

**ENHANCING LEGAL CO-OPERATION WITHIN THE COMMONWEALTH:  
PROPOSAL FOR THE ESTABLISHMENT OF THE COMMONWEALTH NETWORK OF  
CONTACT PERSONS**

**Paper by the Commonwealth Secretariat**

**INTRODUCTION**

1. Senior Officials of Commonwealth Law Ministries in their meeting on 18 October 2004 considered the possibility of setting up a Commonwealth Network of Contact Persons (CNCP), including Prosecutors and Competent Authorities, for effective co-operation in criminal matters amongst the members of the Commonwealth. This idea has been taken forward by Paul Wilkins, a Crown Advocate from Guernsey. The purpose of this paper is to outline how a CNCP could work in practice.

2. It is granted that to ensure an effective system of international co-operation in criminal matters, it is essential that there is proper communication between countries. In spite of having proper legislative frameworks, quite often members are not able to effectively co-operate with each other because of lack of information about the legislative and procedural requirements in other countries. This is further inhibited because of the absence of central authorities in many countries or ignorance about the existence of such authorities. In order to get over these difficulties some countries have set up networks of contact persons to enhance co-operation amongst countries in their region by closer and direct interaction with each other. A good example to consider in this regard is the European Judicial Network (EJN) that has been put in place in the European Union to enhance mutual assistance in that region. Following the success of the EJN, similar networks have been set up in South America and between the Portuguese speaking jurisdictions in the world.

**BACKGROUND OF OTHER NETWORKS**

**European Judicial Network**

3. The EJN was created by way of a Joint Action on 29 June 1998. Article 2 of the Joint Action provides for the appointment of one or more contact points from each Member State. The number of contact points varies greatly between members. For example, in the Republic of Ireland there are three contact points - two based at the Ministry of Justice in Dublin and one at the Garda Police Headquarters. In the United Kingdom and the Crown Dependencies, there are contact points at the United Kingdom Central Authority at the Home Office, Crown Prosecution Service, Serious Fraud Office, HM Customs and Excise, Metropolitan Police, the Crown Office in Edinburgh, the office of the Director of Prosecutions in Northern Ireland and one contact each for the Crown Dependencies of Guernsey, Jersey and the Isle of Man.

4. France has 49 contact points and Italy has 58 because their legal systems require contact points for each of the major court centres. However, assistance as to which contact point should receive a Letter of Request for Mutual Legal Assistance can be obtained from the respective Ministries of Justice of these countries.

5. The functions of contact points of the EJN are primarily to facilitate "*judicial co-operation between member states, particularly in action to combat forms of serious crime.*" Additionally, the EJN indicates that "they shall be available to enable local judicial authorities and other competent

authorities in their own country and to contact points and judicial and other competent authorities in other countries to establish the most appropriate direct contact.”

6. The EJN contact points under Article 4 of their establishment “*provide the legal and practical information necessary to the local judicial authorities in their own country, to the contact points and judicial authorities in other countries to enable them to prepare an effective request for judicial co-operation or to improve judicial co-operation in general.*”

7. The purpose of meetings of the Network is to allow the contact points to get to know each other and exchange experiences, particularly concerning the operation of the Network. Additionally, they “*provide a forum for discussion of practical and legal problems encountered by the member states in the context of judicial co-operation, particularly with regard to the implementation of measures adopted by the European Union.* Obligations of information sharing regarding possible legislative changes for improving international judicial co-operation are also a feature of the EJN.

8. In each of the 25 countries that make up the European Union there are a number of contact persons who are responsible for giving advice firstly, to their colleagues as to how to make requests for evidence to other jurisdictions and secondly, to contact persons in other jurisdictions. There are also contact persons in the Crown Dependencies of Guernsey, Jersey and the Isle of Man.

9. In practice, the Network meets for a day every year in Brussels, either in February or March and they discuss, *inter alia*, proposals for EU legislation that may affect the Network. Each year there are two other meetings of the contact persons. These meetings are held in the country holding the presidency of the EU at the time. These gatherings allow contact persons to learn about developments in mutual legal assistance and provide an opportunity to gain knowledge of the legal systems in other states. More importantly, it provides a good platform for the contact persons to get to know each other.

10. Before the establishment of the EJN and the appointment of the contact points, there were many instances when requests for assistance were not made due to ignorance of the mutual legal assistance scheme in another jurisdiction or lack of knowledge about the person to be contacted.

11. Article 8 of the Joint Action requires that each of the contact points must have full details of their colleagues in other member states, access to a simplified list of the judicial authorities and a directory of local authorities in each member state. In addition, there is a requirement that information should be available to contact points concerning the mutual legal assistance legislation and procedure in each member state and access to the text of the relevant Convention. The EJN has developed a website in which details of all the Mutual Legal Assistance Regimes of the member jurisdictions are available for viewing. In addition, following an initiative during the recent Spanish Presidency, there is now a glossary of legal terms available from the EJN website.

12. Article 10 sets out a requirement for consideration to be given to linking contact points by a separate telecommunications network.

13. The EJN has a small Secretariat which has offices at the Eurojust building in the Hague. This is staffed by a prosecutor from Spain, an IT expert and a personal assistant. The EU sets aside approximately Euro250,000 to pay for the Secretariat and a contribution towards the three meetings each year and the website.

#### **The Spanish and Portuguese Speaking Network**

14. Following the success of the EJN, on the initiative of the Spanish Ministry of Justice, a Judicial Network was set up between Spain and the Spanish speaking states of South America. The South American Network is closely based upon the one in place in the European Union. More

recently, a similar network was set up between Portugal and the Portuguese speaking jurisdictions around the world.

## THE COMMONWEALTH NETWORK – THE PROPOSED SCHEME

15. Practically, it may not be a viable proposition to emulate the exact model of the European Union within the Commonwealth as the geographical expanse of the Commonwealth would not allow for the frequency of the meetings that are held by the EU. However, it may be possible to establish a similar kind of network amongst Commonwealth states and organise meetings on a regional basis or on the fringes of the SOLM meeting. The list of contact persons in the network could be shared with other organisations such as the EJN and a separate web page could be created within the existing website of the Commonwealth for greater co-operation amongst the member countries. This would be very useful to countries with limited resources, particularly the smaller states.

### OBJECTIVE OF THE NETWORK

16. The objective of the Commonwealth Network would be to improve mutual legal assistance between the criminal jurisdictions of the Commonwealth. This would be particularly useful in cases of terrorism, organised crime, drug trafficking, corruption and trafficking in human beings.

### COMPOSITION

17. Some European jurisdictions have multiple contact points; this has led to a great deal of confusion. In view of this, as far as the Commonwealth is concerned, it would perhaps be better to keep the number of contact points to a minimum. However, the United Kingdom has three separate criminal jurisdictions within its own jurisdiction plus the three Crown Dependencies and the overseas territories. There may well be other Commonwealth countries that are divided up into several separate jurisdictions as far as criminal matters are concerned. Ministers are invited to consider this issue. It would therefore, appear sensible that there should be one contact point for each separate criminal jurisdiction within the Commonwealth.

### FUNCTIONS OF THE NETWORK

18. The contact points shall be active intermediaries entrusted with the task of facilitating mutual legal assistance in criminal matters between the criminal jurisdictions of the Commonwealth. They shall be available to facilitate co-operation between the prosecution agencies and other competent authorities in their own criminal jurisdiction and contact points and competent authorities in other criminal jurisdictions in the Commonwealth.

19. The contact points shall provide the legal and practical information necessary to the prosecuting and other competent authorities in their own criminal jurisdictions or to the contact points in other Commonwealth criminal jurisdictions to enable them to prepare an effective request for mutual legal assistance and to improve mutual legal assistance in general. They will improve co-ordination of mutual legal assistance in criminal cases where requests from the prosecution authorities in a Commonwealth criminal jurisdiction necessitate co-ordinated action in other Commonwealth criminal jurisdictions.

### FUNCTIONS OF THE CONTACT POINTS

20. The functions of the contact points of the EJN as detailed in Article 4 of the Joint Action of 29 June 1998 have worked well. It would be sensible for the Commonwealth contact points to have similar functions.

## MEETINGS OF THE CONTACT POINTS IN THE NETWORK

21. The Commonwealth has two major advantages over the EJN. In the first place, English is the first language of most of its member jurisdictions or at least it is understood by many and secondly, most members have legal systems that have their origins in English common law. The main problem, however, is that the jurisdictions are spread across the globe and as a result it would be both impracticable and expensive to have meetings on a regular basis. There is no doubt about the fact that the meetings of contact points of other Networks have proved to be very useful, when contact points exchange experiences, discuss problems, issues and learn about developments in other jurisdictions. The Commonwealth may, therefore, consider meeting the contact persons on the fringes of the meetings of Senior Officials of Law Ministries and on a regional basis during other meetings or programmes of the Commonwealth. But the network can be really beneficial and cost effective if the contact points make best use of the web site through virtual meetings through the internet.

## WEB PAGE AND LIST OF CONTACT POINTS

22. Considering the limited resources, there may not be a separate secretariat for the CNCP. But one person in the Legal and Constitutional Affairs Division of the Commonwealth Secretariat may be designated for the purpose of co-ordination within the member countries. For any network to work properly, it is essential that an up-to-date list of contact points be available. The responsibility of maintaining and distributing the list of contact points may rest with the Criminal Law Section of the Commonwealth Secretariat. To make the network more useful, the information should be put up on a separate web page and this should be maintained and updated regularly. It is envisaged that the Commonwealth Secretariat would devote a web page to the activities of the CNCP. It is the responsibility of each contact point to pass on information relating to changes in laws, procedures, telephone and other contact details and particularly the change of contact persons. Since there is no system of training for the new contact points, the outgoing contact point should explain everything about the Commonwealth network to the new person. An up-to-date and interactive web page could, to some extent, serve the purpose of real meetings. This would be the real answer to the problem of resources and if used properly, the network would advance mutual co-operation.

23. It would also be useful to have an updated list of central authorities, with contact particulars that could then be posted on the web page and distributed to member countries periodically. Clause 4 of the Harare Scheme provides, "Each country shall designate a Central Authority to transmit and to receive requests for assistance under this Scheme" and Clause 31 requires that the Secretary-General be notified of the designated Central Authority for the Scheme. But many countries have yet to designate central authorities and the notification of such designation has not been very encouraging. Such a list would also assist the Secretariat in responding to requests for contact authorities.

## CONTACTS WITH OTHER NETWORKS AND COUNTRIES

24. In order to make the network interact with countries outside the Commonwealth, it is essential to establish a good working relationship with other networks and maintain regular contacts with them. The Commonwealth Secretariat may request other networks to allow one of its representatives to attend their meetings as an observer and similar offers may be given to them to interact with the Commonwealth.

25. It would be unfortunate if no effort were made by the Commonwealth network to establish contact with the EJN and the Spanish and Portuguese Networks. Contact could be established via the EJN Secretariat in the Hague which would be able to assist in establishing contact with appropriate contact points in the Spanish and Portuguese speaking world as and when required. In order to establish a good working relationship with the other networks it would be advisable if one of

the European Commonwealth contact points visited the EJM Secretariat in The Hague soon after the establishment of the Commonwealth network.

26. In addition to making contact with other networks, the justice ministries in large jurisdictions that are not part of any network, for example the United States of America, should perhaps be contacted and made aware of the existence of the Commonwealth network.

#### **COST**

27. Since there will not be a permanent secretariat and the web page can be put up on the existing Commonwealth website, the cost of establishing the network and running it should not be prohibitive. The travel and other incidental expenses for attending meetings of other networks may be met from out of the normal travel budget of the Commonwealth Secretariat and efforts may be made to combine it with other meetings. Donor countries may be approached to fund regional meetings. One member of the Commonwealth Secretariat's staff could have responsibility for maintaining the list of contact points and disseminating details of new procedures and legislation notified by member jurisdiction.

#### **SENIOR OFFICIALS**

28. Senior Officials saw value in the development of a network, similar in concept to the EJM but adapted to Commonwealth circumstances, to facilitate the whole mutual assistance process. They asked the Commonwealth Secretariat to develop this proposal and also to consider model legislation or other material or programmes that could assist with the enhancement of the effectiveness of the Scheme. It was noted that following the adoption of mutual assistance legislation, small jurisdictions could face a flood of requests which could overwhelm an office with limited resources. Senior Officials requested the Secretariat to consider ways in which it could assist small states in this respect through the development of the CNCP and by devising programmes that would assist with the capacity building and management of the system.

#### **SUMMARY**

- (i) Given the success of the EJM, it forms a good precedent for the CNCP but there will be a need to take account of the wide geographical spread of the Commonwealth.
- (ii) The functions of the CNCP should be based upon those detailed in Article 4 of the Joint Action of the European Council of 28 June 1998 that established the EJM.
- (iii) Each criminal jurisdiction should have at least one contact point.
- (iv) The Commonwealth Secretariat shall be responsible for maintaining the list of contact points and distributing information on national developments provided to it by the contact points.

29. Law Ministers are invited to consider the operation of a CNCP as outlined herein. A draft framework for the CNCP is attached at Annex. If Law Ministers consider that such a network should be established, they may also wish to mandate the Secretariat to implement the proposed scheme, with any other suggestions that would be most appropriate to the Commonwealth.

**COMMONWEALTH NETWORK OF CONTACT PERSONS (CNCP)  
FRAMEWORK OF THE CNCP**

**Article 1****Establishment**

A network of contact persons, including prosecutors and competent authorities shall be established amongst the criminal jurisdictions of the Commonwealth hereinafter referred to as the Commonwealth Network of Contact Persons (CNCP).

**Article 2****Objective**

The objective of the CNCP is to improve and enhance mutual legal assistance and co-operation amongst the criminal jurisdictions of the Commonwealth.

**Article 3****Composition**

1. The CNCP shall comprise of at least one contact point from each of the criminal jurisdictions of the Commonwealth.
2. The Commonwealth Secretariat shall designate one of its officials to co-ordinate the activities of the CNCP.

**Article 4****Functions of the Network**

The CNCP shall, in particular:

- (a) facilitate the establishment of appropriate contacts between contact points in the various criminal jurisdictions of the Commonwealth in order to carry out the functions laid down in Article 5;
- (b) meet periodically, as arranged by the Commonwealth Secretariat, to review activities;
- (c) make every effort to collaborate with other Networks; and
- (d) contact points, through the Commonwealth Secretariat, shall distribute any changes in legislation or procedure introduced within their jurisdiction

**Article 5****Functions of Contact Points**

1. The contact points shall facilitate mutual legal assistance in criminal matters between the criminal jurisdictions of the Commonwealth. They shall enable the most appropriate direct contacts between prosecution agencies, other competent authorities and contact points in Commonwealth criminal jurisdictions.

They may if necessary travel to meet other contact points, on the basis of an agreement between the administrations concerned.

2. The contact points shall provide legal and practical information to prosecution agencies, other competent authorities and contact points in Commonwealth criminal jurisdictions to improve mutual legal assistance.
3. They shall aim to improve co-ordination of mutual legal assistance in criminal cases where a series of requests from a Commonwealth criminal jurisdiction necessitates co-ordinated action in another Commonwealth criminal jurisdiction.

## Article 7

### Meetings

1. Contact points shall endeavour to meet periodically to revise the activities of the CNCP.
2. The aims of the periodic meetings of the Commonwealth Prosecutors Network shall be as follows:
  - (a) to allow the contact points to get to know each other and exchange experiences;
  - (b) to provide a forum for discussion of practical and legal problems encountered in member jurisdictions in connection with the provision of mutual legal assistance in criminal matters.
  - (c) through the Chairperson the meeting of contact points may pass to the Commonwealth Secretariat any information or collective opinions which may assist the Secretariat in its work.

## Article 8

### Election of Chairperson of Meetings

At the start of each meeting of contact points a chairperson for the meeting shall be elected. Each candidate for election as chairperson must be proposed and seconded by contact points. In the event of the chair being contested there shall be a vote by secret ballot and the person having the most votes will be elected.

## Article 9

### Role of the Commonwealth Secretariat

Activities of the network should be co-ordinated by the Commonwealth Secretariat which duties will include, *inter alia*:

1. to maintain an up-to-date list of Contact Points;
2. to maintain an up-to-date web page concerning the activities of the CNCP;
3. to facilitate meetings of Contact Points;
4. to disseminate information amongst Contact Points.