



Proposed draft legislation on the recognition of digital assets as personal property

10 September 2024

On 30 July 2024, the Law Commission of England and Wales published a supplemental report and draft bill that, if implemented, would confirm the existence of a third category of personal property into which certain digital and other assets could fall.

On 30 July 2024, the Law Commission of England and Wales [published](#) a supplemental report and draft bill that, if implemented, would confirm the existence of a third category of personal property into which certain digital and other assets could fall.

The Commission's digital assets report in June 2023 concluded that certain digital assets, including crypto-tokens and non-fungible tokens (NFTs), are capable of attracting personal property rights. However, because they are fundamentally different both from physical assets, and from rights-based assets like debts and financial securities, they do not fit within traditional categories of personal property. The Commission recommended that legislation should confirm the existence of a "third" category of personal property.

The draft Bill makes clear that a thing is not prevented from being the object of personal property rights merely because it is neither a thing in action nor a thing in possession. This reflects the trajectory of recent case law, but removes the lingering uncertainty that remains in the absence of a definitive statement from the appellate courts. This will enable courts to determine a number of issues, including, for example, if digital assets are the subject of a legal dispute and there is a danger of their holder dissipating them before that dispute can be resolved, a court can, if these assets are classed as property, order a proprietary freezing injunction over them to prevent this. These remedies exist for things already recognised as property; as yet it is an open question whether they are available in relation to digital assets.

The Commission consulted on the draft Bill in February 2024. The wording, but not the substance, of the draft has been amended in response to points raised by consultees.

The government will consider the draft Bill, along with the earlier June 2023 report recommendations.

Next steps

If you would like to discuss anything raised in this article, feel free to contact our Financial Regulation team.