

# Franchising: Scottish Law – The Differences



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## Franchising – the differences in Scottish Law

- Scots property law differs significantly from that in England & Wales. The National Conditions of Sale do not apply here, and common mechanisms like Deeds of Option in favour of franchisors do not work well here, although there are equivalents we can suggest.
- Scots law draws more heavily on civil law than equity, and so contract law here can differ in key aspects. For example, it is possible to make a binding legal promise here, and consideration is not a prerequisite to a contract.
- Since 1999, the Scottish Parliament has been active in enacting new legislation unique to Scotland: so far over 110 new Acts of Parliament and countless new regulations! For example, Scotland introduced a ban on smoking in public places in early 2006. This was earlier than other parts of the UK, and the rules here are different in significant respects.
- Legal terminology is not the same, and legal terms of art do not always translate meaningfully.
- The Scottish Court system differs, so dispute resolution needs local advice.
- Debt recovery and execution (called diligence in Scotland) operates in a uniquely Scottish manner. With the correct wording, Franchisors in Scotland can register their agreements and move directly to diligence without the expense of requiring a court decree.
- The formal requirements for execution of documents and deeds are different to those of England & Wales.

### Why the differences? – A wee gallop through history

Strange as it may seem for such a small group of islands, in legal terms, Scotland is a separate country to the rest of the British Isles. Up until 1707, Scotland was a fully independent country with its own legal system and parliament. In 1707, the Act of Union was signed and Scotland became part of the British Isles but the separate Scots law was preserved. Over time, elements of the Scottish legal system moved into line, in certain areas, with the English & Welsh legal system. Today, 300 years later, Scots law is still different in several key areas including licensing, personal law and, in particular, property law.

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These substantial differences in law can cause confusion for franchises moving into Scotland who often make the incorrect assumption that what applies in England & Wales applies in Scotland. WJM works with English solicitors and their franchise clients to help overcome these differences by applying the 'tartan touch'.

**For more information on applying the 'tartan touch' contact:**

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