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Daniel Johnson MSP
Convener
Economy and Fair Work Committee
Scottish Parliament
EH99 1SP

9 February 2026

Dear Mr Johnson,

Digital Assets, Diligence and Civil Procedure

Following on from our previously provided evidence, we have read with interest the letter received by you from the Minister for Business and Employment, Mr Richard Lochhead MSP, dated 30 January 2026, and now available on the Scottish Parliament website. We were pleased to see the detailed response provided by the Scottish Government to the Committee's Stage 1 Report on the Digital Assets (Scotland) Bill, annexed to the Minister's letter. This demonstrates the Scottish Government's active engagement with the Committee's recommendations. We agree with much of what is stated in the response and do not intend to provide extensive commentary on points therein with which we agree or disagree. However, we consider it prudent to address one point in particular, regarding debt enforcement (diligence) and civil procedure rules, in order to provide further clarity on that point, in case there may be some misunderstanding.

We very much welcome the Scottish Government's expressed interest in exploring the reform of the law of diligence, including in relation to digital assets. As noted in evidence and in the Committee's Stage 1 Report, various parties (including us) have identified this area of law as being one of the most challenging for the accommodation of digital assets in Scots law and it requires reform. The Scottish Government's response (after the reference to paragraph 100 of the Stage 1 Report) states that:

"I listened with interest to the evidence provided on behalf of the Law Society of Scotland and the Faculty of Advocates, which suggested that the bigger issue for someone deprived of their digital assets is the civil procedure rules for diligence that exist in Scotland, rather than the available substantive remedies. Views were expressed on how restrictive these rules can be when it comes to raising actions against persons unknown, for example."

This passage appears to suggest that the issues concerning digital assets in civil procedure are limited to the law of diligence. In reality, these are distinct matters requiring separate attention. In evidence and in published work we have previously pointed to the law of diligence *and* civil procedure as both needing reform as regards digital assets. The reforms required for each area differ.

Diligence is relevant where one party, a creditor, is owed money by another party, a debtor. The creditor may have a court order for payment but the debtor could still refuse to pay. The creditor

can seek to enforce by executing diligence against the debtor's assets, which can allow for assets to be sold to pay the debt. There are diligences available for different types of property, including corporeal moveables and particular types of incorporeal moveables. However, the present position is unsatisfactory for digital assets.

For diligence and digital assets, the two principal challenges are: (1) finding out information about a debtor's digital assets (e.g. whether the debtor owns such assets or has another interest in them, what type(s) of digital assets, the number of assets and where they are held); and (2) if it is known that the debtor does have such assets, a creditor needs effective mechanisms to enforce against those assets. Scots law currently provides inadequate solutions for both (1) and (2).

One of us (Dr MacPherson) has written at length about the difficulties involving digital assets and diligence in Scots law. A co-written article (with Dr Andrew Sweeney) on the subject is due to be published in the next edition of a leading Scottish law journal, the *Juridical Review*. A version of the article is available at the following link, in case it is of interest to the Committee – https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5286149. More positively, the article also identifies solutions to the problems that exist. These include the introduction of information disclosure orders in modified form and allowing for the diligence of residual attachment. Provision is made for both of these mechanisms in the Bankruptcy and Diligence etc (Scotland) Act 2007 but they have not been brought into force. We think it is timely and desirable that the Scottish Government explores whether these could be introduced in the near future.

We agree with the Minister that “raising actions against persons unknown” is a problem regarding digital assets under Scots law, but this is an issue for wider civil procedure rules and is not directly relevant to diligence in the same way. An enforcing creditor will ordinarily know the identity of the relevant debtor and diligence is used after an action is raised. The issues relating to diligence against digital assets apply *whenever* a debtor has such assets and a creditor wishes to enforce, not just where the court action that has allowed for diligence involves a dispute relating to digital assets.

By contrast, the legal hurdles to raising civil law actions against persons unknown in Scots law, as well as uncertainty about how an action could be suitably served against such persons, are broader problems with civil procedure and how it applies to digital assets (due to pseudonymity). For instance, if a person is the victim of fraudulent behaviour or a hack by an unknown person, there would be difficulties in successfully commencing an action against the wrongdoer. This is because the wrongdoer's true identity and other personal details (including contact information or location) are unlikely to be known to the party defrauded or hacked. The action may involve an attempt to recover assets that have been wrongfully obtained by someone else, but this differs from diligence which is about enforcing debts against the debtor's assets whether or not those assets have been the subject of legal action. The reform of civil procedure rules consequently requires attention separately from the reform of diligence.

We hope that this letter is of some assistance to the Committee and we would be happy to provide any further information if requested.

Yours sincerely,

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