

The Distributed Ledger

Blockchain, Digital Assets and Smart Contracts

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UK Government Introduces Bill To Clarify the Legal Status of Digital Assets

On 11 September 2024, the UK government introduced the [Property \(Digital Assets etc\) Bill](#), which provides that digital assets can be considered to be personal property under the laws of England and Wales, and could therefore be afforded the same legal protections as other, traditional categories of personal property.

Digital assets include cryptocurrencies, non-fungible tokens (NFTs) and carbon credits.

The bill itself is very brief. The key provision states:

Objects of personal property rights: A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither — (a) a thing in possession, nor (b) a thing in action.

More information on the implications of this change is provided in the related [Explanatory Notes](#).

The bill is a direct response to the [Law Commission's 2023 digital assets report](#), which was commissioned by the Ministry of Justice to investigate and report on barriers to the legal recognition of digital assets and to recommend solutions.

The report concluded that, whilst the common law in England and Wales had proven to be “sufficiently resilient and flexible” in the recognition of personal property rights in digital assets, there were some types of digital assets that did not readily fall within existing categories of personal property rights.

This created legal uncertainty at odds with the general development of the common law in this area and a misalignment with the expectation of market stakeholders. The overall result was that owners of digital assets found themselves in a grey area concerning their ownership of digital assets, particularly in the face of third-party interference and disputes.

To remedy this, the Law Commission recommended specific statutory law reform to confirm and codify the common law position and to remove any residual uncertainty in the common law by providing that personal property rights can relate to digital assets.

Expanding on the two existing distinct categories of property — “things in possession” (such as cars and money), and “things in action” (such as shares or debt) — **the bill creates a third category of property**, “thing (including a thing that is digital or electronic in nature)” (such as a crypto token).

The language of the bill is important. In stating that a “thing ... is not prevented from being the object of personal property rights merely because it is neither (a) a thing in possession, nor (b) a thing in action,” it does not provide that **any** “thing” is capable

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of being personal property, as there may be other reasons why it (including some forms of digital assets) cannot be personal property. But the fact that the “thing” is neither a “thing in possession” nor a “thing in action” is not enough to preclude it from being personal property.

The effect of the bill is to afford legal protection to owners, such as individuals and companies, of some categories of digital assets.

Such legal protections include:

- Enforceable action in the event of fraud and theft.
- Rights in disputes and cases of undue interference — legal tools such as freezing injunctions would be available to digital assets.
- Inclusion in bankruptcy and insolvency procedures — digital assets could form part of estates available to be sold in order to repay creditors.

At a basic level, personal property rights are particularly valuable because they are rights recognised against the world, but they are also important in the determination of modern, complex legal relationships.

Additionally, a corollary of the bill is the intent to improve the security of digital assets against concerns relating to the high levels of fraud and scams within the sector.

The term “digital asset” is very broad and encompasses a broad range of assets, including email accounts and digital records, cryptocurrencies such as bitcoin and NFTs. The Law Commission’s recommendations in its 2023 digital assets report focused on a narrower subset of digital assets, most notably crypto currencies.

As recommended by the Law Commission, the language of the bill does not seek to provide a precise definition of “thing.” It does include language expressly referring to things that are “digital or electronic in nature.”

Whilst digital assets are the main impetus underlying the reform, it is important to note that **the bill does not restrict the category to digital “things.”** Instead, the bill leaves the common law to define the appropriate boundaries of which “things” do and do not fall within the newly established third category of property rights.

This flexibility remains, in part, due to the desire of lawmakers to ensure the legal system in England and Wales remains responsive to the ever-evolving digital asset ecosystem and the technologies within it, but also because of the inherent difficulties in statutory law attempting to define the legal boundaries of a broad spectrum of digital assets.

The UK is one of the first countries to recognise digital assets in law. As well as providing legal certainty, the bill is aimed at ensuring that the law in England and Wales is able to maintain pace with, and be equipped to react to, the development and changing nature of the global fintech industry.

The UK government estimates that English law governs “£250 billion of global mergers and acquisitions, and 40 per cent of global corporate arbitrations.” Therefore, the legal recognition of the status of digital assets is aimed at ensuring the UK can “maintain its position as a global leader in cryptoassets,” attract business and investment in the UK and reinforce the attractiveness of English law to international stakeholders in the digital asset industry.

The bill demonstrates the new UK government’s commitment to continuing the work of the previous government to respond and adapt to developments in the digital asset sector, including through legislative changes.

The focus of the bill is on the implementation of the first recommendation from the Law Commission’s report. Certain of the report’s other recommendations include those for:

- Statutory law reform to give market participants legal certainty in respect of a regime for collateral arrangements involving digital assets.
- The establishment of an industry-specific panel of experts from across the sector to provide technical and legal guidance on the complex issues involving digital assets.

The UK government has not yet set out its proposed timing for the implementation of the bill. We will continue to monitor for developments both on the bill’s progress and in the broader implementation of the Law Commission’s recommendations.