
Established by the Commissioner for Children and Young People (Scotland) Act 2003 the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland. The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights. The Commissioner is fully independent of the Scottish Government and Parliament.

Background

Thank you for the opportunity to comment on the work of the Public Petitions Committee on this issue. The Children and Young People's Commissioner Scotland supports the call of the Scottish Youth Parliament (SYP), for a ban on the use of mosquito devices in Scotland. The office of the Commissioner has been campaigning for a ban since 2007 and in 2015 provided support to an earlier SYP petition, PE1367: Ban Mosquito Devices Now¹.

Human Rights Framework

The sale and use of devices emitting high-frequency sounds equipment to disperse children and young engages a number of human rights law and standards in the UN Convention on the Rights of the Child including:

- the principle of non-discrimination (article 2),
- the principle that the best interests of the child must be a primary consideration in all decisions affecting them (article 3),
- the right to freedom of assembly and association (article 15),
- the right to protection from unlawful interference with privacy etc (article 16)
- the right to protection from violence, abuse and injury (article 19)
- the right of disabled children to a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (article 23)
- the right to the highest attainable standard of health (article 24)
- the right to play, leisure and recreation (article 31).
- the right to protection from torture or other cruel, inhuman or degrading treatment or punishment (article 37) ²

These high frequency devices also engage the following rights enshrined in the European Convention on Human Rights (ECHR) and incorporated into Scots law via the Human Rights Act 1998:

- the right to protection from torture and inhuman or degrading treatment (article 3)
- the right to privacy, including respect for physical integrity (article 8)

¹ <http://www.parliament.scot/GettingInvolved/Petitions/PE01367>

² <https://www.cypcs.org.uk/rights/uncrcarticles>

- the right to freedom of assembly and association (article 11)³

The UN Committee on the Rights of the Child

In 2016 the UN Committee on the Rights of the Child produced its Concluding Observations and recommendations to the UK in the context of the implementation of the UNCRC. The Committee recommended that the State party in order to fully guarantee children's right to freedom of movement and peaceful assembly:

- (a) prohibit the use of mosquito devices (acoustic youth dispersal devices) in public spaces;⁴

In its 2008 Concluding Obligations, the UN Committee expressed concerns regarding the *“general climate of intolerance and negative public attitudes towards children, especially adolescents”* observed in the UK. It went on to recommend that:

*“the State Party reconsider the ASBOs as well as other measures such as mosquito devices insofar as they may violate the rights of children to freedom of movement and peaceful assembly, the enjoyment of which is essential for children's development and may only be subject to very limited restrictions.”*⁵

Furthermore, in 2010 the Parliamentary Assembly of the Council of Europe (PACE) called for the prohibition of the sale and use of mosquito devices in public places, based on a lack of proportionality and their blanket impact on children, including those legitimately using the space. PACE further calls for the regulation of devices in non-public spaces.⁶

Addressing anti-social behaviour

Whilst we acknowledge that some communities have very real concerns about anti-social behaviour, high frequency devices such as the mosquito device are not an appropriate response to these concerns, as they indiscriminately target all children, including infants and very young children.

PACE found that the use of these devices is a disproportionate interference with children's rights under Article 8 of the European Convention on Human Rights (ECHR), which protects the right to respect for private life, including the right to respect for physical integrity. The devices may also interfere, depending on the circumstances, with Article 11 of the ECHR which guarantees the right to freedom of peaceful assembly and the use of the device, with a frequency tone of roughly 17.5 kHz to 18.5 kHz, may also engage children's rights under Article 3 of the ECHR due to potential onset of physical symptoms and the inability of certain children, for example young children, to remove themselves from the vicinity of the noise produced by the device.

A study undertaken by the German Federal Institute for Occupational Safety and Health concluded that the device particularly affects babies and young children and suggests that the noise emitted by mosquito devices may have impacts on children

³ https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

⁵ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

⁶ <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17891&lang=en>

beyond their hearing, potentially causing nausea, dizziness and pain, as well as affecting children's sense of balance. The Institute was unable to exclude risks to health and safety in the use of such devices⁷.

While we are not aware of specific research on the health impacts of these devices on particularly vulnerable groups, the evidence emerging suggests they have a disproportionate impact on children with autistic spectrum disorders, hearing impairments including users of hearing aids and those with tinnitus and babies and young children.⁸ In this context it is important to note the right of disabled children to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community, as enshrined in UNCRC article 23.

States also have obligations under the UNCRC to protect children's privacy and physical integrity (article 16), freedom of association (article 15) and torture and degrading treatment (article 37).

Article 31 of the UNCRC provides all children with the right to *"rest and leisure, to engage in play and recreational activities..."* The use of mosquito devices in public and private spaces to discourage their use by children interferes with this right. Article 2 of the UNCRC requires states to take *"all appropriate measures to protect children from discrimination or punishment on the basis of status"*, using the UNCRC definition of a child as any person under the age of 18 years. Mosquito devices engage all of these rights as they specifically and indiscriminately target all children on the basis of their status as children.

Recommendations:

1. The Scottish Government should consider banning the sale and/or use of high frequency devices aimed at 'dispersing' children and young people as their blanket nature infringes the principle of proportionality within a number of human rights.
2. The Scottish Government should regulate the use of high frequency devices to ensure they are compliant with human rights legislation. In doing so the Scottish Government will also ensure adequate and effective guarantees against abuse by private and public actors.

⁷https://web.archive.org/web/20110927131822/http://www.baua.de/nn_5858/de/Presse/Pressemitteilungen/2007/12/pm079-07.html

⁸ <https://royalsocietypublishing.org/doi/full/10.1098/rspa.2015.0624>