

# Property Boundaries (Resolution of Disputes) Bill

## [HL]

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### EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Member in charge of the Bill, the Earl of Lytton, are published separately as HL Bill 59 – EN.



# Property Boundaries (Resolution of Disputes) Bill

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**B I L L**

TO

Make provision for the resolution of disputes concerning the location or placement of boundaries and private rights of way relating to the title of an estate in land; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Application of this Act to proceedings**

This section shall have effect where lands of different owners adjoin and a dispute has arisen between the owners as to the location of the exact line of the boundary between the lands or the location and extent of a private right of way; and—

- (a) a claim has been issued in any court of competent jurisdiction alleging that an owner of land has trespassed upon land belonging to a land owner or obstructed a private right of way, irrespective of the remedy sought, and a defence has been filed which puts into issue the precise location of the boundary or right of way; or
- (b) a claim has been issued in any court of competent jurisdiction claiming a declaration as to the exact location of a boundary or private right of way between the lands of adjoining owners; or
- (c) an application has been made to the Registrar of Her Majesty's Land Registry under paragraphs 117 to 122 of the Land Registration Rules 2003 for the determination of the exact line of a boundary and any owner of land adjoining the boundary has given notice of objection in accordance with paragraph 119(6) of the Land Registration Rules 2003.

**2 Stay of proceedings and referral of disputes for determination under this Act**

All claims and proceedings to which section 1 applies shall be stayed automatically and shall be determined in accordance with section 5.

### 3 Procedure where a boundary dispute has arisen but no court proceedings have commenced between adjoining owners of land

- (1) Where an owner of land (“the owner of land”) wishes to establish the position of a boundary or the location and extent of a private right of way he must follow the procedure set out in this section. 5
- (2) The owner of land must serve notice on the adjoining owner accompanied by a plan identifying the exact line of the boundary or extent of the private right of way claimed and showing sufficient physical features to allow the boundary or right of way to be identified.
- (3) Nothing contained in this section prevents an owner upon whom a notice has been served from consenting. 10
- (4) Where the adjoining owner –
- (a) responds to the notice under subsection (2) that he objects to the claimed boundary line or extent of the private right of way, or
  - (b) gives no response to the notice within the period of 14 days, 15
- a dispute shall be deemed to have arisen between the parties and the dispute shall be determined in accordance with section 5.
- (5) “Notice” under this section means a written document –
- (a) stating the name, registered address and correspondence address of the owner of land; 20
  - (b) addressed to the registered owner of the adjoining land or premises and to any building on the adjoining land or premises;
  - (c) signed by the owner of land (or by an individual suitably authorised to do so on his behalf) and dated;
  - (d) stating the name and address of a surveyor that the owner of land 25
- proposes to appoint in accordance with section 5, should a dispute arise.

### 4 Penalty for failure to comply with section 3

Where after the commencement of this section an owner of land issues proceedings covered by section 1 without having first complied with section 3, then he shall not be entitled to recover any costs incurred in the issue and service of such proceedings against the adjoining owner. 30

### 5 Appointment of surveyors

- (1) Where a dispute arises or is deemed to have arisen between an owner of land and an adjoining owner in respect of any matter connected with the location of the boundary between the adjoining properties or the location and extent of a private right of way, then either – 35
- (a) both parties shall concur in the appointment of one surveyor (an “agreed surveyor”); or
  - (b) each party shall appoint a surveyor and the two surveyors so appointed shall forthwith select a third surveyor (all of whom are in this section referred to as “the three surveyors”). 40
- (2) All appointments and selections made under this section shall be in writing and shall not be rescinded by either party.
- (3) If an agreed surveyor – 45

- (a) refuses to act;
- (b) neglects to act for a period of ten days beginning with the day on which either party serves a request on him;
- (c) dies before the dispute is settled; or
- (d) becomes or deems himself incapable of acting,
- the proceedings for settling such dispute shall begin de novo. 5
- (4) If either party to the dispute –
- (a) refuses to appoint a surveyor under subsection (1)(b) or (5); or
- (b) neglects to appoint a surveyor under subsection (1)(b) or (5) for a period of ten days beginning with the day on which the other party serves a request on him,
- the other party shall make the appointment of another surveyor on his behalf. 10
- (5) If, before the dispute is settled, a surveyor appointed under subsection (1)(b) by a party to the dispute dies, or becomes or deems himself incapable of acting, the party who appointed him shall appoint another surveyor in his place with the same power and authority. 15
- (6) If a surveyor –
- (a) appointed under subsection (1)(b) by a party to the dispute; or
- (b) appointed under subsection (4) or (5),
- refuses to act effectively, the surveyor of the other party may proceed to act ex parte and anything so done by him shall be as effectual as if he had been an agreed surveyor. 20
- (7) If a surveyor –
- (a) appointed under subsection (1)(b) by a party to the dispute; or
- (b) appointed under subsection (4) or (5),
- neglects to act effectively for a period of 10 days beginning with the day on which either party or the surveyor of the other party serves a request on him, the surveyor of the other party may proceed to act ex parte in respect of the subject matter of the request and anything so done by him shall be as effectual as if he had been an agreed surveyor. 25 30
- (8) If either surveyor appointed under subsection (1)(b) by a party to the dispute refuses to select a third surveyor under subsection (1) or (9), or neglects to do so for a period of ten days beginning with the day on which the other surveyor serves a request on him –
- (a) an appointing officer of the local authority; or 35
- (b) in cases where the relevant appointing officer or his employer is a party to the dispute, the Secretary of State or, where the land that is the subject of the dispute is located wholly in Wales, a Welsh Minister,
- shall, on the application of either surveyor, select a third surveyor who shall have the same power and authority as if he had been selected under subsection (1) or (9). 40
- (9) If a third surveyor selected under subsection (1)(b) –
- (a) refuses to act;
- (b) neglects to act for a period of ten days beginning with the day on which either party or the surveyor appointed by either party serves a request on him; or
- (c) dies, or becomes or deems himself incapable of acting, before the dispute is settled, 45

the two appointed surveyors shall forthwith select another surveyor in his place with the same power and authority.

## 6 Resolution of disputes

- (1) The agreed surveyor or as the case may be the three surveyors or any two of them shall settle by award – 5
  - (a) the precise location of the boundary or location and extent of the private right of way which shall be shown on a dimensioned plan in a form acceptable to the Land Registry;
  - (b) the extent to which any building, structure or other erection constructed on the land of one owner extends beyond the boundary onto, over or under the land of the other; and 10
  - (c) the costs of making the award.
- (2) Either of the parties or either of the surveyors appointed by the parties may call upon the third surveyor selected in pursuance of this section to determine the disputed matters and he shall make the necessary award. 15
- (3) The reasonable costs incurred in –
  - (a) making or obtaining an award under this section;
  - (b) reasonable inspections of land, buildings or work to which the award relates; and
  - (c) any other matter arising out of the dispute, 20
 shall be paid by such of the parties and to whom as the surveyor or surveyors making the award determine.
- (4) Where the surveyors appointed by the parties make an award, the surveyors shall serve it forthwith on the parties.
- (5) Where an award is made by the third surveyor – 25
  - (a) he shall, after payment of the costs of the award, serve it forthwith on the parties or their appointed surveyors; and
  - (b) if it is served on their appointed surveyors, they shall serve it forthwith on the parties.
- (6) The award shall be conclusive and shall not, except as provided by this section, be questioned in any court. 30
- (7) Either of the parties to the dispute may, within the period of 28 days beginning with the day on which an award made under this section is served on him, appeal to the High Court against the award and the court may –
  - (a) rescind the award or modify it in such a manner as the court thinks fit; 35
  - and
  - (b) make such order as to costs as the court thinks fit.
- (8) There shall be no right of appeal to the County Court on any award made under this section.
- (9) Within 28 days of expiry of the appeal period referred to in subsection (7), the owner of the land shall submit the award to the Land Registry. 40

## 7 Regulation of surveyors

- (1) Surveyors appointed under section 5 must be regulated by one of the following professional bodies –

- (a) the Royal Institution of Chartered Surveyors;
    - (b) the Institution of Structural Engineers;
    - (c) the Royal Institute of British Architects; or
    - (d) any other body, with chartered or equivalent status, as the Secretary of State may by regulation made by statutory instrument appoint. 5
  - (2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- 8 Service of notices, etc**
- (1) A notice or other document required or authorised to be served under this Act is to be served in accordance with the Civil Procedure Rules as amended from time to time and in accordance with the Code. 10
  - (2) Where a notice or other document is required or authorised to be served under this Act on a person as owner of land, it may also be served by –
    - (a) addressing it to “the owner” of the land and giving the owner’s name, if known; and
    - (b) delivering it to a person in any building on the land or, if no person to whom it can be delivered is found, fixing it to a conspicuous part of any building on the land. 15
- 9 Right of entry** 20
- (1) A surveyor appointed or selected under section 5 or his authorised agent may during usual working hours enter and remain on any land or premises owned by either party for the purpose of carrying out the objective for which he is appointed or selected.
  - (2) If the land or premises are closed, the surveyor, his agents and workmen may, if accompanied by a constable or other police officer, break open any fences, gates or doors in order to enter the land or premises. 25
  - (3) No land or premises may be entered by any person under subsection (2) unless the surveyor serves on the owner of the land or premises –
    - (a) in case of emergency, such notice of the intention to enter as may be reasonable and practicable;
    - (b) in any other case, such notice of the intention to enter as complies with subsection (4). 30
  - (4) Notice complies with this subsection if it is served in a period of at least 14 days ending with the day of the proposed entry. 35
  - (5) “Notice of the intention to enter” under this section means a written document –
    - (a) stating the name, registered address and correspondence address of the owner of the land;
    - (b) stating the name, registered address and correspondence address of the surveyor or surveyors appointed; 40
    - (c) the reasons for requiring entry to the property;
    - (d) details of the proposed time and date on which entry will be sought.

## 10 Code of Practice for the resolution of property boundary disputes

- (1) The Royal Institution of Chartered Surveyors shall issue a Code of Practice (“the Code”), which specifies best practice in the preparation of plans and other documents specified in this Act and the form and manner in which notice must be served under section 3(2). 5
- (2) Before issuing the Code under this section, the Royal Institution of Chartered Surveyors shall submit a draft to the Secretary of State, who shall –
- (a) if the Secretary of State approves the draft –
    - (i) notify the Royal Institution of Chartered Surveyors, and
    - (ii) lay a copy before Parliament, or 10
  - (b) otherwise, give the Royal Institution of Chartered Surveyors written reasons why the Secretary of State does not approve the draft.
- (3) Where a draft is laid before Parliament under subsection (2)(a)(ii), if neither House passes a resolution disapproving the draft within 40 days –
- (a) The Royal Institution of Chartered Surveyors may issue the Code in the form of the draft, and 15
  - (b) it shall come into force in accordance with provision made by the Secretary of State by regulation made by statutory instrument.
- (4) The 40 day period specified in subsection (3) –
- (a) shall begin with the date on which the draft is laid before both Houses (or, if laid before each House on a different date, with the later date), and 20
  - (b) shall be taken not to include a period during which –
    - (i) Parliament is prorogued or dissolved, or
    - (ii) both Houses are adjourned for more than four days. 25
- (5) The Royal Institution of Chartered Surveyors may amend or revise the Code issued under this section, and a reference in this section to the issue of the Code shall be treated as including a reference to the amendment or revision of the Code.
- (6) Parties to any disputes to which this Act applies must comply with the provisions of the Code. 30

## 11 Offences

- (1) If –
- (a) an owner, occupier or their agent of land or premises refuses to permit a surveyor, his agent or workmen to do anything which he is entitled to do with regard to the land or premises under section 9; and
  - (b) the owner knows or has reasonable cause to believe that the person is so entitled,
- the owner is guilty of an offence. 35
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale. 40

## 12 Recovery of sums

Any sum payable in pursuance of this Act otherwise than by way of a fine shall be recoverable summarily as a civil debt.

**13 Exception in case of Inns of Court**

This Act shall not apply to land which is situated in inner London and in which there is an interest belonging to –

- (a) the Honourable Society of the Inner Temple,
- (b) the Honourable Society of the Middle Temple, 5
- (c) the Honourable Society of Lincoln’s Inn, or
- (d) the Honourable Society of Gray’s Inn.

**14 The Crown**

- (1) This Act shall apply to land in which there is –
  - (a) an interest belonging to Her Majesty in right of the Crown, 10
  - (b) an interest belonging to a government department; or
  - (c) an interest held in trust for Her Majesty for the purposes of any such department.
- (2) This Act shall apply to –
  - (a) land which is vested in, but not occupied by, Her Majesty in right of the Duchy of Lancaster; 15
  - (b) land which is vested in, but not occupied by, the possessor for the time being of the Duchy of Cornwall.

**15 Interpretation**

In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them – 20

- “adjoining owner” means a freehold owner of land, whose land forms a boundary with the land of an owner of land who is seeking to establish a boundary or a private right of way;
- “boundary” means an invisible plane which can extend above and below ground, defining the exact extent of the owner of land’s property; 25
- “court” means a process of adjudication whereby a judge or adjudicator sits and hears or reads submissions from the parties or their representatives and considers evidence from witnesses before making a decision; 30
- “owner of land” means a freehold owner of land who is seeking to establish the position of a boundary between his land and the land of an adjoining owner or a private right of way;
- “private right of way” means an easement or right of access or egress benefitting someone other than the owner of the land on which it lies; 35
- “surveyor” means any person not being a party to the matter appointed or selected under section 5 to determine disputes in accordance with the procedures set out in this Act.

**16 Other statutory provisions**

- (1) The Secretary of State may by regulations amend or repeal any provision of a private or local Act passed before, or in the same session, as this Act, if it appears to him necessary or expedient to do so in consequence of this Act. 40
- (2) Regulations under subsection (1) may –

- (a) contain such savings or transitional provisions as the Secretary of State thinks fit;
  - (b) make different provision for different purposes.
- (3) The power to make regulations under subsection (1) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 5

**17 Extent, commencement and short title**

- (1) This Act extends to England and Wales only.
- (2) Sections 1 to 16 come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint. 10
- (3) Regulations under subsection (2) may –
  - (a) contain such savings or transitional provisions as the Secretary of State thinks fit;
  - (b) make different provision for different purposes.
- (4) This section comes into force on the day on which this Act is passed. 15
- (5) This Act may be cited as the Property Boundaries (Resolution of Disputes) Act 2017.



# Property Boundaries (Resolution of Disputes) Bill

## [HL]

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# B I L L

To make provision for the resolution of disputes concerning the location or placement of boundaries and private rights of way relating to the title of an estate in land; and for connected purposes.

*The Earl of Lytton*

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*Ordered to be Printed, 13th July 2017*

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