

Stage 3 Brief

Digital Assets (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Digital Assets (Scotland) Bill (“**the Bill**”) was introduced by the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, Kate Forbes MSP, on 30 September and now comprises 10 sections (following amendments at Stage 2).

We submitted written evidence on the Bill to the Economy and Fair Work Committee (“**the Lead Committee**”) on 12 November 2025 and provided oral evidence as part of the Lead Committee’s Stage 1 consideration of the Bill on 03 December 2025. The Lead Committee Report on the Bill at Stage 1¹ (“**Stage 1 Report**”) was published on 15 January 2026. The Parliament agreed the general principles of the Bill on 22 January 2026.

We issued suggested amendments to the Bill on 10 February 2026 and the Lead Committee considered these and completed its Stage 2 consideration of the Bill on 18 February 2026. The amended Bill² was published on the same date. We also note the publication of the revised explanatory notes³ to the amended Bill on 27 February 2026.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 proceedings scheduled for 5 March 2026.

Specific Comments on Sections of the Bill

Section 1 – Meaning of Digital Asset

Section 1 describes the digital things with which the Bill is concerned, labelling them as “digital assets” and confirming they are objects of property which are capable of being owned.

We note that there is continued widespread support for the statutory definition of digital assets to be technologically neutral and avoid being too prescriptive. We consider that the definition at section 1 of the Bill is largely technologically neutral and attempts to strike a balance between providing a workable definition of digital

¹ [Stage 1 Report on the Digital Assets \(Scotland\) Bill](#)

² [Bill as amended](#)

³ [Revised Explanatory Notes](#)

assets in Scots law whilst ensuring that the definition can be applied to types of digital assets which are not yet developed or commonly known.

However, we question whether the requirement for an “*immutable record of transactions*” at subsection 2(a) is technologically neutral, as it seems to be devised with primarily standard blockchain technology in mind. This may be intentional, but it would be helpful to have further detail in the revised explanatory notes or in supporting guidance as to why other digital assets would be excluded merely because, for example, a system allows for authorised modification of records in limited circumstances (e.g. in cases of error).

We note that the Lead Committee has supported the definition of digital assets in the Bill.⁴ However, the Lead Committee acknowledged different views on the manner in which the term “immutable” may be interpreted by the courts and asked the Scottish Government to monitor developments in this area.⁵ We consider that such monitoring is sensible should the Bill be passed and receive Royal Assent.

We also welcome that no attempt has been made in the Bill to define which specific digital phenomena are “digital assets” in an exhaustive way, as this would have likely created future complications, given that these categories are likely to evolve with users’ behaviour and as technology develops. We believe that any such attempt to define the only types of assets that would be captured by this legislation could have risked restricting the scope for future innovation.

We note from the passage of this Bill through Stage 1 that the Lead Committee recommended that the Scottish Government work with industry, academia and relevant public sector stakeholders regarding the development of guidance on the interpretation and application of definitions of digital assets,⁶ and requested that the Scottish Government provide further information setting out which current digital technologies are expected to meet or not meet the Bill's definition of a digital asset.⁷ We welcome these recommendations and will be happy to engage in this process further.

Throughout our engagement with this Bill, we have confirmed our view that it should be clarified in section 1 that certain “things” should not be treated as digital assets for the purposes of the Bill as they are already subject to other transfer regimes. These legislative “carve-outs” are needed to make clear that such other enactments will prevail and thus remove any legal uncertainty around how this Bill will interact with already established legislation.

We therefore welcome the newly inserted section 1(3) which confirms that “*an electronic trade document within the meaning of section 2 of the Electronic Trade Documents Act 2023 is not a digital asset for the purposes of this Act.*”⁸ We are

⁴ Stage 1 Report, page 7, para 51

⁵ Stage 1 Report, page 8, para 53

⁶ Stage 1 Report, page 8, para 54

⁷ Stage 1 report, page 8, para 55

⁸ [Bill as amended](#)



also pleased that the Bill goes one step further at the newly inserted section 5A which confirms that “sections 2 to 4 are subject to any enactment wherever passed or made.”⁹ We believe that, depending on circumstances, such enactments can include;

- the Insolvency Act 1986;
- the Bankruptcy (Scotland) Act 2016;
- 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 (in the context of “claims” and “financial collateral” as defined in these Acts¹⁰);
- “uncertified units of security” as defined in the Uncertificated Securities Regulations 2001; and
- “rights, benefits and privileges attaching to or arising from such a unit, or relating to the details of a holder of such a unit”¹¹ principally in relation to the CREST system and reliance on dematerialised instructions under regulation 35 of the Uncertificated Securities Regulations 2001.

We consider this not to be an exhaustive list. However, we believe it may be helpful to refer to them (or at least some of them), by way of example, in the revised explanatory notes or supporting guidance.

Section 2 – Nature of Digital Assets in Scots Law

Section 2 provides that digital assets are incorporeal moveables for the purposes of Scots law.

It is helpful to have this express confirmation that digital assets are to be recognised as incorporeal moveables, as this will remove any doubts on the application of the existing private law rules for these types of assets to digital assets.

However, please see our further comments below regarding acquisition of ownership and the difficulty that we anticipate that will arise from labelling digital assets as corporeal moveables for this purpose. This is a point that we have stressed throughout our engagement with this Bill at Stage 1 and Stage 2.

Section 3 to 5 – Presumption of Ownership, Acquisition and Exclusive Control

Section 3 creates a rebuttable presumption that the person who has exclusive control of a digital asset owns it. We note from the Bill’s accompanying explanatory note that “the presumption created by section 3 is analogous to the

⁹ Ibid

¹⁰ [The Moveable Transactions \(Scotland\) Act 2023 \(Financial Collateral Arrangements and Financial Instruments\) \(Consequential Provisions and Modifications\) Order 2025](#)

¹¹ [The Uncertificated Securities Regulations 2001](#)

one that applies in relation to corporeal things, whereby the person in possession of a thing is presumed to be its owner.”¹²

We agree with the inclusion of a provision in the Bill specifying how ownership of a digital asset is transferred, as the general rules for transferring incorporeal property are difficult to apply to digital assets.

However, we believe that the Bill's continued classification of digital assets as corporeal moveables for the purposes of acquisition of ownership will create uncertainty and unforeseen issues and is likely to lead to incompatibility with the (correct) general application otherwise of the law of incorporeal property. There may also be issues regarding whether and to what extent digital assets are to be treated as corporeal or incorporeal moveables in the context of acquisition of ownership in insolvency law.

In addition, given that corporeal property rules are to be applied to the acquisition of ownership of digital assets, some clarification will now be required that certain common law rules regarding the acquisition of ownership are also inapplicable or applicable in a different way, such as rules regarding accession of one digital asset to a digital asset owned by another person or the application of the *specificatio* doctrine on the changing of the nature of a digital asset by a non-owner. We therefore believe that there will be legal uncertainty and scope for unforeseen issues arising within the acquisition of ownership through applying corporeal property rules.

Given the confirmation of digital assets as incorporeal moveables in section 2, we again stress that the rules for transfer of ownership could simply have been provided, with reference to an intention to transfer ownership and the transfer of exclusive control (for voluntary transfers). This would have been preferable to using the legal fiction of digital assets as corporeal moveables for transfer purposes.

We are therefore disappointed that our suggested amendment to section 4(1) of the Bill was not tabled¹³.

Furthermore, we previously raised the point at Stage 1 that the use of physical possession as an analogy for the (exclusive) control of some types of incorporeal property, including potentially certain digital assets, on an ad-hoc exceptional basis can be useful. However, we note the further amendment that has been tabled by the Scottish Government prior to Stage 3 to remove the “exclusive” element from control and have concerns as to how this will work in practice. We would therefore welcome further clarification of this point in revised explanatory notes to this Act or in supporting guidance. Without this, we believe that this amendment could create legal uncertainty and raise more questions about the attempt to make digital assets corporeal moveables for acquisition purposes.

¹² [Pg 9, Explanatory Note to Bill](#)

¹³ [See pg3, Law Society of Scotland Amendments with Effect and Reason](#)



In relation to section 4(2) of the Bill, we agree with the provision favouring a good faith acquirer of (exclusive) control for value over the pre-existing owner(s). We believe that the latter should have a basis for personal recovery against the wrongdoer(s) who caused them to be deprived of the property. It may be queried whether the common law is currently adequate to provide such redress, particularly in situations of error.

However, we believe that it is likely that the law will have to subsequently address the practical realities of control and it may not be feasible to do this adequately in legislation. One point to note is that if anyone else has an ability to initiate any “use” of a digital asset, this may cause ownership doubts. This problem may be further exacerbated by the amendment to remove the “exclusive” element of control. Given this, we now believe that clarity on related points will now need to be developed by wider case-law. We also believe that the removal of the “exclusive” element of control may lead to more litigation, with courts having to clarify how the statutory analogies between control and physical possession, and between digital assets and corporeal moveables more broadly.

We note that the Lead Committee has asked that the Scottish Government keeps the issue of good faith acquisition under review,¹⁴ and asked the Government to reflect on how the good faith provision in the Bill is drafted.¹⁵ We support this request and note the Scottish Government amendment of the provision on good faith acquisition at Stage 2, which has further clarified the effect of the relevant rule.

Section 6 to 8 – Ancillary Provision, Regulation Making Powers and Commencement

Section 6 empowers the Scottish Ministers to make, by regulations, various types of ancillary provision for the purposes of, in connection with, or to give full effect to the Act that the Bill will, if enacted, become or any provision made under the Act. We note from the explanatory note that this power is stated to include “*the power to modify any enactment (including the Act that the Bill, if enacted, will become)*.”¹⁶

Section 7 makes further provision about the regulation-making powers conferred on the Scottish Ministers by sections 6 (ancillary provision) and 8 (commencement).

We have mixed views about these powers. We believe it is important to avoid giving the impression that the Bill may shortly become outdated due to technological advancements. However, given that other areas of law need to be considered further as regards digital assets, there may be some value in seeking wider Parliamentary scrutiny or review of the Bill’s impact should it become law.

¹⁴ Stage 1 Report, para 99

¹⁵ Stage 1 Report, para 100

¹⁶ [Explanatory Notes accessible](#), page 15



In any event, those operating in practice and in industry will appreciate that the technological landscape is in a state of flux and that not all developments can be foreseen, and that further primary or secondary legislation may need to follow.

Wider Commentary

We believe that a number of wider issues that have not been addressed in the Bill remain, and will require further consideration should the Bill be passed and receive Royal Assent.

First, we note that no provisions have been included in terms of debt enforcement (diligence) and insolvency (albeit that property classification and acquisition of ownership provisions may have some relevance in such contexts too). Whilst we believe that creating a more effective system in these areas is definitely achievable for digital assets, we also acknowledge that adding provision for this in the Bill could risk overburdening the legislation. Therefore, given that these areas are not currently addressed, we would welcome assurances that reforms will be considered as soon as possible.

Furthermore, in terms of civil procedure and dispute resolution (and given the cross-border dimensions of digital assets), we also believe that the Bill naturally raises questions regarding its interaction with issues of private international law. This includes implications for jurisdiction and the applicable law (or governing law) in digital asset disputes. We note that many of these issues are being looked at in a number of ongoing law reform projects, including a consultation by the Law Commission of England and Wales in 2025 on Digital Assets and (Electronic) Trade Documents in Private International Law¹⁷. A copy of our response to this consultation can be found [here](#).

We believe that the questions around these important issues need to be addressed and considered further in Scotland too, in parallel to the developments in England and Wales and internationally on private international law aspects of digital assets. We are also aware that the issue of how the Scottish civil procedure and enforcement regimes can account for digital assets is becoming more relevant within practice in Scotland, strengthening a need for provision in that regard. We therefore welcome the Lead Committee's recommendation that the Scottish Government maintains a watching brief on initiatives in other countries to ensure any decisions taken here do not create unnecessary barriers to businesses operating internationally.¹⁸

In addition, it would be desirable to give some attention to whether there are useful limited and focused reforms that could be made in relation to areas such as succession law, executory practice and family law. Additionally, wider

¹⁷ [Digital assets and electronic trade documents in private international law – Law Commission Consultation](#)

¹⁸ Stage 1 Report, para 134



consideration of taxation issues may be appropriate, with a particular focus on the location of digital assets for tax purposes.

We welcome the Lead Committee's recommendation that the Scottish Government review the law in areas including private international law, debt enforcement, taking security for loans, and court procedure with a view to bringing forward reform proposals.¹⁹ We would be happy to engage with any associated consultation.

We also note the Lead Committee's previous calls for the Scottish Government to work with stakeholders to ensure Scottish interests are represented on the UK Jurisdiction Taskforce, as well as any other relevant expert group which may be established.²⁰ Alongside this, we also note the Lead Committee's previous call for the Scottish Government to establish a Scottish panel of experts to advise the courts, businesses and the legal sector on emerging digital technology issues in Scotland.²¹ We consider liaison with other jurisdictions appropriate, and would welcome confirmation of the Scottish Government's intentions in these areas.

Conclusion

Whilst we welcome the development of this Bill and its attempts to clarify the law surrounding digital assets, we believe that this needs to be taken forward in the context of the issues highlighted above, alongside a consideration of the potential risks and drawbacks of widespread usage of such assets. Investments in cryptocurrencies remains volatile, and we are aware of instances where consumer funds have been lost in the context of both "legitimate" investments and cryptocurrency scams and fraudulent schemes, although we note that UK-wide regulatory changes are being introduced and further developed.

Consequently, whilst enhanced legal recognition is a step in the right direction, this should not be taken as an endorsement of digital assets as a type of investment, creative vehicle, or otherwise. We believe that caution needs to be exercised and that further legislation will likely be required before the full range of benefits relating to digital assets will be realised.

¹⁹ Stage 1 Report, para 144

²⁰ Stage 1 Report, para 104

²¹ Stage 1 Report, para 105



For further information, please contact:

Richard Male
Policy Team
Law Society of Scotland
DD: 0131 476 8113
richardmale@lawscot.org.uk