



Conyers Dill & Pearman

Bermuda Status and Permanent Residents' Certificates

Foreword

This Memorandum sets out some of the basic principles pertaining to the designation of Bermuda Status and the acquisition of Permanent Residents' Certificates. It deals in broad terms with the requirements of Bermuda law and, where applicable, the policy of the Bermuda Government. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients seek legal advice in Bermuda on their specific proposals before taking steps to implement them.

This Memorandum has been prepared on the basis of the law and practice in Bermuda as at the date referred to below.

Conyers Dill & Pearman

January 2012

TABLE OF CONTENTS

1. BERMUDA STATUS

- 1.1 General
- 1.2 Acquisition at Commencement
- 1.3 By Birth
- 1.4 By Grant
- 1.5 By Marriage
- 1.6 Long Term Residence
- 1.7 Other Cases

2. PERMANENT RESIDENTS' CERTIFICATES

3. COMMONWEALTH CITIZENSHIP

SCHEDULES

Schedule I: Persons with a Qualifying Bermudian Connection

Schedule II: Bermudian Status Flow Charts

Schedule III: Permanent Residents' Certificates Flow Charts



1. BERMUDA STATUS

There is only one classification of “nationality” under Bermuda law, and that is whether or not someone possesses “Bermuda Status” (“**Status**”). It should be noted that this is not an issue of citizenship as that is governed by the British Nationalities Act 1981. In Bermuda, Status does not affect citizenship but rather confers certain rights upon the individual.

The legislation governing the designation of Status is the Bermuda Immigration and Protection Act 1956 (the “**Act**”) as amended from time to time. While there is only one classification of Status there are a variety of ways to attain Status; including by birth, by acquisition, by grant, etc.. This memorandum will only deal with the most common methods of acquiring Bermuda status. Additionally, as one of the pre-requisites for obtaining Status is that the applicant be a Commonwealth citizen, a brief outline of the requirements to obtain Commonwealth citizenship is set out at the end of this memorandum.

1.1 General

Section 16(2) of the Act provides that any person who is under the age of twenty-two years and who is a child or step child or child adopted in a manner recognized by law, of a person who has Status shall be deemed to have Status.

Section 20(1) of the Act further provides that if:

- (a) you are between the ages of 18 and 22; and
- (b) you have been ordinarily resident in Bermuda for 5 years preceding your application¹; and
- (c) you have been deemed to possess Status pursuant to Section 16(2) for 5 years prior to your application;

¹ N.B. - overseas schooling generally counts as residency.

you shall be entitled to have Status granted to you.

1.2 Acquisition at Commencement

Section 17 of the Act provides that if you were “deemed to be domiciled” in Bermuda on 30 June 1956 for the purposes of the Immigration Act 1937 (the “1937 Act”), then from 1 July 1956 you shall possess Status. A person will be deemed to be domiciled if they are a British Subject (as defined under the UK law applicable at the time); and

- (a) they were born in Bermuda or born of parents who at the time of their birth were ordinarily resident in Bermuda; or
- (b) they were ordinarily resident in Bermuda for the requisite number of years; or
- (c) they obtained such status from a grant of the Governor; or
- (d) they are the wife of a person to whom any of the foregoing would apply; or
- (e) they are the child or step child or adopted child under the age of sixteen of a person to whom any of the foregoing would apply.

It should be noted that the interpretation of the rules applicable to the 1937 Act are very complex. Before making a determination of whether a person would or would not be entitled to Status under Section 17, appropriate legal advice should be obtained.

1.3 By Birth

Section 18 of the Act states that you will possess Status if you were a Commonwealth citizen at birth and you were born:

- (a) in Bermuda after 30 June 1956 and before 23 July 1993 and one of your parents had Status at the time of your birth;

- (b) outside Bermuda after 30 June 1956 and before 23 July 1993 and one of your parents had Status at the time of your birth and was also domiciled in Bermuda at the time of your birth;
- (c) in Bermuda on or after 23 July 1993 and one of your parents had Status at the time of your birth; or
- (d) outside Bermuda on or after 23 July 1993 and one of your parents had Status at the time of your birth and was also domiciled in Bermuda at the time of your birth.

Although “domicile” is not a clearly defined legal term, it can be loosely translated as the law that governs your personal life. Essentially, you can only have one domicile at any one time. When you are born you obtain a domicile of origin from your father (or mother in certain circumstances). Once you are of legal age, it is possible to change your domicile (a “**domicile of choice**”). In order to change a domicile, either from Bermuda or to Bermuda, a two limbed test applies: (i) you must be actually present in the new domicile (factual); and (ii) you must have the settled intention to make that place your permanent home (subjective).

The rules on domicile have never been properly codified and are generally defined by the common law. Accordingly, if there are any particular issues or concerns about your domicile, appropriate legal advice should be obtained.

Pursuant to Section 16(2B) of the Act, if the above provisions would apply save for the fact that you were not a Commonwealth citizen, then you shall be deemed to possess and enjoy Status. Additionally, Section 20(1A) of the Act states that once such a person referred to in Section 16(2B) becomes a Commonwealth citizen, he or she shall possess Status from that point.

1.4 By Grant

Section 19 of the Act provides that you may apply to the Minister for Status if:

- (a) you are not less than 18 years old and are a Commonwealth citizen; and
- (b) you have been ordinarily resident in Bermuda for 10 years immediately preceding your application²; and
- (c) you have a “qualifying Bermudian connection”.³

1.5 By Marriage

Section 19A of the Act provides that you may apply to the Minister for Status if:

- (a) you are a Commonwealth citizen;
- (b) for the period of ten years prior to the application you have been married to a person who throughout that period possessed Status;
- (c) for a period of seven years preceding the application you have been ordinarily resident in Bermuda, two of which must have been immediately preceding the application;
- (d) you must have been married to the same spouse for such seven years; and
- (e) you enclose with the application a letter from your spouse supporting your application.

An application may also be made under Section 19A by a person who was married to a spouse possessing Bermudian status (a “**Bermudian spouse**”) but whose Bermudian spouse died before the application was made. In relation to such a person, Section 19A shall apply with the following modifications—

² N.B. - overseas schooling generally counts as residency

³ Please see attached Schedule detailing what qualifies as a 'qualifying Bermudian connection'

- (a) the application must be made not earlier than ten years after the marriage to the Bermudian spouse was celebrated or after the Bermudian spouse acquired Bermudian status, whichever of those events occurred later; and
- (b) 1.5 (d) and (e) above shall not apply.

In addition to the Section 19A provisions, pursuant to Section 16(2) of the Act, as originally drafted, as modified by The Bermuda Immigration and Protection Amendment Act 1980, any woman who was on or before 1st May 1980: (a) a 'British Subject'; and (b) the wife of a person who possesses Status, shall be deemed to possess and enjoy Status, notwithstanding the fact that that particular section was revoked pursuant to the Bermuda Immigration and Protection Amendment Act 1980.

1.6 Long Term Residents

Section 20A of the Act provides that you may apply to the Minister for Status if:

- (a) you were born in Bermuda or first arrived in Bermuda before your sixth birthday;
- (b) you are a Commonwealth citizen and not less than 18 years of age;
- (c) you were ordinarily resident in Bermuda on 31 July 1989 and on 23 July 1994;
- (d) you were ordinarily resident in Bermuda for ten years immediately preceding your application; and
- (e) you make your application on or before 31 July 2008.

1.7 Other Cases

Section 20B of the Act provides that you may apply to the Minister for Status if:

- (a) you were a Commonwealth citizen and ordinarily resident in Bermuda on 31 July 1989;
- (b) you are 18 years or older when making the application;

- (c) you have been ordinarily resident in Bermuda for a period of ten years immediately preceding your application; and
 - (aa) at least one of your parents possessed Status at the time of your birth; and you were born in Bermuda or arrived in Bermuda prior to your sixth birthday; or
 - (bb) you are a British Dependent Territories citizen by virtue of the grant to you by the Governor of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914 (U.K.) or the British Nationality Act 1948 (U.K.) or British Nationality Act 1981 (U.K.) having been approved for the grant of Status; or
 - (cc) being a woman, you are a British Dependent Territories citizen by virtue of the grant to you by the Governor of registration under Section 6(2) of the British Nationality Act 1948 (U.K.) with the result that you thereby acquired rights under Section 4(2) of the Bermuda Immigration and Protection Amendment Act 1980.

Section 20D of the Act provides that you may apply to the Minister for Status if:

- (a) you were a Commonwealth citizen;
- (b) you were ordinarily resident in Bermuda on or before 31 July 1989;
- (c) you have been ordinarily resident in Bermuda for a period of 20 years immediately preceding your application;
- (d) all of your siblings possess Status; and
- (e) you make application before 1 August 2010.

Section 20E of the Act provides that you may apply to the Minister for Status if:

- (a) you were a Commonwealth citizen;
 - (b) you were ordinarily resident in Bermuda on or before 31 July 1989;
 - (c) you have been ordinarily resident in Bermuda for a period of 20 years immediately preceding your application;
 - (d) you have been ordinarily resident in Bermuda for 20 years on 31 July 1989;
- and

- (e) you have a child who possesses, or children each of whom possesses, Status.

Section 20F of the Act provides that you may apply to the Minister for Status if:

- (a) you were a Commonwealth citizen;
- (b) you were ordinarily resident in Bermuda on or before 31 July 1989;
- (c) you have been ordinarily resident in Bermuda for a period of 20 years immediately preceding your application;
- (d) you were registered in the parliamentary register on 1 May 1976; and
- (e) you were registered in the parliamentary register on 30 October 2002.

Section 4 of the Bermuda Immigration and Protection Amendment Act 1980 provides that you shall be deemed to possess Status if:

- (a) you were a British Subject on 1 May 1980;
- (b) you are a woman; and
- (c) you were, on or before 1 May 1980, married to a man who possessed Status.

2. PERMANENT RESIDENT'S CERTIFICATE

The Bermuda Immigration and Protection Amendment Act 2002 introduced the concept of the permanent resident's certificate (a "PRC"). The intention behind this was to provide a certain level of security to those persons who are so closely connected to Bermuda and have been in Bermuda for such a period of time as to warrant special benefits. While not the same as possessing Status (i.e. there is no right to vote etc.), the non-Bermudian with a PRC is granted certain concessions, most notably, the holder of a PRC has the right to reside and work in Bermuda and to acquire Bermuda property with a lower ARV than would otherwise be applicable in the case of a person who does not possess Status.

A PRC may be revoked by the Minister if the holder is absent from Bermuda for more than two years without the permission of the Minister.

Section 31A of the Act provides that you may apply to the Minister for a PRC if:

- (a) you were ordinarily resident in Bermuda on or before 31 July 1989;
- (b) you have been ordinarily resident in Bermuda for a period of 20 years;
- (c) you were ordinarily resident in Bermuda for a period of two years immediately preceding your application;
- (d) you are at the date of your application at least 40 years old; and
- (e) you make application before 1 August 2010.

Section 31B of the Act provides that you may apply to the Minister for a PRC if you are:

- (a) the brother or sister of a person who has Status, but you do not qualify for Status;
- (b) the natural parent of a person who possesses Status, but you do not qualify for Status;
- (c) the brother or sister of a person who has been granted a PRC under Section 31A, but you do not otherwise qualify for such grant;
- (d) the natural parent of a person who has been granted a PRC under Section 31A, but you do not otherwise qualify for such grant;
- (e) you are the son or daughter of a person who has been granted a PRC under Section 31A, and you are above the upper limit of compulsory school age; or
- (f) you are the spouse of a person who has been granted a PRC under Section 31A, but you do not qualify for the grant of a PRC or Status.

3. COMMONWEALTH CITIZENSHIP

Pursuant to Section 3 of the Act, the term 'commonwealth citizen' has the same meaning as it has in the British Nationalities Act 1981.

“The following, and no others, have the status of Commonwealth citizens:

- (i) British Citizens;
- (ii) British Dependant Territories Citizens;
- (iii) British Overseas Citizens;
- (iv) British Nationals (Overseas);
- (v) British Subjects; and
- (vi) Citizens of independent Commonwealth countries, namely, Antigua & Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Cyprus, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, St. Christopher & Nevis, St. Lucia, St. Vincent & the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad & Tobago, Tuvalu, Uganda, Vanuatu, Western Samoa, Zambia, Zimbabwe.”⁴

Most persons with Status are classified as “British Dependent Territories Citizens”.

Notwithstanding the provisions and comments in this memorandum, whether or not you have British Citizenship, British Dependent Territories Citizenship, Bermuda Status or Commonwealth citizenship will depend entirely on the facts and just because you do or do not fall within the provisions provided above should not be taken as conclusive evidence of such. There are many minor variations and exceptions

⁴Halsburys Laws of England, Vol 4[2], Para 65

to the rules provided above which may in reality lead to a different or contrary position being taken by the relevant immigration authorities.

SCHEDULE I

PERSONS WITH A QUALIFYING BERMUDIAN CONNECTION

1. For a person to have a qualifying Bermudian connection under section 19 of this Act, he must fall within a class of a description set forth in paragraph 2; and those descriptions are subject to paragraphs 3 and 4.
2. The classes of persons referred to are—
 - A a person who at any time answered one of the following descriptions—
 - (a) he was deemed to possess Bermudian status under subsection (2) of section 16 of this Act;
 - (b) he was deemed to be domiciled in Bermuda under paragraph (e) of subsection (1) of section 5 of the Immigration Act 1937;
 - (c) he would have qualified under (a) or (b) above had he been a Commonwealth citizen.

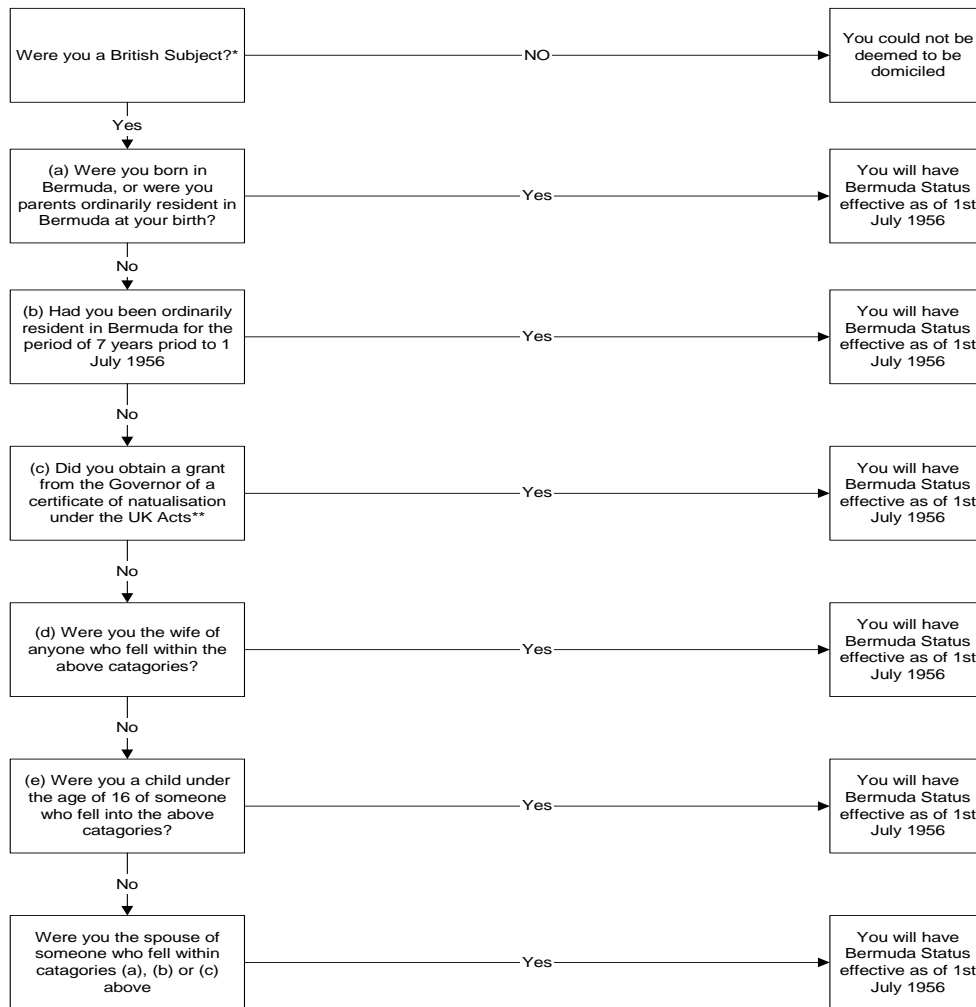
Note: a child born out of wedlock is to be treated as legitimate if, by being so treated, he will qualify through his mother under (a) or (b) or (c) above;

- B a person who at any time possessed Bermudian status under this Act, except where his claim to possess such status depends solely on his rights under subsection (2) of section 16 of this Act or under subsection (2) of section 4 of the Bermuda Immigration and Protection Amendment Act 1980;

- C a person who at any time had been deemed to be domiciled in Bermuda under the Immigration Act 1937 by reason of residence in Bermuda for a number of years;
 - D a person who, in the Minister's opinion, has been accepted by the community of Bermuda as possessing Bermudian status. In forming that opinion, the Minister must be of the view that the following conditions are satisfied in relation to that person, that is to say, that—
 - (a) although not in law possessing Bermudian status—
 - (i) he has worked in Bermuda free of control under Part V of this Act; or
 - (ii) he has obtained ostensible title to land without being required to obtain a licence from the Government; or
 - (iii) he has voted in a general election in Bermuda without being challenged; and
 - (b) there is other evidence indicating generally that he has been accepted as a person possessing Bermudian status by persons dealing with him.
3. The requirements specified in paragraph 2 must have been satisfied throughout the period mentioned in paragraph (b) of subsection (1) of section 19 of this Act.
4. In considering an application under section 19 of this Act, the Minister shall apply the law in force at the time he is considering the application, whether or not that law is different from the law in force at the time when any event or circumstance forming part of the facts underlying the application occurred.

Bermudian Status By Reason of Section 17 (Born before 30 June 1956)

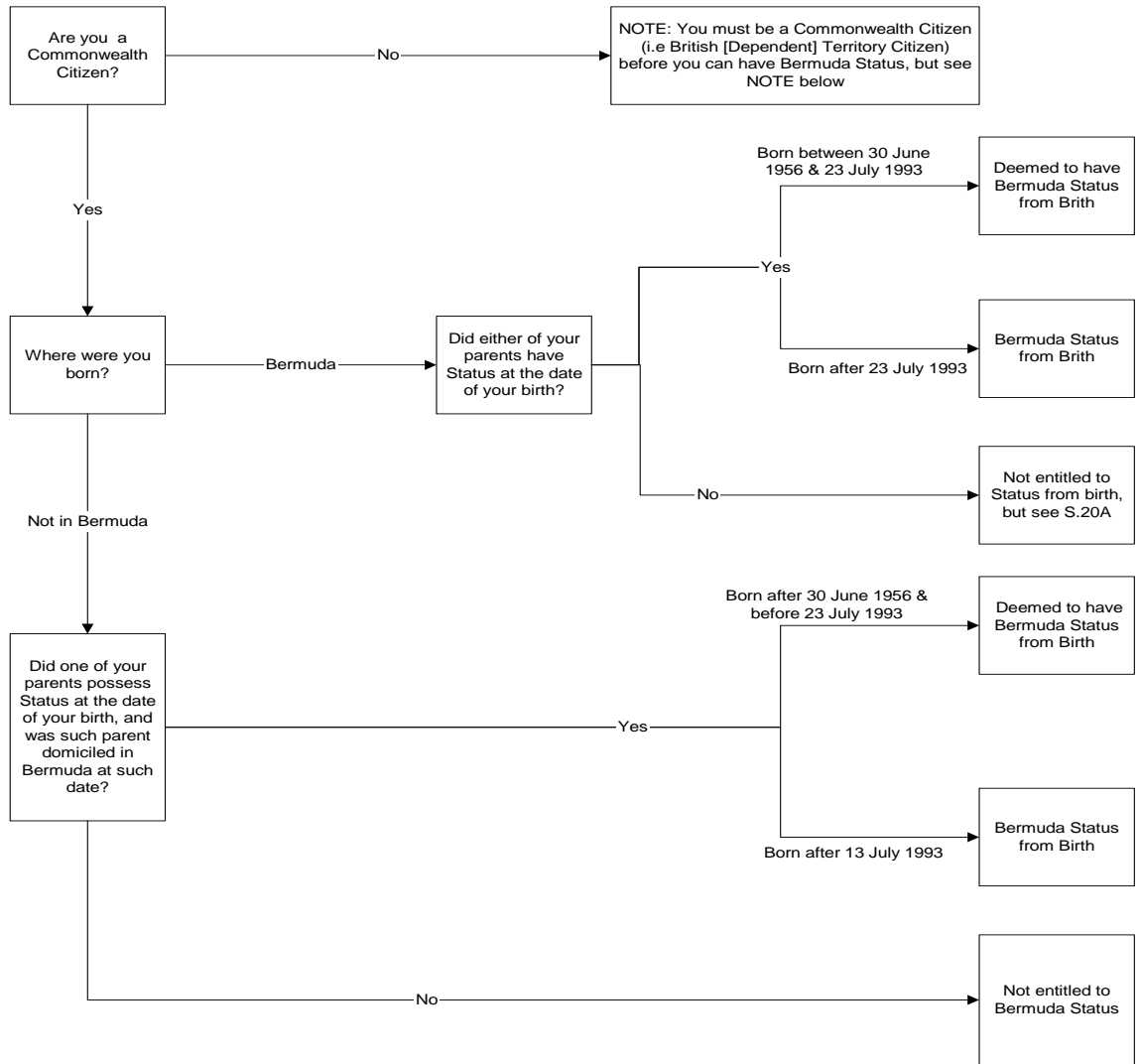
"Any person who was on 30 June 1956 "deemed to be domiciled for the purposes of the Immigration Act 1937 [as amended]... shall from 1 July 1956 possess Bermuda Status"



* As being a British Subject could not be passed by a mother, S.17(3) of the 1956 Act provides that if you mother could have passed to the child British nationality if she had been that child's father, then the child shall be deemed to have been a British Subject

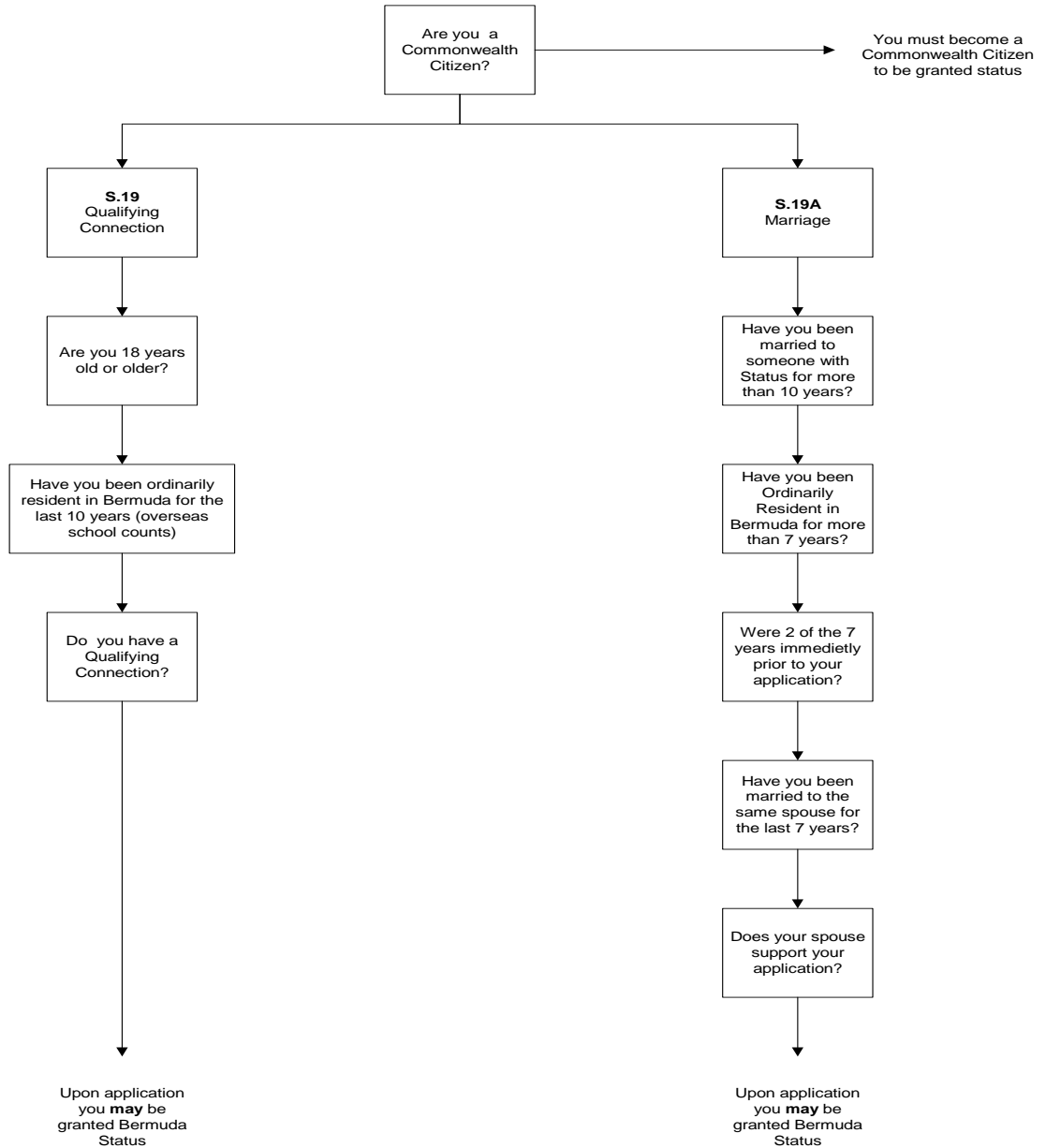
** The British Nationality and Status of Aliens Act 1914 and the British Nationality Act 1948

Bermudian Status By Reason of Section 18 (Born after 20 June 1956)

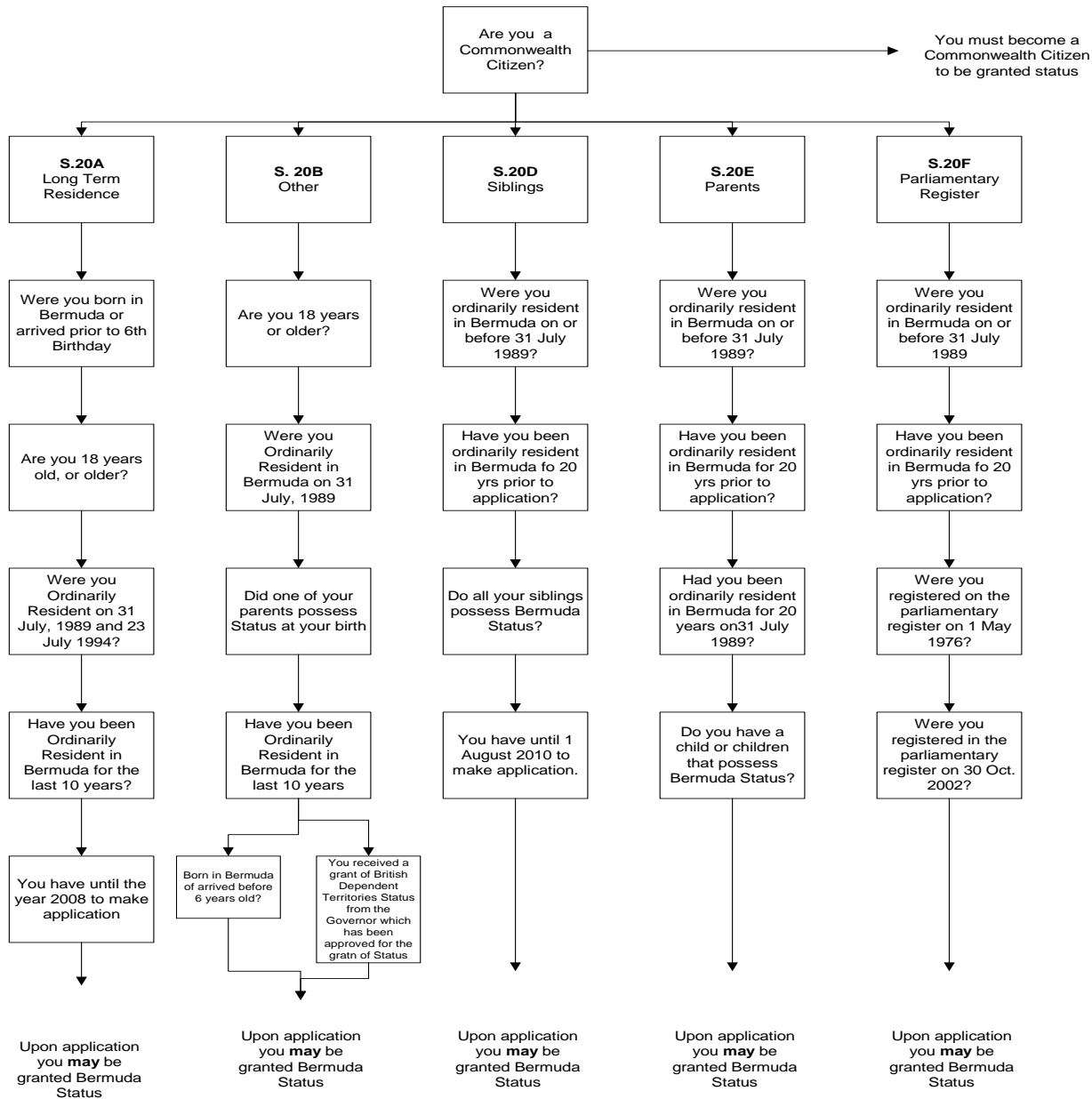


NOTE: If you would have attained Bermuda status, but for being a Commonwealth Citizen at birth, then you shall be deemed to possess and enjoy Bermudian status from birth (S.16(2B)), and shall upon becoming a Commonwealth Citizen attain Bermudian status (S.20(1A))

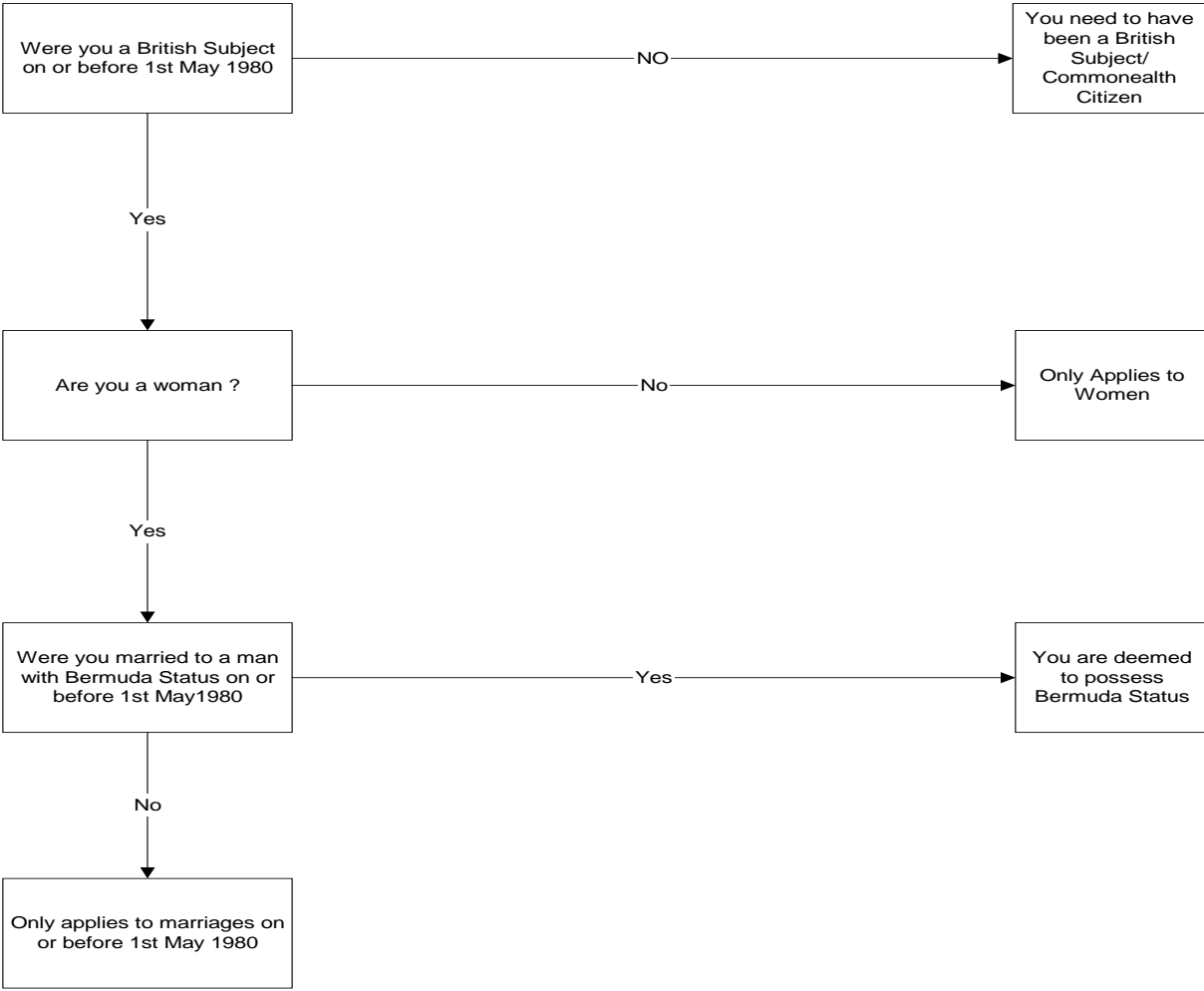
Bermudian Status By Reason of Section 19



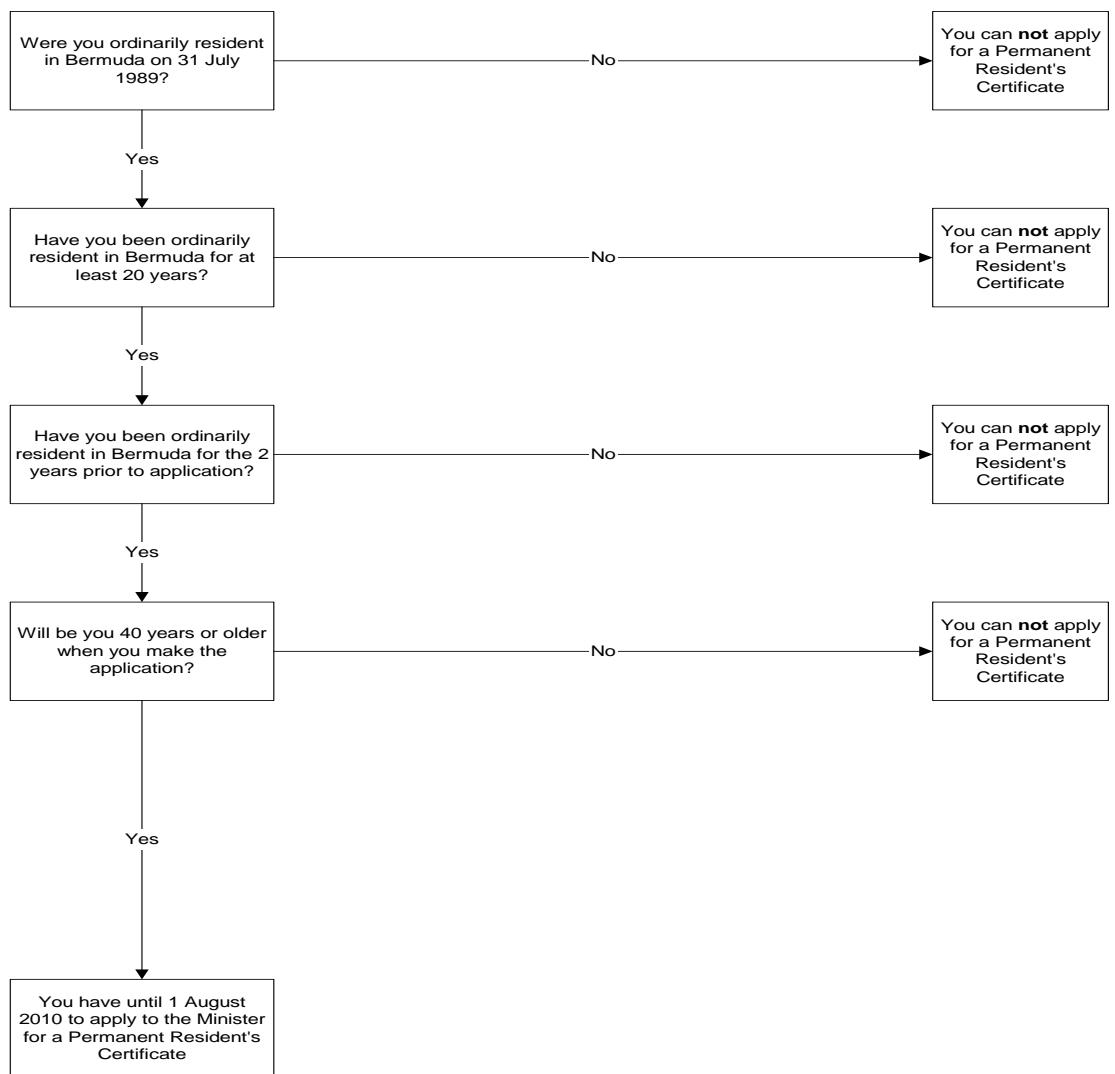
Bermudian Status By Reason of Section 20



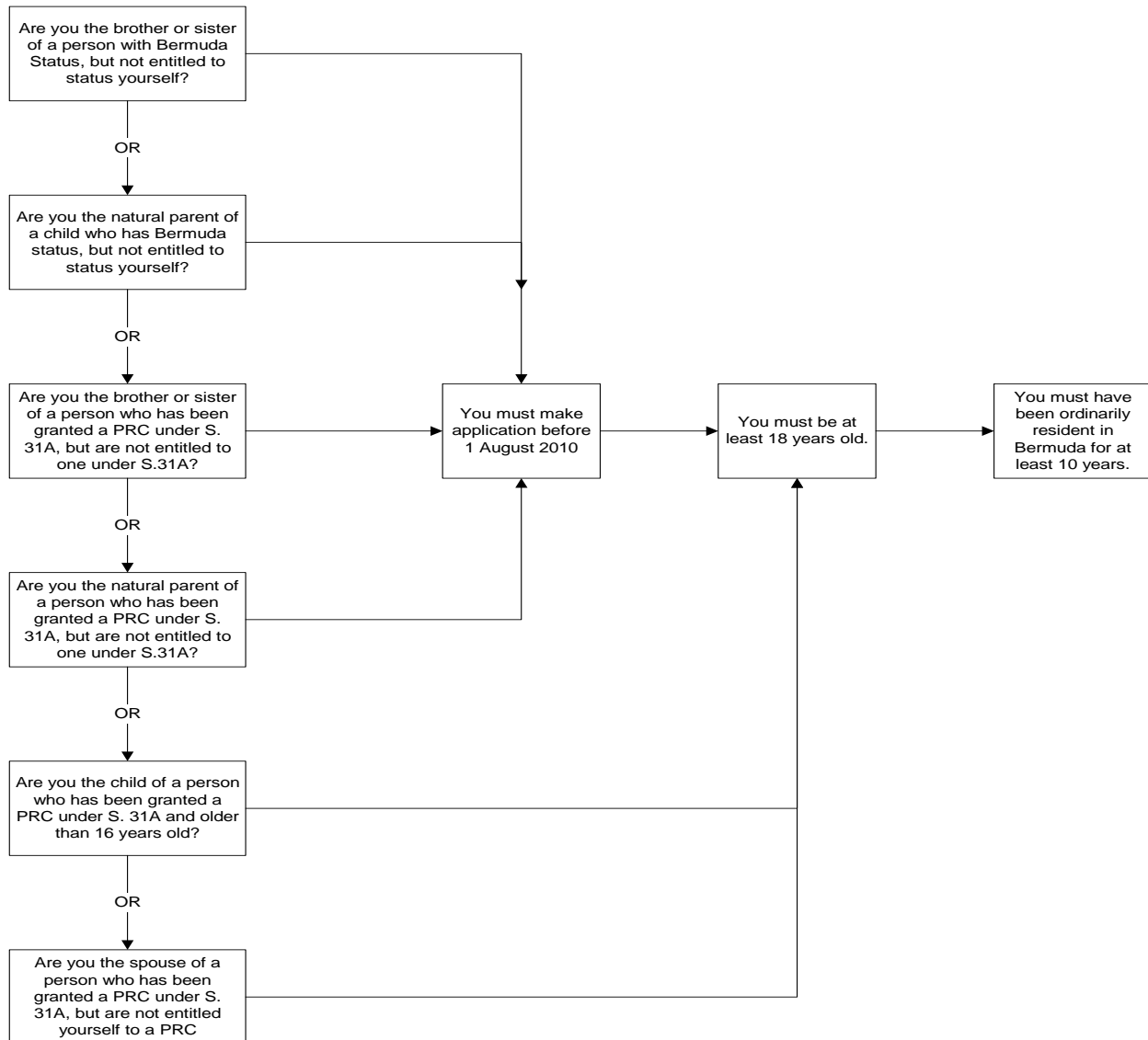
Bermudian Status By Reason of Other Misc. Sections of the Act



Permanent Resident's Certificate Section 31A



Permanent Resident's Certificate Section 31B



This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

About Conyers Dill & Pearman

Conyers Dill & Pearman advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda, Mauritius and Cyprus. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters.

The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

Conyers' sophisticated client base includes FTSE 100 and Fortune 500 companies. Working with leading local and international firms, Conyers advises on highly complex multi-jurisdictional projects.

Affiliated companies (Codan) provide a range of trust, corporate secretarial, accounting and management services.

Founded in 1928, Conyers has 600 staff, including more than 150 lawyers.

www.conyersdill.com