

CAA response to London Luton Airport Limited's March 2022 Statutory Consultation

CAP 2336

A large, abstract graphic composed of overlapping blue and purple shapes, resembling a stylized wing or a modern architectural element, occupies the lower two-thirds of the page. It features a gradient from light blue to dark blue and purple, with curved edges and a layered effect.

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Introduction

1. The Civil Aviation Authority (CAA) welcomes the opportunity to respond to London Luton Airport Limited's (LLAL) statutory consultation on airport expansion in its capacity as a statutory consultee under planning law.
2. The CAA has a number of statutory functions which are relevant to any scheme proposing to make best use of an airport's existing runway. We are using our response to this statutory consultation on LLAL's proposed development to provide clarity and transparency on the roles and responsibilities we are performing and will continue to perform with respect to LLAL's proposed expansion scheme.
3. Parts of LLAL's proposals for expansion will be subject to CAA regulatory processes and approval. Some of these regulatory processes are already under way and will continue throughout and beyond the Development Consent Order (DCO) process (including after DCO consent, if granted, and during the construction phase).
4. We have engaged and will continue to engage with LLAL over the coming months to understand its proposals for expansion insofar as they relate to our relevant regulatory roles and statutory functions and thus in our capacity as a statutory consultee.
5. This response is based on the available information in LLAL's statutory consultation as at 4 April 2022 (the date of our response to LLAL's statutory consultation) and the current status of our relevant policies at this date. As our work on our regulatory processes will continue after this date, this response should be considered as a "snapshot" of our position on the issues discussed as at that date and remains subject to further development in those processes.

The CAA's regulatory roles and statutory functions

6. The CAA is the UK's specialist civil aviation regulator. We work so that:
 - the aviation industry meets the highest safety standards. We regulate the safety of airport design against all applicable legislation, including regulations that are retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018, and international safety criteria.
 - consumers have choice, value for money, are protected and treated fairly when they fly. We apply an economic licencing regime to airports which satisfy the market power test in section 6 of the Civil Aviation Act 2012; a category which, at present, does not include Luton Airport.

- airspace is well managed. We are required to prepare and maintain a co-ordinated strategy and plan for the use of all UK airspace for air navigation up to 2040, including the modernisation of such airspace. We make decisions on proposals to change airspace design, which we do against the background of our duties under the Transport Act 2000, Directions and environmental guidance from the Secretary of State. and
- the aviation industry manages security risks effectively.

We also provide the Government, and third parties on a commercial basis, with environmental advice as requested, including information about the noise effects of aviation operations. It is for Government to determine aviation environmental policy and for the CAA, where required, to implement such policy as it relates to our functions.

The CAA's role as a statutory consultee under planning law

7. The CAA is prescribed as a statutory consultee in relation to applications for development consent made under the Planning Act 2008 and must be consulted on all such applications relating to an airport or which are likely to affect an airport or its current or future operation. We therefore respond to consultations and information from an applicant insofar as their application is relevant to our regulatory roles and statutory functions and we have comments to make.
8. As a statutory consultee, we are expected to provide advice and assistance to the Planning Inspectorate and Secretary of State on whether we see any impediments to LLAL's proposed development proceeding insofar as they relate to our regulatory roles and statutory functions, and, if so, whether we consider those impediments are capable of being properly managed¹. We make that assessment, where possible, at the time of LLAL's DCO submission. In making that assessment, we will need to give our view to the Examining Authority whether there are any unmanageable impediments where there is sufficient evidence available to inform the CAA's assessment. Our assessment will be based on the evidence then available. The assessment we carry out and the advice and assistance we provide do not in any way fetter the CAA's decision-making discretion in relation to its regulatory decisions at a later stage; all regulatory decisions will be taken based on the information available, the statutory framework and relevant considerations at the time.

¹ This is likely to be in the form of a 'no impediments' and/or 'statement of common ground' document.

Structure of this response

9. We welcome the opportunity to respond to LLAL's Statutory Consultation. Each chapter of this response deals with a different topic for which we have a regulatory role.
10. There is evidently a large volume of consultation material, much of which does not appear to be directly relevant to the CAA's regulatory roles and statutory functions. We have not reviewed all of the consultation documents published by LLAL as part of this consultation. We have focussed our attention on those areas which are within or are closely related to the CAA's areas of regulatory responsibility. Also, we have only included reference to documents where we have a comment to make.

Chapter 1

Aerodrome Safety

- 1.1 The CAA is the UK regulator of civil aviation safety. The CAA's role as regulator is to oversee compliance by UK aerodromes with all relevant aerodrome regulations (namely, UK Reg (EU) No. 2018/1139, UK Reg (EU) No. 139/2014 and all associated Acceptable Means of Compliance and Certification Specifications) that fall within scope of that regime.
- 1.2 The CAA has considered the consultation documents relevant to its aerodrome safety role and can confirm it does not have any comments to make.

Chapter 2

Airspace

2.1 The CAA has two separate but related roles concerning airspace. First, we are directed by the Secretary of State to develop a strategy and plan for the use of all UK airspace for air navigation up to 2040, including for the modernisation of such airspace. Our approach to this is detailed in our Airspace Modernisation Strategy (AMS), which is set out in CAP1711. Second, the CAA makes decisions on airspace change proposals. Change sponsors are required to follow our airspace change proposal (ACP) process, which is set out in CAP 1616 before submitting a proposal to us for decision. Our airspace functions are carried out in such a way as to give effect to our AMS subject to our statutory functions and duties.

CAA Airspace Modernisation Strategy

2.2 The CAA's AMS, which was first published in December 2018, sets out the shared objective between the CAA and the Department for Transport (DfT) – to deliver quicker, quieter and cleaner journeys and more capacity for the benefit of those who use and are affected by UK airspace. It initially focussed on the period to 2024, replacing the CAA's earlier Future Airspace Strategy. The CAA recently launched a public consultation on a refreshed AMS, set out in CAP2298a and CAP2298b, which intends to:

- Extend the strategy out to 2040
- Place integration of all airspace users at the core of the strategy, including accommodating new aerial vehicles like drones, advanced air mobility and spacecraft
- Aim for simpler airspace design and supporting regulations
- Introduce sustainability as an overarching principle to be applied through all modernisation activities, including better managing noise and helping to achieve government commitments to net zero emissions
- Align delivery of the strategy with the ICAO Global Air Navigation Plan and provide a clear strategic path for rulemaking activities, now that the UK has left the EU and the European Aviation Safety Agency.

2.3 One of the most complex and challenging delivery elements within the AMS is the need for airspace to be redesigned, which requires coordination between independent airspace change sponsors to understand trade-offs and dependencies between their respective airspace changes. The CAA and DfT believe this complex coordination is best achieved through a masterplan of

airspace changes. We have required NATS (En Route) plc (NERL) to set up ACOG (the Airspace Change Organising Group), as a separate and impartial unit, to prepare the masterplan – a single coordinated implementation plan for airspace changes in the UK to cover the period to 2040.

- 2.4 In order to confirm that the masterplan is consistent with government policy and the CAA's own statutory airspace functions, the co-sponsors must assess ACOG's progress. Based on that assessment, and before the masterplan can be implemented, the CAA must decide to formally accept the masterplan into its AMS, having consulted the Secretary of State.
- 2.5 On 27 January 2022, the CAA published its decision to accept Iteration 2 of the masterplan into the AMS. Iteration 2 of the masterplan includes an airspace change proposal sponsored by Luton airport's operator LLAOL, which is part of a cluster of strategically important changes to modernise upper airspace and lower airspace in the South of the UK. ACOG's current implementation plan suggests that, subject to a CAA decision to approve the ACP, this is not expected to be implemented until 2027 at the earliest.

Airspace Change Proposals

- 2.6 Airspace change sponsors are required to follow our airspace change proposal (ACP) process, which is set out in CAP 1616. The CAA must consider and determine ACPs in accordance with the AMS, including any iterations of the masterplan that have been accepted into it.
- 2.7 In addition to airspace change, changes to air traffic control (ATC) operational practices are sometimes required to accommodate new traffic or improve efficiency. Originally, the CAA regulated only the safety of such practices, but in October 2018 the Secretary of State gave the CAA a function of deciding whether or not certain ATC operational practices may be implemented (after considering other factors such as noise impact, in addition to safety). Following a consultation in 2019, our decision-making process for PPRs (planned and permanent distribution of air traffic) was incorporated into CAP1616.

Luton DCO Consultation Material

- 2.8 We note at p.149 of the Consultation Brochure Document LLAL states "It is important to note that changes may be required to flightpaths from the airport to fit in with the overall airspace Masterplan regardless of whether the DCO is granted or not and that the DCO itself does not directly require changes to flightpaths over the ground to achieve the increase in runway movements."
- 2.9 However, LLAL goes on to say that "nonetheless, realising the modernisation of the airspace is necessary to enable the growth envisaged across the London airports to be achieved, including the growth envisaged through this scheme as well as at the other airports, including the potential third runway at Heathrow, due

to the importance of removing the current complex interactions between flightpaths serving different airports. Given the priority being accorded to airspace change by the government, it is envisaged that changes will be delivered in time to facilitate the growth plan for this scheme" (also p.149 of Consultation Brochure Document).

- 2.10 We also note that in the Draft Need Case footnote 25 states, in relation to runway capacity modelling, that "It was also assumed that in the longer term, operations at LTN would not be constrained by the operations at other airports as this is an overarching objective of the government's Airspace Modernisation programme".
- 2.11 The CAA considers that there is some tension between these statements as on the one hand LLAL states that the DCO itself does not "directly require" changes to flightpaths over the ground but LLAL also appears to indicate that airspace modernisation will, to some extent, enable the growth envisaged through this scheme. The CAA is not aware of any evidence within the consultation documents to conclude that the projected increase in air traffic movements as proposed by the DCO can be accommodated within the existing airspace structure, and the CAA is not yet in a position to comment on or verify, or otherwise, the assertions outlined above in the absence of any evidence from LLAL to support these statements.
- 2.12 Further, the airspace modernisation programme is at an early stage and it is not possible at this stage to say with any certainty what trade-offs might be needed to resolve a conflict between the sponsors of separate airspace changes, or between different objectives (such as achieving noise reduction, fuel efficiency or additional capacity), and therefore what benefits individual airports might achieve from airspace modernisation. In addition, any airspace change proposals intended to deliver airspace modernisation will be subject to the CAA's separate regulatory decision-making process for individual airspace change decisions under CAP 1616.
- 2.13 Also at p.149 of the Consultation Brochure Document LLAL states that "A second draft of this Masterplan is due in the near future and will be assessed by the CAA. Until such time as this Masterplan is approved to proceed to the next stage, all further proposals for airspace change at specific airports have been placed on hold by the CAA". It should be clarified that on 27 January 2022, the CAA published its decision to accept the latest iteration of ACOG's masterplan (Iteration 2) into the AMS, and relevant individual sponsors have been allowed to proceed to their CAP1616 Stage 2 gateway assessment, including LLAOL.
- 2.14 We note the proposed use of a noise envelope in the DCO process (as stated in the Green Controlled Growth document at paragraph 4.2.2) which will, we understand, establish the maximum parameters within which any future changes to flight paths will have to be delivered as part of the CAP 1616 process. LLAL

should ensure that the noise envelopes proposed as part of the DCO process enable LLAOL, and where relevant LLAL, to comply with the requirements of the CAP 1616 process and do not unduly restrict scope for development of airspace options in any future ACPs or the ability to coordinate with other airspace change sponsors as part of the UK's airspace modernisation programme.

Chapter 3

Noise and carbon emissions

Aircraft noise

- 3.1 The CAA has three key roles in relation to aviation noise:
- Deciding whether or not to accept any proposal to change airspace design (developed under our CAP 1616 process) in accordance with UK law and noise policy. Detailed information is available on our airspace change pages.
 - Monitoring noise around UK airports and publishing information about noise levels and impact. We do this for a range of customers including the UK Government, airport operators, airspace change proposers and local authorities.
 - Collaborating on and reviewing research into the effects of noise and how they can be reduced, and offering advice to Government on these effects.
- 3.2 The CAA does not make decisions about the amount of noise that is considered damaging or a nuisance for people, nor does it make decisions about particular plans for airports, such as expansions. Further, CAP 1616 and the Air Navigation Guidance 2017 do not place any requirement on the CAA in terms of regulating noise on the ground at airports.
- 3.3 We note LLAL's view that its DCO application does not require a change to the design of the airport's airspace, as it is not considered a requirement by LLAL. However, the airspace design around Luton airport may change in the future due to the modernisation of airspace in the south of the UK. This currently involves proposed changes to upper airspace and lower airspace at up to 16 airports, including a proposal by Luton airport's operator LLAOL.
- 3.4 Therefore, these future ACPs may alter the environmental impacts of the proposal from those presented in the PEIR and subsequent Environmental Statement (ES). LLAL will need to ensure the noise envelope secured through the DCO does not unduly fetter the airspace modernisation programme that is underway and the subsequent Airspace Change Process.
- 3.5 In Table 3.1, we set out the CAA's comments on the consultation documents with regard to noise.

Table 3.1: CAA comments concerning Noise

Document/Para No.	Comment
Draft Compensation Policies and Measures	
Draft Compensation Policies and Measures	The CAA welcomes the proposed voluntary noise insulation scheme with four tiers. It is not clear to the CAA how eligibility will work within the different tiers. A property may be eligible within one tier, but forecast to fall into a higher tier once the proposed development reaches capacity. Does an application under one tier preclude a subsequent application under another tier at a later date? If so, what happens if an application is deferred until the highest anticipated tier is reached, but subsequently not reached, such that the final eligible insulation scheme could have been claimed earlier? Consequently, there appears to be a risk that noise mitigation substantially lags behind noise detriment associated with the development or may encourage residents to claim earlier for less than their eventual entitlement.
PEIR Volume 2 Chapter 16: Noise and Vibration	
Chapter 16 Para. 16.6.1 c.	para 16.6.1 c., runway modal split seems reasonable for long-term average modal split, but there does not appear to be any evidence presented to confirm this. There is a long-standing principle to use a 20-year average modal split.
Para 16.6.1 f.	Regarding para 16.6.1 f., no evidence presented to confirm that radar tracks in 2019 are comparable with 2017 tracks used for noise modelling. Although there have been no changes to the design of the airspace in that time that will affect the noise contours, at other airports other changes have occurred that were not due to changes in the published airspace design.
Para 16.6.1 h.	It is not clear why the noise modelling was adjusted for other aircraft to match measurements, but not for the A321neo. We would be grateful for clarification as to why the measured performance of the A321neo was not used as a baseline. We would also be grateful for clarification as to the basis for the assumption that the A321 neo's performance will be resolved by 2039.
Para 16.10.11	With regard to the assumption that any airspace change proposals will be accommodated within the DCO Noise Envelope, it is not clear what, if any, sensitivity analysis has been undertaken of how noise contour area might change with differing airspace usage (similar issue to sensitivity of differing runway modal split). Whilst the CAA recognises that detailed designs will not be available for

	<p>some time, analysis of different runway modal splits and different departure route traffic distributions would give some indication as to how sensitive noise contour area is to these parameters.</p>
<p>PEIR Volume 3: Appendix 16.1 Noise and Vibration Information</p>	
General	<p>The CAA welcomes the detail presented on noise validation of the dominant types. However, having adjusted AEDT for the four of the aircraft types, as noted in the CAA's comments on Chapter 16, it is not clear why the A321neo was not adjusted and treated differently.</p>
Table 24 and 25	<p>Tables 24 and 25 do not appear to entirely align with Table 23. Are the headings of Tables 24 and 25 reversed? (for example, approach noise data is shown for monitor locations LTN_MRK and LTN_FLM in Table 24, but these are not indicated as departure locations in Table 23).</p> <p>Similarly, departure noise data is shown in Table 25 for monitor locations LTN_KNS, LTN_CAD, and LTN_DGN, but these are identified as approach noise monitors in Table 23.) It would be helpful if these matters could be clarified.</p>
6.7 Weather data	<p>The noise assessment is based on average summer day noise exposure. However, significant aircraft noise data presented was collected outside the summer period. It would be helpful if LLAL could clarify why noise measurement data was not limited to the same summer period. It would be helpful if LLAL could also confirm if any data was rejected due to windspeed (as done for the baseline noise survey).</p>
Tables 87 & 88	<p>There appears to be an error in Table 87; the core case in the table heading refers to year 2043, but the table title and sensitivity refers to year 2039.</p> <p>There also appears to be an error in Table 88; the core case in the table heading refers to year 2043 but the table title and sensitivity refers to year 2039.</p>
<p>Draft Green Controlled Growth Proposals</p>	
	<p>The CAA welcomes LLAL's proposals for noise contour area limits for daytime and night-time.</p> <p>The CAA welcomes two levels below the specific noise contour area limit.</p> <p>As indicated by LLAL some airports dispense movements from night quota movement and noise limits, however, the dispensed aircraft are currently included in noise contours at those airports. We would welcome further clarity on how dispensations would work with both daytime and night-time contour area limits. It is not clear, for example, if flights delayed into the night period and subsequently dispenses, would be calculated as part of the daytime noise contour or not.</p>

	<p>Whilst the document does acknowledge that noise contours are affected by the impact of wind on runway usage (para 4.2.5), the proposals do not appear to make any allowance for this. It may be that Luton airport's noise contour areas are less sensitive to runway modal split than at other airports, but the effects of this need to be considered and potentially the limits defined around long-term runway modal split (e.g. a 20-year average runway use) to avoid atypical prevailing winds from causing a breach in a given year. Atypical winds have already caused a breach of the Amsterdam Schiphol noise envelope, for example.</p> <p>With regard to the ranges proposed for the limits, there needs to be consistency between the limits proposed, the likely significant impacts identified, and the associated mitigation proposed, including the noise insulation scheme.</p>
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Carbon emissions

- 3.6 The CAA has a general duty to publish information on the adverse effects of aviation on the environment (CAA Act 2012, Section 84)².
- 3.7 In Table 3.2, we set out the CAA's comments on the consultation documents with regard to carbon emissions.

Table 3.2: CAA comments regarding carbon emissions

Document/Para No.	Comment
PEIR Chapter 5 – Approach to the Assessment	
	<p>The Planning Inspectorate's Scoping Opinion (Section 4.4) stated that the Applicant "should identify and consider the cumulative effects of the Proposed Development with other relevant projects or plans" with regards to GHG emissions.</p> <p>Table 5.1 of the PEIR states that 'Cumulative' GHG effects are scoped out and it would be helpful if LLAL could clarify if this is in accordance with the scoping opinion.</p> <p>The Planning Inspectorate's Scoping Opinion (Section 4.5) stated that "an assessment of vibration effects arising from construction vehicles on the existing road network should be provided as part of the ES". Please clarify whether this is in or out of scope as this is not clear from Table 5.1, which states that 'Noise and vibration from earthworks and construction of the airport infrastructure' is in scope, but 'Traffic vibration' is scoped out.</p>

² See [Environment | Civil Aviation Authority \(caa.co.uk\)](https://www.caa.co.uk)

PEIR Chapter 9: Climate change resilience	
	LLAL should consider taking into account the IPCC 6 th report.
PEIR Chapter 12: Greenhouse gases	
Paragraph 12.3.17	The Planning Inspectorate considered that 'Due to the length of the lifetime of the Proposed Development decommissioning of the airport was scoped out of the assessment, as agreed with PINS in the EIA Scoping Opinion, and therefore is not considered further in this assessment.' LLAL might consider whether the impact from decommissioning should be classified (significant/not significant) as part of the decision before it is scoped out.
Paragraph 12.6.5	The Planning Inspectorate considered that 'Most future emission factors will be dependent on factors outside of the Applicant's control, for example those affected through UK Government policy and legislation (as set out in Section 12.2). This means that there are inherent uncertainties in the quantification of future GHG emissions.' It would be helpful if LLAL could clarify what steps, if any, it is taking to mitigate the emissions which are outside of its control (given that they account for over 90% of the overall GHG emissions of the proposed development as per Draft GHG Management Plan in Appendix 12.1 in Volume 3 of the PEIR).
Table 12.32	In Table 12.32, where the Planning Inspectorate considered 'DS DCO-embedded emissions in comparison with national carbon budgets', LLAL might consider including 2050 emissions in order to show the % in the UK emissions in the ability of the UK achieving net zero.

Chapter 4

Other aspects

Accessibility

- 4.1 UK Reg (EC) 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air states in the recitals that -

In deciding on the design of new airports and terminals, and as part of major refurbishments, managing bodies of airports should, where possible, take into account the needs of disabled persons and persons with reduced mobility. Similarly, air carriers should, where possible, take such needs into account when deciding on the design of new and newly refurbished aircraft.

As a result, it would be useful for Luton to demonstrate that such matters have been considered.

- 4.2 Under CAA guidance document, CAP1228, UK airports with more than 150,000 passengers a year should consult with disability organisations, through setting up an advisory forum. This should include consultation with disability organisations regarding accessibility of infrastructure, including in relation to the new terminal building.
- 4.3 LLAL should also demonstrate that Section 5.10 (Airport Design) of ECAC Doc Part 1 has been taken in account.

Aviation Security

- 4.4 The CAA is responsible for aviation security regulatory activity and compliance monitoring at major UK airports.
- 4.5 It should be noted that it is important that security managers work closely with project managers and designers to ensure that the relevant threats and risks are understood and the right security outcomes are delivered through design. Guidance to airport operators is offered in the Department for Transport publication 'Aviation Security in Airport Development 2017'.

Economic regulation

- 4.6 Luton is subject to the obligations of the Airport Charges Regulations 2011, which we enforce and which place non-discrimination, consultation (including on

major infrastructure projects) and transparency obligations on airports serving over five million passenger a year.³

4.7 However, Luton is not subject to the more wide-ranging obligations normally associated with Airport Economic Licences.⁴ The CAA can regulate an airport operator by means of an Airport Economic Licence, but before doing so, it must determine that the given operator meets the market power test in section 7 of the Civil Aviation Act 2012 (CAA12).⁵

4.8 The market power test consists of three parts, all of which must be met if the airport operator is deemed to have met the market power test:

a) that the airport operator has, or is likely to acquire, substantial market power in a market, either alone or taken with other such persons as the CAA considers appropriate;

b) that competition law does not provide sufficient protection against the risk that the airport operator may engage in conduct that results in an abuse of the substantial market power; and

c) that, for users of air transport services, the benefits of regulating the airport operator by means of a licence are likely to outweigh the adverse effects.

4.9 While we are required to keep under review the provision of airport operation services in the United Kingdom⁶, we are not required to make market power determinations for all UK airports or to make market power determinations at regular intervals. We may, however, make a market power determination whenever we consider it appropriate to do so, or may be required to make one in response to a request from airport operators or another person whose interests are likely to be materially affected by the determination.⁷

³ The Airport Charges Regulations 2011 implemented in UK law the Airport Charges Directive 2009. We have published guidance on how we shall use our powers in the Airport Charges Regulations 2011, which is also intended to help airports and airlines to comply with the regulations and inform them on how to make a complaint about alleged non-compliance. This guidance document is available at www.caa.co.uk/CAP1343.

⁴ An airport economic licence allows airport operators for which the CAA has determined that they meet the market power test to levy airport charges and can set conditions that airport operators must fulfil on a number of aspect areas such as maximum allowed prices or revenues, service quality and investment.

⁵ We published guidance on our application of the market power test at www.caa.co.uk/CAP1433.

⁶ Under section 64 of CAA12.

⁷ See section 7 of CAA12. In cases where we receive a request from an interested party to make a market power determination for an airport serving more than five million passengers per annum on which we have not previously made one – the case of Luton airport – we are required to make one.

- 4.10 Currently, we only economically regulate Heathrow and Gatwick airports. Stansted airport was deregulated in 2014 when we determined that this airport did not meet the market power test above.⁸ We currently have no information that suggests Luton airport's DCO proposals would lead us to launch a market power determination process under CAA12 or an investigation under the Airport Charges Regulations 2011.
- 4.11 In addition to our economic regulation functions, the CAA also has concurrent competition powers regarding the provision of airport operation services.⁹

⁸ The 2014 Market Power Determinations in relation to Heathrow, Gatwick and Stansted airports are available at <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Airport-market-power-assessment/>

⁹ We have enforcement powers of competition law prohibitions on anti-competitive agreements and abuses of dominant market positions. We can also conduct market studies and refer a market for a full investigation by the Competition and Markets Authority. We have published guidance on the application of CAA's Competition Powers at www.caa.co.uk/cap1235.