

Equalities Statement

1. Policy Summary

The Law Commission published its final report on digital assets on 28 June 2023 and made four recommendations.¹ This Bill implements recommendation 1: to confirm in statute that a thing will not be deprived of legal status as an object of personal property merely because it is not a thing in possession or a thing in action.

Traditionally, the law of England and Wales and Northern Ireland has only recognised two categories of personal property rights: things in possession and things in action. Over the last ten years, the courts have moved towards the position that certain assets (in particular crypto-tokens) are capable of attracting personal property rights even though they are difficult to classify as things in possession or things in action. The courts have therefore begun to recognise there exists a further category of personal property, in particular in relation to milk quotas, carbon emission allowances, and more recently crypto-tokens (including Bitcoin). However, this has not been confirmed by an appellate court so some doubt about the position remains. The Bill seeks to confirm this position.

This measure provides a clear conceptual foundation for the law's continued development by confirming in statute that a thing may be capable of attracting property rights even though it is neither a thing in action nor a thing in possession. Whilst the 'third category' of thing is principally intended to include certain digital assets, the Bill does not specify hard criteria for the 'third category' but instead allows the exact parameters to be developed further through common law.

2. Equality Duties

This statement considers the impact of new legislation and associated operational changes against the statutory obligations under Section 149 of the Equality Act 2010 (the Act) that require Ministers and the department, when exercising their functions, to pay 'due regard' to the need to:

1. Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Act;
2. Advance equality of opportunity between those who share protected characteristics and those who do not; and
3. Foster good relations between those who share protected characteristics and those who do not.

The protected characteristics are race, sex, disability, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment. The protected characteristic of marriage and civil partnership is relevant only when considering the first limb of the duty.

3. Equality Considerations

Direct discrimination

The Bill is not directly discriminatory within the meaning of the Equality Act. It does not treat people less favourably because of their protected characteristics and it applies in the same way to all individuals who may own or use the affected assets, regardless of their protected characteristics.

Indirect discrimination

The Bill is not indirectly discriminatory within the meaning of the Equality Act, as the Bill is simply confirming in statute what is arguably the current common law position. It does not put those with a particular protected characteristic at a disadvantage compared to those who do not share that characteristic.

Whilst the impacts of the Bill are likely to be negligible, we have considered the demographic profile of those who hold the affected assets. The Law Commission report and Bill focus principally on digital assets, but the Bill affects other assets that we are unable to analyse due to a lack of demographic data. Cryptoassets are one of the most common and consequential digital assets affected by the Bill, so we have analysed the demographic profile of those holding cryptoassets to assess which groups would most likely be affected.

Overall, the evidence suggests that those holding cryptoassets are more likely to be younger, male and from minority ethnicities than the general population.² Therefore, any impacts would be more likely to affect these groups on average. However, we do not consider that this overrepresentation will likely result in any disadvantage for these groups when compared with those who do not share that characteristic. To the extent there is any impact it is likely to be positive for legitimate owners and users of digital assets.

In the following sections, we describe the demographics of cryptoasset owners according to the available data on specific protected characteristics. Although, if cryptoasset usage continues to increase, the demographics could potentially broaden over time.³ Again, we note that this is only one type of asset that may be impacted by this Bill, however there is limited data available for the variety of assets that may be captured.

Age

Cryptoasset owners are more likely to be younger than the general population. A report published in 2022 found that 76% of current and former cryptoasset owners in the UK were under 45, compared with 45% of the general population.⁴ The age distribution within this group varies significantly according to different surveys.

Sex

Cryptoasset owners are predominantly male. Survey results published across 2021-2024 consistently estimate that around 70-80% of cryptoasset owners in the UK are male, in comparison with around 50% of the general population.^{5,6,7}

Race

Although data is more limited, some research indicates that ethnic minority groups may have higher rates of cryptoasset ownership compared to White British individuals. A report published in 2022 found that while 82% of current and former cryptoasset owners identified as White, 11% identified as Asian and 8% as belonging to other ethnicities. In comparison, Asian and other ethnicities constituted only 5% and 4% of the general population, respectively. In addition, this research found that ownership was most prevalent among the Black ethnic group (24%), followed by Asian (19%) and White (9%).⁸

Advancing equality of opportunity

We do not consider that these proposals would have any significant impact on the achievement of this objective. The impacts of the Bill on people are minimal and it will not affect the opportunities available to those with particular protected characteristics to any significant degree.

Discrimination arising from disability and duty to make reasonable adjustments

We do not consider that the proposals are likely to result in any unlawful discrimination within the meaning of the Equality Act in relation to disability.

Research suggests that people with disabilities are more likely to be digitally excluded and therefore will be less likely to hold digital assets, however the Bill will not result in any particular disadvantage to this group and so will not cause indirect discrimination.⁹

Fostering good relations

We do not consider that these proposals would have any significant impact on the achievement of this objective, as the impacts of the Bill on people are minimal and it does not put those with a particular protected characteristic at a disadvantage compared to those who do not share that characteristic.

Welsh language Impact

The Bill would affect Welsh law. It is important to ensure that this is communicated in Welsh through the usual government channels. Any websites, forms and services will meet all statutory requirements to provide a service through the Welsh medium.

¹ Law Commission. (2023). *Digital assets*. Available at: <https://lawcom.gov.uk/project/digital-assets/>.

² Research is primarily conducted on the UK as a whole, whereas this Bill would only affect English and Welsh law.

³ Research has indicated that 9% of UK adults owned cryptoassets in August 2022, compared with 4.4% the previous year.

Financial Conduct Authority. (2023). *Research Note: Cryptoassets consumer research 2023 (Wave 4)*. Available at: <https://www.fca.org.uk/publication/research-notes/research-note-cryptoasset-consumer-research-2023-wave4.pdf>.

⁴ HM Revenue and Customs, Kantar Public (2022). *Individuals holding cryptoassets: uptake and understanding*. Available at: <https://www.gov.uk/government/publications/individuals-holding-cryptoassets-uptake-and-understanding>.

⁵ HM Revenue and Customs, Kantar Public (2022). *Individuals holding cryptoassets: uptake and understanding*. Available at: <https://www.gov.uk/government/publications/individuals-holding-cryptoassets-uptake-and-understanding>.

⁶ Financial Conduct Authority (2021). *Research Note: Cryptoasset consumer research 2021*. Available at: <https://www.fca.org.uk/publications/research/research-note-cryptoasset-consumer-research-2021>.

⁷ Finder UK, Censuswide (2024). *UK cryptocurrency statistics 2024*. Available at: <https://www.finder.com/uk/cryptocurrency/cryptocurrency-statistics>.

⁸ HM Revenue and Customs, Kantar Public (2022). *Individuals holding cryptoassets: uptake and understanding*. Available at: <https://www.gov.uk/government/publications/individuals-holding-cryptoassets-uptake-and-understanding>.

⁹ According to ONS estimates for 2020, 15% of people who self-assessed as having a disability in line with the Equality Act have never been online, compared to 3% of those without disabilities. Office for National statistics (2021). *Internet users*. Available at: <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/datasets/internetusers>.