

Additional Written Submission on the Digital Assets (Scotland) Bill

by

Professor Burcu Yüksel Ripley and Dr Alisdair MacPherson

19 December 2025

Following the Economy and Fair Work Committee's oral evidence session on 17 December 2025, we are writing to provide additional information regarding the potential exclusion of electronic trade documents (ETDs) from the Digital Assets (Scotland) Bill. We note that the views expressed are ours alone and do not reflect the views of any other organisation or group to which we are affiliated.

We have examined the relationship between ETDs and digital assets in our academic work (including [B. Yüksel Ripley and A. MacPherson, 'Digital Assets \(Scotland\) Bill: Scope and Definitional Issues', Aberdeen Law School Blog, 2025](#), and [A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025](#)). In doing so, we have also been informed by international developments and discussions in this area, particularly at the United Nations Commission on International Trade Law (UNCITRAL), and the relevant international legal literature (e.g. L. Castellani, *UNCITRAL Model Laws on Digital Trade* (Hart Publishing 2025)). Based on our research on this matter, we have provided evidence to the Committee concerning the need to have a carve-out for ETDs in the Digital Assets (Scotland) Bill (including the [Response to Scottish Parliament Call for Views on the Digital Assets \(Scotland\) Bill, prepared by A. MacPherson and B. Yüksel Ripley and endorsed by J. Ainslie, C. Emedosi, D. McKenzie Skene and E. West](#)).

As we explained in our academic work and previous submissions to the Committee, ETDs are already provided with adequate legal treatment and recognition in the UK under the [Electronic Trade Documents Act \(ETDA\) 2023](#). It appears that an ETD could also be a digital asset under the current provisions of the Digital Assets (Scotland) Bill if an ETD is designed in a way that meets the requirements set out under the Bill. We understand from the evidence provided to the Committee during the 17 December session that the possibility of an ETD also being a digital asset may remain. If so, this would create legal uncertainties and unintended consequences for ETDs which fall into the definition of digital assets in the Bill and the definition of ETDs in the ETDA 2023.

We, therefore, wish to reiterate our view that the Bill should have an explicit carve-out for ETDs in its definition, for the following reasons:

- 1. The recent UK-wide law reform, which resulted in the ETDA 2023, already provides electronic trade documents with adequate legal treatment and recognition in Scotland.**

There is already UK-wide law reform concerning ETDs, which resulted in the enactment of the ETDA 2023. This Act applies across the three jurisdictions of the UK and ensures substantial alignment among them regarding ETDs.

The ETDA 2023 gives electronic forms of certain trade documents the same legal status as their paper counterparts if they satisfy criteria set out in the Act. The non-exhaustive list of trade documents provided in the Act includes the following: bill of exchange, promissory note, bill of lading, ship's delivery order, warehouse receipt, mate's receipt, marine insurance policy, and

cargo insurance certificate. The Act ensures functional (as well as legal) equivalence between paper and electronic forms of trade documents falling within its scope. The Act also provides the possibility of change of form from electronic to paper (or vice versa).

The Act embeds ETDs into the existing laws relating to trade documents. The Act, which is considered as a “game-changer” for the industry and as “the missing piece in the jigsaw in digitalisation of trade”, is important for Scotland and Scotland’s trade, as well as for the UK as a whole (see further [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](#), pp.179-186).

It is, therefore, crucial that the legal regime established by the ETDA 2023 remains unaffected in Scotland by the Digital Assets (Scotland) Bill. This is because it is the ETDA 2023’s legal regime which gives legal recognition to ETDs and embeds them into the existing laws relating to trade documents. That legal link and recognition should not be impaired by the Digital Assets (Scotland) Bill. In addition, the existing alignment across the three jurisdictions of the UK for ETDs under the ETDA 2023 is valuable and should be preserved given cross-border or international dimensions of trade.

2. If electronic trade documents are not excluded from the Digital Assets (Scotland) Bill, this will create interpretation difficulties and uncertainties for electronic trade documents which meet the requirements of both the Bill and the ETDA 2023.

If ETDs, within the scope of the ETDA 2023, meet the definition of digital assets under the Digital Assets (Scotland) Bill, they would be deemed digital assets in the absence of any carve out in the Bill. This would create interpretation difficulties and legal uncertainties as to which of these legal regimes will be applied to ETDs meeting the requirements of both the ETDA 2023 and the Bill. For points of law on which these regimes are compatible with one another, there may not be a significant problem. However, this will not always be the case and there may be differing and conflicting rules concerning e.g. acquisition (see further below), depending on whether the digital assets or ETDs regime prevails.

We refer to the [UNCITRAL Guide on legal issues relating to the use of distributed ledger technology in trade](#), published in 2025, which states at paragraph 84 that:

“The Taxonomy recognizes the lack of consensus on the definition of digital assets; however, it provides that, in its ordinary meaning, the term “digital asset” connotes a collection of data, stored electronically, that is of use or value (Taxonomy, para. 82). *Some assets may fall under the definition of digital asset but also under other definitions that are legally relevant, for example, that of an electronic trade document. In those cases, it is particularly important to determine which legal regime shall prevail.*” (emphasis added)

This international guidance is very helpful and also relevant to Scotland and the Digital Assets (Scotland) Bill. An explicit carve-out for ETDs in the Bill could bring the needed clarity that the legal regime established by the ETDA 2023 would prevail for ETDs.

3. If electronic trade documents are not excluded from the Digital Assets (Scotland) Bill, this would also create an undesirable dual regime for paper and electronic forms of the same trade documents.

The Digital Assets (Scotland) Bill introduces substantive law provisions for digital assets. If the Bill applies to electronic forms of trade documents (by considering them digital assets under the Bill), this will undermine the existing functional (as well as legal) equivalence established by the

ETDA 2023 between paper and electronic forms of the same trade documents and could have unintended consequences.

As an illustration of this, we refer to our analysis in [B. Yüksel Ripley and A. MacPherson, 'Digital Assets \(Scotland\) Bill: Scope and Definitional Issues', Aberdeen Law School Blog, 2025](#):

“One example is the good faith acquisition provision in section 4(2) of the Bill. In Scots law, obtaining ownership from a non-owner is an exception in relation to, for example, bills of exchange as negotiable instruments. Although there seems to be some consistency between the rule for these instruments under the Bills of Exchange Act 1882 and the rule for digital assets under the Bill, there would be uncertainty as to which of them would apply to bills of exchange (or promissory notes) in electronic form. Further, a good faith acquisition rule does not apply to all trade documents. There is no strong reason why the Bill should change this for those trade documents just because they are in electronic form that complies with the Bill, rather than being paper.

ETDs are substantially different from (other types of) digital assets. ‘Pseudonymity’, which is a relevant justification for the application of the good faith acquisition rule to, for example, Bitcoin and similar cryptocurrencies (see paragraph 59 of the [Bill’s Policy Memorandum](#)), is less relevant for many trade documents. Trade documents (in electronic or paper form) are typically used by parties whose identities are known to each other in a business context. This is particularly necessary for various requirements associated with, for example, trade sanctions, anti-money laundering and counter-terrorism financing (AML/CTF) compliance, and know your customer (KYC) checks.”

As seen, such a dual regime for paper and electronic forms of the same trade documents would be undesirable. It would create legal uncertainties and barriers to trade. It would also bring further legal complications whenever the form of a trade document is changed (from electronic to paper, or vice versa), because this potentially means changing the applicable legal regime too.

4. Electronic trade documents under the ETDA 2023 can and should be excluded from the scope of the Digital Assets (Scotland) Bill for legal certainty and predictability in trade.

Based on the above reasons, we think that ETDs should be explicitly excluded from the Bill. This can be done by providing an explicit carve-out in section 1 of the Bill (for a similar approach in the US, see the carve-outs provided in Section 12-102(a)(1) of the [Uniform Commercial Code](#)).

An alternative approach, which could achieve the same result, would be to make the provisions of the Digital Assets (Scotland) Bill subject to other legislation (enactments) more generally. This might be sufficient if it were to be accompanied by wording in the Bill’s Explanatory Notes confirming that, for example, the application of the Bill to ETDs (under the ETDA 2023) will be subject to the provisions of the ETDA 2023 regarding such assets, ensuring that the regime provided by that Act takes precedence. However, if this broader approach were to be adopted, its consequences would need to be fully considered, i.e. whether it is desirable to make the Bill’s provisions subject to all other relevant legislation/enactments and whether there would be any unintended consequences of taking this wider approach.

Unless the Bill’s scope of application is clarified regarding ETDs, there will be problems arising from the dual regime inadvertently created by the Bill for paper and electronic forms of the same trade documents, and issues with determining the legal regime and rules to apply to trade

documents under Scots law. Because of legal uncertainties that would arise from such problems, there would be a risk that traders might be less willing to use ETDs and some of the benefits Scotland expects to gain from the recent ETDs law reform under the ETDA 2023 may be jeopardised.

As we have noted in our work, ETDs (and any future law reform for them) should be considered under the law relating to trade documents, rather than digital assets given that ETDs are substantially different from (other types of) digital assets (see further [A. MacPherson and B. Yüksel Ripley, 'Digital assets in Scots law', SPICe Research Briefing, 2025](#), pp.31-32; [B. Yüksel Ripley and A. MacPherson, 'Digital Assets \(Scotland\) Bill: Scope and Definitional Issues', Aberdeen Law School Blog, 2025](#)).

We hope that this additional submission will be of assistance to the Committee and we would be happy to discuss further these points or others relating to digital assets if that might be helpful.