

30 November 2024

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Solicitor  
Departmental Solicitor's Office  
Civil Law Reform Division  
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By email to: ██████████

Dear ██████████

We have prepared this note in response to your request. In preparing it, we turned to our members for initial reflection and, accordingly, note our views on the proposal to extend the Property (Digital Assets) Bill to Northern Ireland as follows:

In preparing this note, we have conducted a high-level review of:

- Your letter to FSB, dated 23 October 2024;
- The Property (Digital Assets) Bill;
- [The Law Commission's report on digital assets](#), published on 27 June 2023; and
- Hansard report (Volume 840: debated on Wednesday 6 November 2024) from the second reading of the Bill in the HL.

Our preliminary thoughts are as follows:

- The proposed legislation doesn't seek to provide a definition for "digital assets"
- Nor does it mean that all digital assets will be recognised as property
- The common law tests for personal property will be applied by courts to each specific digital asset
- The Bill simply confirms that digital assets (including cryptoassets/crypto-tokens and cryptocurrency) are not excluded from being the object of personal property rights
- NI and E&W have same legal framework for personal property rights
- The draft Bill seeks to confirm and codify the already established common law position
- If the legislation were not extended to NI, NI would be able to get to the same place via common law but would have to wait for cases to come to the court before it could establish the precedent – this would potentially lead to uncertainty for businesses in NI as to whether digital assets owned/traded here can attract the same property rights as in E&W

- Would be unlikely for NI courts to depart from the E&W position anyway
- Cannot foresee any adverse impact in adopting the legislation
- Most law firms/commentators we have read welcome the proposed legislation insofar as it extends to England and Wales e.g. [England and Wales: Property \(Digital Assets Etc\) Bill 2024](#) (Eversheds Sutherland article); [Property rights in digital assets provided for in 'landmark' Bill](#) (Pinsent Masons article); [New bill and case law clarify path forward for digital assets in the UK - Osborne Clarke](#) | Osborne Clarke;

We hope you find this useful and thank you for engaging with the Federation of Small Businesses on this matter.

Yours sincerely,

  
FSB NI Senior Policy Advisor