

Title: Property (Digital Assets etc) Bill IA No: MoJ010/2024 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Law Commission	Impact Assessment (IA)
	Date: 21/08/2024
	Stage: Final
	Source of intervention: Primary Legislation Domestic
	Type of measure: Primary Legislation Primary legislation
	Contact for enquiries: Susannah Keogh, susannah.keogh@justice.gov.uk
Summary: Intervention and Options	
RPC Opinion: Not applicable	

Cost of Preferred (or more likely) Option (in 2024 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
Unknown	NA	NA	N/A

What is the problem under consideration? Why is government intervention necessary?

Digital assets – defined as any asset which is represented either digitally or electronically - are an increasingly growing market. They are increasingly used and for an expanding variety of purposes – including as valuable things in themselves, as a means of payment, or to represent or be linked to other things or rights. The UK is a major centre for the use of digital assets, and certain digital assets such as crypto-tokens are generally regarded by the market as attracting property rights. However, this position is open to interpretation under the common law of England and Wales given that they do not fit easily in existing categories of personal property, and is reliant on the courts. For our law to remain competitive in this area, it is vital we keep it up to date with technological advancements. Following a consultation by the Law Commission on draft legislation, the Property (Digital Assets etc) Bill will confirm in statute that a thing – including those that are digital or electronic in nature – is not prevented from being the object of personal property rights merely because it is not a thing in possession or a thing in action. Government intervention is required because the Property (Digital Assets etc) Bill is primary legislation.

What are the policy objectives of the action or intervention and the intended effects?

The associated policy objectives is to provide additional certainty and clarity to owners of digital assets, businesses and the law in general. This will ensure the law firmly recognises that a further category of personal property exists, which may accommodate certain digital assets. Whilst indicators of success are not necessarily quantifiable, we also expect the Property (Digital Assets etc) Bill to ensure businesses in the digital market space continue to use English law and that the bill will reinforce the competitive position of English & Welsh law on the international stage for property and commercial disputes.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0:** Do nothing and leave the issue to common law development, without legislation;
- **Option 1 (Recommended):** Legislate to introduce the provisions of the Property (Digital Assets etc) Bill

Both options were considered by the Government and by the Law Commission in their review of the area. The preferred option, Option 1, was assessed to be relatively low risk, with the benefits to stakeholders outweighing any minor risks.

Will the policy be reviewed? It will not be reviewed. If applicable, set review				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: NA	Non-traded: NA	
date: NA				

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 11/09/2024

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate to introduce the provisions of the Property (Digital Assets etc) Bill

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: NA
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	NA		NA		NA
High	NA		NA		NA
Best Estimate	NA		NA		NA
Description and scale of key monetised costs by 'main affected groups'					
Due to limited data it is not possible to monetise the costs of this option although no monetised costs are expected. The expected costs are discussed qualitatively below.					
Other key non-monetised costs by 'main affected groups'					
Respondents to the consultation identified the following potential non-monetised costs: the potential for additional court time to be spent on determining whether a specific asset fits into the new category, despite the removal of the need to determine if digital assets can be considered property; the potential for new rights to entail obligations on (and thus costs for) digital infrastructure providers, and the potential encouragement of the further use of digital assets reliant on energy-intensive systems, leading to environmental costs. To note, the later two points are highly debatable since the bill is not changing anything, only confirming the likely position of the common law.					
There are no direct costs because the bill confirms the likely position of the common law and does not					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	NA		NA		NA
High	NA		NA		NA
Best Estimate	NA		NA		NA
Description and scale of key monetised benefits by 'main affected groups'					
Due to limited data it is not possible to monetise the benefits of this Bill. Expected benefits are discussed qualitatively below.					
Other key non-monetised benefits by 'main affected groups'					
The following non-monetised benefits are expected to arise: reducing the time spent by the courts deciding on what rights a digital asset attracts, and the associated costs to litigants associated with establishing whether certain things can be the objects of personal property rights, and instead allowing them to focus on substantive issues; reducing the level of legal analysis required by law firms when dealing with crypto-asset related queries; encouraging digital asset platforms to select English & Welsh Law or be based in the UK; enhancing the competitive position of English & Welsh law on the international stage for property and commercial disputes which should benefit the UK legal services sector; and removing some uncertainty which may stand in the way of investment.					
Overall, while we do not have data to assess how many firms will be impacted, this Bill will reduce burdens on businesses by providing greater clarity on issues pertaining to digital assets and their property rights.					
Key assumptions/sensitivities/risks				Discount rate (%)	NA
There are no major assumptions associated with this assessment and main risks are noted above. The Bill confirms what is likely to be the existing common law position and provides certainty in the law - it does not force or encourage the use of digital assets. As such, the MoJ and the Law Commission assess the above					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Evidence Base

A. Background

Digital Assets

1. Certain digital assets, such as crypto-tokens, are generally regarded in the market as being capable of attracting personal property rights. However, this position has not been definitively confirmed under the law of England and Wales.
2. Digital assets more generally – being any asset represented digitally or electronically - are an increasingly growing market. They are used in growing volumes and for an expanding variety of purposes — including as valuable things in themselves, as a means of payment, or to represent or be linked to other things or right. For example, electronic signatures, cryptography, smart contracts, distributed ledgers and associated technology broaden the ways in which digital assets can be created, accessed, used and transferred. Such technological development is set only to continue.
3. The UK is also a major centre for the use of such digital assets. Evidence¹ submitted to Parliament from Chainalysis for the year to June 2023 finds the UK is a leading adopter of digital assets, ranking 14th for grassroots adoption. The UK was also third in the world in terms of raw transaction volume, at an estimated \$252.1 billion received.
4. It therefore important that the private law of England and Wales regarding digital assets keeps pace with technological developments and can recognise and protect new types of assets to ensure that people and businesses that own, use, and transact with digital assets can do so confidently, allowing the possibilities of these new technologies to flourish.

Problem Under Consideration

5. Over the last 15 years, personal property law in England and Wales has largely proven sufficiently flexible to accommodate digital assets. However, as the digital asset market and related technology continue to change, there remains some residual legal uncertainty and complexity. In particular, the current legal position regarding digital assets is open to interpretation and is reliant on the courts. In particular, while certain digital assets such as crypto-tokens are generally regarded by market participants as constituting property, they do not fit easily within the categories of personal property that have been recognised traditionally: things in possession (broadly, things that can be physically possessed) and things in action (at least traditionally, personal property that can only be claimed or enforced through a court action).
6. In 2020 the Ministry of Justice (MoJ) commissioned a report from the Law Commission of England and Wales, a statutory independent body that keeps the law of England and Wales under review, to identify any barriers to the recognition of digital assets as property under English and Welsh private law and to recommend solutions. The Law Commission published their final report in June 2023 and a subsequent consultation on a draft bill in July 2024.
7. The report made four recommendations, two for the Ministry of Justice (MoJ) and two for HM Treasury (HMT). The MoJ recommendations included:
 - to confirm in statute the (likely) existing common law position that certain digital assets can constitute property despite being neither things in action nor things in possession.

¹ [Written evidence submitted by Chainalysis](#)

- To establish a multidisciplinary panel to produce non-binding guidance on factual and legal issues relating to control of digital assets. We have asked the UK Jurisdiction Taskforce, an expert group chaired by the Master of the Rolls that produce non-binding guidance on areas of legal uncertainty, to take forward this work as a one-year proof of concept (commencing October 2024.)
8. These recommendations were based on extensive consultation by the Law Commission. Responses to the consultation and other feedback received by the Law Commission indicated that the legal services sector and judiciary were generally supportive of statutory confirmation, given that the legislation would leave space for the judiciary to focus on substantive questions about digital assets, and for the common law in this area to develop incrementally. As a result, the government is now proposing to implement the Law Commission's recommendation via the Property (Digital Assets etc) Bill.
 9. The courts have been moving towards recognition of a further category of personal property capable of accommodating certain and other digital assets, but this has not been confirmed by an appellate court so there remains doubt and uncertainty on the issue. This bill will confirm this in statute by stating that a thing – including those that are digital or electronic in nature – is not prevented from being the object of personal property rights merely because it is not a thing in possession or a thing in action. This will support our law to remain competitive and up to date with technological advancements. This Impact Assessment (IA) describes the main costs and benefits of the proposed bill.

B. Rationale and Policy Objectives

Rationale

10. The conventional approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, for example monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g., reallocating resources from one group in society to another).
11. In this instance the rationale for intervention is efficiency: Government intervention is needed to give certainty to the law and avoid unnecessary disputes about the existence of a further category of personal property. It is important that the law in this area keeps pace with technological developments and can recognise and protect new types of assets. This will ensure that people and businesses that own, use, and transact with digital assets can do so confidently, allowing the possibilities of these new technologies to flourish.

Policy Objective

12. The associated policy objective is to provide additional certainty and clarity to the owners of digital assets, businesses and the law in general. This will ensure the courts feel confident in recognising that a third category of personal property exists, into which certain digital assets such as crypto-tokens could fall, removing lingering doubt about the current common law position. Whilst indicators of success are not quantifiable, we expect businesses in the digital market will continue to use English & Welsh law and that the Bill will reinforce the competitive position of English & Welsh law on the international stage for property and commercial disputes.

C. Description of options considered

13. The following options are considered in this IA:

- **Option 0:** Do nothing and keep the common law position, without legislation.
- **Option 1:** Legislate to introduce the provisions of the Property (Digital Assets etc) Bill

14. Option 1 is preferred as it best meets the policy objectives.

Option 0: Do Nothing

15. Under this option, there would be no change to existing legislation meaning that the existing uncertainty around the common law position concerning categories of personal property and the status of digital assets as personal property would continue.

16. This option was considered by both Government and by the Law Commission in their review of the area. However, it was assessed that legislation in this area was relatively low risk, and the benefits to the legal services market and digital asset owners outweighed any minor risks, in particular the certainty it will bring to businesses and helping keep the UK an attractive legal jurisdiction.

Option 1

17. Under this option, the government will introduce legislation via the Property (Digital Assets etc) Bill using the Law Commission's Special Procedure (which is reserved for bills which are straightforward and non-controversial.). The text of the draft bill is brief and can be found in Annex A of this IA.

18. The intended effects of the Bill are to:

- (1) allow digital assets (e.g. crypto-tokens) to be recognised by the law as property despite not being things in action or things in possession;
- (2) decrease litigation costs by giving certainty as to the existence of a further category of personal property (including by giving courts confidence that it is appropriate to develop the law of personal property in this way); and
- (3) ensure that this jurisdiction continues to be an attractive place to deal with digital assets (e.g crypto-tokens) and other third category things.

19. The Bill will only confirm the common law position and provide certainty in the law - it will not force or encourage the use of digital assets. As such, the MoJ and the Law Commission assess the proposed legislation as providing minimal risk.

20. The Act will extend to England & Wales only.

D. Affected Stakeholder Groups, Organisations and Sectors

21. The following groups will be most impacted by the options assessed in this IA:

- Firms and other organisations who hold, transact with or otherwise deal with digital assets such as crypto-tokens.
- The Courts who currently have to determine the legal status of digital assets.
- The UK legal services sector.
- Individual owners of digital assets

E. Cost and Benefit Analysis

22. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
23. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration.
24. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
25. There is, however, only limited data available on the potential costs and benefits of the Bill, however extensive consultation was undertaken by the Law Commission. Details can be accessed at [Digital assets - Law Commission](#)².
26. The Law Commission's review and consultation responses forms the majority of our evidence. As such, we have not provided any monetised costs and benefits in this IA, but discuss the expected impacts qualitatively, based on stakeholder responses. As a consequence, no Net Present Value or Net Present Cost is presented in this IA.

Option 1: Legislate to introduce the provisions of the Property (Digital Assets etc) Bill

Costs of Option 1

27. Some consultees who submitted responses highlighted some potential costs of the Bill. These included:
- The need for additional court time to be spent on determining whether a specific asset fits into the new category, despite the removal of the need to determine if digital assets can be considered property.
 - The legislation leading to obligations on (and thus costs for) digital infrastructure providers.

The Bill encouraging further use of digital assets reliant on energy-intensive systems, leading to environmental costs.

28. Government suggests that the latter two are unlikely to give rise to additional costs because the Bill is confirming the likely position of the common law anyway and does not introduce any new obligations or mandate/encourage the use of digital assets.

Benefits of Option 1

29. Option 1 will produce benefits to firms by providing greater clarity on issues pertaining to digital assets and their property rights. This will come from:
- Reducing the time spent by the courts, and the associated costs to litigants, associated with establishing whether certain things can be the objects of personal property rights, and instead allowing them to focus on substantive issues.
 - Reducing the level of legal analysis required by law firms when dealing with crypto-asset related queries.

² [Digital assets - Law Commission](#)

- Encouraging digital asset platforms to select English & Welsh Law or be based in the UK.
- Reinforcing the competitive position of English law on the international stage for property and commercial disputes. This should benefit the legal services sector.
- Removing uncertainty which may stand in the way of investment.

30. Overall, while we do not have data to assess how many firms will be impacted, this Bill is expected to reduce burdens on businesses by providing greater clarity on issues pertaining to digital assets and their property rights.

Net Impact

31. Most consultees who submitted responses to the Law Commission agreed that the Bill would have a positive impact.

E. Assumptions, Risks and Sensitivity Analysis

32. There are no major assumptions associated with the preferred option. As such there are no major risks. Due to the lack of data in this area and there being no quantified impacts, no sensitivity analysis is provided.

F. Wider Impacts

Equalities

33. An Equality Impact Assessment will be published alongside this IA.

International Trade

34. As the Bill will increase certainty concerning the use of digital assets in England and Wales, it should have a positive impact on the UK's trade position, dependent on decisions made by other countries.

Environmental Impact

35. Some consultees who submitted responses suggested that the Bill could encourage further use of digital assets reliant on energy-intensive systems, leading to environmental costs. However, the Bill only confirms what is likely to be the existing common law position and provides certainty in the law - it does not force or encourage the use of digital assets. As such, the MoJ and the Law Commission, having examined the Environmental Principles policy statement, do not expect environmental costs due to the Bill.

Better Regulation

36. As a regulatory provision, this measure is deregulatory in effect. Although the economic analysis for any benefit is unquantifiable the effect of this proposal will result in time saved for all sizes of business by ensuring greater legal clarity of personal property rights for digital assets.

37. As the majority of the preparatory work relating to the options in this IA occurred prior to the UK general election in July 2024, the MoJ completed the regulatory impact assessment template which was in force at that point.

G. Monitoring and Evaluation

38. There is no formal evaluation planned, given that the Bill simply provides certainty for a position already evident under common law. The MoJ will continue our regular engagement with the legal services sector after the Bill is in place.
39. In addition, the Law Commission recommended a multidisciplinary panel to produce non-binding guidance on factual and legal issues relating to control of digital assets. We have asked the UK Jurisdiction Taskforce, an expert group chaired by the Master of the Rolls that produce non-binding guidance on areas of legal uncertainty, to take forward this work as a one-year proof of concept (commencing October 2024). We will also engage with this panel.

ANNEX A: Text of the Property (Digital assets etc) Bill

1 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.

2 Extent, commencement and short title

(1) This Act extends to England and Wales only.

*(2) This Act comes into force at the end of the period of two months beginning with the day on which this Act is passed.**

(4) This Act may be cited as the Property (Digital Assets etc) Act 2024.

*To note, Law Officers consent is being sought for the Bill to come into force after Royal Assent. The Bill will be updated accordingly if consent is given.

ⁱ [Digital assets - Law Commission](#)