

From the Minister of Finance

*Matthew O'Toole MLA
Chairperson
Committee for Finance*

Private Office
2nd Floor
Clare House
303 Airport Road West
BELFAST
BT3 9ED

Tel: 028 9081 6236
Email: private.office@finance-ni.gov.uk

Our reference: SUB-1399-2024
Date: 31 October 2024

Matthew, a chara

PROPERTY (DIGITAL ASSETS ETC) BILL

I am writing to notify the Committee for Finance that I am seeking Executive agreement to the extension of the Property (Digital Assets etc) Bill('the Bill'), to this jurisdiction via Legislative Consent Motion, and that, in parallel, I seek the views of the Committee for Finance in relation to same. The most recent printed version of the Bill and explanatory note can be found at:

<https://bills.parliament.uk/publications/56207/documents/5086>

In England and Wales, as is the case in this jurisdiction, private law principles which relate to personal property divide into two broad categories. The first category are rights relating to 'things in possession', this includes those things which are tangible and are capable of being physically possessed. These rights can be asserted by use and enjoyment as well as by the exclusion of others from them. The second category are rights relating to 'things in action'. These can be described as legal rights or claims enforceable by action, e.g. debts, or rights to sue for breach of contract.

With the emergence of digital assets such as bitcoin crypto tokens, the Law Commission of England and Wales ("The Law Commission ") was tasked with reviewing the extent to which personal property law applies to these forms of assets in order to determine whether the law required reform to accommodate them. The Law Commission published its report on 27 June 2023. It noted a movement within the courts in England and Wales towards recognition of a distinct 'third' category of personal property things which is capable of consisting of objects of personal property rights, and that the courts have accommodated and protected features unique to certain digital assets. The Law Commission concluded that although certain types of digital assets do not easily fit within the traditional categories of personal property, they are things to which property rights relate and should as such be regarded as belonging to a separate category, however, there is, as yet, no definitive judicial position on this specific matter. The report recommended that minimal legislation should be introduced to confirm on a statutory footing the existence of a third category of personal property rights capable of accommodating certain digital assets into which things in the modern world which do not easily fit into the two traditional categories could fall. Following a short consultation on draft clauses on 29 July 2024 the Law Commission published its supplemental report and draft Bill which can be found at:

<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2024/07/Digital-assets-as-personal-property-supplemental-report-and-draft-Bill-web-version.pdf>

The Bill had its first reading in the House of Lords on 11 September 2024.

As drafted, this short technical Bill removes any doubt that there are only two categories of personal property, things in action and things in possession. The Bill does not restrict the third category to digital things, nor does it mean any kind of digital thing will necessarily fall within that category, and it is clear that there may be other reasons why a thing cannot be personal property. On enactment, the Bill will therefore provide explicit recognition of a further category of personal property that reflects the unique characteristics of certain things relevant to the modern age. If the Bill were to be extended to this jurisdiction, statutory clarity in the recognition of a distinct further category which could accommodate the unique nature of digital assets, but which does

not define them, would allow the courts to develop common law with a focus on the attributes or characteristics of the thing in question within that third category, and of the legal treatment which should be afforded to it.

The Bill, as introduced, extends to England and Wales only and on 11 September 2024, the UK Government sought opinion as to whether the Bill could theoretically be applied to the law in this jurisdiction and made an offer for this jurisdiction to be included in the Bill via Legislative Consent Motion. I am content with this approach. There is no appropriate vehicle by which to bring this legislation forward in this jurisdiction and given the constraints on the legislative programme in this mandate, it would not be possible to achieve equivalent legislation via an Assembly Bill within the same timescale as this Westminster Bill.

The Department is currently carrying out a short engagement exercise with potential local stakeholders, though it is considered unlikely that there will be much specific local interest in an area that is broadly identical to the law in England and Wales. Responses have been requested by no later than the end of November, and in the event of significantly differing local views, I will take those into account before tabling the LCM at the Assembly. In the meantime, I intend to seek the agreement of the Executive Committee at the meeting currently scheduled for 21 November 2024 to the extension of the provisions of the Bill to this jurisdiction, and to the tabling of an appropriate Legislative Consent Motion to obtain the Assembly's endorsement following Finance Committee scrutiny of the attached Legislative Consent Memorandum. It is due to the Legislative Consent Motion being required to be in place by the end of 2024 that I welcome the views of the Finance Committee in parallel to that process.

Is mise le meas

A handwritten signature in dark ink, appearing to read 'C. Archibald'.

DR CAOIMHE ARCHIBALD MLA
MINISTER OF FINANCE