

Things Amongst Other Things...

March 2026

Commerce almost always moves faster than legislation.

From time to time the law has to pause, look around, and refresh its vocabulary to describe the world as it now exists rather than the one it inherited. A good example arrived recently in the form of the Property (Digital Assets etc) Act 2025 which addresses the status of digital assets under English law.

This article outlines the purpose of and some initial questions relating to the Act and potential implications for commercial insurance products.

CHARLES III

c. 29



Property (Digital Assets etc) Act 2025

2025 CHAPTER 29

An Act to make provision about the types of things that are not prevented from being objects of personal property rights. [2nd December 2025]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Objects of personal property rights

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.

2 Extent, commencement and short title

- (1) This Act extends to England and Wales and Northern Ireland.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act may be cited as the Property (Digital Assets etc) Act 2025.

The Property (Digital Assets etc) Act 2025

On 12 March 2026, at an event marking the passing of the legislation, the Master of the Rolls, Sir Geoffrey Vos, observed:

“In essence, it removes the legal uncertainty that was previously thought to exist as to whether digital assets would or would not be held to be a species of property under English law.”

The Act’s operative language is sparse but carries significant consequences.

Traditionally, English law regarding personal propertyⁱ was clear. Something was either:

- a **thing in possession** – physical items such as cars or furniture (chattels); or
- a **thing in action** – an intangible right that exists because the law recognises and enforces it, such as a debt, contractual claim, shares or intellectual property rights.

That framework worked perfectly well in a world of physical objects and legal rights. But technology has a habit of producing things that do not align precisely with recognised legal categories.

Crypto-tokens, digital assets and similar instruments are not physical objects. Nor do they exist merely because the law says they do. They arise from distributed technological systems whose operation is independent of legal frameworks that may attempt to regulate them.

The new legislation therefore performs a deceptively simple function. It confirms that a “thing” – including something digital or electronic – may be recognised

as personal property, even if it falls outside the traditional classifications of possession or action.

In doing so it removes a lingering ambiguity that English courts had already begun to resolve incrementally through the common law.

Importantly, the Act does not attempt to define digital property exhaustively. Instead, it leaves room for the courts to continue doing what they have done for centuries: develop the case law one decision at a time, as new forms of technology emerge.

The Act is modest in form but significant in effect. It supports the enforceability, transferability and recoverability of digital assets, while reinforcing the English courts’ long-standing position as a jurisdiction of choice for international commerce.

The insurance angle

Legislative clarification inevitably raises questions for insurance markets. Coverage is always interpreted in reference to the applicable governing law of the contract and policy wordings need regular revisiting to overcome the ‘dead hand of inertia’.

Clients pay their legal counsel to have a nasty and suspicious mind. And to do a degree of horizon scanning to identify risks and deal with them before they germinate into liabilities by drafting clear and precise policy wordings.

A few early thoughts.

Property All Risks (PAR)

Many PAR policies define the Property Insured as “*all real and personal property of every kind and description (except as otherwise excluded) etc.*”.

Under policies governed by English law, could digital assets now fall within the scope of PAR cover unless expressly excluded?

I think not. The Insuring Clause in PAR forms is the gateway to cover under the policy. Typically, the trigger for cover is ‘*sudden and unforeseen physical loss, destruction or damage to the Property Insured*’. Cryptocurrency, NFTs or virtual real estate are intangible assets and therefore (insofar as I can see) cannot be subject to physical loss, destruction or damage.

If that is correct, there seems to be little risk of PAR cover for digital assets being given for free by virtue of not being excluded.

It is also difficult to imagine an underwriter causing a problem by excluding things that no one thought were covered anyway. And in current soft market conditions, the underwriter who starts pushing back may have nothing left to underwrite.

Digital Asset Specie

Statutory recognition of digital assets as property may encourage the development of more specialised insurance products designed to cover their custody, storage and transfer.

That said, there are hurdles to clear. For nascent business lines, loss data is generally limited, making predictive modelling a difficult and subjective

exercise. Experienced wording specialists and product counsel are already thin on the ground and typically absorbed by established lines of business. Under-resourced teams feeling their way forward with an emerging risk rarely produce optimal risk transfer solutions.

That said, insurance markets have adapted quickly when commercial demand emerges. Cyber insurance followed a similar trajectory: regulatory concerns identified large lines being underwritten on the back of limited claims experience, patchy data and opaque exposures. The industry responded with rapid investment, upskilling and before long developed cyber into a lucrative line of business.

One suspects that experts in digital asset insurance may also be hiding in plain sight and that capacity and expertise will quickly begin to form.

Digital Asset Crime

Even so called ‘stablecoins’ can be vulnerable to a range of operational and criminal risks: hacking, compromise of security systems, misappropriation, exchange failure and, in some cases, total collapse.

The FTX collapse is a cautionary tale of how quickly confidence in digital asset platforms can evaporate. Markets responded with increased scrutiny of crypto companies and measures to prevent ‘silent’ or non-affirmative crypto exposure from creeping into D&O and liability programmes.

If insurance products in this space develop to plug the gaps in conventional financial lines and liability covers, markets will inevitably face the familiar challenge of balancing meaningful protection for policyholders with sustainable loss ratios.

Current conclusions

These are early observations rather than settled conclusions.

However, part of my job is to anticipate areas where emerging risks create elephant traps and then devise workable solutions to help prevent policyholders, brokers and re/insurers from falling into them.

Clients generally prefer those questions to be asked *before* they materialise as liabilities.

There will no doubt be others far more learned than I in this area, and feedback and alternative perspectives are always welcome.

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ⁱ 'Personal' property as distinguished from 'real' property, i.e. being land or immovable fixtures.