Bermuda Status and Permanent Residents’ Certificates
Preface

This publication 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.

Conyers Dill & Pearman
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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 publication 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 publication.

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, 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 application\(^\text{1}\); and

(c) you have been deemed to posses Status pursuant to Section 16(2) for 5 years prior to your application;

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 “\text{1937 Act}”), then

\(^{1}\) N.B. - overseas schooling generally counts as residency.
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 application; and

(c) you have a “qualifying Bermudian connection”.

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;

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

3 Please see attached Schedule detailing what qualifies as a ‘qualifying Bermudian connection’.
(c) for a total 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—

(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 provisions of Section 19A, 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;

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4 This section technically expired on 31 July 2008, but has been included for the sake of completeness.
(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;

5 Again, these sections technically expired on 1 August 2010, but have been included for the sake of completeness.
(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;

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

(f) you make application before 1 August 2010.

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;

(e) you were registered in the parliamentary register on 30 October 2002; and

(f) you make application before 1 August 2010.
2. PERMANENT RESIDENT’S CERTIFICATE

The Bermuda Immigration and Protection Amendment Act 2002 introduced the concept of the permanent resident’s certificate ("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;

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6 This section technically expired on 1 August 2010, but has been included for the sake of completeness.
7 Sub-sections (a) through (d) expired on 1 August 2010, but sub-sections (e) and (f) are still available.
(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 & Barbuba, 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.”

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

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Notwithstanding the provisions and comments in this publication, 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 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.
Who is a British Citizen?
(for persons born before 1 January 1983)

1. Where were you born?
   - United Kingdom: British Citizen
   - Not in the United Kingdom:
     2. Where was your father born?
        - United Kingdom: British Citizen
        - Not in the United Kingdom:
          3. Were you registered or naturalized in the United Kingdom?
             - Yes: British Citizen
             - No:
               4. Was your father registered or naturalized in the UK before your birth?
                  - Yes: British Citizen
                  - No:

NOTE: These are matters of United Kingdom law and Conyers Dill & Pearman is not qualified to advise on matters United Kingdom Law.
Who is a British Citizen?
(for persons born on or after 1 January 1983)

Where were you born?

- United Kingdom → Was either one parent either a British Citizen or settled in the UK at the time of birth
  - Yes → British citizen
  - No → Not in the United Kingdom

Where was your mother/father born?

- United Kingdom → British Citizen

Were you registered or naturalized in the UK?

- Yes → British Citizen

Was your mother/father registered or naturalized in the UK before your birth?

- Yes → British Citizen

NOTE: These are matters of United Kingdom law and Conyers Dill & Pearman is not qualified to advise on matters United Kingdom Law.
Citizenship by Descent
For children born outside the UK to a British parent on or after 1 January, 1983

Was your father or mother born in the UK?
   Yes → British Citizenship by Descent
   No →

Was your father or mother registered or naturalized in the UK before your birth?
   Yes → British Citizenship by Descent
   No →

Was your father or mother a UK and Colonies citizen born overseas who gained the right of abode by living for five years in the UK prior to 1 January, 1983?
   Yes → British Citizenship by Descent
   No →

Was your father or mother a British citizen with a parent as in (1), (2) or (3) above and spent at least 3 years in the UK prior to your birth?
   Yes → Right to register as British citizen within a year of birth
   No → Right to register in UK as a British citizen if at any time child and both parents live in the UK for three years

NOTE: These are matters of United Kingdom law and Conyers Dill & Pearman is not qualified to advise on matters of United Kingdom law.
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"

Were you a British Subject?*
No

(a) Were you born in Bermuda, or were your parents ordinarily resident in Bermuda at your birth?
Yes

(b) Had you been ordinarily resident in Bermuda for the period of 7 years prior to 1 July 1956
No

(c) Did you obtain a grant from the Governor of a certificate of naturalisation under the UK Acts**
No

(d) Were you the wife of anyone who fell within the above categories?
No

(e) Were you a child under the age of 16 of someone who fell within categories (a), (b) or (c) above
No

Were you the spouse of someone who fell within categories (a), (b) or (c) above
Yes

You will have Bermuda Status effective as of 1st July 1956

You could not be deemed to be domiciled

* 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
SCHEDULE II

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

Are you a Commonwealth Citizen?

Yes

No

You must be a Commonwealth Citizen before you can have Bermuda Status, but see NOTE below

Did either of your parents have Bermuda Status at the date of your birth?

Bermuda Status from Birth

Not in Bermuda

Born between 30 June 1956 & 23 July 1993

Deemed to have Bermuda Status from Birth

Not entitled to Status from birth, but see S.20A

Did one of your parents possess Bermuda Status at the date of your birth, and was such parent domiciled in Bermuda at such date?

Deemed to have Bermuda Status from Birth

Born after 23 July 1993

Born after 30 June 1956 & before 23 July 1993

Bermuda Status from Birth

Not entitled to Bermuda Status

Born after 13 July 1993

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

Are you a Commonwealth Citizen?

You must become a Commonwealth Citizen to be granted status

S.19 Qualifying Connection

Are you 18 years old or older?

Have you been ordinarily resident in Bermuda for the last 10 years (overseas school counts)

Do you have a Qualifying Connection?

Upon application you may be granted Bermuda Status

S.19A Marriage

Have you been married to someone with Status for more than 10 years?

Have you been Ordinarily Resident in Bermuda for more than 7 years?

Were 2 of the 7 years immediately prior to your application?

Have you been married to the same spouse for the last 7 years?

Does your spouse support your application?

Upon application you may be granted Bermuda Status
SCHEDULE II

Bermudian Status
By Reason of Section 20

Are you a Commonwealth Citizen?

You must become a Commonwealth Citizen to be granted status

S. 20B
Other

Are you 18 years or older?

S. 20D
Siblings

Were you ordinarily resident in Bermuda on or before 31 July 1989?

Have you been ordinarily resident in Bermuda for 20 yrs prior to application?

S. 20E
Parents

Were you ordinarily resident in Bermuda on or before 31 July 1989?

Have you been ordinarily resident in Bermuda for 20 yrs prior to application?

S. 20F
Parliamentary Register

Were you ordinarily resident in Bermuda on or before 31 July 1989?

Have you been ordinarily resident in Bermuda for 20 yrs prior to application?

Parents

Were you ordinarily resident in Bermuda on or before 31 July 1989?

Have you been ordinarily resident in Bermuda for 20 yrs prior to application?

Have you been ordinarily resident in Bermuda for 20 years on 31 July 1989?

Do you have a child or children that possess Bermuda Status?

Upon application you may be granted Bermuda Status

Upon application you may be granted Bermuda Status

Upon application you may be granted Bermuda Status

Upon application you may be granted Bermuda Status

Parliamentary Register

Were you registered in the parliamentary register on 1 May 1976?

Were you registered in the parliamentary register in 2002?

Parliamentary Register

Upon application you may be granted Bermuda Status

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Parliamentary Register

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Upon application you may be granted Bermuda Status

Parliamentary Register
SCHEDULE II

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

Were you a British Subject on or before 1st May 1980

You need to have been a British Subject/ Commonwealth Citizen

No

Are you a woman?

Only Applies to Women

No

Yes

Were you married to a man with Bermuda Status on or before 1st May 1980

You are deemed to possess Bermuda Status

Yes

Only applies to marriages on or before 1st May 1980

No

* See Section 4 of The Bermuda Immigration and Protections Amendment Act 1980
Permanent Resident's Certificate
Sections 31B

Are you the child of a person who has been granted a PRC under S. 31A and older than 16 years old?

Are you the spouse of a person who has been granted a PRC under S. 31A, but are not personally entitled to PRC under 31A or Bda Status?

You must be at least 18 years old.

You must have been ordinarily resident in Bermuda for at least 10 years.
This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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About Conyers Dill & Pearman

Conyers Dill & Pearman is a leading international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. Conyers has over 130 lawyers in eight offices worldwide and is affiliated with the Conyers Client Services group of companies which provide corporate administration, secretarial, trust and management services.

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