

Response ID ANON-12XZ-CHB5-Q

Submitted to Digital assets as personal property draft clauses
Submitted on 2024-03-22 17:03:14

About you

What is your name?

Name:
Judith Crawford

What is the name of your organisation?

Enter the name of your organisation:
Electronic Money Association

Are you responding to this consultation in a personal capacity or on behalf of your organisation? How should you/your organisation be named if we later refer to your response?

Capacity and name for quoting:
Director of Policy on behalf of the Electronic Money Association

What is your email address?

Email:
judith.crawford@e-ma.org

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Tell us why you regard the information as confidential:

Consultation questions

Consultation Question 1: Do you agree with the general approach of the draft Bill, and agree that it will achieve the desired effect?

Other

Please explain your answer:

We overall agree with the general approach of the draft Bill but think that a change to the wording would be helpful to achieve its desired effect of ensuring that digital assets such as electronic money and cryptoassets are capable of being recognised by the law as property.

In our previous submission to you (of 11 November 2022), we set out our reasons why we believe electronic money should be considered as a third category thing. While you did not refer to electronic money in your final report on digital assets (of 28 June 2023), we nonetheless hope that the Bill will allow electronic money to be treated as an object of personal property. This is a matter of some importance for the ongoing calibration of the legal framework governing the issuance and use of electronic money as a means of payment. However, the argument made below equally applies to cryptoassets (some of which will also be categorised as electronic money).

The wording of the Bill as proposed appears to suggest that third category things are objects of personal property despite being neither things in action nor things in possession. This exclusionary approach will make it harder to regard things as third category things if they share certain aspects with things in action or things in possession yet fall into neither category.

For example, electronic money is defined as “electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer” (Regulation 2(1) of the Electronic Money Regulations 2011, emphasis added), thereby being associated with a claim right. Electronic money could also, if stored on a payment card, be physically possessed. Yet, electronic money is not simply a claim right, as its normal usage in making payments does not involve its redemption with the issuer. Nor does it usually take physical form, it being most commonly issued in the form of an electronic value recorded in the issuer’s systems.

We therefore suggest making the following change to the text in section 1 of the Bill:

A thing (including a thing that is digital or electronic in nature) is capable of being the object of personal property rights even though it is neither exclusively—

- (a) a thing in possession, nor
- (b) a thing in action.

This change would make it clear that third category things may share some aspects of things in action and things in possession and do not form an exclusive third group of personal property. It would thereby allow the courts to take a more flexible and technologically-neutral approach to the categorisation of digital assets, inclusive of assets that share the same functional characteristics but differ in other respects, such as central vs. decentralised issuance. As you recognise in your consultation on the draft Bill, there are things that are difficult to categorise, and this change would ensure that the status of personal property is available to widest group of assets.

Consultation Question 2: What do you consider the positive impacts of the Bill to be? Could you quantify them (for example, by how much in £ or days/hours might a dispute be reduced)?

Positive impact:

What do you consider the costs and/or risks of the Bill to be?

Costs or risks of the Bill: