

— CHECKLIST · WORKPLACE NURSERY

Workplace nursery compliance checklist

One job: check whether your workplace nursery arrangement meets the section 318 ITEPA 2003 exemption, and whether you can prove it.

ACCURATE AS AT 4 MARCH 2025 2024/25 TAX YEAR VERSION 1.0

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HOW TO USE IT

Allow about 20 minutes with your nursery or scheme agreement to hand. Tick only what you can document, not what you have been told. Every A item that applies to your route must be ticked.

A The statutory conditions

- ☐ **A1 The child qualifies.** A child or stepchild maintained at least partly by the employee, living with them, or under their parental responsibility, and under the age limit (1 September after their 15th birthday, 16th if disabled). (Condition A; s.318B)
- ☐ **A2 Not domestic premises.** Not used wholly or mainly as a private dwelling. (Condition B)
- ☐ **A3 Registered.** The premises hold the registration required in their nation – Childcare Act 2006 Part 3 (England); Children and Families (Wales) Measure 2010 Part 2; Public Services Reform (Scotland) Act 2010 Part 5; Children (NI) Order 1995 Part XI – and you hold the current certificate. (Condition B)
- ☐ **A4 Who provides the premises.** You alone make them available (skip A5 to A8), or you rely on the partnership route (tick all of A5 to A8). (Condition C)
- ☐ **A5 Partnership – you are a party** to the arrangements, shown by a signed agreement naming you. (s.318(7)(a))
- ☐ **A6 Partnership – the premises** are made available by a party to those arrangements. (s.318(7)(b))
- ☐ **A7 Partnership – real financial responsibility.** You are wholly or partly responsible for financing the provision. HMRC says you “must accept material financial responsibility”, which “requires more than purchasing places at a commercial nursery and making contributions to fixed costs”, and share any losses. (s.318(7)(c); EIM22007; Agent Update 121)
- ☐ **A8 Partnership – real management responsibility.** You take part in appointing staff, monitoring performance, setting the terms of care and allocating places. Employers must “in a real sense, play a part in management”. If an employee-parent sits on the management board as your agent, you can show they are empowered to act for you and do so. (s.318(7)(c); EIM22007; Agent Update 121)
- ☐ **A9 Open to employees generally,** or generally to those at a particular location. (Condition D)

B Stop signs

If any of these describes your arrangement, take advice before relying on the exemption.

- ☐ **B1 You buy places.** You pay a third-party nursery a fee for individual places.
- ☐ **B2 The partnership is a label.** A contractual designation and a small extra contribution, with the scheme promoter on the management committee as your agent (EIM21970–21971).
- ☐ **B3 No risk and no say.** No exposure if the nursery under-occupies, overspends or closes, and no part in decisions on staffing, fees, capacity or places.
- ☐ **B4 Fixed fee per child.** You pay only a fixed sum per child (for example £100 a month) to a commercial nursery that already exists (Agent Update 121).



WHAT IS AT STAKE

Where s.318 is met, the place is free of income tax and NI and off the P11D. Through salary sacrifice, the sacrificed pay also saves employer Class 1 NI at 13.8% (2024/25).

If it fails, tax and NI are due for past years, not just future ones. Normally the place becomes a taxable benefit on the higher of the salary given up and its cost, with employer Class 1A NI at 13.8%. If the employee holds the nursery contract (so your payment settles their bill), or can give up the place and return to full salary at any time, the amounts count as pay: PAYE plus employee and employer Class 1 NI (EIM21971).

HMRC can ordinarily assess income tax for 4 years (6 if careless, 20 if deliberate) and recover NI for 6 years (20 in Scotland, and longer where there has been deliberate concealment or fraud), plus interest and possible penalties. It will not usually give clearance on a proposed nursery (EIM21960) and does not approve schemes (Agent Update 121, July 2024).

C Evidence you can produce

- If HMRC opened an enquiry, could you put these on the table within a week?
- ☐ **C1** Signed partnership or joint-provision agreement naming you, with the financing and management obligations written in.
 - ☐ **C2** Documents showing your financial commitment (share of costs or fixed sum, and term) and the terms under which you bear risk.
 - ☐ **C3** Dated minutes and correspondence showing your representative in decisions on staffing, fees, capacity and places, covering at least 12 months.
 - ☐ **C4** Provider correspondence, including marketing material and any tax assurances given.
 - ☐ **C5** A written statement of the basis for the exemption, mapped to Conditions A to D.
 - ☐ **C6** Payroll evidence: contract variations, minimum wage checks, employee communications and the reporting treatment applied.
 - ☐ **C7** Named sign-off: who approved the treatment, when, and on whose advice.

D Questions to put to your provider in writing

Ask by email and keep the reply.

QUESTION	ANSWER RECEIVED / DATE
D1 Which route do you say we qualify under: premises made available by us alone, or the s.318(7) partnership requirements?	
D2 What is our financial commitment, over what period, and what exposure do we carry if the nursery under-occupies, overspends or closes? Name the clause.	
D3 Which decisions do we take part in, who represents us on the management committee, and with what vote? Please send the last 12 months of minutes.	
D4 Is any part of our contribution a fee for a set number of places? If so, how much of the total is not?	
D5 Is each place contracted between the nursery and us (or the partnership), or between the nursery and the employee? Can an employee give up the place and return to full salary?	
D6 Have you described this scheme as “HMRC approved” or similar? On what basis?	
D7 If HMRC challenged the arrangement, who bears the tax, NI, interest and penalties under our contract with you?	

E Your result

Scoring rule. Any applicable A item unticked, or any B item ticked, means review before your next reporting deadline (P11D by 6 July, Class 1A paid by 22 July after the tax year). Gaps in C do not break the exemption, but decide whether you can defend it. The government has confirmed that most benefits are to be reported through payroll from April 2026 (HMRC technical note, 30 October 2024).

RESULT	WHEN IT APPLIES, AND WHAT TO DO
1 · Supported	<i>All applicable A ticked · no B ticked · C substantially complete</i> Diary an annual review, and re-test on any change of provider, contract or premises. Keep the evidence for the life of the scheme plus six years after the last tax year it covers.
2 · Unevidenced	<i>All applicable A ticked · no B ticked · gaps in C</i> Probably right, but not yet provable. Send the D questions with a deadline before your next reporting date. Escalate to your adviser if the provider will not supply minutes, the agreement or the financing basis.
3 · Needs review	<i>Any applicable A unticked · or any B ticked</i> Quantify the exposure: participating headcount × the higher of salary sacrificed and the cost of the place × the relevant tax and NI (Class 1 on both sides if the sacrifice fails), grossed up if you bear the employees' tax. Take advice on disclosure, check who bears the cost under your contract, and consider pausing new enrolments until this is resolved.

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ILLUSTRATION

50 participants × £5,000 a year = £250,000. Worst case (20% tax, 8% employee NI, 13.8% employer NI): **£104,500 a year**. Benefit-in-kind case: employer Class 1A of **£34,500 a year**, plus £50,000 of employees' income tax at 20%. Before interest, penalties and any grossing up.

RATES USED

Employer Class 1 NI	13.8% in 2024/25; 15% from 6 April 2025 (announced at Autumn Budget 2024)
Class 1A NI	13.8% in 2024/25 (employer only); 15% from 6 April 2025
Employee Class 1 NI	8% (2% above £50,270)
Basic-rate income tax	20% (rest of UK; Scottish rates differ)
Mandatory payroll	Most benefits from April 2026 (announced January 2024; confirmed October 2024)

NEXT STEP

See a nursery scheme *in practice*

Book a walkthrough to see how the Perky app connects employees with a workplace nursery scheme through our nursery partner. Bring this checklist and your questions.

perkybenefits.co.uk/book-a-demo

Sources: ITEPA 2003 ss.318, 318B; HMRC manual EIM21960, EIM21970–21971, EIM22001–22007; HMRC Agent Update 121 (17 July 2024); HMRC NIM17605; TMA 1970 ss.34, 36; Limitation Act 1980 s.9. A self-assessment, not an HMRC clearance. Superseded edition, kept for reference. Do not use for current decisions.

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