

# **DIGITAL ASSETS (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Digital Assets (Scotland) Bill, introduced in the Scottish Parliament on 30 September 2025.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 75–EN);
  - a Financial Memorandum (SP Bill 75–FM);
  - a Delegated Powers Memorandum (SP Bill 75–DPM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 75–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

4. The overarching policy objective of the Bill is to clarify Scots private law by confirming the status of digital assets as objects of property which are capable of being owned. The Bill will implement a number of key recommendations from the [Digital Assets in Scots Private Law: Expert Reference Group](#).
5. The Bill delivers the [Programme for Government 2025/26](#) commitment to ‘clarify the status of digital assets as property in Scots private law, to provide greater legal certainty for individuals and for businesses including those investing in digital assets, for technology and financial start-ups, as well as for the legal sector’.
6. Firstly, the Bill confirms that certain kinds of digital asset can be objects of property in Scots private law, with reference to defined statutory characteristics. These digital assets are categorised as incorporeal moveable property by the Bill.
7. Secondly, the Bill confirms how ownership of digital assets, that are objects of property, can be established and confirms the rules governing the acquisition (including the voluntary transfer) of ownership of these types of digital asset.

8. Finally, one of the effects of the Bill is to ensure the relevant general principles of Scots private law will continue apply to these digital assets, so far as those principles are consistent with the nature of those assets and subject to provision in any legislation.

## **POLICY BACKGROUND**

9. The existing definitions of objects of property in Scots private law were formulated long before digital technology was invented. Traditionally, Scots private law has recognised two overarching types of property – heritable property (which relates to land, buildings and rights in these) and moveable property (which relates to everything that is not heritable). These two types of property are then further divided into sub-categories depending on whether they can be classified as either corporeal property or incorporeal property. Corporeal property means things with a tangible existence in space (e.g., coins or banknotes). Incorporeal property refers to all other kinds of thing or right which lack that characteristic of tangibility. One of the most common kinds of incorporeal property consists in networks of legally constituted rights between persons. An example of incorporeal moveable property is the right of the holder of a bank account, subject to the terms and conditions of the account (which form part of the account holder’s contractual relationship with the bank in question), to draw funds from their bank account. This is a right which is exercisable by the account holder against the bank. Identification of the relevant legal classification for an asset informs what rights and obligations may attach to property and consequently what rules become applicable, for example in relation to transfers of ownership, trusts, security and succession. While digital assets can be classified as “moveable assets”, they do not fit clearly within what are currently understood to be the existing categories of “corporeal moveable” or “incorporeal moveable” assets. Since digital assets are not readily incorporated by existing classifications of property under Scots private law, this creates legal uncertainty.

10. The Scottish courts can provide a degree of legal certainty; however, they have not yet considered the legal status of digital assets under Scots law. This means that there is no body of case law to help provide the answers needed about digital assets as objects of property for individuals and businesses as well as for legal practitioners. This lack of legal certainty may discourage tech developers and digital asset owners from choosing Scots law to govern their dealings with digital assets, and those whose dealings with digital assets are governed by Scots law may be at risk of finding that they are operating in an area of legal uncertainty.

11. In 2019, at the request of the former Lord Advocate, The Rt Hon James Wolffe KC, the Scottish Government set up the Digital Assets in Scots Private Law: Expert Reference Group (“ERG”) to provide legal clarification on accommodating digital assets within Scots private law, including the status and treatment of crypto-assets and related technologies as property. The Scottish Government tasked the ERG with reviewing the legal framework and to advise whether a need existed for legislation to clarify the status of these assets.

12. The Rt Hon Lord Hodge, Deputy President of the UK Supreme Court, chaired the ERG, supported by Professor David Fox, of the University of Edinburgh, whose research specialisms concentrate on the formation of modern trust and property doctrine in common law systems, and on the private law applicable to money. The wider membership of the ERG reflected a range of interests from the legal profession, academia and representation from FinTech Scotland, a cluster management body which supports businesses in the sector.

13. Meetings of the ERG were suspended during the Covid-19 pandemic and reconvened in March 2022, at which time its membership determined that the ERG’s remit should consider digital assets more broadly, rather than focusing narrowly on crypto-assets, due to the proliferation in the use of, and technological developments in relation to, digital assets, in part as a response to circumstances during the pandemic. The findings and recommendations of the ERG were reported to the Scottish Government in November 2023, with a primary recommendation that primary legislation be enacted by the Scottish Parliament to clarify the status of digital assets as objects of property in Scots private law. These findings and recommendations were welcomed by Scottish Ministers. The primary recommendation was that a short Bill be introduced to the Scottish Parliament to clarify that certain kinds of digital asset can be objects of property in Scots private law and to outline the main features of how they would operate within Scots property law. This recommendation formed the basis of a consultation paper published by the Scottish Government in November 2024, on which more detail is provided in the “Consultation” section below.

14. As a point of secondary importance, the ERG also drew attention to three recommendations made by the Law Commission of England and Wales (“LCEW”) to the UK Government in connection with digital assets in relation to the law of England and Wales: (1) the UK Government should set up a panel of industry and academic experts to provide non-binding guidance to the industry on the factual and legal issues relating to the control of digital assets; (2) the UK Government consider amendments to the Financial Collateral Arrangement Regulations (No 2) 2003; and (3) the UK Government set up a multi-disciplinary project to create a bespoke statutory framework for taking collateral over digital assets. The ERG notes that none of these recommendations by the LCEW to the UK Government would involve legislation by the Scottish Parliament, but the ERG recommended that the Scottish Government should take steps to ensure that Scottish interests contribute to those initiatives.

## **ALTERNATIVE APPROACHES**

15. The alternative to primary legislation is to wait for the relevant principles of Scots private law to be determined by the Scottish courts. Given the relatively small size of the jurisdiction, it is not possible to predict if or when a suitable case or cases may come before the Scottish courts. The courts can only answer the legal questions asked of them, meaning that reliance on case law could result in the common law developing in a piecemeal fashion, as only discrete issues may be litigated and any resulting judgments may only clarify the application of the relevant rules and principles to a narrow set of factual circumstances. Even disputes that did come before the courts might be settled out of court, meaning that there would be no resultant case law.

16. By way of comparison, litigation in England and Wales has, in recent years, generated a body of case law confirming that digital assets can be a kind of property and defining some of their legal characteristics in English and Welsh law. Judgments delivered by those courts are not binding in Scotland because of the separate and distinct legal systems in our different jurisdictions. Notwithstanding these common law developments, legal practitioners and the judiciary in England and Wales welcomed the possibility of separate primary legislation extending to England and Wales to confirm and support the emerging views in case law.

17. The LCEW project “Digital Assets as Personal Property” led to law reform recommendations being provided to the UK Government. On 30 July 2024, LCEW published a supplemental report and draft Bill, which resulted in The Property (Digital Assets Etc.) Bill being

introduced by the UK Government into the House of Lords on 11 September 2024, following a special parliamentary procedure for Bills originating from LCEW. The Property (Digital Assets Etc.) Bill as introduced, extended to England and Wales only, but has since been amended to extend to Northern Ireland. In light of the differences between Scots property law and the law of property in England and Wales, and in Northern Ireland, the Scottish Government decided, consistently with the conclusions of the ERG, that separate primary legislation would need to be enacted for Scotland in relation to digital assets and that this would not be an appropriate case for pursuing a legislative consent motion to approve extending the Property (Digital Assets Etc.) Bill to Scotland.

18. With a low likelihood of litigation in the Scottish courts to provide legal certainty in the short to medium term, unless there is an Act of the Scottish Parliament, there is a risk that Scots private law will not keep pace with developments across the other jurisdictions of the UK. Rather than the alternative approach, the Bill provides a foundational legislative building block to help support the tech market in Scotland by facilitating Scots private law accommodating modern business practices. There will always be a role for the Scottish courts to interpret and apply the provisions in the Bill. Alternative approaches to specific provisions of the Bill were considered during its drafting, and are examined in greater detail in the “Bill Provisions” section.

## CONSULTATION

19. The Scottish Government published the “[Digital Assets in Scots Private Law: Consultation](#)” which was open for responses between 27 November 2024 and 5 February 2025. The consultation was intentionally focused to capture a range of views on the ERG’s recommendations and to identify to what extent support existed for potential primary legislation.

20. In total, 21 responses were received, of which 10 were from the legal sector (including legal academia), five were from individual members of the public, four were from organisations connected to Financial Services/FinTech<sup>1</sup> and two were from public sector bodies. All questions received at least one response.

21. To support the online consultation, a series of roundtable discussions took place in Aberdeen, Edinburgh, and London. The purpose of these sessions was to have targeted discussions with a range of stakeholders, including legal professionals, academics, FinTech representatives and UK government officials and to explore the recommendations in the consultation and encourage participants to submit responses.

22. Generally, the proposals within the consultation were well supported. Respondents overwhelmingly supported that primary legislation is the most effective way to resolve uncertainty regarding the status of digital assets in Scots private law. Two-thirds of respondents supported that any such legislation ought to have a narrow scope, limited to a statutory definition of digital assets as objects of property, rules governing the transfer of ownership and provisions having the effect of confirming that the general principles of Scots private law continue to apply to digital assets.

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<sup>1</sup> FinTech can be described as “tech-driven financial innovations that could result in new business models, applications, processes and products with an associated material effect on financial markets, related institutions and the provision of financial services” (The University of Strathclyde).

23. The majority of consultation respondents supported the proposal that any statutory definition of digital assets should be technology neutral and avoid being too prescriptive. The majority of respondents also supported defining digital assets with reference to the two proposed characteristics: “capable of independent existence” and “rivalrous”.

24. There was broad agreement that digital assets be classified as incorporeal moveable property; however, a response submitted from the Faculty of Advocates proposed that rivalrous, independently existing digital assets be classified as “digital corporeals” by analogy to physical objects, given that their use and treatment is more aligned to traditional corporeal moveable property. This approach was considered and is covered in the “Bill Provisions” section below in more detail.

25. On ownership and the transfer of ownership, most respondents agreed that control over a digital asset should generally be the basis for establishing ownership. There was strong support that voluntary transfer of ownership should require transfer of control over the digital asset from the current owner to another person, coupled with an intention by the current owner to transfer ownership to that other person. A majority of respondents supported that a good-faith acquirer who pays value for a digital asset should obtain the ownership of that digital asset, even if the transferor was not the owner.

26. Most respondents agreed with the proposition that legislation should state the general principles of Scots private law (which would include, for example, contract law) continue to apply to digital assets, so far as those principles are consistent with the characteristics of digital assets. It was noted by some that if digital assets are legally recognised as objects of property, then these principles would naturally extend to them; however, some respondents noted that express provision to this effect could help eliminate uncertainty in practice and aid market confidence.

27. Views were mixed on whether there should be additional substantive provisions, within the devolved legislative competence of the Scottish Parliament, beyond those outlined in the consultation. Some respondents identified ancillary changes for diligence as being an area where further clarification may be beneficial. It may be appropriate to specifically consult on the matter with bodies such as Scottish Courts and Tribunal Service and the Society of Messengers-at-Arms and Sheriff Officers. The issues raised by consultation respondents and roundtable participants regarding diligence were not unique to digital assets and were of a more cross-cutting nature, which suggests that a more holistic review of this area of Scots law, with further policy development and stakeholder engagement, may be beneficial. If undertaken, such a holistic review would need to be progressed separately and would not be within the intended scope of the Bill.

28. Some respondents recommended ancillary changes to insolvency law, however, the scope of the insolvency reservation under the Scotland Act 1998 is such that the Bill will not make provision in relation to insolvency, to avoid encroaching upon this reservation.

29. The Scottish Government published its [analysis and findings](#) from the consultation exercise on 23 May 2025.

## **BILL PROVISIONS**

### **Purpose of the Bill**

30. The primary purpose of the Bill is to provide foundational certainty by confirming that digital assets can be objects of property under Scots private law, with reference to defining characteristics. This is a narrow purpose. Due to the current lack of substantive case law from the Scottish courts on digital assets, the Bill also makes provision on how ownership of digital assets is established and acquired (including by way of voluntary transfer). One of the effects of the Bill is to help ensure that the relevant principles of Scots private law continue to apply to digital assets, so far as these principles are consistent with their nature and subject to provision in legislation, to help put this issue beyond doubt.

31. Retaining a narrow field of application will mean that opportunities remain for appropriate legal approaches to be tested and ultimately for judges to apply the principles of Scots private law in a suitable way.

### **The meaning of digital assets**

32. The term “digital asset” is a broad one and is understood to mean different things by different people. To provide legal certainty on the status of digital assets, the Bill firstly clarifies what is meant by digital assets for its purposes. Digital assets are part of relatively new and rapidly evolving technology. Within this context, it is important that any definition can accommodate developments in digital technology to help mitigate against potential redundancy due to technological innovation. Digital assets are defined in a manner that is technology neutral and not prescriptive.

33. A technology neutral approach to defining digital assets aligns with that adopted in cross-jurisdictional statements of relevant private law principles, notably [The International Institute for the Unification of Private Law \(“UNIDROIT”\) Principles on Digital Assets and Private Law \(“UNIDROIT Principles”\)](#). It will benefit Scots law on this subject to be accessible to businesses operating internationally, and for there to be consistency with other legal and regulatory regimes, where possible and appropriate. Taking the alternative approach of defining digital assets in the Bill by excluding identified digital things, such as email addresses and social media accounts, would move away from the preferred approach of being technology neutral, whilst introducing a degree of inflexibility into legislation.

34. The Bill clarifies that a digital asset is a thing which arises from an electronic system. In other words, the object of property in Scots private law is notional in nature but arises from an electronic system. Defining a digital asset in this way will distinguish a digital asset from other objects of property and, importantly, will avoid traditional forms of corporeal property being deemed to be digital assets.

35. The technical analysis undertaken by the ERG identified that, despite their incorporeal character, digital assets share many features of corporeal moveable property in the way they are held and transferred. In other words, digital assets can behave more like coins and banknotes than debts and other incorporeal moveable rights, such as the right to draw money from a bank. The ERG recognised digital assets as being incorporeal but also that there are analytical differences

between them and other more familiar kinds of incorporeal property. Digital assets continue to exist without an underpinning contractual framework, in contrast to certain traditional forms of incorporeal moveable property. To define the digital assets that are classed as objects of property by the Bill, characteristics have been identified which accommodate these differences.

## **Characteristics**

36. The Bill defines “digital assets” by reference to identified defining characteristics, namely: (1) that the electronic system from which it arises must make it rivalrous; and (2) it must exist independently of the legal system. Both characteristics require to be present for an asset to be classed as a “digital asset” and therefore to be classed as an object of property.

37. “Rivalrous” means that: (1) the electronic system on which a thing arises maintains an immutable record of transactions in relation to the thing; and (2) that record is used to ensure that, when a person transacts in relation to that thing within the system in a certain way (such as transfer or expenditure), that person loses the ability to transact in relation to the thing in that way again. The Bill provides that the rivalrous nature of a digital asset arises from the features of the electronic system on which it is expressed. For example, the electronic system protects against “double-spending” of the same digital asset, with the consequence being that it is rivalrous. Objects of corporeal moveable property will usually be rivalrous; however, in the context of digital assets, this characteristic will help to distinguish digital assets (which are constituted by data) from what is referred to as “ordinary data” (such as digital photos and word documents) which is non-exclusive as it can be easily duplicated and shared without affecting the original version. A photo or document can be replicated multiple times, and its use by one person does not prevent others from using it. Scots law does not recognise ownership rights over “ordinary data” and therefore the statutory definition of “digital assets” does not include “ordinary data”, as it is not intended to classify ordinary data as an object of property.

38. “Exists independently from the legal system” means that a digital asset, being an object created as a virtual entity, can be independent of the law. In other words, should Scots private law cease to exist, the digital asset would continue to exist. This characteristic will distinguish digital assets (which are intangible) from other intangible things which are already recognised as incorporeal moveable property under Scots private law, which consist in legally-constituted networks of rights between persons, for example, the right to require repayment of a debt which is owed to you or the right to require another party to a contract to fulfil an obligation which that party is required to fulfil under that contract.

## **Nature of digital assets in Scots law**

39. The Bill confirms that digital assets are to be classified as incorporeal moveable property (subject to the provision in any legislation), in order to deliver the policy aim of removing any prevailing uncertainty about their classification for the purposes of Scots property law.

40. Traditionally, the distinction between corporeal moveable and incorporeal moveable objects of property broadly follows the distinction between tangible and intangible things. There is a strong association of corporeality with tangibility in legal thought. However, the ERG’s analysis of the existing understanding from legal practice led them to conclude that while digital assets are incorporeal in nature, there were strong analogies with corporeal moveable assets in the

way that digital assets are held and transferred. To reflect these unique characteristics of digital assets, the ERG recommended that digital assets be classified as incorporeal moveable property, however, that the rules governing the establishment and transfer of ownership of digital assets should reflect, with necessary modifications, the common law rules of Scots property law which govern the establishment and transfer of ownership of corporeal moveable assets.

41. An underlying policy aim is to align Scots private law with developments across other jurisdictions (both within the UK and internationally) when necessary and appropriate to do so. This is to enable Scotland's businesses and its legal system to be more competitive, as it will benefit Scots law on this subject to be accessible to businesses operating internationally. If digital assets were instead classified as corporeal moveable property, this could imply that these assets are capable of being possessed, and place Scots private law at odds with developments internationally, most notably the UNIDROIT Principles.

42. The potential alternative classification of digital assets as corporeal moveable property was assessed as part of the development of the Bill policy and a number of consequences arising from classifying digital assets as either corporeal moveable, or incorporeal moveable, were identified and considered. Following this assessment, it was concluded that classifying "digital assets" as incorporeal moveable property was the more appropriate classification, consistently with the recommendation of the ERG. Classification as corporeal moveable property would result in a number of complex and difficult interactions, such as with the 'market access principles' for goods under the United Kingdom Internal Market Act 2020 and the application of the regime in relation to the new statutory pledge, established by the Moveable Transactions (Scotland) Act 2023.

43. The ERG recommended that primary legislation should confirm that the general principles of Scots private law continue to apply to digital assets, so far as those principles are consistent with the characteristics of the digital assets. Although, by virtue of legislating to legally recognise digital assets as objects of property, the principles of Scots private law would automatically apply to digital assets, it is considered beneficial to make provision within the Bill which achieves this outcome in practice, to put the issue beyond doubt.

44. As noted above, the Bill confirms that digital assets are incorporeal moveables. The Bill then goes on to clarify that the law applies in relation to them on that basis, so far as consistent with the nature of digital assets and subject to any provision in any legislation. For example, Scots common law principles will provide that digital assets can be sold and purchased through contracts, and are subject to the law of unjustified enrichment (where applicable). These general principles also engage the law of trusts, meaning that digital assets will be capable of being held on trust, as well as facilitating custody arrangements and other structures involving trusts, without requiring separate provision in the Bill on this matter. Consideration was given to whether the Bill should also contain a provision to expressly confirm that digital assets may be held on trust, however, it was not considered legally necessary to make this provision.

45. Overall, the purpose of this provision is to help deliver the underlying policy aim of supporting market confidence, as well as ensuring greater legal certainty that the general principles of Scots private law and particular rules emanating from those principles continue to apply to digital assets, so far as consistent with the nature of those assets.

## **Presumption of ownership**

46. The Bill clarifies how ownership of digital assets may be established and acquired (including by voluntary transfer). The ERG identified the ability to control digital assets as central to this issue. Control of a digital asset reflects the reality of who would most likely be deemed its owner or, at the very least, its holder. Control is likely to reflect the power to use and to transfer a digital asset, subject to exceptions, such as in agency and intermediated holding arrangements.

47. In the context of digital assets and by way of example, control can often be evidenced through the ability to access a digital wallet and the ability to deal with the assets within that wallet. It is possible that these abilities are simultaneously held by a number of parties independently, as an owner of digital assets may willingly and knowingly provide other parties with their private key. These parties may be unaware that others also have the private key. A private key is a cryptographic code that is unique to a particular digital asset and that allows transactions to occur, for example on a blockchain. If a private key is shared with a number of parties, independent of one another, in so doing, control will also be transferred to each of these parties. When multiple parties hold the key, all of them can therefore acquire and share control. When the original holder of the private key retains it, despite it being shared with other parties, they will also retain control. In such circumstances, control is not the strongest determiner of ownership given that a number of parties may be able to legitimately demonstrate control over a digital asset at any one time.

48. As stated, it is intended that the Bill aids alignment of Scots private law with developments in other jurisdictions, where necessary and appropriate to do so. In the UNIDROIT Principles an exclusivity criterion forms part of the consideration for control of digital assets. Reliance on “exclusive control” is deemed to better reflect market norms for digital assets, in which acquirers have an expectation and a belief that they will obtain exclusive abilities with respect to a digital asset.

49. An important feature of “exclusive control” is an ability to limit access to and use of a digital asset, as opposed to control of that asset being widely shared. Exclusive control is not limited to control held by one party and can also encompass situations when a number of parties agree to act in furtherance of mutual objectives or consensually share control of digital assets. Such arrangements are reflective of the business and tech landscapes within which digital assets operate. Exclusive control could apply, for example, when multiple people are acting together, such as a tech start-up, who all have knowledge of the relevant private key and agree that any one of them may use that key for a shared interest.

50. The Bill establishes a rebuttable presumption that a person that has “exclusive control” of a digital asset is presumed to own the asset, unless the contrary can be shown.

## **Acquisition of ownership**

51. The Bill makes provision which applies the Scots common law of property in relation to the acquisition of ownership of corporeal moveable assets to the acquisition of ownership of digital assets (including by voluntary transfer), but with some necessary modifications to those common law rules to reflect the unique characteristics of digital assets. A more detailed explanation of those common law rules, with applied examples, is provided in the Explanatory Notes for the Bill.

52. The Bill provides that any rule of law in relation to the acquisition of ownership applies, in connection with digital assets, on the basis: (1) that a digital asset is to be treated as though it were a corporeal moveable (despite the classification of digital assets as incorporeal moveable assets, explained above) and (2) that “exclusive control” of a digital asset is to be treated as physical possession of the digital asset. The Bill clarifies that, for this purpose, a “rule of law” does not include an enactment (i.e. legislation). The effect of this provision is that (subject to an important exception explained below) a voluntary transfer of ownership of a digital asset will occur where the current owner of the digital asset transfers “exclusive control” over that asset to another person (“the transferee”) and, in so doing, the current owner intends to transfer the ownership of the digital asset to the transferee.

53. The need, according to the common law rules applicable to the acquisition of ownership of corporeal moveable property in Scotland (as those rules are applied to the acquisition of ownership of digital assets in accordance with the Bill), for there to be a voluntary transfer of exclusive control, coupled with the intention to transfer ownership to another person, will help negate ownership claims when a bad actor takes control of digital assets without an owner willingly or knowingly making a transfer. This addresses concerns raised by some stakeholders regarding stolen or hacked digital assets, since a person involuntarily deprived of their digital assets would remain the owner under Scots private law.

54. It is possible to anticipate situations when a person makes a transfer voluntarily, but is induced to do as a result of fraudulent behaviour on the part of a bad actor; however, by applying the rules of the Scots common law of property in relation the transfer of ownership corporeal moveable assets, the original owner generally must willingly and intentionally divest themselves of the digital asset.

55. This approach also precludes a transfer of ownership taking place when exclusive control of digital assets is passed by the owner to an agent to hold and administer the asset for an indeterminate period, which is common in arrangements with Electronic Funds Transfer intermediaries. In these circumstances, the common law rules of agency would apply and the necessary intention to transfer ownership would be absent.

56. By applying, with necessary modifications, the common law rules of Scots property law which govern the acquisition of ownership of corporeal moveable assets to the acquisition of ownership of digital assets, the Bill also removes a possible point of confusion. While digital assets are categorised as incorporeal moveable property, and assignation<sup>2</sup> is a common method for transferring ownership of traditional incorporeal moveable assets, the operation of this provision within the Bill clarifies that ownership of a digital asset is not transferred by assignation. This reflects the recommendation of the ERG that digital assets are not the kind of thing that would be suitable for a transfer by assignation on the basis that it is a workable form of transfer for things that consist in legally-constituted networks of rights, but it cannot work for digital assets since they do not consist in legally-constituted rights.

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<sup>2</sup> Assignation is the method by which incorporeal moveable rights are transferred under Scots law from one person to another. Depending on the nature of the incorporeal moveable right being transferred, the Scots common law rules of property in relation to assignation may apply, or the statutory method of assignation established by the Moveable Transactions (Scotland) Act 2023 may apply.

57. The Bill does not make any distinction between “on-chain” transfers, which take place within the blockchain system by being executed and recorded on a distributed ledger, and “off-chain” transfers, which take place without being executed or recorded on the blockchain. Both methods of transfer are common and reflect the commercial realities of how digital assets operate.

58. As noted above, the Bill provides an exception to the effect that a defect in the transferor’s title to a digital asset does not prevent the transferee from becoming the owner of a digital asset, provided that the transferee acquired the digital asset in good faith and for value. This provision will extend protections to good faith acquirers who have obtained a digital asset in exchange for value.

59. It is understood that this would represent a departure from the standard position in Scots private law, whereby ownership cannot be acquired from a non-owner. However, the characteristics of digital assets, including pseudonymity and the potential ease of transfer (with the ability for transfers to occur on multiple occasions within very short periods of time) require to be taken into account. There would also be considerable practical challenges for someone claiming to be an owner in terms of enforcing their rights against a later good faith purchaser. These considerations, along with the policy intention of providing legal certainty to help to provide markets and transactions with greater confidence when dealing with digital assets, merit an exception to the general legal rule.

### **Exclusive control: meaning and presumption**

60. The Bill sets out what is meant by the term “exclusive control” in relation to a digital asset for the purposes of determining and acquiring ownership of the asset. It does so by providing that control of a digital asset is established with reference to a person having the ability to initiate specified types of transactions in relation to the digital asset within the system on which the digital asset arises. This reflects the reality that some types of digital asset may be subject to different people being able to exercise different levels of control over the same asset at the same time. Control is not necessarily determinative of ownership, since a number of parties may be able to legitimately demonstrate a form of control over a digital asset, whereas an ability to demonstrate “exclusive control” permits a stronger indicator of ownership. To distinguish “exclusive control”, the Bill provides that this can be demonstrated if a person has an ability to initiate certain types of transactions within the system which a person with a lesser form of control could not. Having these abilities in respect of a digital asset will give rise to a presumption of ownership.

61. The person (which could mean a natural person or a legally-recognised person such as a company) with control of a digital asset is presumed to have exclusive control of that asset, unless the contrary can be shown.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

62. The Bill will impact those who create, transact with or invest in digital assets. The provisions in the Bill are overall neutral and would apply equally to any person who makes the decision to engage with digital assets. There is no compulsion on any persons to engage with

digital assets, and for those not wishing to do so alternatives might be sought. The provisions in the Bill are to clarify the legal status of digital assets since the Scottish courts have not had an opportunity to provide judicial authority.

## **Human rights**

63. Property rights are the defining subject matter of this Bill and therefore the right to peaceful enjoyment of possessions under Article 1 of Protocol 1 of the European Convention on Human Rights (“ECHR”) is clearly engaged. The purpose and design of the Bill, however, are shaped to ensure that property rights are appropriately recognised and protected in Scots law. Accordingly, the Scottish Government is content that there are no incompatibilities with ECHR rights.

## **Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024**

64. The Minister for Business and Employment, Richard Lochhead MSP, has made the following statement regarding children’s rights:

“In accordance with [section 23\(1\) of the United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), in my view the provisions of the Digital Assets (Scotland) Bill are compatible with the UNCRC requirements as defined by [section 1\(2\) of that Act](#).”

## **Island communities**

65. The Scottish Government is satisfied that the Bill will have no significantly different effect on island communities.

## **Local government**

66. The Bill does not create new regulatory functions or additional responsibilities for local authorities. The Scottish Government is satisfied that the Bill has no direct impact on local authorities.

## **Sustainable development**

67. The Scottish Government undertook a Business and Regulatory Impact Assessment (BRIA), published to coincide with the introduction of the Bill, which records that the Bill is not expected to have any material impact, positive or negative, on the ability of businesses to contribute to climate or circular economy targets, nor does it create new requirements that would impact business’ sustainability. The Scottish Government also undertook a Strategic Environment Assessment pre-screening report. This identified that provisions in the Bill will have very limited environmental consequences based on the criteria set out in schedule 2 of the Environmental Assessment (Scotland) Act 2005.

## **CROWN CONSENT**

68. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

# **DIGITAL ASSETS (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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