



HL Bill 31 of 2024–25

Property (Digital Assets etc) Bill [HL]

Author: Eve Collyer Merritt

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There are two types of property in established case law: things in possession (usually tangible objects) and things in action (like debts or the right to sue). Digital assets do not fall neatly into either category. While the law has been flexible in practice in considering them property, this Law Commission bill aims to remove uncertainty by legally establishing a third type of property. This is intended to provide more clarity in cases involving digital assets, including settlements, divorces, or disputed ownership.

I. Procedure for a Law Commission bill

The Law Commission is an independent body with a remit to keep the law of England and Wales under review and make systemic recommendations for Parliament's consideration.¹ It recommends changes to codify the law, eliminate anomalies and obsolescence and reduce the number of separate statutes.² The Law Commission has proposed the Property (Digital Assets etc) Bill to resolve the status of digital assets.

The next stage of the [Property \(Digital Assets etc\) Bill \[HL\]](#) will be second reading committee on 6 November 2024.

Second reading committees function like grand committee: usually in the Moses Room with an unlimited number of members.³ The second reading committee will debate the bill with no formal time limit and report to the House that it has considered it. A second reading motion is then normally taken formally in the House without debate. However, if there is opposition, amendments can be tabled or a vote can take place on the motion.

¹ Law Commission, '[Homepage](#)'; and '[About us](#)', accessed 22 October 2024.

² Law Commission, '[Statute law repeals](#)'; and '[Consolidation](#)', accessed 22 October 2024.

³ House of Lords, '[Companion to the standing orders and guide to proceedings of the House of Lords](#)', 2022, p 127.





The committee stage will then be conducted by a special public bill committee.⁴ Special public bill committees are empowered to take written and oral evidence on bills before considering them clause by clause. The committee will not publish a report. It will output the bill (as amended, if applicable) and will publish the proceedings transcripts and the evidence it has received.

Report stage and third reading will take place in the main House of Lords chamber.⁵

- Read more about Law Commission bills: House of Lords Library, '[Law Commission bills: Codifying the law and tidying up the statute book](#)', 14 February 2024

2. Background

2.1 Overview of property law

Personal property rights are key to a range of legal situations, including:⁶

- when property is interfered with or unlawfully taken
- bankruptcy and insolvency
- succession
- custody
- structures involving trusts and collateral arrangements

Traditionally, two categories of personal property have been recognised by the law of England and Wales:⁷

⁴ As above, pp 145–6.

⁵ [HL Hansard, 7 October 2010, col 224.](#)

⁶ Law Commission, '[Digital assets as personal property: Supplemental report and draft bill](#)', 29 July 2024, HC 188 of session 2024–25, p 1.

⁷ As above, pp 14–15.



- **Things in possession** are, generally, tangible visible objects. Rights to them can be asserted by use and enjoyment as well as by the exclusion of others from them. Things in possession have historically been aligned with things that can be physically possessed but, following Law Commission recommendations, the law has changed so that electronic trade documents such as bills of exchange could be considered things in possession if certain criteria are met.
- **Things in action** include any personal property that can only be claimed or enforced through legal action or proceedings, enforceable against a particular party. Examples are debts, rights to sue for breach of contract, and shares in a company.

The law can apply differently to the two categories. For example, different types of remedies are available when disputes arise.⁸

The Law Commission states there are various indicia (indicators) established in common law that could be applied to determine whether a thing should be considered to attract property rights. The indicia include the following potential characteristics of a thing:⁹

- definable
- identifiable by third parties
- having some degree of permanence or stability
- excludability (where the owner can stop others from using it)
- rivalrousness (if use of the resource by one person necessarily prejudices the ability of others to make equivalent use of it at the same time)
- value (would have a monetary value if sold)

2.2 Digital assets

The Law Commission has described digital assets as “increasingly important to modern

⁸ Sarah Green, [‘Digital assets: The common law gets a third category of thing’](#), Law Society Gazette, 16 September 2024.

⁹ Law Commission, [‘Digital assets as personal property: Supplemental report and draft bill’](#), 29 July 2024, HC 188 of session 2024–25, pp 11–12.



society”.¹⁰ Digital assets can include:

- crypto-tokens, which represent an asset or interest such as a tokenised security
- crypto-currency, such as bitcoin, which function as a means of payment or savings
- non-fungible tokens (NFTs), which certify that the holder has unique ownership of a digital item (such as a work of art)

Financial Conduct Authority (FCA) research in 2023 found that almost 10% of UK adults held cryptoassets.¹¹ This had more than doubled since 2021.

Digital assets, according to the Law Commission, “do not easily fit within the traditionally recognised categories of personal property which were developed long before the concept of digital assets was contemplated”.¹²

In applying the indicia to digital assets, the Law Commission points to the concept of rivalrousness as being particularly important to establishing whether a digital asset is private property.¹³ They suggest that if one person using a digital asset meant that others could not use it concurrently, this indicates that it may be private property. For example, two people cannot spend the same bitcoin, or other unit of cryptocurrency, at once.

2.3 Law Commission consultations and recommendations

In March 2020, the Ministry of Justice asked the Law Commission to review how personal property law in England and Wales could apply to crypto-tokens and other digital assets, and to recommend reforms.¹⁴

The Law Commission produced a digital assets consultation paper in July 2022.¹⁵ In that

¹⁰ As above, p 10.

¹¹ Financial Conduct Authority, ‘[Research note: Cryptoassets consumer research 2023 \(wave 4\)](#)’, 8 June 2023.

¹² [Explanatory notes](#), p 2.

¹³ Law Commission, ‘[Digital assets as personal property: Supplemental report and draft bill](#)’, 29 July 2024, HC 188 of session 2024–25, pp 11–13.

¹⁴ Law Commission, ‘[Digital assets: Consultation paper](#)’, 28 July 2022.

¹⁵ As above.



document, the commission said that while property law had in practice shown flexibility in accommodating digital assets, ongoing innovation and growth in the sector called for action.¹⁶ The consultation proposed legislation to confirm the existence of a ‘third category’ of property (beyond things in possession and things in action) to avoid uncertainty.

The Law Commission produced its final report on the consultation in June 2023.¹⁷ It said the majority of consultees, including senior and specialist members of the judiciary, were in favour of the proposed legislation. The report cited one comment that the law would give effect to:

The powerful case for reconsidering the dichotomy between [things] in possession and [things] in action and recognising a third category of intangible property...in a way that would take account of recent technological developments.¹⁸

The final report also concluded it would be best to avoid hard boundaries of what a third category providing for digital assets might include to retain necessary flexibility:

We conclude that the common law is the better vehicle for determining those things that properly can (and should) be objects of personal property rights [...] These might not necessarily be digital things. [They could include things like] milk quotas and certain types of carbon emission allowances.¹⁹

The report also set out other recommendations, including the creation of an expert panel to guide on emerging technical and legal issues.²⁰

The Law Commission published a draft bill for consultation in February 2024.²¹

Following feedback on the draft bill, the Law Commission published a supplemental report and an updated draft bill on 30 July 2024.²² The drafting of the bill changed slightly in

¹⁶ As above, pp 53–4.

¹⁷ Law Commission, ‘[Digital assets: Final report](#)’, 27 June 2023, HC 1486 of session 2022–23.

¹⁸ As above, p 22.

¹⁹ As above, p 19.

²⁰ Law Commission, ‘[Digital assets: Summary of final report](#)’, 28 June 2023, pp 18–20.

²¹ Law Commission, ‘[Digital assets as personal property: Short consultation on draft clauses](#)’, 22 February 2024.

²² Law Commission, ‘[Digital assets as personal property: Supplemental report and draft bill](#)’, 29 July 2024, HC 188 of session 2024–25.



response to the consultation.

Clause I of the February 2024 draft of the bill said:²³

A thing (including a thing that is digital in nature) **is capable of being** an object of personal property rights even though it is neither—

- (a) a thing in possession, nor
- (b) a thing in action.

Clause I of the July 2024 draft of the bill said:²⁴

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.²⁵

The Law Commission explained that the change was “intended to address the concern that the previous wording could be (and, in some cases, was being) read as providing that any ‘thing’ was capable of being personal property”.²⁶ It continued: “The new drafting makes it clear that there may be other reasons why a thing cannot be personal property—such as the thing in question not satisfying the indicia for personal property generally”.

The Law Commission noted that “the vast majority” of consultees agreed with their proposals.²⁷ For example, the International Digital Assets Counsel (IDAC) was positive about the draft bill:

We believe that the draft bill provides a strong basis around which a coherent legal framework can be developed and will promote legal certainty as to the categorisation of digital assets under English property law. IDAC considers that the draft bill confirms what we understand the English common law position to be in

²³ Law Commission, ‘[Digital assets as personal property: Short consultation on draft clauses](#)’, 22 February 2024.

²⁴ Law Commission, ‘[Digital assets as personal property: Supplemental report and draft bill](#)’, 29 July 2024, HC 188 of session 2024–25.

²⁵ Bolding added.

²⁶ Law Commission, ‘[Digital assets as personal property: Supplemental report and draft bill](#)’, 29 July 2024, HC 188 of session 2024–25, p 33.

²⁷ As above, p 22.



respect of the existence of a third category of property. However, we are of the view that there is still some uncertainty on this point. In turn, this limits the ability of law firms to provide, and market participants to obtain, clear legal opinions on the matter. This threatens the competitiveness of UK markets.²⁸

A minority of consultees held the view that digital assets should not be considered personal property, or that they should be considered things in action.²⁹ Other respondents felt that the bill did not go far enough in terms of setting out what kind of assets would fall within the third category.

3. Government response to the Law Commission's recommendations

In a statement on 11 September 2024, the government said that it would take forward the Property (Digital Assets etc) Bill following the Law Commission's recommendations.³⁰ It also accepted the recommendation to set up an expert group on control of digital assets. The government has asked the UK Jurisdiction Taskforce to take that work forward.

The government also confirmed that the Treasury was considering the Law Commission's other recommendations on whether a statutory framework for crypto asset collateral arrangements was necessary.

In a press release on the bill's publication, the government said the bill would “give legal protection to owners and companies against fraud and scams, while helping judges deal with complex cases where digital holdings are disputed or form part of settlements, for example in divorce cases”.³¹

Justice minister Heidi Alexander emphasised the bill's potential contribution to the UK's global standing in the tech and legal sectors:

²⁸ As above, pp 31–2.

²⁹ As above, p 19. For a detailed argument against digital assets being considered property, see: Robert Stevens, ‘[Crypto is not property](#)’, *Law Quarterly Review* (£), 2023, vol 139, pp 615–28

³⁰ House of Commons, ‘[Written statement: Government response to the Law Commission's report on digital assets \(HCWS84\)](#)’, 11 September 2024.

³¹ Ministry of Justice, ‘[New bill introduced in Parliament to clarify crypto's legal status](#)’, 11 September 2024.



Our world-leading legal services form a vital part of our economy, helping to drive forward growth and keep Britain at the heart of the international legal industry. It is essential that the law keeps pace with evolving technologies and this legislation will mean that the sector can maintain its position as a global leader in crypto-assets and bring clarity to complex property cases.³²

In April 2024, the previous government had also said it would take forward the recommendation to form an expert group.³³ The outcome of the consultation on the draft legislation had not been published at that point. The revised draft bill and supplemental report were published under the new government in July.

4. Detail of the bill

The [Property \(Digital Assets etc\) Bill \[HL\]](#) has one substantive clause:

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.

The bill's explanatory notes from the Ministry of Justice state that the intention is not to confirm the status of any particular type of thing as property or to “say that any and all ‘things’ are property”.³⁴ It is to establish that a thing could be considered property, even if it does not fit into the previously established categories. The established indicia can still be used to determine whether an asset is property in each circumstance.

The explanatory notes also say that the bill intentionally does not detail what the implications of a digital thing being recognised as property might be. For example, the bill does not set out what remedies might apply in particular cases or where tortious liability might apply. The notes said:

³² As above.

³³ Ministry of Justice, '[Government response to the Law Commission's recommendation for a legal and technical expert group on digital assets](#)', 18 April 2024.

³⁴ [Explanatory notes](#), p 5.



These matters are left to development by the common law. Personal property rights are traditionally creatures of common law and have been developed by the courts over hundreds of years. The common law approach has allowed for a highly nuanced and flexible approach which is not possible to achieve in statute.³⁵

In addition, the notes state that property rights are generally a matter for common law. However, this bill would remove uncertainty, and so “unlock” the development of common law in this area.

Clause 2 sets out that the provisions in the bill would extend to England and Wales. They would come into force from the day the bill receives royal assent.

5. Read more

- Practical Law (£), '[Hot topics: UK cryptoassets and digital assets regulatory developments](#)', accessed 22 October 2024
- Sarah Green, '[Digital assets: The common law gets a third category of thing](#)', Law Society Gazette, 16 September 2024
- Forbes, '[UK introduces bill to recognize digital assets as personal property](#)', 12 September 2024
- Practical Law (£), '[Digital assets as personal property: Law Commission publishes supplemental report and draft bill](#)', 1 August 2024
- Travers Smith, '[The Law Commission's approach to digital assets as property: The devil is in the detail](#)', 28 June 2024

³⁵ As above.

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