



In Focus

Property Boundaries (Resolution of Disputes) Bill [HL] HL Bill 14 of 2015–16

Key Provisions

The [Property Boundaries \(Resolution of Disputes\) Bill \[HL\]](#) is a private member's bill introduced by the Earl of Lytton (Crossbench). The Bill received its first reading in the House of Lords on 1 June 2015 and is scheduled to receive its second reading on 11 September 2015. The Bill would “make provision for the resolution of disputes concerning the location or placement of the boundaries and private rights of way relating to the title of an estate in land”. In brief, it would require that:

- Where an owner of land wishes to establish the position of a boundary or private right of way the land owner should serve notice, accompanied by a plan, on the adjoining owner of the land (or user of a private right of way) establishing the proposed line of the property boundary or private right of way (clause 2). If the adjoining land owner does not specifically consent to that contained in the notice then a ‘dispute’ is deemed to have arisen. Provision as to how the notice should be served is contained in clause 6 of the Bill.
- Where a ‘dispute’ arises, then both parties shall either select one “agreed surveyor”, or each party shall select one surveyor who will then jointly select a third surveyor (clause 5). One or more of the surveyors selected (depending on the scenario) would then serve on the parties an award setting out their conclusions as to the dispute, and also setting out the costs of the matter and who should pay them.
- The surveyors’ findings would be considered conclusive (clause 5(15)), and could only be challenged if an appeal was made within 28 days to the Technology and Construction Court (clause 5(16)). Within 28 days after expiry of the appeal period, the owner of the land would be required to submit the award to the Land Registry (clause 5(17)).

The Bill contains provisions setting out the rights of entry of surveyors (making it an offence not to reasonably allow access) and how the proposed legislation would apply to disputes already in progress. It would also require the Secretary of State to publish and maintain a Code of Practice as to the form and manner in which notices or plans must be served under the legislation.

Background

A [similar private member's bill](#), with the same name, was introduced in the 2012–13 session by Charlie Elphicke (Conservative MP for Dover). The Bill contained many of the same clauses, and shared the

objective of improving the way property boundary disputes are handled through the involvement of surveyors in the process. However, the Bill did not receive its second reading.

On [15 January 2015](#), the House of Lords debated the subject of property boundaries in a QSD tabled by the Earl of Lytton. Opening the debate, the Earl of Lytton stressed the importance of the 2012–13 Bill tabled by Charlie Elphicke MP, and stated that “although his Bill did not progress, it triggered the formation of an expert panel of practitioners who took away the original and have comprehensively revised it”.¹ Regarding the revised Bill, which formed the basis of the Property Boundaries (Resolution of Disputes) Bill 2015–16, he said:

[The Bill] can and would be of assistance in removing many disputes from the courts and providing better self-regulation and a cost-effective starting point in the event of the court having to intervene. The formula that is proposed would enable the end product to be recorded without recourse to conventional litigation. It would start with a system of notification of a boundary proposal which, if disputed, would trigger a dispute resolution procedure. I believe that it is in the public interest and that it would be a good thing for the maintenance of property and the removal of contention from what should be the peace and tranquillity of people’s own homes.²

The proposed Bill was welcomed by the Labour Peer, Lord Kennedy of Southwark, who described it as a “sensible solution” to the problem of the expense of and difficulties connected to resolving boundary disputes.³ Responding for the Government, the Minister of State for Justice, Lord Faulks (Conservative), summarised the effect of the proposed Bill as follows:

That would involve the appointment by parties at as early a stage as possible of an independent expert, normally a surveyor, to determine the position of the boundary. In the event that either party was dissatisfied, it would be open to them to appeal against it to a court.⁴

Lord Faulks argued that requiring everyone to follow this approach would not always return beneficial results, partly due to the naturally adversarial nature of boundary disputes and also due to the potential lack of legal expertise held by the appointed surveyors.⁵ As such, he stated that:

The combination of these factors means that in our view the likelihood of appeals being brought against decisions would be high. It would mean that in many cases the suggestion would simply add a further layer to the proceedings, which would add to the costs rather than reduce them. In some cases the early appointment of experts could itself front-load costs where the dispute might have been resolved in other ways, and, perhaps, permit stronger and legally astute parties to steal an advantage over more easy-going neighbours.⁶

Despite this, the Minister welcomed the discussions surrounding the 2012–13 Bill, reasoning that it had been “a useful exercise informing the ministry and my officials”, and had led to the publication of the recent Ministry of Justice [scoping study](#) on boundary disputes.⁷

Ministry of Justice Scoping Study

Published in January 2015, the Ministry of Justice (MOJ) [scoping study](#) on boundary disputes looks at the prevalence of boundary disputes and how they are dealt with, and considers ways in which the process might be improved. Regarding their prevalence, the report returns estimates from a number of practitioners suggesting that they are a relatively frequent occurrence (for example, some of the

surveyors estimated they were each aware of upwards of 1,000 per annum), but could not be sure of the exact number. Despite this uncertainty, the MOJ did consider the issue worthy of further attention:

Taking the replies together we do not know how many boundary disputes (ranging from rows between neighbours that go no further to cases that end up in the Court of Appeal) there may be but it appears that sufficiently serious disputes happen frequently enough for there to be a benefit in seeking to ensure that they can be resolved as cheaply and efficiently as possible.⁸

The report also noted that there were varying estimates as to how many cases involved litigation and as to the average costs of each dispute.⁹ However, the report did suggest that costs could typically range from between £10,000 to £50,000 for a case, and would often exceed the value of land at stake. The MOJ reported that, based on the evidence received, litigation appeared to be the most common method of resolving disputes (with some people suggesting it was used in around 80 percent of cases), and that mediation was only used in around 20 percent of cases. It also highlighted the potentially lower costs of mediation, but stated that this might not apply in all cases: “generally speaking the cost of mediation was said to be much more reasonable than litigation (with figures of around £1000–£1500 per party being quoted), although an unsuccessful mediation could simply add to the costs involved”.¹⁰

Considering the possible reasons why boundary disputes are often long and problematic, the MOJ highlighted the naturally adversarial nature of boundary disputes, the lack of issues open to negotiation in the process, the problems inherent in the recording of legal boundaries, and issues “stemming from human nature” (eg unwillingness to compromise and territorial behaviour).¹¹ The report then set out some possible methods to improve the process, including: greater encouragement for people to use alternative dispute resolution rather than litigation; procedural adjustments to the process of resolving disputes (such as, early site visits, new powers for local authorities and changes to Land Registry procedure or involvement); and legislation along the lines of the Property Boundaries (Resolution of Disputes) Bill (which the MOJ said included similar provisions to those contained in the [Party Wall etc Act 1996](#)).¹² Regarding the latter suggestion, the MOJ noted the argument that involving early expert opinion may reduce the adversarial nature of the dispute and could also help reduce costs and the time taken to resolve the dispute.¹³ However, it also outlined a number of potential drawbacks with this approach:

The focus on determining the legal position of the boundary is normally a matter for a judge as it determines a person’s legal rights. A surveyor, no matter how expert in technical issues, is not in a position to give a ruling which is conclusive in legal terms and will also not necessarily have the legal expertise to deal with those cases which involve more complex legal issues such as adverse possession [...]

Any such system would therefore require some form of appeals procedure and the likelihood of appeals would seem relatively high [...] In addition, the early appointment of experts may itself front load costs in cases that might have resolved in other ways. A single mandatory procedure for such a varied set of problems may be unduly restrictive as it would be an attempt to impose a single solution on a disparate problem. The approach would require clarity as to when a dispute was deemed to exist otherwise considerable satellite litigation might be anticipated around the question of whether the new procedure had in fact been triggered.¹⁴

The MOJ concluded that, in its view, such legislation would not be the best course of action, and instead recommended the “piecemeal improvement of the current system without impinging on its flexibility”.¹⁵ It also recommend that further work was done to improve the procedures of courts and tribunals, to encourage the use of mediation and experts, and to make “better information available when it is most helpful”.¹⁶

Further Information

- GOV.UK, '[Your Property Boundaries](#)', 21 July 2015
- Royal Institution of Chartered Surveyors, [A Clear Impartial Guide to Boundary Disputes](#), November 2013

¹ HL *Hansard*, 15 January 2015, [col GC262](#).

² *ibid*, [col GC265](#).

³ *ibid*, [col GC269](#).

⁴ *ibid*, [col GC271](#).

⁵ *ibid*, [cols GC271–2](#).

⁶ *ibid*, [col GC272](#).

⁷ *ibid*, [col GC270](#).

⁸ Ministry of Justice, [Boundary Disputes: A Scoping Study](#), January 2015, p 6.

⁹ *ibid*, p 8.

¹⁰ *ibid*.

¹¹ *ibid*, pp 9–10.

¹² *ibid*, pp 10–15.

¹³ *ibid*, pp 11–12.

¹⁴ *ibid*, p 12.

¹⁵ *ibid*, p 18.

¹⁶ *ibid*.

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