



CryptoUK
Formal House
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House of Lords
Special Public Bill Committee
Public Bill Office
SW1A 0PW

Submitted by upload to the Special Public Bill Committee website portal

House of Lords Special Public Bill Committee - Call for Evidence on the Property (Digital Assets etc) Bill

Dear Sir or Madam,

CryptoUK (“**we**”, “**our**”) and its members welcome the opportunity to provide evidence to the Special Public Bill Committee on the Property (Digital Assets etc) Bill (the “**Bill**”). CryptoUK is the UK’s self-regulatory trade association representing the cryptoasset sector. Our members comprise leading companies from across the sector.

CryptoUK was pleased to submit a response to the House of Lords Special Public Bill Committee's Call for Evidence on the Property (Digital Assets etc) Bill today. We welcome the work of the Law Commission and the Bill, as it represents an important step that we and our members are very encouraged and excited by. The Bill marks a significant milestone in delivering certainty for the cryptoassets industry, and we want to ensure that the Bill is drafted in the best possible way to achieve this crucial objective.

We sincerely thank the Committee for this important call for evidence as a significant step in ensuring the UK’s continued growth and global competitiveness. CryptoUK would also like to thank our member firms, Travers Smith and Knightbridge Tax, for their expert insights. Finally, we would welcome the opportunity to discuss our input in further detail, should the Committee find it useful.

Yours sincerely,

Su Carpenter
Executive Director

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Consultation Questions and CryptoUK Responses

1. Please could you summarise your view on the Bill in fewer than 300 words?

It has been several years since the Law Commission started its work on the Bill. Since then, there have been several encouraging legal judgments where the courts have determined that cryptoassets are property (and determined, themselves, what type of property cryptoassets are). We want the Bill to encourage, rather than stifle, this approach. This will support the growth of UK cryptoasset businesses.

As such, CryptoUK is not clear that to achieve certainty that cryptoassets are property, it is necessary to create a new category of personal property (which appears to be the effect of the Bill):

- This will make the UK an outlier in the international markets, where other jurisdictions (like Australia and Singapore) have taken the view that cryptoassets can be treated as "things in action".
- What rules will apply to cryptoassets that fall within the new category of personal property? Presumably it will be left to the courts to develop these rules, which means the industry will have little guidance on what rules apply in the meantime.

These points could have implications for the cryptoassets community in the UK – it will make the legal environment harder to navigate and make the UK less competitive. In the context of the government's objectives in encouraging investment in the UK, this feels like a misstep.

It could also undermine existing arrangements in the crypto ecosystem that are based on cryptoassets being treated as an existing type of personal property and could have unintended consequences for tax and accounting analyses for crypto.

Accordingly, we think the Bill ought to be amended as suggested in our response to question 4. This way the industry would take all the benefits of the Bill without any of the potential risks that might be created by forcing the courts to develop a new "third category" of personal property (and associated rules).

2. Do you think that the Bill, in its current form, is necessary and effective?

We think the Bill should be amended, to ensure that it does not introduce any unintended consequences and to signal that the UK is open to cryptoasset businesses. With these amendments (see question 4), we think the Bill will mark a new stage of certainty for the cryptoassets community.

3. Would the Bill have any negative or unexpected consequences?

Yes, although we think these can be addressed through subtle changes to the Bill. If these risks are addressed and resolved through changes to the Bill, then the Bill becomes a powerful and important piece of legislation in supporting the crypto ecosystem.



The risks that we have identified from the Bill as presently drafted are set out below.

International competitiveness

The Law Commission has said that the Bill will create a "third category" of personal property. Other jurisdictions (like Australia and Singapore) have taken the view that cryptoassets can be treated as so-called "things in action", which means that the UK will have taken an alternative approach.

Many of the use cases involving distributed ledger technology and crypto are cross-border and international. Establishing the UK as a jurisdiction which is divergent from other common law jurisdictions could, we are concerned, render the UK unattractive for innovation in crypto.

Some of these non-UK common law developments post-date the Law Commission's work. For example, the recent decision in Australia, in *Re Blockchain Tech Pty Ltd* [2024] VSC 690, where the judge concluded that Bitcoin was a thing in action (not a thing in possession or any other, new category of personal property) was published in November 2024. The Law Commission did not have the benefit of some of these judgments when it produced its reports. As we see it, part of the reason for amending the Bill is to take into account more recent developments.

What rules apply?

What rules will apply to cryptoassets that fall within the new category of personal property? If someone wants to transfer cryptoassets to someone else for safekeeping, what is the legal relationship (and what options are available)? If someone's cryptoassets are stolen, what can they do about it?

Presumably it will be left to the courts to develop the rules to address these (and many other) questions, which means the industry will have little guidance on what rules apply in the meantime. It could take decades for the courts to develop these rules into a form which provides a suitable level of assurance for the industry. One of the key advantages of the English law system is its well developed and pre-existing rules: it seems odd to us to not apply the existing rules attaching to the existing categories of personal property to crypto assets.

Impact on existing arrangements

Creating a new category of personal property for cryptoassets could undermine existing arrangements in the crypto ecosystem that are based on the treatment of cryptoassets as one of the existing types of personal property.

If the legal treatment of cryptoassets changes, they might render existing arrangements invalid or undermine them in other ways – which could severely harm the UK crypto industry.

As an example, if the law applicable to a third category of personal property is developed in a way that treats cryptoassets akin to, or similar to, possessable (uniquely identifiable) things, this may undermine existing arrangements and use cases that are reliant on cryptoassets being treated as fungible. The judge in *D'Aloia v Persons Unknown* [2024] EWHC 2342 takes this approach in part of his analysis, where (having concluded that Tether falls into a third category of personal property) he sought to follow into and through a pool of crypto to identify a specific Tether. The judge refers to the Law Commission's work in his judgment. This type of analysis is unhelpful, and we think it would be



beneficial if the Bill were amended to be clear that it does not explicitly create a third category of personal property.

Tax, accounting and conflicts of laws

We are further concerned that the Bill and the Law Commission's thinking has been developed without regard to other relevant areas that may be impacted by the creation of a "third category" of personal property, such as tax and accounting, where analyses today are predicated on cryptoassets falling into one of the existing categories of personal property. The Bill may have unintended consequences for analyses in these areas.

The same is true of conflicts of laws: this is a key issue, and we are surprised that the Law Commission's work on the Bill has not been completed in parallel with its expected work on conflicts of laws for cryptoassets, where we see overlap.

In short, we are concerned that without having assessed all these areas in the round, together with the Bill, there may be unintended consequences of varying materiality.

4. How could the Bill be improved? How should it be amended to achieve this?

The Bill can be changed so that it gives the crypto industry certainty that cryptoassets can be property – without establishing, in the Bill itself, a new category of personal property. This would support certainty and innovation in the crypto ecosystem, without introducing additional areas of uncertainty.

We think this could be achieved through minor changes tweaks to section 1 of the Bill, which currently states:

"A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither—

(a) a thing in possession, nor

(b) a thing in action."

For example, the Bill could instead state that a thing is not prevented from being the object of personal property rights merely because it is neither:

- capable of being possessed; nor
- a right that can only be claimed or enforced through legal action or proceedings (in other words, it can be property even if it is not a "thing in action" if that term is given a narrow definition).

We think this would achieve the best of both worlds: it gives the crypto ecosystem certainty that cryptoassets are property but without introducing the risk of unintended consequences. This is one of the primary objectives of CryptoUK in supporting the cryptoassets industry.

We also think this change ought to be palatable for those that are in favour of the Bill as currently drafted or in influencing the courts to adopt a third category of personal property. This is because these changes do not prevent the courts from developing a third category of personal property, if the courts consider it appropriate to do so. The key point is that these changes would mean that the Bill

does not force the courts to develop the law in this way and would avoid the Bill itself creating unintended consequences.

5. Should the Bill have retroactive effect?

If the Bill is amended as outlined above, it does not need to be given retroactive effect because it is purely confirming the existing position that cryptoassets are property.

If the Bill is not amended and enacted in its current form:

- **There are issues if the Bill is given retroactive effect:** giving the Bill retroactive effect would cause problems if there are existing arrangements in the crypto industry that treat cryptoassets as things in action or things in possession. Retroactively changing the legal treatment of those cryptoassets so that they are classified as falling within a new category of personal property could entirely undo or undermine those existing arrangements.
- **There are issues if the Bill is *not* given retroactive effect:** However, without giving the Bill retroactive effect, the Bill would have the effect of creating two sets of cryptoassets, which (based purely on the time at which they are constituted) are treated as different types of property, with different rules attaching to them. This outcome would make the UK cryptoassets market extremely unattractive and uncertain.

The upshot of these two points is that the Bill ought to be amended, as outlined above, to avoid reaching the conclusion that cryptoassets fall within a new "third category" of personal property. This way, the industry would take all the benefit of the Bill in confirming that cryptoassets are property without any of the risks and issues associated with creating a new third category.

6. What implications could the Bill have for the development of this area of common law, both in England and Wales and in other legal jurisdictions?

Please see our responses to the other questions in this document.