

# HIGH COURT OF JUSTICIARY

## PRACTICE NOTE

No. 1 of 2011

### Consideration of undisclosed information

1. In terms of section 95 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 where an offender has, otherwise than in pursuance of an assistance agreement (section 91), assisted in relation to the investigation or prosecution of an offence other than one for which he or she has been convicted, the court may take this into account when passing sentence; where it has done so this must not be disclosed (section 95(3)).
2. Similar provisions regarding non-disclosure of such consideration exist in relation to appeals by the offender (section 96(3)) or by other persons, such as a co-accused (section 96(4)).
3. These duties of non-disclosure are, generally, unqualified. Accordingly, practitioners should be aware that there will be circumstances, including circumstances where a co-accused is bringing an appeal deploying a comparative justice argument, where it may not be possible for the appeal court to articulate its reasons as fully as would normally be the case.

*A. C. HAMILTON*

Lord Justice General

Edinburgh

4<sup>th</sup> April 2011