



Northern Ireland
Assembly

Committee for Finance

Report on the Legislative Consent Memorandum on the Property (Digital Assets etc.) Bill

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Report: NIA 76/22-27 Committee for Finance

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Powers and Membership

Powers

The Committee for Finance is a statutory departmental committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant subordinate legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance.

Membership

The Committee has nine members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Mr Matthew O'Toole (Chairperson)
- Ms Diane Forsythe (Deputy Chairperson)¹
- Dr Steve Aiken MLA
- Mr Philip Brett MLA
- Ms Jemma Dolan MLA
- Mr Gerry Carroll MLA
- Mr Paul Frew MLA
- Miss Deirdre Hargey MLA
- Mr Eoin Tennyson MLA

* With effect from the 10 February 2025 Jemma Dolan replaced Nicola Brogan

Background

1. Digital assets play an increasingly vital role in modern society and the contemporary economy. They are used in growing volumes and for an expanding variety of purposes including as valuable things in themselves, as a means of payment, or to represent or be linked to other things or rights.
2. In England and Wales, as is the case in Northern Ireland, 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.
3. 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.
4. 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.
5. 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.

6. The Bill gives effect to recommendations of the Law Commission for England and Wales. The Commission recommended statutory confirmation that a thing will not be deprived of legal status as an object of personal property rights merely by reason of the fact that it is neither a thing in possession nor a thing in action. This recommendation responds to the development of new types of assets such as crypto-tokens which challenge the traditional categories.
7. The Ministry of Justice introduced the [Property \(Digital Assets etc\) Bill \[HL\]](#) in the House of Lords on 11 September 2024.
8. The Bill is a short Bill which has 2 clauses.

Purpose of the Legislative Consent Motion

9. This section provides an overview of the provisions within the Bill and highlights those that would apply to Northern Ireland.

Clause 1 — Objects of personal property rights

Clause 1 provides that a thing (including a digital or electronic thing) will not be deprived of legal status as an object of personal property rights merely by reason of the fact that it is neither a thing in action nor a thing in possession. Things that are neither things in action nor things in possession may therefore be recognised as attracting property rights. There may be other reasons, however, why a thing cannot be personal property – such as the thing in question not satisfying the indicia for personal property generally. The effect of this clause is not to say that any and all “things” are property.

The Bill is not intended to, and deliberately does not, confirm the status of any particular type of thing (including a crypto-token) as the object of personal property rights. In particular: a. it does not attempt to say what things are, in fact, objects of property rights despite not being things in possession or things in action; and b. it does not attempt to detail what the implications of such proprietary recognition would be (such as tortious liability, applicable remedies etc).

These matters are left to development by the common law. Personal property rights are traditionally creatures of common law and have been developed by the courts over hundreds of years. The common law approach has allowed for a highly nuanced and flexible approach which is not possible to achieve in statute. The Bill is intended only as means of “unlocking” the development of the common law by removing the uncertainty stemming from *Colonial Bank v Whinney* without unduly restricting the way in which it can then respond to technological developments and new types of assets.

Although the Bill is deliberately agnostic about the characteristics of third category things, it does refer expressly to things that are “digital or electronic in nature” as

things that could potentially be capable of attracting property rights despite not necessarily being things in possession or things in action. Although this reference is not necessary in legal terms, it is included for context because digital things such as crypto-tokens are likely to be the main type of thing that users of the law will be concerned with, at least in the short to medium term, and because they were the main impetus for the Bill.

It is important to note, however, that there is nothing in the Bill to restrict its impact to digital things; nor does it mean that any particular kind of digital thing will necessarily be found to be property.

Clause 2 — Meaning Extent, commencement and short title

Clause 2(1) sets out the territorial extent of the Bill. The Bill extends to England and Wales.

Clause 2(2) makes provision about the coming into force of the Bill. The Bill comes into force at the end of the period of two months beginning with the day on which it is passed. An amendment was made to reflect Northern Ireland's addition to the territorial extent of the Bill which was formally agreed on the 3rd February. The amendment was then made at Westminster.

Ministry of Justice are seeking consent from the Law Officers so that the bill will come into force after Royal Assent. Clause 2(2) of the Bill will be updated accordingly if consent is given.

Committee Consideration of the Legislative Consent Motion

10. The Minister for Finance wrote to the Committee on the 31 October 2024, advising that they would be seeking Executive agreement to the extension of the Property (Digital Assets etc) Bill to Northern Ireland via Legislative Consent Motion (LCM), and in parallel, would be seeking the views of the Committee for Finance in relation to same LCM.
11. In this correspondence, the Minister outlined that on 11 September 2024, the UK Government sought feedback on the potential application of the Bill to this jurisdiction and offered to include it through a LCM. The Minister expressed support for this approach, noting that legislative constraints and the current mandate's schedule made it impractical to introduce equivalent legislation through an Assembly Bill within the same timeframe as the Westminster Bill.
12. The Minister also outlined how the Department was carrying out a short engagement exercise with potential local stakeholders, though it was 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 were requested by no later than the end of November, and in the event of significantly differing local views, the Minister acknowledged she would take those into account before tabling the Legislative Consent Motion at the Assembly.
13. As the Minister highlighted in her letter, the offer from the UK Government to legislate on behalf of Northern Ireland has not followed the normal process; therefore, as agreement was required by the end of 2024, the Minister wrote to the Committee prior to Executive agreement and the formal laying of a legislative Consent Memorandum.
14. Executive approval was given on the 21 November 2024 to extend the Bill's provisions to this jurisdiction and to table the LCM to secure the Assembly's endorsement after the Committee for Finance's consideration of the LCM.

15. At its meeting on the 6 November 2024, the Committee considered correspondence from the Department regarding the background to the Bill and its provisions, which extend and apply to Northern Ireland. The Committee then agreed to schedule an urgent oral briefing with Department officials.
16. The Committee also agreed to write to the Department to request that any responses to the Department's engagement exercise should be copied to the Committee and that the Department should provide the Committee with detail on any ongoing discussions between the Department and Westminster where a position(s) has not been finalised; any financial human rights and equality implications (including Article 2 of the Protocol on Ireland/Northern Ireland); any regulatory impact; any rural impact; and any data protection implications.
17. The Committee also agreed to request further information from the Department on crypto trading figures in Northern Ireland. The Committee also agreed to request whether feedback from Northern Ireland stakeholders was considered as part of the UK Law Commission Report on digital assets as personal property.
18. The Committee received a written briefing paper on the Property (Digital Assets etc) Bill from the Department on the 15 November 2024 which responded to the Committee's queries. The Department's view is that statutory confirmation regarding a third category of personal property will reduce ambiguity in transactions involving digital assets and provide legal certainty for businesses in terms of risk assessments and investments. A reduction in such ambiguity may reduce disputes over ownership and rights related to digital assets. This could lead to fewer legal proceedings, saving time and money for individuals and businesses.
19. In relation to stakeholder engagement the Department outlined that the Law Commission did not engage with stakeholders in Northern Ireland as its remit extends to England and Wales only.
20. While some of those with an interest in this issue are set up on a UK-wide basis and therefore have a presence in this jurisdiction, the Department therefore

wrote to the following stakeholders; Credit union NI, Federation of Small Businesses, Ulster Bank, Northern Ireland Chamber of Commerce, Allied Irish Banks, Bank of Ireland, UK Danske Bank, UK Law Society Northern Ireland, Law Society Northern Ireland Financial Advice Ltd, Bar Council, PWC, Citibank, CME group, Queen's University Belfast, Ulster University and Fiscal Council. Responses were requested by 30 November 2024.

21. In relation to any impact the Department indicated that the provisions of the Westminster Bill are considered compatible with the Human Rights Act 1998 and there are no associated equality implications. The Bill does not create any new rights, nor dilute or remove any existing ones. The Department envisaged that it will not have any implications relating to Article 2 of the Protocol on Ireland/Northern Ireland or The Windsor Framework.
22. The UK Government has stated that there are no financial implications of the Bill, the Bill does not mandate for the use of any certain type of asset (digital or otherwise) but instead provides clarity and greater legal certainty in how certain assets will be treated. No significant costs to the public purse in this jurisdiction are expected. The Law Commission reported that the Bill complements, rather than duplicates or undermines, other provisions touching on digital assets and the crypto ecosystem. It is not anticipated that there will be any data protection or regulatory implications arising from the Bill. Nor is it anticipated that the Bill will have a rural impact.
23. In response to the Committee's queries in relation to crypto currency the Department outlined that it was not possible to identify how many people here are involved in crypto-currency trading, or the quantum for current or expected trading in Northern Ireland.
24. The Department indicated that the Financial Conduct Authority's 2023 online crypto assets consumer research reported that when looking at the profile of adults that own crypto assets, ownership is highest in London and in Northern Ireland. In terms of how much value people hold in their crypto assets, the research found that across the UK 39% held a value under £100, with 52% holding under £250.

25. Officials then briefed the Committee through an oral evidence session at its meeting on 20 November 2024. The timeline for introduction and the Consultation to date were discussed. At this time no responses had been received to the Department's Consultation.
26. Officials noted that, *'we have not received one substantive response. This is pretty niche stuff, to be honest. Since it does not create any immediate or new rights or obligations for the people who hold digital assets or the big financial institutions that hold such assets, and the existing rights and obligations are not changing, it is not something that, to date, has captured a significant amount of interest.'*
27. The Committee enquired about the figures the Department referenced to within the Financial Conduct Authority Report. Following the oral briefing from Departmental officials the Committee agreed to write to the Financial Conduct Authority to elaborate on the figures to 2023 Online Crypto Assets Consumer Report on the 25 November.
28. The Financial Conduct Authority responded to the Committee on the 11 December and referred to research conducted in 2022, published in June 2023, where they stated that "Ownership [of crypto] is highest in London and Northern Ireland" (Page 24 - Research Note: [Cryptoassets consumer research 2023](#) (Wave 4)). This statistic was based on the fact that 10.34% of the nationally representative sample group in Northern Ireland said they "bought cryptocurrencies in the past and still own them", compared with London at 10.36%. The next closest geographic area, as defined by YouGov, was the 'South', which was 7.72%. The online sample of respondents used by YouGov was controlled by quotas using targets reflective of the UK's adult population based on the key demographics of age, gender, education level, region, and social grade. The use of an online panel is also an efficient way to reach a large number of people. However, the FCA noted (as with any online survey there is the possibility of response bias as those online are willing to take part). This means that those surveyed online may have a different opinion to those who would be unwilling to be part of an online research panel.

29. The Financial Conduct Authority also highlighted that they had published further updated research: [Cryptoassets consumer research 2024](#) (wave 5). While this report does not state the geographic differences in ownership within the report, the results they received from the survey were generally the same, with Northern Ireland having one of the higher ownership rates.
30. They also emphasised that identifying the underlying reasons is challenging without further research. However, based on their most recent findings, the Financial Conduct Authority can state that, compared to crypto consumers in Great Britain, those in Northern Ireland:
- Hold on average less crypto - 53% of Northern Ireland crypto consumers hold less than £250 value of cryptoassets, compared to 37% of Great Britain crypto consumers.
 - Are older on average - 63% are above 35, compared to 50% for Great Britain crypto consumers.
 - Are more likely to have purchased their crypto through a payment firm (30% vs 15%).
31. Officials on the 6 December 2024 advised that *“MOJ colleagues have been in touch and suggested that the laying of the LCM should wait until an amendment to extend the Bill’s provisions to here is both formally agreed (to date, an offer was made, the Minister and the Executive agreed to the principle of extension, and the Minister has written back to MOJ to confirm all this) and then the amendment is made at Westminster.”*
32. The Department also updated the Committee on the 7 February 2025 that in terms of the consultation. Two responses were received which were both supportive of extension from Law Society NI and the Federation of Small Businesses. Their responses are summarised below. A copy of their responses can be found in Appendix A. No other responses were received.
33. Federation of Small Businesses acknowledges the proposed legislation as a positive step in clarifying the legal status of digital assets, ensuring they are not

excluded from property rights. They also highlight that if the legislation is not extended to Northern Ireland, businesses may face legal uncertainty, as similar protections would only emerge through case law over time. This could create a disadvantage for Northern Ireland businesses compared to those in England and Wales.

34. The Law Society NI understands no reason to adopt a different approach from England and Wales, as maintaining consistency with their legal framework is desirable. Given the increasing prevalence of digital assets, divergence at this stage could create unnecessary legal uncertainty. The Law Society NI supports extending the Bill's provisions to Northern Ireland and is keen to engage in any future legislative developments, amendments, or consultations.
35. While Executive agreement to the LCM was agreed at its meeting on 21 November the Legislative Consent Memorandum was not laid until the 10 February 2025 by the Department of Finance following the Special Public Bill Committee stage at Westminster which took place on 3 February.
36. At its meeting on the 12 February 2025, the Committee agreed that it was content with the proposal to extend provisions in Property (Digital Assets etc.) Bill to Northern Ireland by way of a Legislative Consent Motion.

Conclusion

37. Following consideration of the Legislative Consent Memorandum laid on the 10 February 2025, the Committee for Finance agreed to support the Minister for Finance in seeking the Assembly's endorsement of the Legislative Consent Motion:

“That this Assembly endorses the principle of the extension of the provisions of the Property (Digital Assets etc) Bill [HL] to Northern Ireland”.

Links to Appendices

Appendix 1: Memoranda and Papers from the Department of Finance

[View Memoranda and Papers supplied to the Committee by the Department for Finance](#)

Appendix 2: Minutes of Proceedings

[View Minutes of Proceedings of Committee meetings related to the report](#)

Appendix 3: Minutes of Evidence

[View Minutes of Evidence from evidence sessions related to the report](#)

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