

A Brief Guide to Nullity

The majority of marriages that are brought to an end in England and Wales are as the result of divorce proceedings. However, it may be possible to present a nullity Petition. Such a Petition can be presented within the first year of marriage, unlike a divorce Petition which cannot.

There are two sets of grounds upon which Petitions for nullity may be presented. Section 11 of the Matrimonial Causes Act 1973 sets out the grounds on which a marriage is “void”. Section 12 of the same Act sets out the grounds on which a marriage is “voidable”

The difference between the two is that a void marriage is not a valid marriage. However, a voidable marriage is a valid one until such time as the second and final Decree of nullity (the Decree Absolute of nullity) is pronounced.

The person who issues a nullity Petition is the Petitioner. His/her spouse is the Respondent.

In the case of a marriage celebrated after 31 July 1971, the grounds for a void marriage include:-

1. that the parties are within the “prohibited degrees of relationship”;
2. that either party was under the age of 16 years;
3. that the parties were not male and female respectively;
4. that the marriage was a bigamous one.

In the case of a marriage celebrated after 31 July 1971, the grounds for a voidable marriage include:-

1. incapacity of either party to consummate the marriage;
2. wilful refusal of the Respondent to consummate the marriage;
3. lack of consent on the part of either party, whether based on duress, mistake, unsoundness of mind or otherwise;
4. the Respondent being pregnant (at the time of marriage) by some person other than the Petitioner.

There are “special rules” for some of the grounds for presenting a nullity petition, these being contained in section 13 of the 1973 Act.

The position is as follows:-

1. Where the Petition is based on certain grounds (including lack of consent and the respondent being pregnant (at the time of marriage) by some person other than the Petitioner), the Court must be satisfied that proceedings were instituted within three years of the date of marriage, or leave (permission) granted for the institution of proceedings after the expiration of that time;
2. Such leave may be granted where the Court is satisfied the Petitioner has suffered from mental disorder at some time during that period and it is considered in all the circumstances that it would be just to grant such leave;
3. An application for leave may be made more than three years after the date of marriage;

4. Where the Petition is based on certain grounds (including the Respondent's pregnancy by a man other than the Petitioner), it must be proved that the Petitioner was ignorant of the facts alleged at the time of marriage;
5. The Court will not grant a Decree Nisi (the first of the two Decrees), if the Respondent satisfies the Court that:-
 - The Petitioner, although aware that the parties' marriage was voidable, conducted him/herself in such a way with regard to the Respondent as to lead him/her reasonably to believe that no Petition would be issued; and
 - The grant of such a Decree would be unjust.

Since the coming into force of The Family Procedure Rules 2010 (on 6 April 2011), the procedure for nullity proceedings has been brought into line with that for divorce and judicial separation Petitions. All three can now be dealt with under what is termed the "Special Procedure" whereby undefended Petitions can be pursued without attendance at Court. This development will ensure that nullity Petitions can be dealt with more quickly and at considerably less cost than was formerly the case.

For further information regarding matters arising from this article, please telephone Sofia Dionissiou-Moussaoui on 0207 872 0023 or email her: sofia.moussaoui@dwfmbeckman.com

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