

These notes relate to the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) which received Royal Assent on 14 April 2004

VULNERABLE WITNESSES (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Civil Proceedings

Section 23 – Establishment of grounds of referral to children’s hearings: restrictions on evidence

86. This section inserts 2 new sections into the Children (Scotland) Act 1995.

Section 68A – Restrictions on evidence in certain cases involving sexual abuse

87. This new section creates a general rule that evidence or questioning with reference to character and sexual behaviour is not admissible in children’s referrals. The prohibition applies to the child who is the subject of the referral or any other witness in respect of whom the evidence is to be admitted.

Section 68B – Exceptions to restrictions under section 68A

88. Subsection (1) allows a hearing to be held where an application has been made to admit evidence which would fall within the general restriction. The court can admit this evidence if satisfied that it comes within the factors set out in paragraphs (a) to (c).

89. Subsection (2) of the new section requires the court to take account of the need to protect the privacy and dignity of the witness in determining whether to admit this type of evidence.