

# PROPERTY BOUNDARIES (RESOLUTION OF DISPUTES) BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Property Boundaries (Resolution of Disputes) Bill [HL] as introduced in the House of Lords on 25 May 2016 (HL Bill 19).

- These Explanatory Notes have been prepared by the Earl of Lytton in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

## Introduction

- 1 A Bill intended to address the issue of disputes over property boundaries and rights of way was first introduced in the House of Commons by Charlie Elphicke MP in the 2012-13 session but it did not proceed. It has since been redrafted to produce this Bill.
- 2 An earlier version of this Bill was introduced in the House of Lords during the 2015-16 session. It received a Second Reading but did not then progress further. The current version of the Bill was introduced on 25 May with the following alterations:
  - A reference to appeals to the High Court;
  - The addition of a new Clause which provides for a means of jurisdiction over the conduct of surveyors by reference to the powers of their relevant professional bodies; and
  - A definition of “boundary”.
- 3 Cases related to disputes over property boundaries and rights of way can have a direct financial impact on the individuals concerned, and can also affect relationships, frustrate optimisation of the utility of land and buildings and impede property transactions. Currently there is no legislation directing parties in dispute as to how they may resolve their differences, or any published guidance. Alternative Dispute Resolution (ADR) is sometimes available, but in the majority of cases there is neither a legal obligation to submit to ADR nor an outcome to ADR which binds the parties. In other words, definitive adjudication is only available via the courts.
- 4 The costs connected with resolving boundary disputes can and often do, outweigh the intrinsic value of the interest in land under consideration. As a result, at a relatively early stage it can become difficult for parties to withdraw from litigation, due to liability for accrued costs. At a later stage, the costs accrued during litigation themselves can become contentious. As matters stand there is no alternative procedure. For this reason, mediation can be ineffective.
- 5 Typically, surveyors (sometimes a single surveyor for both parties or, more usually, a surveyor for each party) are appointed at some point in a contested case—usually when litigation has commenced and costs have accrued. The Bill defines as a surveyor: any person not a party to the matter who is a member of the Royal Institution of Chartered surveyors, a member of the Institution of Chartered Structural Engineers, a member of the Royal Institution of British Architects or a person who has another suitable qualification, as specified by regulation. Boundary disputes revolve around issues of physical characteristics and legal title. It may therefore be necessary to appoint a surveyor because of the technical nature of boundary disputes. The technical nature of the assistance that surveyors give to the courts means that their evidence can be an important factor in the courts’ final decision. The Bill provides for the mandatory appointment of experts at an earlier stage, before the commencement of court proceedings. In so doing the Bill aims to reduce the need for recourse to litigation, which can be costly.

## The Purpose of the Bill

- 6 The Bill seeks to augment the current legal process for property boundaries disputes by providing for mandatory expert determination (by a surveyor), without depriving parties of the right to have the matter examined subsequently by a court on appeal. The current operation of the Party Wall etc. Act 1996, which utilises a similar approach, suggests that if the

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- Bill were brought into force, the majority of parties to boundary disputes would accept an expert determination on the grounds that it would be consistent with an eventual court ruling.
- 7 By adopting a procedure of expert determination from inception, this Bill aims to reduce costs and speed up the process for property boundaries disputes. The Bill also seeks to make savings in court time, by removing the majority of disputes from the court process altogether whilst remaining under the courts' ultimate jurisdiction. The Bill aims to ensure that where matters do proceed to court, the basis of the respective parties' cases and the identification of areas of difference will already have been well rehearsed, thus simplifying the courts' task.
  - 8 Evidence from a surveyor is usually required in connection with boundary disputes. Therefore, it is not expected that the imposition of "expert determination" at a preliminary rather than a later stage will of itself increase costs, should the matter proceed to litigation. By directing the parties to a dispute to obtain expert determination first, the Bill aims to achieve an effective resolution without need for recourse to the courts.
  - 9 The Bill does not seek to make an expert determination legally conclusive: if the parties are not content with the surveyors' determination then they would be able to appeal the decision through the courts for judgement in the conventional manner.
  - 10 It is not the purpose of the Bill to allow surveyors to determine matters of title. The Bill leaves this to the courts. However, title depends on the interpretation of documentation related to the physical evidence on the ground. The Bill seeks to enable surveyors in the disciplines of boundary identification and demarcation to settle the issues that typically arise in respect of such documentation.

## The Practical Operation of the Bill

- 11 The Bill aims to set out best practice, avoid creation of red tape and reduce pressure on the civil courts. It vests surveyors with authority to settle disputes by a simple Award based on the dispute resolution procedure, embodied in the Party Wall etc. Act 1996 and the London Building Acts (Amendment) Act 1939.
- 12 Where a dispute related to property boundaries arises or is deemed to have arisen, the Bill would require both parties to appoint a surveyor or to agree on the appointment of a single surveyor. The surveyor or surveyors would then proceed to consider the evidence and draw up a document known as an Award recording their determination. This Award could be appealed to the court by either party. The Bill would operate in a similar manner to provide for determination of disputes over rights of way.
- 13 Part of the purpose of the Bill is to provide a consistent procedural template for resolving a dispute both by the parties and their surveyors. The process outlined in the Bill would mean that the boundary determined by Award would be the subject of the Determined Boundary Procedure for the purposes of the Land Registration Act 2002. This would mean that its precise position would be noted on the title document of the respective ownerships. In so providing, the Bill aims to avoid repeat disputes over the same boundary. Over time, the Bill aims to support the creation of more definitive fixing of property boundaries and to improve the accuracy of the land registration process and Land Registry entries.
- 14 The Bill aims to ensure future flexibility and currency by providing that a code of practice be approved, and amended, by the Secretary of State by regulations subject to annulment by either House of Parliament.

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