

Evolution without revolution: crypto-assets as a stress test for the flexibility of the common law of England and Wales

Simge Aslan

University of Leeds
Woodhouse
Leeds LS2 9JT, United Kingdom
s.aslan@leeds.ac.uk

Abstract: This article explores the legal treatment of crypto-assets under the law of England and Wales, examining both private-law and regulatory approaches. It analyses the recognition of crypto-assets as property, the challenges of categorisation and the implications of tokenisation for real-world and digital assets, drawing on key cases such as 'AA v. Persons Unknown' and 'Tulip Trading v. van der Laan'. On the regulatory front, it reviews developments including the 2025 draft *Financial Services and Markets Act Order* and the Financial Conduct Authority's (FCA) initiatives on tokenised securities, illustrating the UK's move towards a more structured and stricter regulatory framework.

Keywords: *crypto-assets, distributed ledger technology, Financial Services and Markets Act, property law, smart contracts, tokenisation*

1. Introduction

As trite as it may sound, attempting to provide an overview of the law of crypto-assets under England and Wales' common law is akin to tracing a moving target. Nevertheless, this article attempts to examine the treatment of crypto-assets under the law of England and Wales, with a focus on both private law and regulatory dimensions. Despite the acknowledgement of the relevance and importance of crypto-assets for the contemporary economy across the board, the developments in private law and regulation have taken

different paths so far. Private-law developments have been fast-paced and innovative, whereas regulation has taken a slower approach.

In this article, I explore both aspects. The first section, on private-law matters, focuses on the common-law approach on the personal property law front by considering the case-law on recognising crypto-assets as property, the challenges of categorisation and the evolving legal discourse on tokenisation. The discussion will then move on to various applications that utilise the technology behind crypto-assets in the legal context, such as automated contracting, electronic trade documents and digital dispute resolution, where innovative and leading developments have taken stage. The second section of the article focuses on the regulatory side and analyses recent developments, highlighting the UK's efforts to balance innovation, legal certainty and consumer protection.

2. Private-law concerns

Private-law issues are often the subject of debate for the specific jurisdiction. Some of the most controversial topics include the legal status of crypto-assets as subject of property, corresponding ownership concerns, the use of smart contracts and automated contracting. The overwhelmingly apparent approach that can be observed is that the common law of England and Wales, as it is, is well positioned to be able to accommodate the novelties of crypto-assets. Common law can be sufficiently flexible to deal with crypto-assets by building on the existing principles rather than requiring legal reform. Overall, the tendency appears to be towards allowing common law to develop or update principles with limited statutory intervention. This section will attempt to provide an overview and a critical analysis of how the private-law concerns have evolved based on reports from the Law Commission, reports of the UK Jurisdiction Taskforce (UKJT) of the Law Tech Delivery Panel, as well as the commentaries of academics in the field.

2.1 Property and ownership of crypto-assets

2.1.1 Proprietary characteristic of crypto-assets

One of the earliest and most cardinal issues in the realm of crypto-assets is their proprietary nature. The insolvency of Mt. Gox in Japan triggered the avalanche in 2014. The Japanese court dismissed the customers' claim to segregate bitcoins, stating that under the Japanese *Civil Code*, an object of ownership is a 'tangible thing', and therefore, bitcoin cannot be an object of ownership (Digital Assets Project, 2019). This triggered a discussion across borders about the proprietary nature of crypto-assets, and the law of England and Wales was no exception to this.

Under the common law of England and Wales, the property question can be broadly analysed under two limbs: first, whether the law can recognise crypto-assets as property and, if the first question is answered in the affirmative, which category of property they might fall under. It can be easily observed that a common consensus was reached quite rapidly on the first limb of the property question: whether crypto-assets can be property. This was answered in the affirmative by various commentators (Fox, 2019; Sarra and Gullifer, 2019; Low, 2020) and by the UKJT (2019; Law Commission, 2023). Second limb, however, the category under which crypto-assets fall under the common law of England and Wales, remained a controversial issue for a long time. One might argue that the most recent efforts of the legislators with the *Digital Assets Act* helped to resolve this discussion for good but one would be mistaken. The section below will elaborate on why the *Digital Assets Act* is not the end of this discussion.

Regarding the proprietary nature of crypto-assets, it has been widely noted that the inherently flexible nature of common law allows the introduction of new types of assets into the property realm. This approach was soon confirmed when 'AA v. Persons Unknown, Re Bitcoin' in 2019, which was the landmark judgment that ruled digital assets as being capable of being an object of property rights was granted. Numerous cases subsequently also confirmed the proprietary characteristics of crypto-assets, among these 'D'Aloia v. Persons Unknown & Others' (2024); 'Litecoin Foundation Ltd. v. Inshallah Ltd.' (2021); 'Fetch.ai Ltd. v. Persons Unknown' (2021); 'Director of Public Prosecutions v. Briedis' (2021); 'Osbourne v. Persons Unknown Category A' (2023); 'Wang v. Darby' (2021). Finally, in 2023, the Court of Appeal also confirmed that "a cryptoasset such as bitcoin is property" under the law of England and Wales ('Tulip Trading Ltd. v. van der Laan', 2023, at 24–25).

On this matter, it might be difficult, or indeed impossible, to separate the development of common law into specific jurisdictions. Despite certain idiosyncrasies, common-law jurisdictions are affected by and develop in harmony with each other. They do not develop the law in isolation and routinely draw on one another's judgments. Although this article's focus is on England and Wales, it would be remiss if it did not refer to how the rest of the common-law jurisdictions have affected each other.

The first and most detailed analysis of the legal nature of distributed ledger technology (DLT) assets came from the High Court of New Zealand in 2020. The court concluded that DLT assets were property in 'Ruscoe and Moore v. Cryptopia Limited (In Liquidation)' (2020) and cited the English Courts judgment in 'AA v. Persons Unknown, Re Bitcoin', along with other jurisdictions such as 'B2C2 Ltd. v. Quoine Pte Ltd.' from Singapore. The decision in *Cryptopia* is significant as it is the first to provide a clear statement on the issue of property with a comprehensive analysis and detailed reasoning. It was held that DLT assets are "a species of intangible personal property and clearly an identifiable thing of value" ('Ruscoe and Moore v. Cryptopia Limited', 2020).

The 'Cryptopia' judgment considers the previous judgments on the subject and the property criteria set by 'National Provincial Bank Ltd. v. Ainsworth' ('Ainsworth') (1965). Lord Wilberforce's famous indicia for property in 'Ainsworth' are being definable, being identifiable by third parties, being capable in its nature of assumption by third parties and having some degree of permanence or stability. Gendall J, in his judgment in 'Cryptopia', provided an analysis for crypto-assets against all four criteria and noted that all four were satisfied. Indeed, the 'Ainsworth' criteria of Lord Wilberforce are often relied on to answer the question of crypto-assets as property by judges from common law jurisdictions. Most recently in Australia, the Victoria Court of Appeal noted that "Bitcoin satisfies the Ainsworth characteristics of property" ('Yeates (a pseudonym) v. The King', 2025).

This judgment confirmed that crypto-assets can be property by citing many of the cases noted above from other jurisdictions, including 'AA v. Persons Unknown' from England and Wales and 'Cryptopia' from New Zealand, and 'ByBit' from Singapore.

In addition, both the Law Commission's final report and the UKJT's *Legal statement on cryptoassets and smart contracts* (hereafter, *Legal statement*) have been influential in affecting the judicial approach across borders to the proprietary status of crypto-assets. The Law Commission provides a

comprehensive analysis of the relevant principles of property law and has been cited in recent judgments across multiple common-law jurisdictions, including the 2025 decision of the Victoria Court of Appeal mentioned above. The *Legal statement*, as one of the earliest attempts to clarify the legal characterisation of crypto-assets, is often used as a reference point by courts and commentators.

2.1.2 Categorisation of crypto-assets under property law

To anyone observing the earlier comments and the approaches adopted by the UKJT and the Law Commission, the trajectory of the property characteristic of crypto-assets would be abundantly clear. It would not be too forward to claim that there was never any doubt that crypto-assets will be property under common law.

This can also be supported by the fact that common law in England and Wales has developed consistently throughout the decades, recognising unorthodox assets as property when the circumstances called for it. Intellectual property has been recognised as property since the early nineteenth century. More recent case-law (*Swift v. Dairywise*, 2000) considered milk quotas as property. The commercial value and the way in which the world of commerce treats these assets have been acknowledged by the courts traditionally in such cases (Bennett Moses, 2008).

In a similar vein, there is an abundance of literature in which scholars had reached a clear consensus on the common law's conceptual ability to accommodate crypto-assets as property (Allen, 2019; Fox, 2019; Low, 2020; Sarel, 2021) mainly as a result of high-worth 'Initial Coin Offerings' ('ICOs'). As such, it did not come as a surprise when the courts ultimately confirmed this approach in the case-law mentioned above.

A bigger question, however, is the category of property under which crypto-assets belong. Under English law, personal property is traditionally categorised as *choses in possession* and *choses in action*. Choses in possession, as the name suggests, refer to property that can be physically possessed. Choses in action are defined as "all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession" (*Torkington v. Magee*, 1902).

The *Legal statement* has suggested that DLT assets are property, but neither choses in possession nor choses in action (UKJT, 2019). Similar concerns have been raised aplenty by commentators (Bayern, 2014; Fox, 2019).

This was problematic due to the traditional notion of property rooted in the classical statement of Fry LJ in ‘Colonial Bank v. Whinney’ from 1886, according to which “the law knows no tertium quid between the two” categories of property: choses in action and choses in possession. Therefore, if DLT assets are property, they must belong to either category.

As neither category was a good fit for crypto-assets, the Law Commission (2023, para. 2.6) recommended that a statutory intervention is required to confirm that an asset’s inability to fit into those two categories would not prevent it from being property. In 2023, the *Digital Assets Bill* was introduced, and it was enacted in December 2025. The Act confirms that “[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 5 (b) a thing in action” (*Digital Assets Bill*, 2025, Article 1).

In terms of resolving the dichotomy of categorisation, the Act is helpful. However, it also falls short. In many ways, the Act confirms what was already abundantly clear that crypto-assets are indeed property. However, the traditional dichotomy has already been weakened previously by previous case-law that recognised property rights over milk quotas or licences, as described above.

“The common law grows by a process of principled analogy between the old and the new” (Fox, 2018). If we do end up placing DLT assets in one of the existing categories, some rules will apply, while bespoke rules may also have to be created where necessary, and exceptions may need to be carved out. Similarly, if we do accept the need for a third category of property, some of the already existing rules will be applied by analogy. Additionally, the Act fails to provide further guidance on what this means for property law in general. If crypto-assets belong to a further category of property, important questions remain, such as the transfer of ownership, creation of security rights over assets, and the author’s opinion is that these aspects will not be easily answered, as the question of whether crypto-assets are property or not remains. When it comes to these more practical issues, the law remains uncertain.

2.1.3 Tokenisation of real-world assets

The discussion in the common law of England and Wales and its treatment of crypto-assets originated from and remained on native tokens. To date, existing case-law has discussed the proprietary notion of crypto-assets but appears to focus mostly on those types of crypto-assets that are endogenous.

At its core, a DLT asset is a unit of value whose record is kept and managed on a distributed ledger within a DLT system. These assets can be either *endogenous tokens*, which are native and only exist within the network (e.g., Bitcoin), or *exogenous data*, which represent an external, tangible or intangible object that exists outside of the network (e.g., tracking a vehicle or recording stock prices). When a crypto-asset represents an external asset, in other words, is linked to another asset, this is generally referred to as tokenisation. The external asset can, in theory, be any pre-existing asset, such as tangible items or intangible items such as security, debt or even another crypto-asset.

To date, the focus of case-law from England and Wales and the Law Commission appears to have been on the treatment of endogenous tokens. In contrast, the tokenisation of real-world assets is not at the forefront of legal discourse in England and Wales, except in the context of the tokenisation of securities.

The most important question is whether the law allows the creation of a legal link between a crypto token and the underlying asset so that any action taken with the crypto token, such as transferring it, can also transfer legal title of the underlying asset.

The analysis under the common law of England and Wales will ultimately depend on the kind of real-world asset that the crypto-asset represents. While an asset may be tokenised, its legal nature remains the same. This means that for parties to validly transfer ownership, they must still satisfy the local legal requirements of the asset's location, which may mandate written contracts or other formal procedures (Garcia-Teruel and Simón-Moreno, 2021).

However, a crucial distinction must be made between technical and legal representation (Odinet and Tosato, 2025). The factual and technical ability to have a token represent another asset does not automatically extend to the legal realm. Even though a crypto-asset has the capability of being property in itself, its role in asset tokenisation is limited to representing

the underlying asset. It is not, and cannot be treated as, the asset itself (Verstappen, 2025).

Historically, this has been done with certain types of assets with documents of title and conventional securities; however, this was only possible because the law has explicitly recognised that the representation of the underlying asset can be legal and not merely technical. A typical example is intermediated securities.

When assets are transferred on a conventional securities trading register, the change in the state of the register causes a change in the parties' title to the assets precisely—and only—because legislation provides for this result. Without legislation to link the state of the register to the parties' titles to the securities, the register would be legally inert. (Fox, 2021)

At the moment, the law of England and Wales does not recognise crypto tokens as a form of document of title. In theory, it may be possible to conceptualise crypto tokens being recognised as something akin to documents of title that give rise to proprietary rights over the underlying asset, but not without mercantile usage or legislative intervention (Martins Pereira, 2023).

If the underlying asset is incorporeal, it might be possible to accommodate the transfer conceptually, as these are transferred by assignment or novation under English common law. David Fox recognised this explanation as one of the potential solutions in which the transfer of the token represents the intention of the parties to transfer the underlying chose in action, and the token itself is simply evidential (Fox, 2021). Other possible solutions include introducing bespoke legislation or the emergence of a digital negotiable instrument via mercantile custom (Fox, 2021).

On the other hand, this could be problematic if the token represents an external tangible item and particularly problematic for asset types that have an external title ledger system, such as land.

Even where electronic transaction laws might accommodate digital deeds, the title assurance system creates a dual ledger problem requiring maintenance of both blockchain records and traditional county land records, failing to eliminate complexities while leaving token holders vulnerable to competing claims. (Odinet and Tosato, 2025)

So, representing property rights and effectuating the transfer of ownership will ultimately depend on the type of real-world asset that is tokenised. As such, if tokenisation is not recognised by the legal infrastructure, it will not have legal effect.

To date, the discourse in the UK focuses on the use of tokenisation in financial services, particularly on the tokenisation of securities. Tokenised securities and security tokens should be differentiated: Tokenised securities are those that are issued traditionally and subsequently converted into and represented by a crypto-asset, whereas security tokens are issued directly in the form of a crypto-asset and are not linked to an underlying traditional security (Katz and Williams, 2025). Security tokens and their treatment are addressed under the regulatory scope. The tokenisation discussion in this section focuses on tokenised securities.

In November 2025, the Financial Conduct Authority (FCA) published a consultation setting out plans to accelerate the tokenisation of funds. Under these plans, the FCA aims to enable authorised UK investment funds to use DLT to run their unit-holder registers by allowing these fund-units to be issued, redeemed, recorded and transferred via blockchain (on-chain or hybrid) under a “Blueprint” model (FCA, 2025b). The FCA’s policy development process involves this consultation, followed by a policy statement that reflects the feedback received. The initiative is a significant step in the UK’s broader goal to become a global hub for innovation and fully embrace the novelty of the distributed ledger technology’s utility for increasing efficiencies and reducing costs. (FCA, 2025c)

2.2 Remedies: fiduciary responsibility

Discussion of the proprietary aspects of crypto-assets under the common law of England and Wales naturally leads to a further and increasingly prominent issue: the governance of the technological infrastructure on which such assets rest. Once crypto-assets are recognised as property, questions arise as to who bears responsibility for safeguarding those interests in decentralised systems.

It is in this context that a judgment of the Court of Appeal becomes relevant, as it raises the novel argument that developers of blockchain networks may, in certain circumstances, owe fiduciary duties to holders of the assets recorded on those networks.

Walch first posed this question in 2018, arguing that there is a similarity between how public-blockchain developers and traditional fiduciaries function (Walch, 2018). In 2023, in ‘Tulip Trading v. Van der Laan’, citing Walch’s opinion, the Court of Appeal questioned whether developers that maintain the network may owe fiduciary duties to the holders of the relevant crypto-asset.

This decision signals that the law may extend responsibility to actors who hold genuine control over valuable assets, even within decentralised or open-source networks. The court did not establish that this was the case; however, by posing such a critical question, it opened the door to potentially groundbreaking legal considerations.

It also provides insight into how the law approaches decentralised platforms and how it might distinguish them in the future. In ‘Tulip Trading’, Birrs J noted “the decentralised governance of bitcoin really is a myth.” The Law Commission (2023, para. 2.66) accordingly notes that in a decentralised network, different “levels and types of control will be distributed across different participants.” The case of ‘Tulip Trading’ was discontinued by the claimant, so the issue of the fiduciary duties of developers was not analysed further or concluded. This means there is considerable uncertainty in the area. What was previously ambiguous is now troubling. Even the mere suggestion of potentially holding developers of open-source networks liable for the transactions on the network will have a devastating effect on the ecosystem in general. As such, this author believes that rather than clarifying the legal landscape, ‘Tulip Trading’ deepened and darkened the legal uncertainty.

3. Utilising the DLT

Some of the principal ways of utilising distributed ledger technology in commercial and legal settings include automated contracting, the use of digital trade documents and digital dispute resolution. Although these mechanisms are not the only applications, they have been chosen as they represent what some of the legal discourse in England and Wales has been focusing on or has already had some legislative developments in this context.

3.1 Automated contracting

Automated contracting, including smart contracts on blockchain, involves the formation and performance of contractual obligations through a code deployed on a distributed ledger. Geoffrey Vos (2019) has noted that “English law is in a good position to provide the necessary legal infrastructure to facilitate smart legal contracts if, but only if, we try to keep any necessary reforms simple”.

The Law Commission's analysis supports this position. It found that the existing legal framework is capable of governing smart legal contracts because the principles that apply to traditional agreements can be applied to coded agreements with only incremental development of the common law where particular issues arise. The Commission also considered the current legal structure sufficiently robust to support the use of smart legal contracts without requiring major statutory reform. (Law Commission, 2021)

The Commission did, however, identify the potential need for regulatory attention in relation to “oracles” that trusted external data sources used to trigger or inform the operation of automated contractual terms. To date, the author is not aware of any concrete regulatory measures introduced specifically to address the use of oracles in automated contracting.

Whilst on the subject of automated contracting, it would be remiss to ignore one of the most advanced applications of automated contracting: decentralised autonomous organisations (DAOs). There is no single definition of a DAO. However, in layman's terms, it refers to an organisation that is built in software and run on a distributed ledger. Werbach (2018, p. 110) describes a DAO as an algorithmic organisational form wherein “the standard corporate arrangements of equity, debt and corporate governance can be encoded as a series of smart contracts based on cryptocurrencies.”

It is widely recognised that many DAOs currently hold and deal with both real-world and on-chain assets. Unlike in the United States, where DAOs have been subject to litigation (*‘Commodity Futures Trading Commission v. Ooki DAO’*, 2022), the courts of England and Wales have not yet addressed the legal nature of DAOs. Similarly, a DAO-specific entity, akin to Wyoming's DAO LLC law, has not been recognised and is unlikely to be recognised in the near future. This was confirmed by the Law Commission in their scoping paper that was published in 2024 in an effort to identify how the law would apply to DAOs as it is. (Law Commission, 2024) They concluded that at this stage, there is no need to develop a specific legal entity type to encompass DAOs and this is partially due to the difficulty of reaching a consensus on what a typical DAO might look like and what it might need due to its relatively nascent stage of development.

Similar to the initial response to the treatment of crypto-assets within private law, it can be argued that the already existing traditional notions are capable of accommodating DAOs at this stage. English law distinguishes between incorporated and unincorporated entities. Incorporated entities

rely on registration, and as such, without registration, no such entity exists. Certain DAOs may choose to combine the automated contracting arrangement with a legal entity, known as a legal wrapper (Brummer and Seira, 2022). Currently, the impact of these arrangements on the law of England and Wales is limited. The Law Commission observes that few, if any, DAOs exist that have chosen a legal entity registered under the law of England and Wales. However, this does not preclude the use of a company incorporated under the laws of England and Wales, if desired (Law Commission, 2024, sec. 4).

For DAOs that do not use any form of a legal wrapper—that is, pure DAOs—it is perfectly possible to conceptualise them under an unincorporated entity. For instance, a DAO can be characterised as a general partnership between the developers of a DAO and governance token holders who are able to contribute to the decision-making of the DAO (Schillig, 2022). It is also possible that a DAO can be characterised as an unincorporated association, or a collection of contracts or a trust. These characterisations can arise under the law of England and Wales without incorporation or registration (Law Commission, 2024, sec. 4). It is, of course, of critical importance that it will be highly fact-specific to identify which of these characterisations will apply to a given DAO structure and that it undoubtedly creates an uncertainty in the law.

In order to provide ex-ante certainty for participants, the Law Commission aims to review several aspects of the law, including trust law, company law and anti-money laundering regulations, to identify possible reform areas in the near future. This will be a critical step in eliminating the hurdles and enhancing certainty for DAOs to utilise the legal structures under the law of England and Wales and make the jurisdiction more attractive for legal innovation.

3.2 Legal documentation

In 2021, the Law Commission started looking into electronic trade documents to bring the practice of trade documents into this century. This was particularly critical, as under the law of England and Wales, the use of trade documents still relied on the possession of paper documents. As the law does not allow electronic documents to be possessed, paper form was still being used despite it becoming increasingly unfeasible. As such, the Law Commission recommended that as long as an electronic document can be susceptible to exclusive control, that control is fully divested on transfer

and a reliable system is used, the electronic document should have the same legal effect as the paper trade document (Law Commission, 2022). As a result of the Law Commission's report, the *Electronic Trade Documents Act* (ETDA) was enacted in 2023.

The ETDA provides a non-exhaustive list of instruments that can qualify as electronic trade documents. These include bills of lading, promissory notes, bills of exchange, marine insurance policies, warehouse receipts, mates' receipts, cargo insurance certificates and ship's delivery orders. Each of these documents allows the bearer to make a claim under the document when they are in possession of the said document. Traditionally, English law recognised only physical paper documents to have the intended legal effect and functionality. Under the ETDA, electronic counterparts are now recognised to have the same legal effect. The introduction of the ETDA is a particular example of how the common law of England and Wales has responded swiftly and effectively to accommodate the novelties of distributed ledger technology. This is a welcome development, as it recognises the technical capability of distributed ledger technology to allow factual exclusive control of such documents.

3.3 Digital dispute resolution

In 2021, the UKJT published its *Digital dispute resolution rules* (DDRR), providing a set of standard terms governed by English law for the expert or arbitral resolution of digital disputes (UKJT, 2021). A key innovation was that the rules allow the expert or arbitrator access to the relevant private key and enable disputes to be resolved at a speed aligned with the rapid nature of digital transactions. Under the rules, arbitrators can implement decisions directly on-chain. The rules have been described as revolutionary and ground-breaking (Addleshaw Goddard, 2021). They are certainly innovative and constitute a significant step in demonstrating how the jurisdiction can facilitate the adoption of the technology to improve efficiencies in the area of dispute resolution. The rules do not apply automatically and need to be explicitly implemented by the parties, and the UKJT is monitoring their use. However, no information has been made public to date regarding the adoption of the rule. Similar to the ETDA example explored in the previous section, the introduction of DDRR is another indication of the welcoming approach of the jurisdiction in recognising the opportunities of distributed ledger technology.

4. Regulatory framework

Despite decades of the use of crypto-assets, the UK's regulatory landscape has remained “permissive” and attracted criticism from commentators for exposing investors to risks (Krause, 2025). On the other hand, the lack of initial strict regulation was attributed to the government's language that prioritised allowing innovation for a long time. More recently, however, there has been a clear change in the attitude of the regulatory bodies to prioritise regulation. This comes with an emphasis on the premise that correct regulation and innovation do not need to be mutually exclusive. As such, the language remains on being a global hub for innovation but now rather the previous permissive approach, and the attention is on regulation to bring more clarity to the market.

The UK's framework until today has mainly focused on financial marketing rules and oversight related to anti-money laundering (AML). In April 2025, the UK government announced the draft *Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025*. The latest effort is attributed to the UK meeting the international standards. It appears that the UK is aligning more with the US approach in terms of regulating crypto-assets as securities and bringing them within the scope of the already existing financial rules, rather than adopting the EU's approach of a more tailored regulation.

The draft order amends several pieces of legislation that include the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* (RAO), the *Financial Services and Markets Act 2000* (FSMA) and the *Financial Services and Markets Act 2000 (Financial Promotion) Order 2005* (FPO). Although this ultimately remains a *draft* order, the accompanying Policy Note adds that it is near-final and will be published subject to technical checks (HM Treasury, 2025).

Under the draft legislation, the issuance of UK stablecoins and dealing, custody arrangements, operating a platform and arranging transactions in “qualifying cryptoassets” are brought within the scope of regulated activities under the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* and, thereby, within the UK's mainstream financial-services regulatory perimeter.

Recent developments in the UK crypto-asset regulation legislation mark a clear shift in the attitude towards crypto regulation and a move towards

sharper and stronger regulation efforts. Previously, the *Financial Services and Markets Act 2023* was one of the key developments in the field that brought crypto-assets within the scope of regulated financial activities. The FSMA 2023 was necessary as it brought crypto-assets within the perimeter and enabled the creation of a digital securities sandbox to test the new technology. However, it did not create a detailed regulatory regime. The 2025 Draft Order (once adopted) will build on this foundation.

Under the 2025 amendments, firms will need to be authorised, subject to rules (AML, disclosures, operations, custody, etc.) and regulated more like traditional financial services firms. This reduces legal uncertainty for firms and users and is welcomed by some commentators for attempting to bring a great deal of certainty, stronger consumer protections, greater transparency and clearer regulatory oversight (Milliken and Wilkes, 2025).

A potential drawback of the new regulatory framework could be that US and other foreign crypto firms and investors may face new compliance challenges and potentially increased costs (Krause, 2025). On the other hand, it is noted as an attempt for the UK to align itself better with the international developments (Milliken and Wilkes, 2025).

The FCA notes that they aim for a regulatory system that is “well-balanced, enables innovation and is underpinned by integrity and trust” (Geale, 2025). It appears that striking a balance between oversight and flexibility is part of the government’s language at this juncture. There is a clear emphasis on the fact that innovation and regulation do not need to be mutually exclusive.

Another visible attitude of the UK government in this field is the constant emphasis on collaboration with the industry. The FCA notes that they are actively seeking feedback, consultations and making use of the regulatory sandboxes to monitor and improve the activities in the field. The results of the sandbox are used to influence and feed insights into the wider work of the FCA (2025b).

5. Conclusion

Overall, the approach of the common law of England and Wales to crypto-assets and the industry in general is anything but static. On the private law side, there is a blend of common-law evolution and targeted but limited statutory reform. The emphasis is clearly on the inherent flexibility

of common law to adopt and accommodate the novel notions of crypto-assets without relying extensively on statutory reform. On the regulatory side, although there has been a clear change in attitude towards stricter regulation, the government's language continues to stress the importance of fostering innovation.

Simge Aslan is a lecturer in business law at the University of Leeds. She previously studied and worked at the University of Nottingham as an LLM student, PhD researcher and teaching associate, where she taught contract law and corporate insolvency law. Her research examines the private-law implications of digital assets, particularly in insolvency and personal property law. Her paper on digital assets and automated transactions in insolvency was awarded the Silver Medal in the 2025 Prize in International Insolvency Studies by the International Insolvency Institute. More broadly, her work explores the interaction between decentralised ledger technology, automated transactions and private law.

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