

LEGISLATIVE CONSENT MEMORANDUM

Property (Digital Assets etc) Bill

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Finance, is:

“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Property (Digital Assets etc) Bill, as amended in the House of Lords on 3 February 2025, dealing with territorial extent as contained in clause 2 of the Bill.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Finance under Standing Order 42A(2). The Property (Digital Assets etc) Bill was introduced in the House of Lords on 11 September 2024. Following agreement of the Executive Committee on 21 November 2024 in principle to the extension of the provisions of the Bill to here, on 3 February 2025 the House of Lords formally agreed an amendment to the Bill to include this jurisdiction in its territorial scope. The latest version of the Bill can be found at:

<https://bills.parliament.uk/publications/58474/documents/5864>

Summary of the Bill and its policy objectives

3. Private law principles and associated rights which relate to personal property divide into two broad traditional categories. The first category relates to ‘things in possession’, this includes those things which are tangible and are

capable of being physically possessed. The second category relates to ‘things in action’, which can be described as personal property that can only be claimed or enforced through a court action such as debts, or rights to sue for breach of contract.

4. Responding to the development of new types of assets such as crypto-tokens, which can challenge the traditional categories, and seeking to recognise and protect those new types of assets, the Bill provides that where a thing does not fit into either of the two traditional categories of personal property, it will not be deprived of legal status as an object of personal property rights merely because it falls to be considered under a separate, third category.
5. The Bill does not confirm the status of any particular type of thing as being the object of personal property rights. Instead, in Clause 1, the Bill provides that a thing which does not fall within the two traditional categories of things, in possession and in action, cannot be prevented from being treated as an object of personal property rights merely for that reason alone. Therefore, matters relating to what things are objects of property rights and the implications of such proprietary recognition, are left to determination by, and development within the courts via common law.

Provisions which deal with a Devolution Matter

6. The Bill has been amended to include this jurisdiction in its territorial scope. The provisions of the Bill deal with the law on personal property which is a transferred matter. The law on personal property is also devolved to the Scottish Parliament. Scotland does not have the concepts of things in action and things in possession and therefore the policy objectives of the Bill may not be appropriate for, nor impact Scotland.

Reasons for making the Provisions

7. In recognising a further category of personal property, the provisions in this short technical Bill reflect the emergence of assets with features not within contemplation when the two traditional categories were developed.
8. With a lack of authoritative judicial position on this specific issue, statutory confirmation of a third category of personal property will allow the courts in this jurisdiction to develop common law with a focus on the characteristics of things within that third category, including digital assets, and of the legal treatment which should be afforded to them, and not be fettered by

deliberation of principles applicable to other traditional objects of those rights.

Reasons for utilising the Bill rather than an Act of the Assembly

9. There is no appropriate vehicle in this jurisdiction by which to bring forward a provision within this mandate which would recognise a third category of property rights. It would be more efficient to introduce this provision via the Westminster Bill.

Consultation

10. The Law Commission of England and Wales conducted a consultation exercise within that jurisdiction. Further to a short consultation with sixteen local stakeholders in November 2024, the Department of Finance received two positive responses from the Federation of Small Businesses and Law Society NI.

Human Rights and Equality

11. The provisions of the Westminster Bill are considered compatible with the Human Rights Act 1998.
12. The Bill has does not create any differential equality treatment and has been screened out.

Financial Implications

13. No significant costs to the public purse are expected.

Summary of Regulatory Impact

14. No significant costs to businesses, community, voluntary, charitable and social enterprises/organisations are expected.

Engagement to date with the Committee for Finance

15. The Department has briefed the Committee for Finance in both writing and in evidence to the Committee at its meeting of 20 November 2024.

Conclusion

16. The view of the Minister for Finance is that in the interests of clear legislation, that so far as the provisions of the Bill deal with a devolution matter, they should extend to this jurisdiction.

Department of Finance

10 February 2025