (Member)
 - Eminent RICS
14. This discretion would apply to individual Chartered Surveyors or companies where they are owned/led by RICS members holding the above classes of membership.
15. Liaison with officers of RICS (Membership, Policy, and Regulatory Compliance) suggests that this approach should not be extended to Associate level RICS members (AssocRICS).
16. Approximately 6000 RICS members currently classify themselves as attached to the Rural Professional Group in RICS. It is not possible for RICS to indicate how many of those 6000 Chartered Surveyors undertake activities that fall under the current GLA regulations.
17. The Royal Charter of RICS requires it to act in the public interest, as opposed to the interests of members only. Therefore, that requirement provides assurance that RICS can provide the necessary support to confirm the professional and ethical status of its members, removing the need for the GLA to add a second layer of regulation.

18. RICS has further advised that the approach to Chartered Surveyors should be extended to the classes of membership cited in paragraph 12 because those members:
- will have demonstrated their adherence to the rules of conduct of RICS over a longer period ("earned recognition"), are subject to "continuous professional development" requirements,
 - are required to make an annual return to RICS to provide details of their activity, and compliance with the RICS rules of conduct for members/firms, including confirmation of professional indemnity insurance cover and an alternative dispute resolution mechanism to provide for the protection of their clients, and
 - are subject to disciplinary action by members of the RICS Conduct and Appeals Committee when found to be in breach of the RICS rules of conduct for members/firms.
19. The RICS Regulation Department has a monitoring team which operates to intelligence-led principles. Where it receives information to suggest that its members are not adhering to the rules of conduct it will initiate an investigation. The outcome of such investigations can lead to expulsion, a reprimand, or being required to undergo a further inspection to determine whether the member has returned to compliance.
20. The regulatory framework that operates within RICS therefore provides confidence that those individuals that the GLA comes into contact with are subject to effective regulatory control. The GLA therefore considers that it should exercise its discretion under section 1(3) of the Act: "*The Authority may do anything that it considers is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions.*" and not require Land Agents to hold a licence.
21. However, the GLA recognises that the simple application of discretion creates an informality that may be misinterpreted as a removal of control, or amnesty. It may be perceived by others (for example, rural professionals who are not Chartered Surveyors) that they too can avoid the licence requirement and create greater levels of unlicensed activity requiring investigation. Consequently, the use of section 1(3) must be underpinned by a formal process to prevent such perceptions proliferating.
22. It is therefore proposed that there will be a register of those Chartered Surveyors operating within the GLA's regulated sector that do not require a licence. The GLA would aim to confirm the status of those Chartered Surveyors with RICS, and develop a memorandum of understanding on how it will work with RICS. The register the GLA creates will be published on the GLA website. The GLA would also issue a GLA Brief to the industry to explain the change.
23. In producing such a Brief, the GLA would wish to issue it with the support of the RICS, and badged as such, utilising their communication channels to ensure maximum distribution. Furthermore, as part of the educational process the GLA would want to secure the assistance of RICS to emphasise the need for Chartered Surveyors to exercise due diligence when procuring labour services, to

ensure that those companies they contract with hold a licence, where it is required, and are compliant with the GLA's licensing standards.

24. It is proposed that where the GLA becomes aware of a Chartered Surveyor operating in a manner that would normally require a licence it will contact RICS. The liaison with RICS would confirm the status of the member (as in paragraph 12). A licence would not be required for those whose status as a member of RICS has been confirmed and who are confirmed as holding the correct class of membership by RICS (FRICS, MRICS, Eminent).
25. The GLA would then notify the Chartered Surveyor accordingly, and add that Chartered Surveyor to the register of organisations on its website.
26. The GLA would operate a single point of contact (Spoc) with RICS, where the RICS Spoc would be based within the intelligence and risk assessment function of RICS' Regulation Department's Customer Services team. The Spoc should be the Customer Services Manager.
27. Further liaison with RICS will determine the extent of the agreement on information exchange, and situations in which the GLA may require further information on whether a member has been subject to RICS disciplinary procedures, or where RICS advises the GLA that a member on the GLA's register has been expelled. Both the GLA and RICS Regulation recognise the need for their respective policy teams to review the operation of the agreement periodically to ensure it remains fit for purpose.
28. Further information on RICS Regulation can be found in **Annex 1**. Information on the RICS routes to membership is attached as a separate document, **Annex 2**.
29. This approach demonstrates the GLA's continuing commitment to a flexible and proportionate approach to regulation, and:
 - Operating a "lighter touch"
 - Continuing to develop its risk based approach
 - "Earned recognition" utilising evidence of compliance in other environments as evidence to reduce regulatory burdens
 - "Supporting "co-regulation" in the development of new guidance, and the lighter touch that is proposed.
30. The GLA Board is invited to agree the proposed course of action.

Next Steps

31. If the Board accepts this proposal the GLA will liaise with RICS who will present the proposal to their Regulatory Board on 2 February 2012.
32. Assuming agreement is secured then the GLA would prepare the draft GLA Brief (**Annex 3**) for issue. It is anticipated that this could be issued at the end of February 2012.

Annex 1 RICS**RICS Regulation – safeguarding professional standards****What do we do?**

RICS Regulation provides assurance to members, markets and the public that RICS members and firms operate to the standards set out in RICS' Rules of Conduct. Members demonstrate this by maintaining professional ethical standards and through continuous professional development. Firms do this by ensuring procedures are in place to provide for the protection of their clients, such as having a complaints handling procedure that includes an independent alternative dispute resolution (ADR) mechanism.

RICS Regulation monitors, guides and assists members and firms to comply with these rules, regulations and ethical standards. We review and investigate complaints and, where appropriate, take disciplinary action in cases where members and/or firms fall short of what is expected of them. In this way, we underpin the business and best practice of the profession with an appropriate regulatory regime so that chartered surveyors, wherever they practise and in whatever specialism, are doing the best possible job for their clients.

RICS Regulation provides a safety net that enables members to avoid pressure to undertake inappropriate or unethical work.

As a regulator, we:

- use better regulation principles to develop policy operations and to provide a single regulatory framework for members and firms, where possible;

- provide advice and guidance to members and firms to help meet regulatory requirements, and subsequently to manage risk effectively in their operations;
- develop policy and engage in public affairs activity to promote the value of a self regulated profession; and
- communicate widely the benefits of using regulated firms.

Why do we do it?

RICS Regulation provides assurance to members, markets and clients that RICS members and firms provide a professional service to their clients and the public. Regulation protects clients, firms and the profession.

Because RICS Regulation operates independently of the rest of RICS, we provide an arms' length review of compliance.

Regulation by RICS also provides benefits to regulated firms and members as it:

- Is cost effective;
- provides technical as well as professional regulation; and
- Is global in application.

Organisational Structure:

RICS Regulation is governed by a Regulatory Board that operates at arms' length from the rest of RICS and has a mix of independent members and Chartered Surveyor members, with an independent Chair. The Board is appointed by an independent selection process and is accountable to RICS' Governing Council. The Board is responsible for the formulation and delivery of regulatory policy objectives including rules, guidance and advice for member firms, and disciplinary processes.

The RICS Regulation Conduct and Appeals Committee, appointed by the independent Appointment Selection Board, consists of an equal number of independent and RICS members with an independent Chair. The Committee sits in a quorum of three to hear a case and make disciplinary, appeal and/or registration decisions.

Links to further information:

Royal Charter and Bye-laws:

http://www.rics.org/site/download_feed.aspx?fileID=10210&fileExtension=PDF

(See particularly Bye-law 5).

Rules of Conduct for Members*:

http://www.rics.org/site/download_feed.aspx?fileID=8463&fileExtension=PDF

Rules of Conduct for Firms*:

http://www.rics.org/site/download_feed.aspx?fileID=11076&fileExtension=PDF

(*Please note the reference to the principles of better regulation)

Maintaining Professional and Ethical Standards:

http://www.rics.org/site/download_feed.aspx?fileID=6309&fileExtension=PDF

Continuing Professional Development for Members:

http://www.rics.org/site/download_feed.aspx?fileID=2363&fileExtension=PDF

Monitoring and Investigation Rules:

http://www.rics.org/site/download_feed.aspx?fileID=11077&fileExtension=PDF

Disciplinary Panel Hearings:

<http://www.rics.org/site/scripts/documents.aspx?categoryID=492>

RICS Conduct and Appeal Committee:

http://www.rics.org/site/scripts/documents_info.aspx?documentID=920

Regulatory Scrutiny Panel:

http://www.rics.org/site/scripts/documents_info.aspx?documentID=676&pageNumber=2

Annex 2 **RICS routes to Membership** is a separate document

Annex 3 Draft GLA Brief

GLA Brief

Issue X – 2011: Chartered Surveyors

The Brief sets out how the GLA will regulate the supply of labour by Land Agents providing they are qualified Chartered Surveyors. This approach takes effect from the issue of this GLA Brief.

Introduction

This guidance has been developed with the assistance and support of the Royal Institution of Chartered Surveyors (RICS).

Current position

Any person or organisation supplying labour to another party requires a GLA licence unless they satisfy one or more of the exclusion regulations.

Land Agents, providing services to land owners procure the services of others to complete works required on estates. Such work may not fall under the exclusion regulations. They may therefore operate in a manner which defines the activities as a labour provider requiring a licence from the GLA. The GLA recognises that this is an unintended consequence of the current legislative framework.

New approach to Land Agents

The GLA has discussed this situation with RICS. It has concluded that a Land Agents that are Chartered Surveyors within the following classes of membership:

- FRICS
- MRICS
- Eminent RICS

do not constitute a significant risk of exploitation to workers and that an alternative approach is appropriate.

The GLA has decided to adopt a different approach for Chartered Surveyors within the aforementioned classes of membership because of the compliance framework that exists which controls and monitors Chartered Surveyors.

This framework provides the following controls and requirements:

- A requirement for continuous professional development
- Adherence to RICS rules of conduct for members/firms

- Independent investigation, discipline, sanctions and appeals through the RICS organisational structure

The GLA has therefore exercised its powers under section 1(3) of the Gangmasters (licensing) Act 2004 not to require a licence by Chartered Surveyors who are FRICS, MRICS, or Eminent RICS. However, in order to satisfy itself that organisations / individuals are not abusing this process and referring erroneously to themselves as Chartered Surveyors, a formal register will be created and maintained by the GLA.

The GLA will check the status of individuals and companies to confirm their RICS status. If the correct membership status is held a licence will not be required, but the individual/company will be entered onto the GLA register of known Chartered Surveyors. There will be no charge for this process.

From the issue of this GLA Brief the GLA will not undertake criminal investigation against any Chartered Surveyor that has not registered with the GLA providing it satisfied the RICS membership criteria.

This registration assists labour users in identifying organisations that supply workers which do not require a licence. It provides assurance to labour users that they are not using labour providers that may place them at risk of committing a criminal offence (section 13 of the Gangmasters (Licensing) Act 2004).

A register of Chartered Surveyors that do not require a licence will be available on the GLA website:

(to be inserted in published version)

Useful Links

Further information on RICS regulatory controls can be found on its website at: www.rics.org

Further information

If you would like any help or guidance, more information is available on the GLA website, www.gla.gov.uk. You can also contact our helpdesk:

Email: enquiries@gla.gsi.gov.uk

Telephone: +44 (0) 845 602 5020

If you have received a hard copy of this Brief but would prefer electronic versions in future, please email communications@gla.gsi.gov.uk

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Fiona – is an organisational structure available to show the links of the various regulatory/CPD and membership sections?**Links to further information:**

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Routes to Membership

(Fiona – is the PowerPoint on this subject, produced by Liz Mackenzie available on the web to include a link?)

Maintaining Professional and Ethical Standards:

http://www.rics.org/site/download_feed.aspx?fileID=6309&fileExtension=PDF

Continuing Professional Development for Members:

http://www.rics.org/site/download_feed.aspx?fileID=2363&fileExtension=PDF

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