

Signed, sealed & delivered

Is the U.K.'s lack of specific franchise laws advantageous for franchisees, or a minefield of unforeseen issues? Stephen Pearne provides a legal perspective

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If you are contemplating becoming a franchisee for the first time, you might be surprised to learn that there's no specific franchise laws regulating U.K. franchise operations. However, with the right legal advice, the absence of dedicated franchise law isn't a problem, as long as the franchise agreement is comprehensive and protects your interests.

It's partly because franchise structures have their basis in contract and intellectual property law that franchise agreements tend to run into many pages. They have to cover a wide range of legal matters, from the contractual relationship with the franchisor, to intellectual property law, competition law, and data protection law (GDPR). There are often property law issues running alongside these too, as a franchise business will usually need premises from which to operate.

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Know your responsibilities

When you're setting out on your first franchise, many aspects

of the franchise process and agreement can be a bit daunting, not least understanding your responsibilities as a potential franchisee. It's a good idea to get a realistic perspective on the potential performance of the business that you're interested in. Linked to this, you should ensure that the franchise agreement provides adequate support from the franchisor for advertising and training.

On the flipside, the franchisor will want to make sure that fees are paid on time, and that you comply with their operations manual, along with the licences of their intellectual property rights.

One key concern of a franchisor is ensuring that customers receive the same, high-quality service at every outlet of their branded business, regardless of who operates that outlet. As far as branding is concerned, both you and the franchisor will want each customer to have a positive customer experience in all franchised outlets, as this benefits everyone. This is one of the main reasons why a franchisor will require you (and their other franchisees) to deliver the same look and feel at each of their outlets.

Get legal support

While the franchise agreement may well be long and difficult to digest, it's crucially important that you do understand what you're committing to before you sign up, not least because franchise agreements often include personal guarantees, making you personally liable alongside your company.

This is where your franchise solicitor is key – they can explain the agreement to you in plain English and help you to understand your obligations and liabilities if the agreement includes a personal guarantee. They can also point out any issues which are less than ideal.

Unless it's a new franchise operation, there may be limited scope to tailor the agreement towards your requirements, although this will be restricted because franchisors want consistency between their agreements with their franchisees. Whether or not a franchisor is prepared to make any changes to their standard franchise agreement depends very much on the individual or business involved.

Either way, it's best to fully check out the agreement with a solicitor, who can suggest any proposed changes to make the agreement work better for you. They can help you to minimise your risks, or at least make you aware of them before you proceed.

Even if you can't get changes made to the agreement, you should at least understand what you're committing to before signing.

Unforeseen circumstances

If things do go wrong in the franchise relationship, you may be glad of the long-

winded franchise agreement, because, in the absence of a single piece of franchise legislation, it should set out each of the parties' responsibilities and liabilities. Most franchise agreements include a dispute resolution clause, setting out how tensions or unforeseen issues should be dealt with and helping to maintain the business relationship. The combination of a comprehensive agreement and a dispute resolution clause can help resolve headaches before they become full-blown disputes.

Experienced, seasoned franchisees will all concur that any business, including a franchise, doesn't stand still for long, what with changing markets, supply chain pressures, and tech developments. To make sure the franchise agreement remains fit for purpose, it's important that it gets reviewed. The balance of risk and reward needs to be something you're comfortable with – a winning combination for any franchisee and their franchise solicitor to achieve.

A WORD FROM THE BFA

A franchise agreement should always be reviewed by a lawyer who is an affiliate of the British Franchise Association (bfa).

Affiliates are all accredited by the bfa as having significant experience in franchising. Instead of seeking to make wholesale revisions to the agreement, a bfa affiliate will usually focus on preparing a report on it for the franchisee which explains all the key terms and perhaps suggests some areas where the franchisee needs to seek more information or clarification from the franchisor. The franchisee can send this report to the franchisor, discuss it with them and allow the franchisor to respond to any queries made.

