

Supporting notes for guidance on completing a nullity petition

Important

You should complete this form if you wish to apply to the court to annul your marriage or civil partnership.

In this form any reference to a marriage certificate or civil partnership certificate means a certified copy of the entry in the Register of Marriages or Register of Civil Partnerships. If you do not have the original marriage/civil partnership certificate, you can apply for a certified copy from the General Register Office or from the relevant Register Office. Please see leaflet **D191 – About Annulment** for more details, a copy of which can be obtained from either a family county court or by going to www.justice.gov.uk.

In cases of urgent applications it may be possible for you to provide an undertaking to the court to deliver the original or a certified copy of the marriage/civil partnership certificate to the court at a later date.

If you are attaching any order of the High Court, county court or family court to your petition, it must be a sealed copy of the order (that is, a copy that has been stamped with the seal of the court). If you are attaching an order made by a Family Proceedings Court/magistrates' court, it must be a certified copy (a copy certified by a court officer to be a true copy of the original order), or a copy that has been stamped with the seal of the originating court. If you are in any doubt about what is needed, please contact the court where you are applying for assistance. Please note, while court staff will help with procedural matters, they cannot offer legal advice.

Take or send the completed form to the court together with the court fee and any documents you are attaching in support of your application. You will also need to give the court a copy of the petition and documents for the Respondent.

You should make your application to the nearest court that deals with divorce/civil partnership matters. You can find the full list of courts and what type of work they do online at courtribunalfinder.service.gov.uk

You may need to pay a fee with your application. You should read leaflet **EX50 Civil and family court fees** to find out what fee, if any, you need to pay. This leaflet is available from your local court or online at hmctsformfinder.justice.gov.uk

Complete the form as fully as you are able. If the form is not fully completed the court may be unable to issue your application and this may delay your case.

Assistance in completing the form

The notes below will help you to complete the form. However, if you are unsure about any of the questions or how to answer them you may wish to seek legal advice.

Page 1: Insert the full name by which you are currently known, and then confirm what you are applying for by ticking the appropriate box.

Part 1: About you (the Petitioner) and the Respondent

You are known as the Petitioner. Your spouse or civil partner is known as the Respondent. You should enter your current details and the Respondent's current details as fully as you know them, making sure you enter the names by which you are both currently known.

If you do not wish to disclose your or your child(ren)'s address, for example because you may feel threatened by the Respondent knowing where you live, or because there is a history of domestic violence, you can leave the details blank and complete Confidential contact details, form **C8**.

Occupation

Please give your occupation and that of the Respondent. If you are not in current employment, please state 'Unemployed/retired/carer' or some other description of your situation.

Part 2: Details of marriage/civil partnership

It is important that the details are entered **exactly** as they are shown on your marriage or civil partnership certificate.

You should attach a certified copy of the marriage/civil partnership certificate together with any other supporting documents regarding any change of name (such as a certified copy of a change of name deed). Photocopies cannot be accepted. If you married or entered into a civil partnership in a foreign country and your marriage/civil partnership certificate is in the language of that country, you must provide a translation of the certificate into English, or Welsh in a court in Wales, from an authorised person (a person authorised for translations). The translation should be certified by a notary public or be authenticated by a statement of truth.

When giving the place at which the marriage/civil partnership was formed you should write the exact words contained in the marriage/civil partnership certificate, including both the printed and written words, which come after the phrase 'Marriage solemnised at' or 'Civil Partnership formed at'.

For example:

- For a marriage in a Register Office: 'The Register Office, in the District of
in the County of
- For a marriage which took place in a church: '..... Church,
in the Parish of in the County of
- For a civil partnership: '..... in the Registration Authority of

Part 3: Jurisdiction

It is important to be sure that the court has jurisdiction (is able as a matter of law) to deal with your application. Jurisdiction depends on you and/or the Respondent having a specific connection to England and Wales, which may be a connection listed in one of the Regulations referred to below, or a connection which gives rise to the court's 'residual jurisdiction'. It is possible for you to have a connection under more than one option.

Jurisdiction under the Council Regulation or Civil Partnership Regulations or Marriage (Same Sex Couples) Regulations

The principal connections that give the court jurisdiction are set out in the following provisions:

- for matrimonial proceedings, Article 3(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003;
- for civil partnership proceedings, the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005; and
- for marriages of same sex couples the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) Regulations 2014.

If you consider that the court has jurisdiction to hear the case under one of these provisions you should

- tick the appropriate box to show which of these provisions applies; and
- then state the connection(s) ('the grounds') on which you rely to show that the court has jurisdiction.

The relevant connections are set out below. These connections depend on where you or the Respondent have your 'habitual residence' or your 'domicile'.

Habitual Residence – This is the country where you live voluntarily and for settled purposes (such as work, training, family life), apart from temporary or occasional absences. You must spend a substantial amount of time in a place to be habitually resident there.

Domicile – This is the country which you consider to be your permanent home.

Note: If your spouse/civil partner lives in or is a national of another country, they may have the option of issuing proceedings abroad, and this could prevent your case from continuing here.

The relevant connections

The court will have jurisdiction to hear your case under the Council Regulation or the Civil Partnership Regulations or the Marriage (Same Sex Couples) Regulations if any of the following connections applies on the date on which your petition is issued. You should state which of the connections matches your situation. You do not need to specify more than one, but if more than one connection applies, you may state more if you wish. **If your spouse/civil partner is not, or may not be, habitually resident in England and Wales, you should state all the connections that apply.**

The connections are that:

- The Petitioner and the Respondent are habitually resident in England and Wales.
- The Petitioner and Respondent were last habitually resident in England and Wales and the [Petitioner*] [or] [the Respondent*] still reside there (*specify as appropriate).
- The Respondent is habitually resident in England and Wales.
- The Petitioner is habitually resident in England and Wales and has resided there for at least a year immediately prior to the presentation of the petition.
- The Petitioner is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately prior to the petition.
- (in a matrimonial case only) The Petitioner and Respondent are both domiciled in England and Wales.

If you and the Respondent are both habitually resident in England and Wales, you should tick the box next to that statement.

If this does not apply to you, or if you wish to rely on any additional or alternative connection(s), please tick 'other' and write in the box any of the other connections on which you rely.

Residual jurisdiction

If none of the above applies, the court may still have jurisdiction on an alternative basis (known as the residual jurisdiction) outside the Council Regulation and the Civil Partnership Regulations and the Marriage (Same Sex Couples) Regulations. The connection which will give such residual jurisdiction will depend on whether the proceedings are matrimonial or civil partnership proceedings.

For matrimonial proceedings, the court has jurisdiction on a residual basis if:

- no court in any Contracting State (that is, no court in an EU Member State) has jurisdiction under the Council Regulation (because neither the Petitioner nor Respondent is habitually resident in any other Contracting State, nor is there any Contracting State of which they are both nationals, or in the case of the UK and Ireland, in which they are both domiciled); and
- either the Petitioner or the Respondent is domiciled in England and Wales on the date when the petition is issued.

If this option matches your situation you should tick the box next to the appropriate statement and state whether the Petitioner or the Respondent is domiciled in England and Wales.

For civil partnership proceedings, the court has jurisdiction on a residual basis if no court has, or is recognised as having, jurisdiction under the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 and either:

- the Petitioner or the Respondent is domiciled in England or Wales

or

- the Petitioner and the Respondent registered as civil partners of each other in England and Wales and it would be in the interests of justice for the court to assume jurisdiction in this case.

If either option matches your situation, you should:

- tick the box next to the appropriate statement; and
- then tick the box by the connection which matches.

For marriages of same sex couples, the court has jurisdiction on a residual basis if:

- no court in any Contracting State (that is, no court in an EU Member State) has jurisdiction under the Marriage (Same Sex Couples) Regulations (because either the Petitioner nor the Respondent is habitually resident in any other Contracting State, nor is there any Contracting State of which they are both nationals, or in the case of the UK and Ireland, in which they are both domiciled in England and Wales); and
- either the Petitioner or the Respondent is domiciled in England and Wales on the date when the petition is issued, or died before that date and either at death was domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death;

or

- the Petitioner or the Respondent married each other in England and Wales and it would be in the interests of justice for the court to assume jurisdiction in this case.

If none of the connections described above, whether under the relevant regulations or residual jurisdiction, matches your situation, the court will not have jurisdiction to deal with your application.

If you are completing this form and need help in deciding which connection applies, you should seek legal advice particularly in international cases.

Part 4: Other proceedings or arrangements

You should indicate, if there have been other proceedings in England and Wales, or elsewhere, concerning:

- your marriage/civil partnership
- any child of the family
- any property belonging to either you or to the Respondent.

This includes any proceedings relating to the marriage/civil partnership, or to any child of the family even if the proceedings have now finished or were abandoned without a final decision being made.

You should give details of the name of the court in which the proceedings took place, details of the order(s) which were made, details of any future hearings and, if proceedings were about your marriage/civil partnership, say whether you and the Respondent resumed living together as spouses/civil partners after the order was made.

If there have been proceedings in a court outside England and Wales which have affected the marriage/

civil partnership, or may affect it, please give the name of the country and the court in which they are taking/have taken place, the date the proceedings were begun and the names of the parties, details of the order(s) made and if no order has yet been made, the date of any future hearing(s).

Part 5: The fact(s)

Tick the appropriate box(es) to include the fact(s) you intend to prove your application based on whether you are applying to annul your marriage or civil partnership. The notes below provide some explanation of the various options. (Please note that the options for marriage and civil partnership are listed separately on the petition, but are combined where appropriate in these notes. You must only select the option(s) relevant to the type of relationship you are in, and can only select either void or voidable options.) However, if you are unsure which (if any) might apply in your situation, you should seek legal advice.

Prohibited degrees of relationship within a marriage or civil partnership

If you and your spouse/civil partner are closely related to each other your marriage/civil partnership may be void. A full list of the relations you can not legally marry/form a civil partnership with can be found in Part 1 of the First Schedule of the Marriage Act 1949 and in Schedule 1 of the Civil Partnership Act 2004. These Acts can be found on the Office of Public Sector Information website www.opsi.gov.uk or you may be able to locate them at your local reference library. More information on the prohibited degrees is also available on the DirectGov website www.direct.gov.uk and from your local divorce court. You may be able to apply for an annulment based on you and your spouse/civil partner being within the prohibited degrees of relationship.

Age at time of marriage/civil partnership

If either you or your spouse/civil partner was under the age of 16 at the time of the marriage or civil partnership it is likely that the marriage/civil partnership is void and you may be able to apply for an annulment for this reason.

Requirements for the formation of a marriage or civil partnership

Marriages and civil partnerships that take place in England and Wales have to fulfil certain criteria to be legally valid. For a full list of the criteria please see sections 25 and 49 of the Marriage Act 1949 or Section 49(b) of the Civil Partnership Act 2004. These Acts can be found on the Office of Public Sector Information website www.opsi.gov.uk or you may be able to locate them at your local reference library. If your marriage/civil partnership did not fulfil the relevant criteria you may be able to apply for an annulment for this reason.

Already married or in a civil partnership

If you or your spouse/civil partner were already in a legally recognised marriage or civil partnership at the time of your marriage/civil partnership, either of you can apply for an annulment of the later marriage or civil partnership.

Genders of the parties to a civil partnership

A civil partnership is void in England and Wales if the parties are of opposite genders. You may be able to apply for an annulment of the civil partnership for this reason.

International cases

If the parties are a same sex couple who have entered into a legally recognised registered relationship outside the United Kingdom, their relationship may be recognised as an overseas relationship which can be treated as a civil partnership within the UK under the Civil Partnership Act 2004. At the time of registration the parties must have been of the same sex under the law of the country where the relationship was registered (known as the relevant law), and the parties will be treated as having a civil partnership if they were of the same sex under United Kingdom law at the time the relationship was registered or when the 2004 Act applied if later.

The civil partnership is void if the relationship is not an overseas relationship or if, although an overseas relationship, the parties are not treated as having formed a civil partnership. The civil partnership is voidable if the overseas relationship is voidable under the relevant law or in certain circumstances under the law of England and Wales. You may be able to apply for an annulment for these reasons.

Polygamous marriages

If you are in a polygamous marriage, which was entered into outside of the United Kingdom, but at the time either you or your spouse was domiciled in England and Wales it is possible for either you or your spouse to apply for an annulment for this reason. A marriage is not polygamous if at the time of the marriage neither party is already married.

Non consummation of a marriage

If your marriage has not been consummated (i.e. you have not had sexual intercourse with your spouse since your marriage) due to the wilful refusal of your spouse to consummate it, or if either you or your spouse has been unable to consummate the marriage due to a physical or mental reason you may be eligible to apply for an annulment for these reasons. This ground will not apply to marriages of same sex couples.

No valid consent to the marriage/civil partnership due to duress, mistake, unsoundness of mind or otherwise

If at the time of marriage or civil partnership you were placed under duress (i.e. you were forced or threatened) which caused you sufficient fear of pressure to override your true intent you may be eligible to apply for an annulment.

If you believed you were marrying/entering a civil partnership with a different person to the one you actually did or if you were unaware that the ceremony would result in a legally recognised marriage or civil partnership you may be eligible to apply for an annulment for this reason. However, if you were only mistaken about your spouse/civil partner's personality or finances this is unlikely to be a sufficient reason for an annulment.

If at the time of the marriage/civil partnership either you or your spouse/civil partner was not capable of understanding the consent they were giving at the time you may be eligible to apply for an annulment for this reason.

Mental disorder

If at the time of the marriage/civil partnership either you or your spouse/civil partner was capable of giving consent but was suffering continuously or intermittently from a mental disorder which made them incapable of living together as a married couple/couple in a civil partnership and carrying out the duties/obligations associated with a marriage/civil partnership, you may be eligible to apply for an annulment for this reason.

Venereal disease

If your spouse was suffering from a venereal (sexually transmitted) disease in a communicable form at the time of marriage and you were unaware of this at the time you may be eligible to apply for an annulment for this reason.

Pregnancy by another person

If at the time of the marriage or civil partnership your spouse/civil partner was pregnant by a person other than yourself, and you were not aware of this at the time you may be eligible to apply for an annulment for this reason.

Interim Gender Recognition Certificate

If either party to the marriage/civil partnership has been granted an interim gender recognition certificate since the date of marriage/civil partnership you may be eligible to apply for an annulment for this reason. For more information, please contact the Gender Recognition Panel on 0845 355 5155 or www.grp.gov.uk.

Acquired gender

If your spouse/civil partner had become the acquired gender before the ceremony and you were not aware of this at the time you may be eligible to apply for an annulment for this reason.

Part 6: Statement of case

This space is provided for you to give details of the allegations, which you are using to prove the facts given in Part 5. In most cases one or two sentences will do.

In all cases, please give any other relevant details about the fact(s) on which you rely.

If you need more space, you may continue on a separate sheet. You must put your name, the Respondent's name and Part 6 Statement of case at the top of the continuation sheet.

Part 7: Details of the children

This part asks for details of children of the family for statistical purposes. (You do not have to give this information.) 'Children of the family' includes:

- (a) Children born to both you and the Respondent or adopted by both of you;
- (b) Other children treated by both of you as children of the family: for example your own or the Respondent's children, or children adopted by one of you;

Any children in these categories should be included on your petition.

For each child you should state:

- their date of birth, or you must if applicable state that they are over 18
- whether they fall under (a) or (b) above.

If you cannot agree arrangements for your children, you can make an application under the Children Act 1989. Please see leaflets CB1 Children and the family courts and CB7 Guidance for separated parents: Children and the family courts.

Part 8: Special assistance or facilities if you attend Court

If you or the Respondent need special assistance and/or special facilities due to a disability or impairment, please set out your requirements in full. The court staff will need to know, for example, if you want documents to be supplied in an alternative format, such as Braille or large print. They will also need to know about any specific requirements you may have on the day of the hearing, such as wheelchair access, a hearing loop, or a sign language interpreter. If you require a foreign language interpreter and are unable to provide your own, you may request that one is booked by the court.

The court staff will get in touch with you about your requirements. It is important that you make the court aware of all your needs. If you do not, any hearing may have to be delayed or adjourned to another date.

Part 9: Service details

Throughout the nullity process, the court will be required to send documents to either one or both parties in the case, depending on the stage in which the proceedings have reached. This is known as service of the documents.

Please complete the boxes in this section as follows:

Box 1 – If you have a solicitor acting for you, you must insert their details here.

Box 2 – This is the address to which the court will send all documentation for the Petitioner. If you have solicitors acting for you then enter 'as above'.

Please note that if you indicate that you have a solicitor acting for you the Court will only correspond with them. Any questions that you may have about your case should be directed to your solicitor.

Box 3 – This is the address to which the court will send all documentation for the Respondent. If the Respondent does not live in England and Wales, they may be given extra time to file documents. Please check with the court for more details.

Part 10: Prayer

Prayer

The prayer of the petition is your request to the court. You should consider carefully the claims which you wish to make. You should adapt the prayer to suit your claims.

(1) The application

Confirm what you are applying for.

(2) Costs

If you wish to claim that the Respondent pay your costs you must do so in your petition. It is not possible to make a claim after a decree/order has been granted.

(3) Financial Order

If you need the court to resolve any dispute over finances you can apply for a financial order. This can deal with property, maintenance, a lump sum payment and/or pensions. An application for a financial order for yourself can only be made before you remarry or enter into a new civil partnership. For more details please see leaflet **D190 – I want to apply for a financial order**.

If you do not complete this section now, but later decide to apply for a financial order, you may be at a financial disadvantage.

If you wish to apply for any of these orders, you should indicate which orders you seek.

You are advised to consult a solicitor if you are unsure about completing this section or about which order(s) you require.

If you complete this section or you later decide to apply for a financial order, you will need to complete and file a Form A to proceed with your application when you are ready to do so.

You can apply to the court for a financial order for any child(ren) of the family in connection with the divorce/dissolution/(judicial) separation proceedings, but the court may only make a periodical payments order for a child if:

- you and the respondent have made a written agreement about child maintenance;
- the child is a stepchild of the Respondent;
- the child or the person with care of the child or the absent parent of the child is not habitually resident in the United Kingdom;
- payments are sought in addition to child support maintenance paid under a Child Support Agency calculation;
- the payments are to meet expenses arising from a child's disability;
- the payments are to meet expenses incurred by a child in being educated or training for work;
- the Child Support Agency does not have power to make a maintenance calculation due to the age of the child.

If none of the above applies to you, you should make an application for child maintenance to the Child Support Agency; the court cannot make an order for child maintenance in your case.

If you are not sure whether the court can hear your application please consult a solicitor; a member of the court staff may be able to assist you with the form, but cannot give you legal advice. Leaflet **D190 – I want to apply for a financial order** is also available.

What must I send to the court?

- Your completed nullity petition – one for the court records and one service copy for the Respondent
You should keep a copy for your records.
- One original or certified marriage/civil partnership certificate – photocopies will not be accepted.
(In cases of urgent applications it may be possible for you to provide an undertaking to the court to deliver the original or a certified copy of the marriage/civil partnership certificate to the court at a later date.)
- The appropriate issue fee. Please see leaflet **EX50 – Civil and Family Court fees** for details on the fees payable and whether or not you have to pay them.

