



# Partnership working through a school company

## Resource

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# Introduction

The way schools are led and managed is changing. The types of school leaders and governing bodies that exist today are far more diverse than they once were and they will continue to change. This publication examines a new emerging model of leadership called a **school company**. School companies themselves are not new, but the way they are now being used for partnership working is.

## What is a school company?

A school company is not a special type of company or business; it is simply a company set up by one or more local authority maintained schools exercising their statutory powers under Section 11-13 of the Education Act 2002.

This power is given to schools maintained by the local authority for specific activities, including:

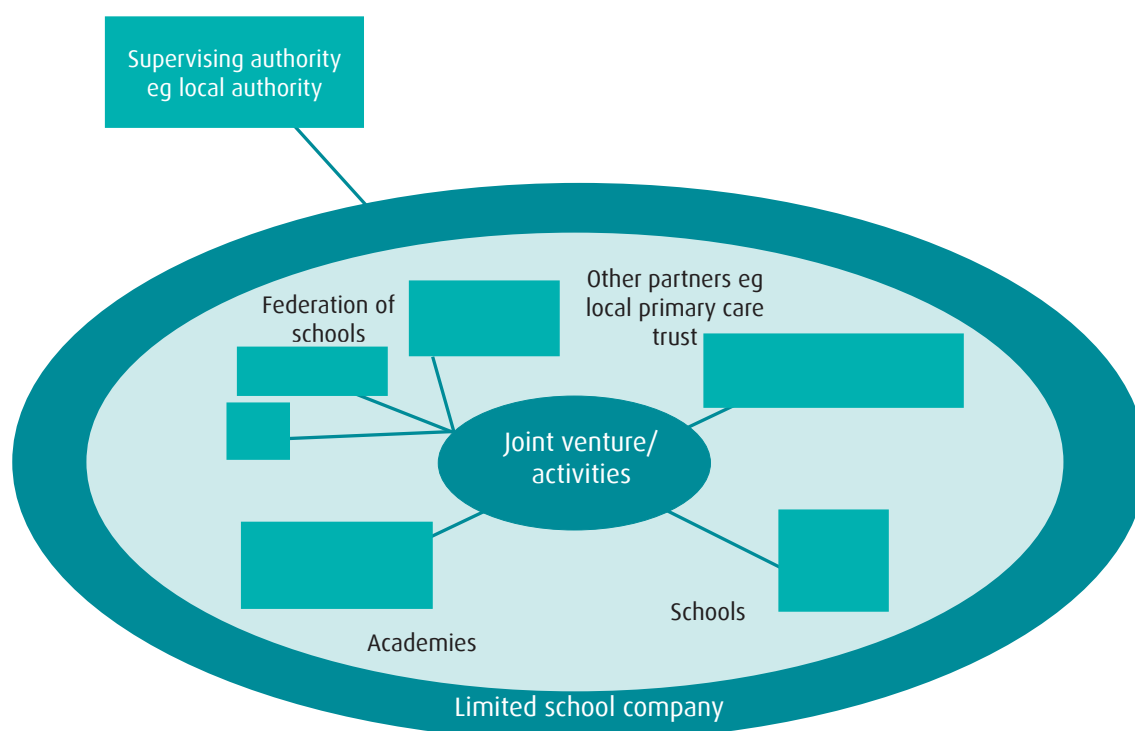
- to provide services or facilities for other schools or academies, eg providing ICT services or specialist curriculum support

- to provide functions that local authorities can contract out eg running a pupil referral unit (PRU)
- to purchase goods or services for schools that are members of the company

To exercise this power, schools need the consent of their local authority. This power is also subject to restrictions in Section 11-13 of the Education Act 2002, which must be taken into account when determining whether this model is appropriate. The full wording of which can be accessed at [www.legislation.gov.uk](http://www.legislation.gov.uk).

Academies can also participate in school companies if it furthers their objectives and they have been given the power to by their governing body. It is likely, in most circumstances where schools and academies wish to collaborate, that this will be satisfied.

## Model - a school company



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## Why use a company?

There are a number of reasons why schools wishing to collaborate may want to use a school company, including:

- the fact that current collaboration regulations do not allow maintained school to independent school collaboration. This creates real difficulties for maintained school and academy collaborations
- helps with risk management by ring-fencing risk through the limited liability of members/shareholders. This means that the financial liability of those involved in the school company is limited to a fixed amount, thus allaying any financial fears of governors or those involved
- promotes the support available from schools working with schools - a key building block identified by David Hargreaves in his think piece on building a self improving school system
- flexibility of governance arrangements of a company model
- being able to target specified activities unlike the trust model. It is also generally quicker and easier to establish than a trust
- providing a catalyst for wider partnership

## What does it look like?

The School Companies Regulations 2002 (found in section 11-13 of the Education Act 2002), set out a number of requirements for the constitution and operation of school companies. The regulations include rules on:

- who can be the members of the company
- the composition of the board of directors
- funding and borrowing
- circumstances where a school must withdraw
- designation of a local authority as a supervising authority (supervising authorities have certain duties to notify the secretary of state about the school company) and to monitor the management and finances of the company
- powers of the supervising authority

The company would have also have articles of association, which set out the company's internal management of affairs. A school company can be established either as a company limited by

guarantee or shares. The company could be established as a charity if appropriate.

The participating schools' liability to the company as members or shareholders will either be the amount they have paid for their shares or the amount of the guarantee (usually £10). The benefits of limited liability will address governors' concerns regarding financial risk.

Governors, or those involved, may also be concerned about any potential risks to the schools' reputations. It is possible for the schools to enter into a legally binding contract, called a collaboration agreement, which sets out the basis of the partnership but can also, importantly, include a list of matters upon which a specified number of members need to give consent before the directors can exercise that power. For example consent could be required before the company could borrow any money.

An additional benefit of a collaboration agreement is that it clearly outlines what members are agreeing to. This allows those schools involved to set up the company with a small business-like board, responsible for ensuring the company's activities do not exceed those within the formal agreement. Adopting this approach can be very reassuring to governors who do not sit on the board.

## Five steps to form a company

One of the main advantages of the school company when compared to other models is its adaptability. School companies can comprise different categories of schools and academies in a secure arrangement and are comparatively quick and easy to establish. However, there can be some legal complexities when creating a school company so we've identified some simple steps to consider:

### Step one

- Be certain the company model is right for you.
- Before creating a school company explore other models such as trusts, collaborations and federations. There is wealth of research and resources collected by the College to help you do this at [www.nationalcollege.org.uk/modelsandpartnerships](http://www.nationalcollege.org.uk/modelsandpartnerships).
- Our associates can also work with you to explain how the regulations surrounding these models can be applied flexibly. The National College's models peer-to-peer service can even help to link you with another school to provide you with

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some ongoing support as you set up your new model.

- A common factor when choosing the right model for your context is the mix of schools involved and/or the need to involve non-educational partners. There are complexities involved in voluntary aided, voluntary controlled and foundation schools joining federations with other community schools or academies, most notably relating to governance issues. The advantage of the company model is that it is virtually all-embracing and even non-educational partners can be included.
- Once you have a general idea who will be in the company and what will be its focus of activity, it should be captured in a briefing document. The information in this document can then be used to gain an in-principle agreement from each governing body of the schools involved. This can also be shared with the local authority when seeking its consent.

## Step two

All school companies need to have a supervising authority, which in most instances is their local authority. It is recommended that you inform your local authority of your intentions to form a company. Local authorities embracing the new agenda outlined in the recent Schools White Paper, *The Importance of Teaching*, are supportive of schools working together in such ways, recognising the opportunities it presents to be able to trade with or commission the company to provide services.

## Step three

Once certain that the company model is right for you, you should engage a firm of solicitors to help advise on the type of company required and support the production of the necessary legal documents. The schools and their governors should then determine the activities or services they want the company to engage in or deliver. The focus of the company will become the objects within the company's articles of association. It is very important to be clear about the nature of the school company's work in this document, as this needs to be presented to individual school governing bodies and will be heavily scrutinised. Governors will not accept vagueness when committing to such a legally binding model, so be precise in what it is that you are asking them to sign-up to.

## Step four

Consider producing a collaboration agreement to capture the details on the composition of the board of directors and other operational issues. This document is extremely useful in specifying the nature of the relationship between members (mostly schools) and expected duties that fall to members of the company. If a company is being formed to be commissioned by a local authority through a service level agreement, for example, a members protocol can be agreed, which clearly identifies the duties that fall upon each member (school). This can be shaped to meet the requirements of the service level agreement, making sure that everyone is clear about their responsibilities. Many other useful elements can be captured in a collaboration agreement, such as how to resolve disputes between members, how insurances and financial issues will be addressed and how, through an annually reviewed delivery plan, the company can move into new areas of activity if agreed by members.

## Step five

Once all the documentation is finalised it is recommended that each governing body pass a resolution to empower a governor, typically the chair or vice-chair of governors, to sign up to the company. Experience shows that it is good to have a joint signing-up event to bring members and governors together to celebrate the start of this new partnership model. Once members have signed the necessary documentation it can be sent to Companies House for incorporation to take place. Thereafter, organising for the board of directors to meet regularly and develop their operational and communication processes will ensure the future success of the company.

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## Case study

Ambitious plans to increase capacity and even take the lead in local education delivery inspired this Nottingham partnership to embrace the model of a school company.

The Partnership of Nottingham City Secondary Schools involved schools and academies who had been collaborating and working together in the city of Nottingham for two years. They wanted to secure and formalise their current partnership working but needed a model able to embrace several different categories of schools that was quick to establish and also capable of adapting to future needs.

Choosing a company model allowed the three academies, three voluntary aided schools, one foundation and six community schools to come together as Nottingham City Schools and Academies (NCSA) Limited, becoming an incorporated company in late December 2010.

The whole process took approximately three months and was supported by solicitors Browne Jacobson. Already NCSA Limited has been commissioned by the local authority through a service level agreement to support an inclusion project focussed on Year 11 students. Realising the potential of this new model, they are currently exploring other projects focussed on school improvement, developing joint provision and many other opportunities that this new model affords.

## Contact us

For further information or to request some support go to:

[www.nationalcollege.org.uk/modelsandpartnerships](http://www.nationalcollege.org.uk/modelsandpartnerships)

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[www.brownejacobson.com](http://www.brownejacobson.com)

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