



The Scottish Parliament
Pàrlamaid na h-Alba

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

SPICe Briefing

Pàipear-ullachaidh SPICe

Digital Assets (Scotland) Bill - consideration prior to Stage 3

Abigail Bremner

The Digital Assets (Scotland) Bill would clarify that certain digital assets are things which can be owned. This briefing looks at key scrutiny issues in advance of Stage 3, including around what is captured by the definition, application of the Bill in practice and the concepts of control and exclusive control.

2 March 2026
SB 26-13

Contents

About this briefing	3
About the Bill - key dates and documents	4
How the Bill defines digital assets	5
What the Bill would do	6
Other important terms and concepts	7
Consideration of the Bill at Stage 1	9
Consideration of the Bill at Stage 2	10
How to ensure a suitably flexible definition for digital assets to which the Bill would apply	10
Interpreting the requirement for an "immutable record"	10
Excluding certain categories of potential digital assets from the scope of the Bill	11
Bridging the gap between law and technology	12
Good faith acquisition protections	13
Exclusive control - Scottish Government amendments at Stage 3	14
Bibliography	15

About this briefing

This briefing looks at consideration of the Digital Assets (Scotland) Bill prior to Stage 3

The Bill would provide a legal framework to recognise certain digital assets as things which can be owned in Scots law. The Bill would define the type of digital assets to which it applies, as well as making provision for the acquisition and transfer of these digital assets.

The Scottish Government's intention is that creating legal certainty about the status of digital assets will support innovation and economic development in Scotland.

The key issues going into Stage 3 are:

- whether the definition of digital assets in the Bill is flexible enough to be future-proofed while not capturing assets which would be better regulated in other ways
- how guidance and expert advice can be provided to ensure that the Bill can be understood by those working with digital assets, and the law can be supported to develop in a coherent way
- whether the protection in the Bill for someone who acquires digital assets in good faith and for value balances competing interests effectively
- the role of the concepts of control and exclusive control (as defined in the Bill) in practice.

About the Bill - key dates and documents

The Digital Assets (Scotland) Bill is a Scottish Government bill. It was introduced in the Scottish Parliament on 30 September 2025.

Key documents relating to the Bill, and to its scrutiny by the Scottish Parliament, are available on [the Digital Assets \(Scotland\) Bill page on the Scottish Parliament's website](#). These include:

- the [Bill as introduced](#) ¹
- the [Bill as amended at Stage 2](#) ²
- the [Policy Memorandum](#) ³
- the [Explanatory Notes](#) ⁴ .

The [SPICe briefing on the Bill](#) ⁵ provides more detailed consideration of its proposals and policy context.

Dr MacPherson and Professor Yüksel Ripley also produced a research briefing on [Digital Assets in Scots Law](#) ⁶ as part of a SPICe fellowship. Their briefing looks at the approach to digital assets in some other jurisdictions; current issues with the treatment of digital assets in Scots law; and the Scottish Government's consultation on reform proposals in this area.

How the Bill defines digital assets

The Bill would only apply to a specifically defined category of digital asset

There is no agreed meaning to the term digital assets. It could be used to cover a wide range of digital items - from bitcoin to image files or in-game rewards.

However, the Bill would only apply to a sub-category of this group, commonly described as cryptoassets. To be caught by the Bill, a digital asset must:

- **arise from an electronic system which makes it rivalrous** - rivalrousness means that the use or consumption of the asset by one person limits its use or consumption by another
- **exist separately from the legal system** - assets which exist only because of particular legal rights (for instance, intellectual property or contract) are more appropriately recognised in other ways under Scots law.

In order to support rivalrousness, the electronic system behind a digital asset must make an **immutable record** of transactions. This has the effect of ensuring that the asset can only be used or spent once.

It would remain possible for other types of digital asset to be recognised as things which can be owned

The Bill would not necessarily stop other digital items - outwith the definition - being recognised as things which could be owned. This could happen through the process of the courts applying the general principles of the common law. The common law is the traditional law as developed by judges through their decisions in individual court cases.

What the Bill would do

The Digital Assets (Scotland) Bill aims to clarify that certain digital assets are recognised as things which can be owned in Scots law.

Property categories in Scots law

Scots law recognised four categories of property, as discussed in the SPICe Bill briefing⁵. **Heritable property** is land and buildings and some related rights, with **moveable property** being everything else. These categories are further divided into **corporeal property**, being property with a physical existence, and **incorporeal property**, being everything else.

Provisions in the Bill

The Bill sets out:

- **a definition for the digital assets to which the Bill would apply** - which requires that the assets are rivalrous, exist separately from the legal system and arise from an electronic system which creates an immutable record of transactions
- **that such digital assets are to be treated as incorporeal moveable property** for the purposes of Scots law generally, but as **corporeal moveable property** for the purposes of acquisition and transfer
- **the concepts of control and exclusive control as key to acquisition and transfer** -someone who has control would be presumed to have exclusive control (unless it can be shown otherwise). And someone who has exclusive control would be presumed to own the asset (unless it can be shown otherwise).

Note that the [Scottish Government has announced its intention to amend the requirements around control](#) by removing the need for exclusive control.

Other important terms and concepts

The following concepts underpin the development of digital assets:

Blockchain - the primary current technology for creating an immutable record of digital transactions, which then makes them rivalrous. Blockchain is a type of distributed ledger technology which records and stores transaction data in encrypted blocks which are joined together chronologically.

Consensus mechanism - the way in which consensus is reached when distributed ledger technology is used to enable a number of different computer networks to participate in a system. There are different types of consensus mechanism, with [proof of work and proof of stake being the main ones for blockchain](#)⁵.

Cryptoasset - a digital representation of an asset backed by cryptographic processes such as blockchain. Common examples of cryptoassets are digital tokens signifying ownership of digital art, such as [Bored Ape Yacht Club](#) images, and digital tokens which give you access to particular services or perks, such as a fan club.

Cryptocurrency - a digital representation of currency, issued privately rather than by a bank or government and backed by cryptographic processes such as blockchain. Bitcoin and Ether are examples of cryptocurrencies.

Cryptography - using mathematical processes to encrypt data to prevent unauthorised access. Cryptography is used to generate blockchain and to secure blockchain-based transactions.

Distributed ledger technology - a computing concept that involves sharing data records across different computers in the system. This enables people to participate independently in the system and transact peer-to-peer without the need for central control (described as decentralisation). Distributed ledger technology can be used to create a synchronised record of digital transactions because the computers on the network agree to make changes via a consensus mechanism.

Hashing - a cryptography process used to make blockchain secure. Data is converted into a hash (a unique string of text with a fixed length). The process cannot be reversed, creating an immutable record. And any minor alternations to the data will result in a different output, making it easy to detect unauthorised changes.

Non-fungible token - a non-fungible item is unique, so that it cannot be easily replaced by a similar thing. Money and apples are usually fungible, whereas a painting by Picasso is non-fungible. A non-fungible token is a digital representation of ownership rights to a non-fungible item, stored electronically in a way which makes them [rivalrous](#).

Public key cryptography – a system for securing digital assets. It involves encrypting data using a public key that is unique to the user but can be seen by anyone else. However, it can only be decrypted by a related private key. The private key code is designed to be virtually impossible to crack. For example, cryptocurrency can be transferred to an address created by a public key for payment, but only the person with the related private key can access the assets transferred.

Tokenisation - this is the concept of representing real-world assets with digital tokens. It

has many applications. For example, company shares could be tokenised, so that trading the token was the direct equivalent to trading the share. Land purchase could be tokenised, so that many people could own a small part of an asset they wouldn't otherwise be able to purchase. Farm produce could be tokenised, so that it could be tracked using blockchain as it is transferred around the world, improving traceability and supply chain efficiency. However, there are a range of issues which may impact on the effectiveness in law of tokenisation in Scotland.

Consideration of the Bill at Stage 1

The Economy and Fair Work Committee was responsible for Stage 1 scrutiny

The Committee conducted [a call for views](#) and heard oral evidence over four Committee meetings. These covered:

- [26 November 2025](#)⁷ - Lord Hodge and Professor Fox, members of the Scottish Government's [Expert Reference Group on digital assets and Scots private law](#)
- [3 December 2025](#)⁸ - legal experts and business/academic experts
- [10 December 2025](#)⁹ - consideration of the wider impact of recognising digital assets as property
- [17 December 2025](#)¹⁰ - the Minister for Business and Employment, Richard Lochhead MSP.

The Committee published its [Stage 1 Report](#)¹¹ on 15 January 2026. The Scottish Government issued a holding response on 21 January 2026, then [a full response on 30 January 2026](#).

The **Stage 1 debate** took place on [22 January 2026](#). Key themes were:

- the growing importance of digital assets to people and businesses
- discussion of the main pillars of the definition of digital assets set out in the Bill
- the need for guidance from the Scottish Government to tease out how some of the concepts in the Bill can be applied in practice
- the need for further legislation - and regulation - in relation to digital assets.

The general principles of the Bill were agreed to at Stage 1 without division.

Consideration of the Bill at Stage 2

The Economy and Fair Work Committee considered Stage 2 amendments at its meeting on [18 February 2026](#)¹².

This briefing does not cover all issues identified by the Committee. Instead, it focusses on the main issues highlighted in the Stage 1 Report and how they were dealt with at Stage 2.

Key issues were:

- [how digital assets would be defined](#) and, in particular, how to ensure the definition was flexible enough to cover future technological developments but not so wide as to capture things which would be better regulated in other ways
- [how to bridge the gap between law and technology](#) - so that technologists understood how the law applied and the law was able to deal with new technological innovations
- [good faith acquisition protections](#) - whether the protection in the Bill for someone who acquires digital assets in good faith and for value balanced competing interests effectively.

The Scottish Government has [written to the Economy and Fair Work Committee highlighting its intention to amend the provisions in the Bill dealing with control and exclusive control at Stage 3](#)¹³. These are discussed in [the section dealing with exclusive control](#).

How to ensure a suitably flexible definition for digital assets to which the Bill would apply

In its Stage 1 evidence-taking, the Committee heard concerns about both the specific definition used in the Bill and about digital items which may be captured by the definition but arguably shouldn't be.

The Committee heard a range of views about the suitability of the definition and alternative approaches. It concluded that it supported the approach of the Scottish Government but flagged several issues for further consideration by the Scottish Government. These were

- [the requirement for an immutable electronic record for items to qualify as digital assets](#)
- [further consideration of whether certain potential digital assets should be excluded from the Bill](#).

Interpreting the requirement for an "immutable record"

The Bill would require a digital item to arise from an electronic system which keeps an immutable record for it to meet the definition of digital assets. There was debate around the appropriateness of this requirement.

A key concern of stakeholders was that it might prevent digital items being recognised as

digital assets under the Bill because a system allowed changes to be made in limited circumstances, such as because of fraud or error.

Professor Fox argued that the courts would likely take a purposive approach to interpretation, covering systems which allowed limited changes in pre-agreed circumstances⁷. However, other stakeholders thought that immutability implied that a record could not be changed. Academics from Aberdeen University suggested that requiring "integrity of records" might be a better way to address this issue¹⁴.

Stage 1 recommendations

The Committee recommended that the Scottish Government monitored developments in this area.

Stage 2 consideration

There were no amendments at Stage 2 which addressed this issue.

Excluding certain categories of potential digital assets from the scope of the Bill

Stakeholders raised concerns that the Bill might capture some digital things which were already subject to separate legal regimes, or should not be given property status without further consideration.

The potential for conflicting regulation

Some types of potential digital asset were already subject to separate legal frameworks, creating the potential for conflicts in the way the law applies to them. Examples of this type of asset are:

- **electronic trade documents** - documents used in trade and transportation of goods, sometimes as proxies for ownership, governed by the Electronic Trade Documents Act 2023
- **shares traded on the CREST system** (the Certificateless Registry for Electronic Share Transfer).

There are human rights implications to giving something property status

Giving an item property status engages Article 1, Protocol 1 (A1P1) of the European Convention on Human Rights, guaranteeing "peaceful enjoyment" to owners. This may make future regulation more difficult.

Professor Robbie highlighted issues with some types of voluntary carbon credits. She saw these as an example of things that may be able to meet the definition of digital asset but should not be given property status without due consideration to the impact of this⁹.

Stage 1 recommendations

The Committee recommended that the Scottish Government give consideration to whether there were some potential digital assets which should be excluded from the ambit of the

Bill.

It also recommended that the Scottish Government undertake a cross-sectoral review of current digital asset activity to identify where the Bill may have unintended consequences.

Stage 2 amendments

Table 1: amendments on excluding some potential digital assets from the Bill

Purpose of amendment	Result
Scottish Government amendment 1 would remove electronic trade documents from the scope of the Bill	Amendment 1 was agreed to without division
Scottish Government amendments 2 and 4 would make clear that the requirements of the Bill were subject to any other legislative provision, regardless of when that legislation was passed. This would make it easier to ensure that digital assets could be excluded from the Bill's requirements where appropriate.	Amendments 2 and 4 were agreed to without division.

Bridging the gap between law and technology

Providing clarity for technologists

The Economy and Fair Work Committee supported the Scottish Government's property law approach to defining digital assets as the best way of future proofing the definition. However, several stakeholders noted that the terminology and approach would not be familiar to those working in the sector. This may make it difficult for those working with digital assets to ensure that the law applied to them in the way they expected.

- **Stage 1 recommendations**

The Committee recommended that the Scottish Government work with the sector to produce guidance on how the concepts in the Bill would apply in practice. It also called on the Scottish Government to set out its views on which current digital technologies would meet the definitions in the Bill.

- **Stage 2 amendments**

There were no Stage 2 amendments addressing this issue.

Ensuring the courts have access to advice on the latest technological developments

Some stakeholders highlighted that the courts would need to apply the law to technological developments which may not obviously fit with the Bill's definitions. It would be helpful for them, and others working in the sector, to have access to expert advice and guidance to support them in this task.

Some witnesses highlighted the work of the [UK Jurisdiction Taskforce](#) in this area and suggested that its guidance could provide the necessary context. However, others noted that the UK Jurisdiction Taskforce had no official role and was unlikely to take the peculiarities of Scots law into account.

- **Stage 1 recommendations**

The Committee recommended that the Scottish Government work to ensure Scottish

representation on the UK Jurisdiction Taskforce, as well as any other expert panel which may be established. It also recommended that the Scottish Government set up a Scottish panel of experts to advise the courts, businesses and the legal sector in this area.

- **Stage 2 amendments**

There were no Stage 2 amendments which addressed these issues.

Good faith acquisition protections

The Bill would allow someone who acquired a digital asset (as defined in the Bill) in good faith and for value to become its owner, even if the person they bought it from was not. This would enable digital assets to be traded with confidence.

This is contrary to the standard position in Scots law, where someone cannot pass on a better ownership right than they themselves have. In practice, this means that an original owner can usually recover something which has been stolen from whoever is in possession of it. However, it does reflect the approach to some types of transfer, including bills of exchange (for example, bank notes).

Some stakeholders raised concerns about the impact good faith acquirer protection could have in a sector where fraud and theft are already serious concerns. Some suggested alternative approaches, including further defining good faith to place additional requirements on a purchaser - for example, undertaking due diligence or using recognised trading platforms.

Stage 1 recommendations

The Economy and Fair Work Committee supported the Scottish Government's approach to protecting acquirers in good faith. However, it noted that good faith in relation to digital assets may be more complicated than in other areas. It called on the Scottish Government to keep this issue under review.

Stage 2 amendments

The Scottish Government amended the good faith provisions in the Bill at Stage 2 (amendment 3, in the name of Richard Lochhead MSP). However, the purpose of the amendment was to re-state the original provision with greater clarity, rather than to address wider issues. The Minister for Business and Employment, Richard Lochhead MSP, stated that the [Scottish Government did not intend to table any further amendments on this subject](#) (col 4) ¹².

Exclusive control - Scottish Government amendments at Stage 3

The Scottish Government has [written to the Economy and Fair Work Committee](#) ¹³ to highlight its intention to bring forward amendments to remove the provisions in the Bill dealing with exclusive control at Stage 3.

Exclusive control as a proxy for possession

The Bill would use exclusive control of a digital asset as the equivalent of possession of corporeal moveable property (such as apples or cars). Section 5 would require that someone who can initiate the transfer (or, where that is not possible, the disposal) of an asset is presumed to control it.

Someone who has control of an asset would be presumed to have exclusive control. And someone who has exclusive control would be presumed to own the asset. Both presumptions could be rebutted by presenting evidence to the contrary.

Control in practice

Several stakeholders noted that control of digital assets is often shared, including with people who are not owners. Some questioned whether the approach in the Bill reflected how digital assets operated in practice.

Stage 1 recommendations

The Committee suggested that the Scottish Government addressed difficulties in applying the concepts in practice via guidance.

Stage 3 amendments

The Scottish Government intends to amend the Bill to remove the concept of exclusive control. It now believes that demonstrating control, as defined in the Bill, is more closely aligned with possession for corporeal moveable property.

Bibliography

- 1 Scottish Parliament. (2025). Digital Assets (Scotland) Bill [as introduced] SP Bill 75. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/digital-assets-scotland-bill/introduced/spbill75s062025.pdf> [accessed 3 February 2026]
- 2 Scottish Parliament. (2026). Digital Assets (Scotland) Bill [as amended at Stage 2] SP Bill 75A. Retrieved from <http://parliament.scot/-/media/files/legislation/bills/s6-bills/digital-assets-scotland-bill/stage-2/spbill75as062026.pdf> [accessed 24 February 2026]
- 3 Scottish Parliament. (2025). Digital Assets (Scotland) Bill Policy Memorandum SP Bill 75-PM. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/digital-assets-scotland-bill/introduced/spbill75pms062025accessible.pdf> [accessed 3 February 2026]
- 4 Scottish Parliament. (2025). Digital Assets (Scotland) Bill Explanatory Notes SP Bill 75-EN. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/digital-assets-scotland-bill/introduced/spbill75ens062025accessible.pdf> [accessed 3 February 2026]
- 5 SPICe. (2025). Digital Assets (Scotland) Bill. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/11/18/46ab3587-0857-4c31-8332-b827322a81af> [accessed 3 February 2026]
- 6 MacPherson, A., & Yüksel Ripley, B. (2025). Digital assets in Scots law. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/9/25/df77b250-0ee0-4298-82ba-20fe6e304591#> [accessed 3 February 2026]
- 7 Scottish Parliament Economy and Fair Work Committee. (2025). Official Report 26 November 2025. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/pa-26-11-2025?meeting=16714> [accessed 23 February 2026]
- 8 Scottish Parliament Economy and Fair Work Committee. (2025). Official Report 3 December 2025. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/pa-03-12-2025?meeting=16734> [accessed 23 February 2026]
- 9 Scottish Parliament Economy and Fair Work Committee. (2025). Official Report 10 December 2025. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/pa-10-12-2025?meeting=16749> [accessed 23 February 2026]
- 10 Scottish Parliament Economy and Fair Work Committee. (2025). Official Report 17 December 2025. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/pa-17-12-2025?meeting=16766> [accessed 23 February 2026]
- 11 Scottish Parliament Economy and Fair Work Committee. (2026). Stage 1 Report on the Digital Assets (Scotland) Bill. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/EFW/2026/1/15/226e86c1-7cc7-4c39-9cb0-4de55289efdf> [accessed 3 February 2026]

- 12 Scottish Parliament Economy and Fair Work Committee. (2026). Official Report 18 February 2026. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/EFW-18-02-2026?meeting=20085> [accessed 23 February 2026]
- 13 Scottish Government. (2026). Letter from Richard Lochhead MSP, Minister for Business and Employment, to Daniel Johnson MSP, Convener of the Scottish Parliament Economy and Fair Work Committee, dated 18 February 2026.. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-economy-and-fair-work-committee/correspondence/2026/digital-assets-scotland-bill-intent-to-bring-forward-stage-3-amendments> [accessed 23 February 2026]
- 14 MacPherson, A., & Yüksel Ripley, B. (2025). Digital Assets (Scotland) Bill - response to the call for views. Retrieved from https://yourviews.parliament.scot/session-6/digital-assets-scotland-bill/consultation/view_respondent?uuld=737734616 [accessed 23 February 2026]

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Abigail Bremner on telephone number 85361 or abigail.bremner@parliament.scot.

Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at info@parliament.scot. Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

