

NULLITY

Leaflet No. 5



LEGAL AID BOARD

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This leaflet is not an interpretation of the law.

In this leaflet the term '**parties**' means the husband and wife in the marriage, or the civil partners. The term '**party**' means either the husband or wife, or either civil partner.

What does nullity mean?

Nullity means that a marriage or civil partnership is treated as though it never took place because some defect or impediment existed at the time of the marriage or registration of civil partnership.

How can I get nullity of my marriage or civil partnership ?

You can apply to court to get an order of nullity of marriage or civil partnership.

What is the effect of an order of nullity of marriage or civil partnership?

The effect of this order is that the marriage or civil partnership never existed in the eyes of the State.

On what grounds might a court grant an order for nullity?

A court may grant an order for nullity on the following grounds:

- **Lack of capacity:** the parties were not capable of marrying or entering into a civil partnership with each other because for example:
 - one party was already married to, or in a civil partnership with, someone else at the time of the marriage;
 - one party was under the age of eighteen years and did not have court permission; or
 - in the case of civil partnerships, if the parties were not of the same sex.
- **Absence of consent:** one of the parties did not give a full, free and informed agreement to the marriage/civil partnership for example:
 - a party gave their agreement to the marriage/civil partnership under force, for example, serious threats;
 - a party gave their agreement to the marriage/civil partnership under too much influence, for example, pressure from a parent;
 - a party did not intend at the time of the marriage, to carry out an important part of the contract, for example, one party intended not to have sexual relations with the other and this had not been agreed between them; (Not applicable to civil partnerships)
 - a person was insane at the time of the marriage/civil partnership and so was not capable of agreeing to the marriage/civil partnership;
- **Impotence:** one of the parties is unable to perform the complete sexual act with the other. It is necessary to find that the psychological or physical causes of impotence are incurable (not applicable to civil partnerships).
- Inability to **form and sustain a normal married relationship:** this might be found where, for example:
 - one party unknown to the other, was suffering from manic depression or schizophrenia at the time of the marriage;
 - one party suffered from great immaturity at the time of the marriage.
- If the requirements for the creation of a valid marriage/civil partnership were not observed.

How does an order for nullity affect me?

Where the court grants an order for nullity:

- the parties are free to marry or enter into a new civil partnership;
- neither party can claim maintenance, as a spouse or civil partner, from the other party;
- the decree does not affect the rights of the parties' dependent children; and
- neither party can claim a legal right share in the estate of the other party.

Can I marry again if I have a church annulment?

A church annulment has **no legal** standing. Where you remarry within a church, the **law** will **not** recognise that marriage **unless** an order for **divorce** or an order for **nullity** was **granted** in respect of your legal marriage.

What are the consequences of a marriage/civil partnership being invalid?

It is **illegal** to be married to, or in a civil partnership with, **more** than one person. A person who is married to more than one person may be prosecuted for bigamy. Where a second marriage/civil partnership is not valid, the parties:

- are not treated as being married/in a civil partnership for the purpose of social welfare payments;
- cannot make a claim against the estate of the other (although they could make provision for each other in a will); and
- cannot seek maintenance against each other.

If an **invalid** marriage/civil partnership breaks down, the parties do not have the protection that the law gives to spouses/civil partners. However, the parties may be able to avail of domestic violence legislation if they have been living together for six of the last nine or twelve months.

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Issued by the

LEGAL AID BOARD



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10.00 a.m. - 12.30 p.m. & 2.00 p.m. - 4.00 p.m.

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