

**DIGITAL ASSETS (SCOTLAND) BILL****AMENDMENTS TO BE MOVED AT STAGE 2**

After Section 1, page 1, line 12

After section 1 insert-

*<Application of other enactments*

*This Act is subject to the following enactments;*

*(a) the Insolvency Act 1986;*

*(b) the Bankruptcy (Scotland) Act 2016);*

*(c) the Electronic Trade Documents Act 2023;*

*(d) the Financial Collateral (No.2) Regulations 2003;*

*(e) the Uncertificated Securities Regulations 2001;*

*(f) the Moveable Transactions (Scotland) Act 2023;*

*(g) the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025.>*

**Effect**

This amendment introduces a new section to ensure that the provisions of the Bill as introduced are subject to other statutory enactments (including enactments passed prior to the Bill).

**Reason**

Assets which may be considered digital assets under the Bill are already subject to existing statutory regimes. Where this is the case, the Bill should make clear that such other enactments will prevail thereby removing uncertainty from the legislative landscape.

The amendment aims to avoid conflict issues resulting from inconsistencies between provisions in the Bill and those in other legislation. It should capture the Insolvency Act 1986, the Bankruptcy (Scotland) Act 2016, the Electronic Trade Documents Act 2023 (**ETDA**), the Financial Collateral (No.2) Regulations 2003 (**FCARs**), the Uncertificated Securities Regulations 2001 (**USRs**), the Moveable Transactions (Scotland) Act 2023 and the Moveable Transactions (Scotland) Act 2023 (Financial Collateral Arrangements and Financial Instruments) (Consequential Provisions and Modifications) Order 2025.

The FCARs, for example, derive from an EU Directive and also reflect rules in further jurisdictions for transactions in intermediated investments. Failing to comply with this legislation would bring Scotland out of line internationally. The USRs regulate how the main public investment markets operate through the CREST system, reflecting the operational requirements of that system and underpinning certainty in those markets.

Ideally the Explanatory Notes should confirm that certain enactments would determine the rules for certain “things” that would also happen to meet the test of digital assets under the Bill. For example, the EDTA would determine the rules for electronic trade documents falling within its scope and these would not be affected by provisions of this Bill.

**DIGITAL ASSETS (SCOTLAND) BILL****AMENDMENTS TO BE MOVED AT STAGE 2**

Section 4, page 1, line 21

leave out sub-section (1) and  
insert-

*<(1) Ownership of a digital asset is transferred from one person (A) to another person (B) if:*

*a) A transfers exclusive control of that asset to B, and*

*b) A intends to transfer ownership to B>*

### **Effect**

This amendment replaces the proposed section 4(1) in the Bill as introduced with a new section 4(1) which sets out the mechanism for the transfer of ownership of a digital asset.

### **Reason**

We consider that section 4(1) of the Bill as introduced lacks clarity, and that the reclassification of digital assets as corporeal property for acquisition of ownership purposes may create unintended consequences.

The current section 4(1) does not achieve the objective of ensuring certainty in the Scottish law of digital assets without litigation. It rather creates uncertainty that may require resolution by litigation. This may deter parties from using Scots law and the Scottish courts in favour of legal systems taking a clearer and more direct approach.

The proposed alternative section 4(1) would make the legislation clearer by removing a conceptual reclassification and a fictional use of the concept of possession for digital assets, and would reduce the risks of unintended consequences from an unusual conceptual approach to property rights.

## **DIGITAL ASSETS (SCOTLAND) BILL**

### **AMENDMENTS TO BE MOVED AT STAGE 2**

Section 4, page 2, line 4

leave out sub-section (3)

#### **Effect**

This amendment is a consequential amendment to the suggested insertion of new wording to section 4(1) of the Bill.

#### **Reason**

We do not consider that there is a need for sub-section 3 in the Bill given that the insertion of new wording to section 4(1) removes the conceptual reclassification of digital assets as corporeal property for acquisition of ownership purposes and does not refer to “rules of law” as referred to in sub-section 3.

The inclusion of the current sub-section (3) would also conflict with a newly inserted section making the Bill subject to other specified legislation thereby creating legal uncertainty in the Bill.