[GB] The Property (Digital Assets Etc.) Bill is introduced to the House of Lords

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The Property (Digital Assets Etc.) Bill (the Bill) was introduced to the UK Parliament via the House of Lords on 11 September 2024, and its purpose is to make provision about the types of things that are capable of being objects of personal property rights. Since the Bill's introduction, it has had its first and second reading and now awaits the committee (the date of which has yet to be set) and report stages, before its third reading in the House of Lords. After its passage through the upper chamber the Bill will be transferred to the House of Commons to follow a similar process to determine whether the proposed legislation should be enacted in law.

The Bill confirms that certain digital assets such as crypto tokens can attract legal property rights even if they do not qualify by definition as one of the two established forms of personal property, namely "things in possession" such as gold or a valuable picture; or as "things in action", for example a share certificate or a contractual right. Things in action have the attribute of being able to be claimed or enforced by court action.

In English and Welsh law, the definition of personal property has been left to common law and court precedent. One of the most significant decisions on the meaning of personal property is in the court decision *National Provincial Bank v. Ainsworth (1965) 1AC 1175* (Ainsworth). One of the presiding judges in Ainsworth, Lord Wilberforce, determined that certain items may not easily be defined as a thing in possession or a thing in action, but instead be treated as "another kind of property".

In Ainsworth, Lord Wilberforce specified the characteristics of property to be property that has to be definable, identifiable by a third party, capable in its nature of assumption by third parties and having some degree of permanence.

In recent years, the Ainsworth decision has been used to define certain types of crypto assets as a kind of property, for instance in the High Court case of *AA v. Persons Unknown*when the court determined that crypto assets were a kind of property and, therefore, could be subject to an injunction.

Given the well-developed common law, the Bill resists classing digital assets as a third category of personal property rights, but instead allows the courts to

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develop what is classified as personal property on a case-by-case basis. This non-prescriptive approach is to allow for flexibility and accommodate new circumstances as well as nascent technology.

The Bill aims to afford some certainty so that different forms of digital assets can be recognised in law as personal property. This provides both individuals and businesses alike with assurance when undertaking a transaction. Another benefit is that giving legal status to digital assets means that they can form part of a person's estate upon death and be inherited by the deceased's beneficiaries.

Also, the Bill aims to reduce the number of court cases which aim to try and identify something as personal property, as instead the parties can rely on the Bill, once it has received Royal Assent, to enforce rights regarding property that does not fall within the traditional definition of personal property or property in possession.

The Bill further intends to help maintain England as an attractive place to transact assets and litigate issues relating to crypto assets, and other forms of digital assets.

The precursor to the Bill was the Law Commission report on digital assets which published the Bill in draft form to address things that are not demonstrably a thing in possession or a thing in action.

Digital assets include crypto tokens, non-fungible tokens (NFTs), virtual carbon credits, digital files and domain names. However, the common law principles described in Ainsworth will determine whether something has the characteristics of property in law.

The Property (Digital Assets etc) Bill (the Bill) (HL)

https://bills.parliament.uk/bills/3766

National Provincial Bank v Ainsworth (1965) 1AC 1175

https://www.casemine.com/judgement/uk/5a8ff8ca60d03e7f57ecd788

Law Commission report Digital Assets: Final Report Law HC 1486 Com 412, 27 June 2023

https://lawcom.gov.uk/document/digital-assets-final-report/

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