Digital Assets (Scotland) Bill – Call for Views

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1. Does the definition of digital asset in the Bill meet the criteria of being technologically neutral and not too prescriptive? Do you have any suggested improvements?

As we have noted in previous consultation responses and in our published work,[1] we are supportive of legislation in this area to bring more clarity and certainty regarding the application of property law to digital assets. The Bill focuses on matters of definition, property status, property categorisation and acquisition of ownership. This should provide a useful foundation for better accommodating digital assets across private law.

Definition of digital asset with reference to "arising from an electronic system"

We agree that there is a need to define digital assets in the Bill.

In relation to the proposed definition, we note the reason given as to why "arising from an electronic system" is being used, instead of a reference to the thing being "digital or electronic in nature". We also note that the latter is the proposed approach for the rest of the UK in the Property (Digital Assets etc) Bill.

We think that the two forms of wording would likely achieve the same result, with the relevant thing arising from an electronic system and therefore being considered digital or electronic in nature. This is, however, so long as there is confidence that the term "arises from" is sufficiently clear and that the Scottish Bill's definition would not capture e.g. a physical item produced by an electronic system (and for which there is a record of relevant transactions), in which case that thing would not be digital or electronic in nature. We think that it is highly improbable that the wording would be interpreted to include physical items, given a purposive approach to the legislation and its focus on incorporeal property but we raise the point for completeness.

Requirements for rivalrousness

[1] See e.g. A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025, https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/9/25/df77b250-0ee0-4298-82ba-20fe6e304591; A. MacPherson, B. Yüksel Ripley, J. Ainslie, C. Emedosi, D. McKenzie Skene and E. West, 'Response to Scottish Government Consultation on Digital Assets in Scots Private Law' (2025), https://consult.gov.scot/financial-services/digital-assets-in-scots-private-law-consultation/consultation/view_respondent?uuId=207144532; B. Yüksel Ripley, A. MacPherson and L. Carey, 'Digital Assets in Scots Private Law: Innovating for the Future' (2025) 29 *Edinburgh Law Review* (May, 2025) 175, https://www.euppublishing.com/doi/full/10.3366/elr.2025.0955.

We are, in principle, comfortable with the use of the term "rivalrous" and the requirement for the thing to exist "independently from the legal system". Both of these were supported by the majority of respondents to the Scottish Government's earlier Consultation. However, we have a few points to raise regarding the requirements for rivalrousness as those requirements were not proposed in the earlier Consultation.[2]

First, an electronic system makes a thing rivalrous if "the system maintains an immutable record of transactions in relation to the thing". We are unsure whether this is sufficiently technologically neutral. It appears to have been chosen with the standard model of blockchain technology in mind. This is presumably because of the predominance of Bitcoin and other similar cryptocurrencies in this area, as early examples of digital assets underpinned by distributed ledger technology (DLT). However, should a digital asset be excluded from the meaning of digital asset under the Bill merely because, for example, there is a central administration in a given system with the ability to modify a record e.g. in cases of error? Why is immutability considered to be a defining criterion for a digital asset here? Is the focus on immutability intended to limit the definition to assets arising from the standard version of blockchain?

We also wonder whether there has been any particular inspiration for the inclusion of such wording. Is there legislation in other countries or international legal instruments requiring immutability in defining a digital asset? We are not aware of such an approach in legislation and legal instruments we are familiar with in this area.

The immutability requirement may put pressure on parties to use only certain forms of technology, principally current versions of blockchain, when designing digital asset systems to comply with the legislation. It may also create uncertainty for assets arising from systems to which this feature does not apply in the required form, even if the systems are secure against unauthorised alterations and ensure integrity of records. This is a fast-moving area technologically, and a requirement for immutability may cause some assets to be inadvertently excluded. For example, the *Financial Times* has reported that a major stablecoin issuer is examining whether transactions with its tokens can be made reversible in cases of fraud and disputes – (https://www.ft.com/content/5b00127e-1f26-4b36-9b19-d20b38392e8c; see also https://uk.finance.yahoo.com/news/stablecoin-transactions-crypto-bitcoin-price-blockchain-circle-134023278.html).

If there is to be a reference to the relevant recording of transactions, it may be preferable to take the integrity of records (rather than the immutability of records) as a point of reference for what the systems should ensure.[3] It is true that this may create more room for debate, given the need to determine whether the system ensures the integrity of records. However, such a result seems inevitable to an extent in any definition of digital assets focusing on characteristics of systems (rather than those of assets) as is done in the Bill. In addition, the level of uncertainty arising from a reference to the integrity of records may be overestimated and a better result than relying on immutability. Those assets featuring systems with immutable recording would obviously meet such a test. For other assets, i.e. those without immutability, the level of uncertainty about their

[2] See further B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[3] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

inclusion might be preferable to their complete exclusion (due to an immutability requirement that they do not meet). The latter would generate the uncertainty of relying on the background law, e.g. whether they are recognised as property and what transfer rules apply etc.

A related point is the question of how a person (e.g. a consumer or non-sophisticated investor) would know whether or not a system maintains an immutable record of transactions in relation to digital assets, particularly if the system is permissionless with no system owner or operator.[4] According to the Bill's Explanatory Notes, whether a given system achieves the required result seems to be left to the courts to determine (paragraph 17).

Second, the definition of rivalrousness departs from the way that the term is usually understood in property law. It also differs from how it was formulated in the Scottish Government's Consultation, which received support from respondents. The Consultation stated that if a digital asset is "of a rivalrous nature", then "the use or consumption of the digital asset by one person will prejudice the use or consumption of that same asset by another person". That meaning is more externally facing, considering the implications for other parties if one person uses or consumes the asset. The meaning in the Bill is focused solely on the party using the asset, so that when a person "transacts in relation to the thing in a certain way (for example by transferring or spending it), the person loses the ability to transact in relation to the thing in that way again". We understand that this is seeking to avoid the "double spend problem", but it might not, for instance, preclude duplication (or replication) of an asset, as long as that duplication cannot happen again. This may or may not be viewed as a problem. We also understand that the wording in the Consultation may have been avoided due to a concern that the use of the asset (e.g. by transfer) means that the transferor no longer has the asset (or power over it), but there are other ways to address this.

We think that it could be preferable to adopt a definition of rivalrousness which is more aligned with the usual understanding of the term in property law and that the concern about duplication could be addressed by providing explicit wording on this as part of the definition. An example of this can be seen in the Dubai International Financial Centre's Digital Assets Law No.2 of 2024, which states at s 8(c) that one of the criteria for a thing to be a digital asset is that "the thing is not capable of duplication and use or consumption of the thing by one person or specific group of persons necessarily prejudices the use or consumption of that thing by one or more other persons." Instead of 'not capable of duplication', possible alternative wording would be 'not replicable' (or 'not capable of replication').[5]

In addition, consideration could also be given to whether the definition of digital assets should include the feature of being attributable (or allocated) to a particular person or a particular group of persons, reflecting an understanding that digital assets, intended to be captured by the Bill, are in essence electronic values which can be attributed to a particular person or a particular group of persons by systems.[6]

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[4] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[5] See e.g. HCCH, Report on Exploratory Work: Digital Tokens Project, Prel. Doc. No 4 of November 2024, March 2025, https://assets.hcch.net/docs/8aad1b4d-c3a7-46b5-99c4-1ee589115685.pdf, para 20, p.4.

[6] See further B. Yüksel Ripley and F. Heindler, 'The Law Applicable to Cryptoassets: What Policy Choices are ahead of us?' in A. Bonomi, M. Lehmann, and S. Lalani (eds), *Blockchain and Private International Law* (Brill, 2023), https://brill.com/edcollchap-oa/book/9789004514850/BP000018.xml, pp.259-284; B. Yüksel Ripley and A.

Of course, legislation can define a term in a non-standard way, and it may only be desirable to amend the wording if the alternative captures something that the present wording does not (e.g. if a person's ability to act in relation to an asset does not stop others from having such abilities, this could be considered to undermine its property status). If that is concluded to be the case, then perhaps wording in legislation elsewhere could provide a guide, or part of the test for rivalrousness could be that "the ability of a person (or specific group of persons) to use or consume the thing (for example by transferring or spending it) necessarily prevents [or prejudices or limits] the ability of other persons to do so".

Definitional matters connected to other sections of the Bill

We would also like to provide our comments on various other sections of the Bill here. These follow on from the discussion regarding definitional matters, given that the relevant rules apply where the definitional criteria are met.

Section 2 (Nature of digital assets in Scots law)

Concerning section 2 of the Bill, we agree that digital assets are incorporeal moveable property in Scots law. The wording of section 2 is suitable for these purposes and provides sufficient flexibility if required.

Incorporeal moveable property is the residual category in Scots law and encompasses various types of assets (e.g. claims for money, shares, and intellectual property) with their own rules of transfer. By contrast, rules for corporeal moveables have been developed on the basis of the uniting feature(s) of such property, i.e. tangibility and the capability of being physically possessed. It would be counter-intuitive to consider a digital asset to be corporeal moveable in spite of its intangibility and it would require the disapplication of various legislative provisions.

Section 4 (Acquisition of ownership)

However, in section 4 and for the important purposes of acquisition of ownership, the Bill provides that digital assets are deemed to be corporeal moveables, with exclusive control taking the place of physical possession. Given the clear statement in section 2 in the Bill that digital assets are incorporeal moveables, the provision in section 4 seems somewhat jarring and confusing.

This approach was not proposed in the earlier Consultation, and we are unaware of it having widespread support. While digital assets may share some features with corporeal moveables regarding transfer, the Consultation seemed to indicate that the (voluntary) transfer of ownership would involve an intention to transfer ownership and the transfer of (exclusive) control from one person to another. It would be preferable for the Bill to include such a provision after stating that digital assets are incorporeal moveables, rather than treating them to be corporeal moveables for these purposes. If deemed desirable, provision could also be made for involuntary transfer (i.e. where there is no intention to transfer ownership, but a party is permitted by law to become owner and obtains exclusive control).

MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/. See also HCCH, Report on Exploratory Work: Digital Tokens Project, Prel. Doc. No 4 of November 2024, March 2025, https://assets.hcch.net/docs/8aad1b4d-c3a7-46b5-99c4-1ee589115685.pdf, para 20, p.4.

The current provision seems to also apply to other forms of acquisition, such as involuntary transfer in the context of bankruptcy (sequestration). However, there are challenges regarding that, as relevant bankruptcy rules are statutory and legislation is disapplied in relation to the acquisition rules in the Bill. There may be other unanticipated consequences concerning involuntary transfer that have not yet been examined. Apart from that, and more broadly, we agree with the decision to remove the application of legislation (enactments) relating to the acquisition of corporeal moveables (in section 4(3)). Otherwise, there would have been questions as to the extent to which (existing) legislation, such as the Sale of Goods Act 1979, might have applied.

Section 4 in its current form will still generally work in terms of achieving what is intended, but it is not our preferred approach. As well as the above, there may also be unintended consequences in relation to derivative (i.e. acquiring from another person) and original (i.e. obtaining an original title not based on someone else's) acquisition, as well as regarding matters such as the law of prescription (i.e. the extinction and acquisition of rights after the passage of time).

Section 3 (Presumption of ownership) and section 5 (Exclusive control: meaning and presumption)

We are supportive of section 3, namely that a person with exclusive control is presumed to own the digital asset. More broadly, we are pleased that the Bill is using the concept of exclusive control, which we raised for consideration in our response to the Scottish Government's Consultation.[7]

The meaning of exclusive control in section 5 generally seems reasonable and we agree with the provision in section 5(4) that a person's control of a digital asset is presumed to be exclusive. This should provide clarity in terms of who is considered to own an asset in the absence of rebutting evidence and ought to provide more certainty regarding the consequences of transactions undertaken.

2. What types of digital asset might be captured by the definition, both now and in the future? And are there wider implications for society to giving these legal recognition?

Types of digital asset captured by the definition

Any particular digital asset has to meet all of the parts of the test in section 1 of the Bill to qualify. This would require a case-by-case analysis. However, it is important to note that just because something does not fall into the definition of digital assets in the Bill, it does not mean that it is not property (it merely means that the rules in the Bill will not automatically apply). This question of property status will have to be determined separately under the law, which may or may not accept the thing as a property object.

Based on the definition of digital assets and the Bill's Explanatory Notes, the Bill will likely capture standard cryptocurrencies using blockchain technology (such as Bitcoin) and NFTs. Various

[7] A. MacPherson, B. Yüksel Ripley, J. Ainslie, C. Emedosi, D. McKenzie Skene and E. West, 'Response to Scottish Government Consultation on Digital Assets in Scots Private Law' (2025), https://consult.gov.scot/financial-services/digital-assets-in-scots-private-law-consultation/consultation/view_respondent?uuId=207144532. See also A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025, https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/9/25/df77b250-0ee0-4298-82ba-20fe6e304591, p.43.

other forms of cryptoasset are likely to meet the test, particularly tokens utilising blockchain technology. However, it is difficult to tell with certainty what types of digital asset could be captured by that definition unless and until this is determined by the courts and, as per the Bill's Explanatory Notes, paragraph 8, this seems to also be the case regarding Bitcoin and NFTs.[8]

There is a possibility that central bank digital currencies (CBDCs) may fall under the definition, depending on how they are designed and to what extent they are considered to exist independently from the legal system/law.[9]

Electronic trade documents could be deemed digital assets under the Bill if they meet the definition. However, creating a dual regime for paper and electronic forms of the same trade documents would not be desirable. Given the recent UK-wide law reform that resulted in the enactment of the Electronic Trade Document Act (ETDA) 2023, and the special features of trade documents, we think that electronic trade documents should be explicitly excluded from the Bill.[10] Otherwise, difficulties would arise from applying different legal regimes to paper and electronic forms of the same trade documents and uncertainties would exist for electronic trade documents meeting the requirements of both the Bill and the ETDA 2023.[11] There would also be a risk that some of the benefits Scotland expects to gain from the recent electronic trade document law reform under the ETDA 2023 may be jeopardised.[12]

Other types of asset, including ones that are difficult to categorise, such as carbon credits, would not be captured by the Bill if they do not exist independently from the legal system/law, albeit that if they are tokenised, then the tokens may fall under the Bill.

The Bill does not generally deal with tokenisation, which can be defined as "[t]he creation of a digital representation of property or rights relating to property (such as rights relating to land, artwork or securities) by using DLT or similar technology, which can facilitate dividing rights and the ease of transferability of those rights".[13] Tokens in varying forms would likely to be captured by the Bill, but this will not answer questions about whether the transfer of a token will also transfer a linked asset.[14] Such issues are not dealt with by the Bill.

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[8] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[9] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[10] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[11] See further A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025, https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/9/25/df77b250-0ee0-4298-82ba-20fe6e304591, pp.31-32.

[12] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[13] A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025, https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/9/25/df77b250-0ee0-4298-82ba-20fe6e304591, p.8.

[14] See further A. MacPherson and B. Yüksel Ripley, 'Tokenisation and the Transfer of Linked Assets in Scots Law', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/tokenisation-and-the-transfer-of-linked-assets-in-scots-law/.

Given the uncertainty about which assets are intended to be included, it would be helpful to have further comments from the Scottish Government as to which other forms of asset they believe would or would not be captured by the Bill.

Wider implications for society?

In terms of wider implications for society by giving digital assets legal recognition, there are a few points to be made.

Firstly, we are of the view that the Bill is largely clarificatory and that the assets covered would be recognised as incorporeal moveable property under Scots law anyway. Nevertheless, the legislation would confirm the property status and classification of certain types of digital assets and would provide rules for acquisition of ownership. Consequently, there will be more certainty for anyone involved in situations featuring digital assets, whether as an investor, a spouse in the context of divorce, a family member receiving an inheritance, or a creditor.

Secondly, while some digital assets, especially Bitcoin, involve high levels of energy consumption (primarily due to "mining"), there is a wide variety of these assets and many of them involve less energy consumption. In addition, the legislation is unlikely to make any notable difference to the overall levels of energy use regarding such assets, except to the extent that it might give some impetus to new initiatives in the FinTech sector in Scotland. Many people (including in Scotland) already have digital assets, the law would almost certainly recognise many of them without the legislation, and the Bill's enactment will probably not significantly increase the activities that give rise to environmental concerns. The Bill's greatest value will lie in the certainty it gives to parties transacting with the assets, particularly if there is a dispute.

Some digital assets raise concerns in the context of illicit activities. However, there are also legitimate use cases for such assets, and there are other digital assets with a wider range of valuable use cases. There are no doubt ways in which the regulation of digital assets can be improved, and, for example, the Financial Conduct Authority is considering what further steps should be taken. However, these issues are beyond the scope of this Bill and largely involve reserved matters.

3. The transfer provisions in the Bill favour an acquirer in good faith (someone who is not aware of any problems with the asset they are acquiring) over the actual owner of a digital asset. Is this justified? Are there alternative approaches which could better balance the interests of acquirers and owners?

We support the Bill's approach which favours acquirers of digital assets who are in good faith and provide value.

It is always an invidious choice in property law as to whether the law should protect the pre-existing owner or someone acquiring in good faith and for value from a non-owner. The pre-existing owner and the purported acquirer are both innocent parties and may lose out if the law does not protect them. In Scots law generally, ownership cannot be acquired from someone who

is not the owner. Consequently, if A's property is stolen by B and B sells it to C, then C cannot usually acquire ownership from B, even if C does not know of the theft and pays money to B.

The rule in the Bill would depart from the normal Scots law position in relation to digital assets. This means that if, for example, A is hacked by B and B sells A's digital asset to C, then C can acquire ownership of the digital asset, if C is in good faith and provides value (e.g. pays money) to B for the asset. We support the protection of C in these circumstances and in other instances of good faith acquisition for value. This is because of the pseudonymous way in which many digital assets are held, the ease of transferability, the need to enable the systems for transfer to operate effectively, and the difficulty of enforcement if an alternative approach is adopted.

Equivalent exceptions exist for some types of property, most notably cash and bills of exchange (see Bills of Exchange Act 1882, ss 29(1) and 38(2)), in order to make their usage practically workable. A good faith acquisition rule can be similarly supported for digital assets as an exception. Otherwise, there would be considerable problems, including the creation of doubt among acquirers as to whether they own the assets acquired, and a lack of faith in the application of Scots law where parties use relevant digital asset systems. For example, any party who acquired a digital asset would have lingering concern that a pre-existing owner could appear at any stage to demand the re-transfer of the asset (subject of course to practical difficulties arising from pseudonymity etc), even if control of the asset had passed through many hands since that pre-existing owner last held it.

It must always be remembered that a wrongdoer, such as B above, remains potentially liable in civil law (usually delict), to A. In addition, criminal prosecution may also be possible. However, the success of these will depend on the particular circumstances.

The good faith acquisition rule also provides assistance in situations where there is no wrongdoing. As such, it can help to address issues that exist when assets are being transferred. For example, if a seller intends to transfer ownership to a buyer and gives them control in an off-chain transaction, but the seller also retains control or others with control do (whether intentionally or not), this would not actually transfer ownership in the absence of exclusive control being transferred (assuming the presumption of exclusive control could be rebutted). If the buyer then sold the asset on to someone else and that party obtained exclusive control (e.g. by completing an on-chain transaction), then the good faith acquisition rule could rightly protect them.

4. Do the provisions in the Bill create a framework for identifying and dealing with digital assets which is workable for businesses involved in this sector?

As academics, we do not have any particular comment as to whether the Bill creates a framework that is workable for businesses involved in the sector. Overall, we think that the greater certainty regarding property matters should be helpful for businesses and individuals dealing with digital assets. If the issues we identified above, particularly in our response to question 1, are addressed or clarified as appropriate, this could further help this law reform to achieve its potential.

5. Is there a need for wider reform to Scots law to enable disputes involving digital assets to be dealt with fairly?

Yes, there are various troublesome matters concerning digital assets that the Bill does not address, and they require further attention in future phases of law reform in Scotland.

Civil procedure

Civil procedure is an area that is challenging in relation to digital assets. If someone wishes to raise an action against someone else with respect to such assets, they may not have the details normally required to do so. Scots law generally does not allow for actions to be raised against persons unknown and there are also significant difficulties in terms of serving an action against them. Consequently, there may not be a means by which someone who claims to have been wronged, e.g. through a contractual breach or a hack or other wrongful conduct, has the ability to obtain a legal remedy.[15]

Debt enforcement

The law of debt enforcement (diligence) in Scotland is also unsatisfactory when it is applied to digital assets. It provides no suitable way to find out that someone has digital assets. Even if it is known that a debtor does have such assets, in most cases the law does not provide an adequate mechanism to enable enforcement against them. This could encourage someone to store their wealth in digital assets to evade enforcement and means that a creditor may be denied justice. There are some straightforward changes that could be made, which would largely address the problems. This includes the introduction of information disclosure orders and residual attachment, as provided for in the Bankruptcy and Diligence etc (Scotland) Act 2007.[16]

Insolvency law

Insolvency law (for both personal (non-corporate) and corporate insolvency) provides some suitable mechanisms for an office holder (e.g. trustee in sequestration or liquidator) to discover the existence of digital assets and to obtain control of them. However, there are some minor changes that could be made to assist office holders in this area. This would be more straightforward for personal insolvency law (particularly sequestration) given that it is devolved, whereas corporate insolvency is partly devolved and partly reserved.

Private international law

Private international law is another area that needs more attention regarding digital assets given their cross-border or international dimension(s). This is an area of law that determines matters such as which country's courts have jurisdiction to deal with relevant cases and which country's law applies to the issue(s) before the court. There is uncertainty as to how some of the existing private international law rules will apply to digital assets.[17] We note that there are ongoing private

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[15] A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025, https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/9/25/df77b250-0ee0-4298-82ba-20fe6e304591, p.29 and 48; B. Yüksel Ripley, A. MacPherson and L. Carey, 'Digital Assets in Scots Private Law: Innovating for the Future' (2025) 29 *Edinburgh Law Review* (May, 2025) 175, https://www.euppublishing.com/doi/full/10.3366/elr.2025.0955, pp.207-208.

[16] For further details, see A MacPherson and A Sweeney, "Cryptoassets, Security Rights and Diligence" (SSRN, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5286149.

[17] See further A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025, https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/9/25/df77b250-0ee0-4298-82ba-20fe6e304591, pp.30-32; B. Yüksel Ripley, A. MacPherson and L. Carey, 'Digital Assets in Scots Private Law: Innovating for the Future' (2025) 29 *Edinburgh Law Review* (May, 2025) 175, https://www.euppublishing.com/doi/full/10.3366/elr.2025.0955, pp.197-208.

international law reform projects in England and Wales and internationally concerning digital assets. We think that Scotland should also consider and address private international law issues arising from digital assets as appropriate in future phases of reform work.

Concerning this Bill, we consider that it would apply if the issue in question is governed by Scots law. We note that, under the existing law, choice of law is, in general, limited to matters of obligations (such as contract), not property issues. Property issues are traditionally governed by the *lex situs*, i.e. the law of the place where the thing/property is located. It is uncertain where a digital asset is located. Depending on circumstances, it could be the place of habitual residence or business of the (last known) holder identified with reference to control.[18]

If the legislature's intention is to incentivise the application of this Bill through choice of Scots law, we think that the Bill should include an explicit provision to enable this for proprietary matters falling into its scope.[19] Such provision could state that this legislation applies to digital assets (whether or not Scots law would otherwise apply) where parties expressly designate Scots law as the applicable law or specify that the legislation's provisions are to apply.[20] Alternatively, this issue could be considered as part of a wider private international law reform project on digital assets in Scotland.

Tokenisation and linked assets

Attention could also be given to specific rules which apply to the transfer of assets that are linked to tokens. So-called "tokenisation" involves the creation of a digital representation of property or rights, such as rights relating to land, artwork or securities (e.g. shares or debt instruments like bonds). It is unclear when the transfer of a token will also transfer ownership of a linked asset and it seems that the existing rules for the transfer of the linked asset will usually have to be complied with. Rules could be introduced to provide clarity regarding these matters or to achieve a policy objective of supporting the transfer of (some) assets via tokens.[21]

Further reform

Despite the above points, we are aware that there is a desire to keep the Bill relatively short and to avoid overcomplicating the reform efforts in the time available. Some of the changes we suggest above may also be beyond the scope of the Bill. However, we think it is important that there is a firm commitment that further reform will be pursued given the significant problems identified above. This Bill should be viewed as a useful foundation for accommodating digital assets in Scots law but is only Phase 1 of required reforms.

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[18] B. Yüksel Ripley, A. MacPherson and L. Carey, 'Digital Assets in Scots Private Law: Innovating for the Future' (2025) 29 *Edinburgh Law Review* (May, 2025) 175, https://www.euppublishing.com/doi/full/10.3366/elr.2025.0955, pp.205-207.

[19] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[20] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.

[21] See further A. MacPherson and B. Yüksel Ripley, 'Tokenisation and the Transfer of Linked Assets in Scots Law', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/tokenisation-and-the-transfer-of-linked-assets-in-scots-law/.

6. What other work is needed to enable the benefits of digital assets to be more widely realised across Scottish society?

In general, we think that digital literacy and understanding of digital assets are important across Scottish society, particularly among members of the public. Informational or educational campaigns may be helpful. The Bill should not be presented as an endorsement of (any type of) digital assets and people must be made aware of risks that are involved.[22]

7. Should the Bill contain any mechanisms to monitor its impact and allow for changes to be made in the future?

Yes. Mechanisms for reviewing the Bill's impact and to consider whether further reform may be necessary would be valuable, particularly in light of the points above regarding other areas of law that require attention. Perhaps a (first) review 2 years after the legislation's entry into force would be desirable.

[22] B. Yüksel Ripley and A. MacPherson, 'Digital Assets (Scotland) Bill: Scope and Definitional Issues', *Aberdeen Law School Blog*, 2025, https://www.abdn.ac.uk/law/blog/digital-assets-scotland-bill-scope-and-definitional-issues/.