

Review of Environmental Acoustic Legislation

Mosquito High Frequency Sound Deterrent

Prepared

For

COMPOUND SECURITY SYSTEMS

By

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1. INTRODUCTION

1.1 Scope

1.1.1 Applied Environmental Research Centre Ltd (AERC) has been commissioned by Compound Security Systems (the client), to undertake a review of legislation associated with noise in the environment. The purpose of this assessment was to identify whether the “Mosquito” high frequency sound deterrent complies with current acoustic legislation.

1.2 Background

1.1.2 The “Mosquito” is a wall-mounted unit, similar in appearance to a small halogen-style wall light often seen outside residential properties. The unit has an effective range of between 15m and 25m, which emits pulses of high frequency sound ranging between 16 kHz –19kHz, which have been recorded at 76 dB(A) at 3m from the unit.

1.1.3 The unit works on the principle that the audible range of the human ear generally ranges between 20 Hz and 20 kHz, with the higher end of the audible spectrum being the first to deteriorate naturally due to an age related deafness called “presbycusis”.

1.1.4 The device exploits the fact that by the time a person reaches their mid to late twenties there is a large drop in their ability to hear very high frequencies. Based on this natural phenomenon, the Mosquito emits high frequency sound, which can generally only be heard by people up to 20-25years of age.

1.1.5 The high frequency sound emitted from the unit, which cannot be heard by older people, has been designed to deter small crowds of anti social young people from congregating outside stores and shops.

1.1.6 Field trials throughout the UK have confirmed that juveniles and young people who have regularly congregated at known meeting places moved away to other areas after a few minutes exposure to the Mosquito. In addition, it is understood that there have been no reported incidents of noise complaints from residents living in close proximity to the “Mosquito” during its operation.

1.1.7 An independent test report conducted by the National Physical Laboratory (NPL) in December 2005 (Ref E05110518) identified that the Mosquito had a fundamental output with a mean frequency at 16.8kHz and maximum frequency at 18.6kHz, with an A-weighted sound pressure level at 3m of 76 dBA. NPL also confirmed that the Mosquito did not present a noise hazard when assessed against the criteria detailed in the current Noise at Work Regulation 1989 and those in the Control of Noise at Work Regulations 2005 (due to come into force 6th April 2006).

1.1.8 It is understood that Compound Security Systems has also commissioned an independent assessment, which confirmed that the Mosquito system complies with all Human Rights legislation.

2. NOISE

2.1 Difference between sound and noise

- 2.1.1 Physically there is no distinction between sound and noise. Sound is a sensation detected in the ear as a result of pressure variations set up in the air by a vibrating force. Such vibrations set a series of alternate regions of increased and decreased pressure (compressions and rarefactions) in the surrounding air.
- 2.1.2 Noise has been defined in various terms, but is essentially unwanted sound which is undesired by the recipient.
- 2.1.3 Most environmental sounds are made up of a complex mix of many different frequencies. Frequency is the rate at which the source vibrates, and subsequently produces the pressure wave. It is measured in cycles per second (Hertz-Hz). Frequency determines the pitch of sound. Doubling of frequency produces an approximate increase of one octave
- 2.1.4 The frequencies that the normal human ear can detect (up to age 25 years) range from 20 Hz to 20kHz, although individuals can vary greatly in terms of their sensitivity. Below 20Hz lies the range of infrasound and above 20kHz the ultrasound range.
- 2.1.1 The human hearing system is not equally sensitive to all sound frequencies, and to compensate for this, various filters or frequency weightings have been used to determine the relative strengths of frequency components making up a particular environmental noise. The A-weighting is commonly used as it approximates the frequency response to our hearing system.

3. NOISE RELATED ENVIRONMENTAL LEGISLATION

3.1 Introduction

3.1.1 Environmental regulation is achieved both through statute and common law. The following sections outlines the legislation which has a relevance to noise control.

3.2 Environmental Legislation

The Control of Pollution Act 1974 Part III (COPA)

3.2.1 COPA covers noise associated with construction and demolition sites S60-S61, which excludes the "Mosquito".

3.2.2 Noise in the street is covered by sub-section 62(1) and bans the use of loud speakers in the street between 21:00 hrs and 08:00hrs, although this section of the Act is now dealt with by the Noise and Statutory Nuisance Act 1993.

3.2.3 Under S64 of the Act, local authorities are able to designate noise abatement zones (NAZ); premises classified under the order usually industrial premises, may not exceed their registered level. The purpose of these is the long term control of noise from fixed noisy premises in order to prevent further increase in existing levels of environmental noise levels in the area, and to achieve a reduction wherever possible.

3.2.4 Following the implementation of a NAZ order, the local authority is required to record noise levels from the premises specified in the order. These are then kept by the local authority and available for public inspection.

3.2.5 Once a noise level has been registered it may not be exceeded. Over a period of time the local authority may seek to reduce the level initially registered under s.66 of the Act. Section 68 allows the Secretary of State to make regulations to reduce noise caused by plant or machinery, whether or not in a noise abatement zone. There is a right of appeal (s.70) to the Magistrates Court for three months from the date on the Noise Reduction Notice.

3.2.6 It is a defence to prove that the best practicable means were used to prevent or counteract the effect of the noise.

Environmental Protection Act 1990, Part III (EPA)

Statutory Nuisance

3.2.7 Part III of EPA deals with noise as a statutory nuisance and applies to England, Scotland and Wales. Section 79 places a duty on local authorities to inspect their areas from time to time to detect whether a nuisance exists or is likely to occur or re-occur. This section of the Act defines a statutory noise nuisance as "*noise emitted from premises so as to be prejudicial to health or a nuisance*". Nuisance is based on common law, and may be defined as an "*unlawful interference with a persons use or enjoyment of land or some right over it, or in connection with it*".

3.2.8 It should be noted that the Act interprets: "noise" to include vibration; "prejudicial to health" means injurious or likely to cause injury, to health; and "premises" includes

land and vessels (except those powered by “steam reciprocating machinery”). Noise from aircraft other than model aircraft is excluded.

3.2.9 Local authorities must also take reasonably practicable steps to investigate any complaint of statutory nuisance from a person living in its area.

3.2.10 The EPA does not define the level at which sound in the neighbourhood becomes a noise nuisance. This determination is made following an objective assessment by a local environmental health officer.

3.2.11 Where the local authority is satisfied that a statutory noise nuisance exists, or is likely to occur or re-occur it must issue the person(s) responsible for causing the nuisance with a noise abatement notice under S 80 requiring:

- the abatement of the nuisance or prohibiting or restricting its re-occurrence;
- the carrying out of the work necessary to abate the nuisance.

3.2.12 Failure to comply with the terms of the abatement notice without reasonable excuse may result in prosecution in the Magistrates Court (Sheriff's Court – Scotland). Conviction may result in a maximum fine of £5,000, plus a daily fine of £500 for each day the offence continues after the conviction. Where the conviction is for a noise offence associated with industrial, trade or business premises, the maximum fine is £20,000 (Sc:£40,000, ASB ACT2004).

3.2.13 The London local Authorities Act 2004 enables local authorities in London to issue fixed penalty notice in respect of a breach of, or failure to comply with an abatement notice served under the EPA.

3.2.14 Under ss 82(10) there is a defence when it can be proven that the best practicable means were used to prevent the nuisance from industrial trade or business premises.

The Noise and Statutory Nuisance Act 1993 (TNASNA)

3.2.15 This Act, covers England Scotland and Wales and amends ss.79-82 of the EPA to make noise emitted from a vehicle, machinery or equipment being used for industrial, trade or business purposes in the street (Scotland-road) a statutory nuisance.

3.2.16 The definition of noise in the street is given by “noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle”, machinery or equipment in the street” or in Scotland, road.

3.2.17 The Act defines equipment to include musical instruments. Guidance from the Department of the Environment, Transport and the Regions (Env Circular 9/97, WO 42/97) suggests that loud speakers tannoys, loudhailers, radios and “ghetto blasters” should also be regarded as equipment.

3.2.18 This could include: noisy car repairs’, car alarms’, car radios and parked refrigerated vehicles.

3.2.19 Local authorities have to take such steps which are reasonably practical to investigate any complaint from a person living in its area. Although there is no requirement to

physically monitor noise levels, local authorities commonly use BS4142:1997 “Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas”. It can be used to determine the likelihood of noise complaints from an industrial source under normal operating conditions.

3.2.20 Having satisfied itself that a statutory nuisance exists or is likely to occur the local authority must serve an abatement notice.

3.2.21 TNASNA also amends the procedure for serving an abatement notice in respect of a nuisance from a vehicle, machinery or equipment (VEM) on the street. If the VEM is unattended then the notice may be attached directly to the VEM.

3.2.22 The Act covers loudspeakers, with section 7 placing restrictions on the hours they may be used in the street.

3.2.23 Section 9 and Schedule 3 of NASNA relates to “Audible Intruder Alarms”. Generally speaking these apply to burglar alarms, and impose certain obligations on owners of the alarms, including:

- Audible intruder alarms would need to comply with the requirements of the Audible Intruder Alarms Regulations 1995, which requires the alarm to be fitted with a device which automatically stops the alarm 20 minutes after it first sounds;
- The local authority is to be informed of its installation within 48 hours;
- The police are to be notified of the names, addresses and telephone numbers of key holders, and the local authority advised at what police station this information is held.
- If the alarm is still sounding after one hour and is “giving reasonable cause for annoyance” the local authority would be empowered to gain entry to turn off the alarm.

3.2.24 The 1982 Code of Practice on Noise from Audible Intruder Alarms gives guidance on minimising nuisance from faulty alarms. It suggests a 20minute cut-out off device.

3.2.25 The London Local Authorities Act 1991 empowers local authorities to prosecute owners occupiers of buildings whose audible burglar intruder alarms contravene specified requirements or cause annoyance to people in the vicinity.

Noise Act 1996

3.2.26 This Act, covering England, Wales and Northern Ireland, was introduced into Parliament as a Private Member’s Bill in February 1996 and received Royal Assent on 18 July 1996. It deals with noise nuisance, – in particular night-time noise- from domestic premises. In Northern Ireland, under ss2-9 the local authority has to make an application in its area if it is to adopt the Act.

3.2.27 The Anti-Social Behaviour Act 2003 amends ss2-9 to enable all authorities in England and Wales to investigate and deal with night-time noise complaints. Under s.10 confiscation of noise making equipment apply to all local authorities in England, Wales and N. Ireland.

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- 3.2.28 In Scotland, similar measures are contained in Part 5 of the Anti-Social Behaviour etc (Scotland) Act 2004.
- 3.2.29 Night time is defined (s.2(6)) as 23:00hrs to 07:00hrs
- 3.2.30 In Northern Ireland local authorities wishing to adopt the Act it must publish a notice in the local paper on two consecutive weeks at least two months before commencement.
- 3.2.31 In England and Wales where the local authority receives a (residential) night time noise complaint about another dwelling it should take reasonable steps to investigate the complaint.
- 3.2.32 If it is thought that the noise exceeds, or might exceed, the permitted level within the complainant's dwelling then a warning notice may be served on the person responsible for the noise.
- 3.2.33 It is not a requirement that the noise is measured, as it may be obvious that the noise exceeds the permitted level.
- 3.2.34 If an investigating officer considers that noise does exceed the permitted level, an abatement notice and a warning notice can be issued.
- 3.2.35 The permitted level of noise has been set by the Secretary of State. This is 35 dB(A) where the background noise level does not exceed 25 dB(A) and 10 dB(A) above the background level where this exceeds 25 dB(A).
- 3.2.36 If an offence is committed when measured from inside the complainant's dwelling then the offender will be liable to a fine not exceeding level 3 on the standard scale (currently £1,000). However, the investigating officer can issue a fixed penalty notice set at £100 if he thinks an offence has or is being committed.
- 3.2.37 Under s.10 of the Act the local authority officer may enter the offending dwelling and confiscate any equipment which is thought is or has been used to emit noise.
- 3.2.38 The seized equipment may be retained for 28 days or, until the case has been dealt with.

The Noise Emission in the Environment by Equipment for Use Outdoors Regulations 2001.

- 3.2.39 The Regulations, which implement the EU Directive 2000/14/EC, cover equipment ranging from concrete breakers and excavators, and welding and power generators to lawn mowers, came into force on 3 July 2001. Manufacturers of 35 categories of outdoor equipment are required to affix a label which shows its sound power level.
- 3.2.40 In addition manufacturers of a further 22 categories of outdoor equipment are required to affix a label illustrating that the equipment meets the specified noise levels. A second stage of stricter noise levels came into force in January 2006.
- 3.2.41 The Department of Trade and Industry has appointed the Vehicle Certification Agency (VCA) to monitor conformity with the Directive-i.e. that manufacturers are providing

accurate information on sound levels. It has also appointed a number of “Notified Bodies” to monitor conformity with noise levels from the 22 categories of equipment for which levels have been set.

3.2.42 Equipment covered by the Regulations range from concrete breakers, dumpers, and excavators, to lawn mowers and leaf blowers.

The Anti-Social Behaviour Act 2003 (England and Wales) (ASB Act)

3.2.43 The ASB Act provides local authorities and other enforcement agencies with additional powers to deal with anti-social behaviour, including noisy premises. There is similar (2004) legislation in Scotland, with The Anti-Social Behaviour (Northern Ireland) Order 2004 SI 2004/1998, NI 12 providing the implementation and operation of anti-social behaviour orders.

3.2.44 As far as environmental noise is concerned the Act covers the following:

- Noise nuisance in England and Wales the provisions of the Noise Act 1996 are amended to enable local authorities to investigate and deal with night time noise; Part 5 of the Scottish Act enables local authorities to specify “noise control periods” when the provisions will apply; local authorities and the police will be given powers to issue warning and fixed penalty notices, and to confiscate noise-making equipment.
- Closure of noisy premises in England and Wales, local authorities may order the closure for 24 hours of licence premises or premises with a temporary events licence to prevent noise nuisance.
- In Scotland, the maximum penalty available in summary proceedings for a range of environmental offences has increased to £40,000, although this level of has not been imposed on other anti-social behaviour related offences and not noise related offences.
- The Anti-Social Behaviour Act 2003 enables local authorities in England and Wales to close noisy premises for 24 hours; it also amends the provisions of the Noise Act 1996 to enable local authorities in England and Wales to take action against night-time noise.
- The Anti-Social Behaviour etc (Scotland) Act 2004 enables local authorities in Scotland, who resolve to do so, to apply noise controls to specific areas and, or for specific times. Other provisions of Part 5 of the Act are similar to those in the Noise Act 1996 (as amended)

3.2.45 Section 1 of the Crime and Disorder Act 1998 enables an anti-social behaviour order to be served on those responsible for various types of anti-social behaviour, including excessive noise.

3.3 Common Law

Private Nuisance

3.3.1 The tort of private nuisance has been defined as an “unlawful interference or annoyance which causes damages to an occupier or owner in respect of his or her use and enjoyment of his or her land, or certain rights over or in connection with land”. Behaviour amounting to private nuisance may take the form of noise preventing certain uses of the property such as for sleeping or use in the garden. Vibration could actually cause physical harm to buildings. Consequently the law of private nuisance protects a person’s interest in the use and enjoyment of his land.

Public Nuisance

3.3.2 A nuisance is said to be a public nuisance where it “materially affects the reasonable comfort and convenience of the life of a class of Her Majesty’s subject”. Class has been defined further in ***Attorney General v PYA Quarries Ltd*** where Lord Denning held that it would be appropriate to assess whether a nuisance was so widespread and indiscriminate in its effect that it would not be reasonable to expect one person, rather than the community at large, to take action to stop it. Damage could take the form of personal injury, loss of business or physical damage to the property. Such action was taken in the case of ***Halsey v. Esso Petroleum Co. Ltd (1961)***. The damage must have been a foreseeable consequence of the nuisance e.g. the loss of sleep due to vehicles being driven during the night, as in Halsey’s case.

Action Under Nuisance

3.3.3 There are many factors that have to be taken into account when deciding whether a nuisance has or has not been committed. Such factors include the following:

- Damage or harm must have been caused.
- The behaviour must have been unusual, excessive or unreasonable.
- The behaviour must have gone on for some time.
- The nuisance must have been caused by another person on the neighbouring property and not on the plaintiff’s own premises.
- *Character of the neighbourhood.* In ***Rushmer v. Polsue and Alfieri (1907)*** for example, the defendants moved some new printing equipment into their works’ n Fleet Street, then a very noisy area. The noise from the equipment was over and above what would have been normal in that area. Thus they were liable.
- *Abnormally sensitive plaintiffs.* The law can only protect the average person with the average sensitivity to noise. If the plaintiff is unusually sensitive, he or she will not be able to succeed in an action, unless the noise is over and above what would be acceptable to the average person.
- *The defendants conduct.* Cases show that behaviour amounting to a nuisance may be intentional, negligent or occasionally unintentional and even non-negligent. The unthinking noise producer is probably the most common, but after being given notice of the nuisance by the suffer, those who continue to commit noise nuisance are probably intentional or negligent. If it can be shown that the defendant intended to annoy people, this will better support the plaintiff’s case. This is illustrated in ***Fraser v. Booth (1943)*** in which a neighbour instructed his son to let off fireworks in order to discourage the plaintiff’s pigeons from returning to their loft.

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- The behaviour must be indirect in nature. Nuisance by its very nature is an indirect tort.
 - Could the nuisance have been prevented easily? If it could have been prevented for a relatively small cost, then nuisance should have been stopped and the court will take this into account.

3.4 Other Guidance

Who Guidelines

- 3.4.1 Noise can cause annoyance, it can interfere with communication and sleep, cause fatigue, reduce efficiency and damage hearing. Physiological effects of exposure to noise include constriction of blood vessels, tighten muscles, increase heart rate and blood pressure and changes in stomach and abdomen movement. Although hearing sensitivity varies and the effects are therefore personal, exposure to constant or very loud noise - either occupational (>80dBA) or leisure-associated can cause temporary or permanent hearing damage.
- 3.4.2 The World Health Organisation's Guidelines for Community Noise 2000 includes the following recommendations for guide levels to prevent critical health effects.
- Outdoor living area-55dB LAeq measured over 16 hours to prevent serious annoyance and 50 dB LAeq over 16 hours, to prevent moderate annoyance (daytime and evening).
 - Dwelling indoors – 35 dB LAeq measured over 16 hours to prevent moderate annoyance (daytime and evening) .
 - Inside bedrooms – 30 dB LAeq measured over 8 hours (nights), for undisturbed sleep.
 - Impulse sounds from toys, fireworks and firearms- peak sound pressure of 140 dB (adults) and 120 dB (children) measured 100mm from the ear to prevent hearing impairment.
- 3.4.3 Although it should be noted that these Guidelines have not been formerly adopted within UK legislation.

4. CONCLUSIONS

- 4.1 Compound Security Systems are intending to launch the “Mosquito” high frequency sound deterrent.
- 4.2 Prior to the launch, AERC has been commissioned to review current acoustic legislation associated with the environment to establish whether the new unit is compliant.
- 4.3 The Mosquito emits high frequency pulses ranging between 16 kHz –19kHz, with a sound pressure level of 76 dB(A) at 3m from the unit, which is specifically designed to deter small crowds of anti social young people from congregating outside stores and shops.
- 4.4 Successful UK based field trials confirmed that juveniles and young people fled established meeting places within a few minutes exposure to the “Mosquito”. In addition, it is believed that none of the residents living in close proximity to the “Mosquito” when it was operating made noise complaints.
- 4.5 Prior to this assessment the National Physical Laboratory (NPL) established the “Mosquito” had a dynamic frequency range between 16kHz and 18.6kHz.
- 4.6 NPL also confirmed that at 3m the “Mosquito” produces a sound pressure level (76 dBA) which is not a noise hazard when assessed against the lower noise levels detailed in the Control of Noise at Work Regulations 2005.
- 4.7 It is understood that Compound Security Systems has also commissioned an independent assessment, which confirmed that the “Mosquito” system complies with all Human Rights legislation
- 4.8 This review of relevant environmental legislation has included both statute and common law.
- 4.9 COPA is not applicable to the “Mosquito” as the Act applies to construction noise, loudspeakers in the street (now controlled under the Noise and Statutory Nuisance Act 1993) and Noise Abatement Zones (NAZ) generally associated with industrial areas.
- 4.10 The Noise Act 1996 deals with noise nuisance from domestic premises at night, which was amended by the Anti-Social Behaviour Act 2003 to enable local authorities to investigate and deal with night time noise complaints. When a local authority receives a (residential) night-time noise complaint about another resident it should take reasonable steps to investigate the complaint. To help local authorities in determining whether a domestic related night time noise nuisance exists the Secretary of State has set background noise limits. As it is assumed that the “Mosquito” will mainly operate in and around shops and stores it is considered the Act is not applicable. However, in the event that the “Mosquito” is secured in a residential area it is strongly recommended that the unit is not secured in the vicinity of the bedroom windows of young people, especially in the summer months when they are likely to be open for ventilation purposes
- 4.11 The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2003 specifies noise limits for various types of construction equipment including

concrete breakers and excavators. The Regulations also apply limits for a number of hand held power tools, and specifies approved organisations to monitor conformity with the Directive. These regulations are not relevant to the 'Mosquito'.

- 4.12 Noise as a statutory nuisance is mainly covered by the Noise and Statutory Nuisance Act 1993. This Act amends ss 79-82 of EPA whereby nuisance now includes noise in the street from vehicles, machinery, equipment, loudspeakers and burglar alarms. There are two aspects of statutory nuisance. Firstly, the issue of the "Mosquito" being prejudicial to health. The report by NPL established that the level of sound (76 dBA) emitted by the "Mosquito" is not prejudicial to health when assessed against the Control of Noise at Work Regulations 2005.
- 4.13 The second aspect of statutory noise is the issue of nuisance. The criteria for establishing nuisance are generally similar under statute and common law and require demonstration that the activity is interfering with the plaintiff's enjoyment of his land, taking into consideration the character of the neighbourhood. There is a presumption that, if the action is carried out to achieve a beneficial end point it is not a nuisance; the converse being that the action is more likely to be a nuisance if carried out in malice. The Local Authority is empowered under the Noise and Statutory Nuisance Act (1993) to take account of nuisance caused off a plaintiff's land if its caused by, *inter alia*, a vehicle, machinery, or equipment on the street.
- 4.14 It is concluded that the 'Mosquito' device would not be prejudicial to health, taking into consideration current workplace and international (WHO) guidance.
- 4.15 The question of whether its use could be interpreted as a statutory nuisance under the Noise and Statutory Nuisance Act is less clear. Provided that it can be reasonably demonstrated that its use, in dispersing youths who may potentially cause disorder, is for the general good, it is probable that a statutory nuisance would not be demonstrated.
- 4.16 As the basis for nuisance is similar in statute and common law it is considered unlikely that use of the "Mosquito" would be actionable as a private or public nuisance.
- 4.17 Although it is considered unlikely that actions under nuisance could be taken against the manufacturers, or users of, the "Mosquito" the validity of nuisance actions proposed under both statutory and common law is open to legal interpretation. Therefore it is recommended that specialist legal advice is sought regarding the conclusions drawn from this assessment.

