Modern Environmental Governance: Qualitative Research Data
Case Study n. 3: Elan Valley, Powys

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1 Introduction and Methodology

This case study is the only one focussing on Welsh common land. The common land under analysis is in fact located in the Elan Valley in the county of Powys. The area is of particular interest for a number of reasons. First of all it shares many similarities with English upland commons, especially Eskdale, thereby providing a valuable ground of comparison with the English environmental governance system. As it will becoming visible in the sections dealing with environmental governance and property rights, in fact, the environmental designations and agreements as well as the proprietary traditions present are very similar to those of Eskdale but the administrative bodies differ greatly. If Natural England holds the majority of responsibility both in the environmental designation process and in the signing and monitoring of management agreements in England; in Wales the environmental governance is divided between the Countryside Country for Wales, a body whose functions parallel those of Natural England, and the Welsh Assembly Government.
Secondly, the case study area is of particular environmental value, hosting various SSSIs, being a Special Protection Area and comprising two Special Areas of Conservation under EU legislation and being located within the Cambrian Mountains Environmentally Sensitive Area. Given that the ESA is coming to an end in 2011, this case study is of particular interest because it opens up the possibility to speculate on the future of Welsh post-ESA management solutions, i.e. the Tir Gofal, which some farms have already entered individually to manage their inbye land.
Finally, the common land under study (CL 36, Cwmdeuddwr common) confines with a large area of de-registered common land (former CL 66). The ownership and management arrangements differ: CL 36 is privately owned and managed by the Cwmdeuddwr Graziers and Commoners Association, while the former CL 66 is part of the Elan Valley Estate of Dwr Cymru Welsh Water, so it is managed by the Elan Valley Trust and grazed by the Elan Valley tenants. This peculiar setting has raised a number of research questions that can be grouped under 5 main headings:
1) Do the different legal statuses of the two areas of land make a concrete difference in everyday management and in the provision of environmental assets?
2) To what extent the physical and legal boundary between the two areas is also a cultural (and metaphorical) boundary?
3) What is the definition of common land, viz. on which legal grounds was CL 66 de-registered?
4) Does the status of common land really make a difference, a) for the environmental quality of the land and b), for the self-perception of farmers?
5) What is the actual social dimension of common land and to what extent does it differ from that of former common grazing uplands?

These questions coupled with the standard questions of the semi-structure interviews' questionnaires have directed the primary qualitative research for this particular case study. In more detail, the methodology employed mirrors that of the other case studies, allowing for variations of questions depending on the specificities of the case study. The fieldwork was conducted in three phases. During the first visit, meetings were scheduled with the Elan valley estate manager, the commons registration officer

responsible for the register of CL 36 and with the Countryside Council for Wales. The principal aim of the meeting with the estate manager was not only to understand the Trust objectives but also to gather the names and addresses of tenants farming on Cwmdeuddwr common in order to plan semi-structured interviews. The meeting with the registration officer was very informative in relation to issues surrounding the registration. There it was possible to discuss the de-registration of CL 66, and concentrate on the rights of common as registered for CL 36. The information gathered is fed below into the section related to property rights. Finally, the meeting with CCW centred on the discussion of the principal challenges and strategic priorities for the current and future management of the Elennydd SSSI as well as on the impact of the various environmental designations on the common and their relations with common rights. Some documentary information was also supplied by CWW under request, namely the SSSIs notification form and maps representing environmental designations. This information is an important part of the environmental governance research. Semi-structured interviews were conducted with 11 farmers in total, 4 in the second trip (30th and 31th of October) and the remaining from the 2nd to the 4th of March 2009. The interviews also provided interesting comparisons between the common grazing on CL 36, the grazing regime on former CL66 and that on CL 6 (where exclusive grazing rights are held by one farmer) – all within the case study area. Two meetings were held with the legal advisor of the Elan Trust during the second and third phase of the fieldwork, and these addressed *inter alia* the possible acquisition of ownership of CL 36. A focus group was conducted with the farmers and the land manager of the Elan Trust to discuss the possibility of setting up a common council to manage the common. Finally a meeting took place at the Welsh Assembly government offices in Llandridod to examine with the rural division officers the Tir Gofal arrangements negotiated with individual farmers and possibly involving the whole common once the ESA agreement expires.

To maintain interviewee confidentiality interview transcripts were coded When a distinction between the farmers is required, each farmer will be numbered from 1 to 11 (Wfarmer 1, W farmer 2 etc. to Wfarmer 11).

2 Environmental Governance

2.1 Environmental Designations

The area has a plurality of environmental designations: it hosts three Sites of Special Scientific Interest (the Elenydd, the Coed y Cefn and the Cerrig Gwalch SSSIs) and it is comprised within the Elenydd-Mallaen Special Protection Area and two special areas of conservation (the Elenydd and the Coetiroedd Cwm Elan/Elan Valley Woodlands SACs). After giving a description of each of the three environmental designations principally derived from CCW data, particular attention will be dedicated to the farmers' subjective definitions and interpretations of these designations to be compared with those of CCW officers.

2.1.1 The Elenydd-mallean SPA

Map of Elenydd-mallaen

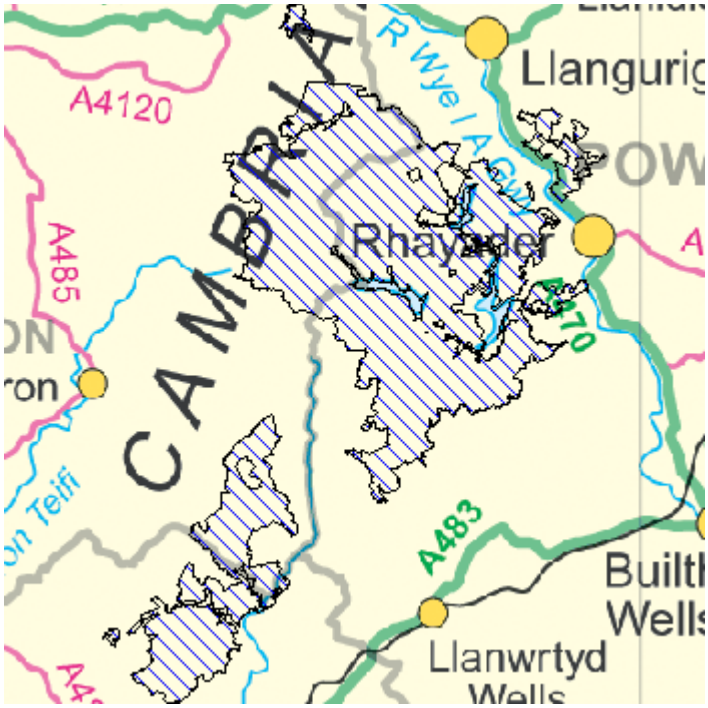


Image retrieved from: http://data.nbn.org.uk/siteInfo/siteSpeciesGroups.jsp?allDs=1&engOrd=false&useIntersects=1&maxRes=1&siteKey=40204

The Elenydd-Mallaen SPA (EU code: UK9014111) has an area of 30022.14 ha. Given the diversity and quality of its upland habitats, the site was classified in 1996 representing one of the most important ornithological sites in Wales for the protection of European breeding raptors, to which it offers many suitable feeding and nesting sites. It therefore qualifies under Article 4.1 of the 79/409/EEC Directive because it supports populations of species listed in Annex I of the directive during the breeding season: 7 pairs of the Falco columbarius (Merlin), 15 pairs of the Falco peregrinus (Peregrine) and 15 pairs of the Milvus milvus (Red Kite). Sheep rearing has played an important role for the conservation of the Red Kite, by contributing to the creation of an important carrion-feeding bird community.
The conservation status of the SPA is favourable according to the information CWW

received from the Kite Conservation Trust in 2007 (Mitchell 2008). Given that the feeding habitats and carrion availability are sufficient to support the breeding population in the long term, the aim is the maintenance of the current woodland management as well as appropriate grazing levels. This contrast with the farmers' assessment, which emphasised that due to the reduction of grazing levels, the carrion availability was diminishing, thereby endangering the bird population.

2.1.2 The Special Areas of Conservaiton

- **The Elenydd SAC**

Map of Elenydd

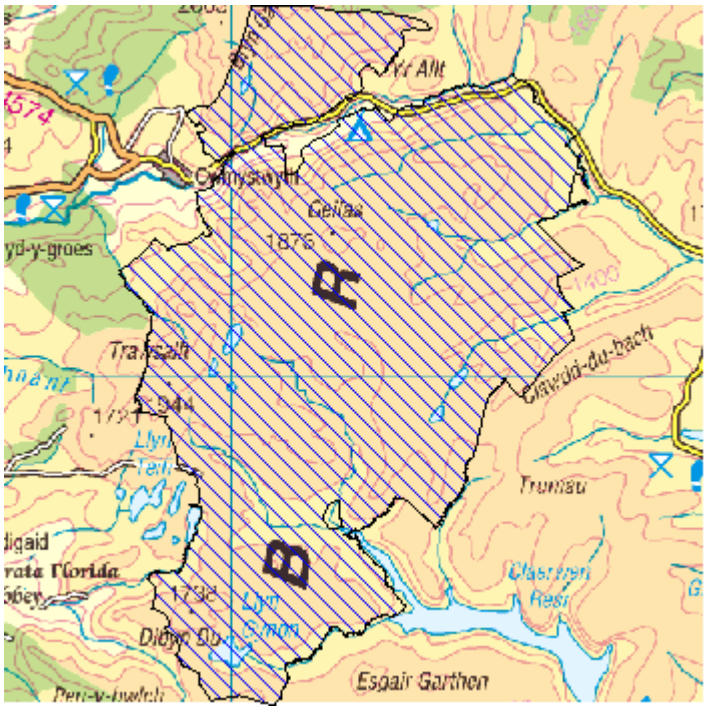


Image retrieved from: http://data.nbn.org.uk/siteInfo/siteSpeciesGroups.jsp?useIntersects=1&allDs=1&engOrd=1&srcKey=UK0012928&srcDsKey=GA000327

The Elenydd SAC (EU code: UK0012928) was designated in 2004 and it covers an area of 8609.42 ha. Annex I habitats that are a primary reason for the selection of the sites are blanket bogs. The blanket mires are however fragmented by species-poor vegetation dominated by purple moor-grass *Molinia caerulea.* The other Annex I habitats that are a primary reason for the selection of the site are calaminarian grasslands, developed as consequence of heavy metal extraction, which has left extensive areas of scree rock outcrop affected by heavy metals available for colonisation by heavy metal-tolerant species (http://www.jncc.gov.uk/protectedsites/sacselection/sac.asp?EUcode=UK0012928).
The Elenydd oligotrophic lakes are populated by floating water-plantains, Annex II species that are a primary reason for the selection of the site. Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or of the *Isoëto-Nanojuncetea* and European dry heaths are Annex I habitats that present

qualifying feature for the site. Natura 2000 data form for this site indicates overgrazing, burning and winter feeding as threats for the site habitats and species. Recreational activities (such s motorbike scrambling) as well as the deposition of atmospheric pollutants are also a determinant of the vulnerability of the site. The agro-environmental agreements in place today are considered as a positive step towards the reduction of grazing damage. (http://www.jncc.gov.uk/protectedsites/sacselection/n2kforms/UK0012928.pdf).

- **The Coetiroedd Cwm Elan/Elan Valley Woodlands SAC**

Map of Coetiroedd Cwm Elan / Elan Valley Woodlands

Image retrieved from: http://data.nbn.org.uk/siteInfo/siteSpeciesGroups.jsp?useIntersects=1&allDs=1&engOrd=1&srcKey=UK0030145&srcDsKey=GA000327

The Coetiroedd Cwm Elan/Elan Valley Woodlands SAC (EU code: UK0030145) was designated in 2004. It is smaller than the Elenydd SAC, extending over an area of 439.53 ha. Its European importance is to be attributed to the broad-leaved deciduous woodland, which covers 68.8% of the site's surface. Annex I habitats that are a primary reason for the selection of this site are in fact the old sessile oak woods, especially q*uercus petrae*. Annex I habitats that are a qualifying feature but not a primary reason for the selection of the site are *Tilio-Acerion* forests of slopes, screes and ravines and, as for the Elenydd SAC, European dry heaths.

As for that of the Elenydd SAC, this SAC conservation status is unfavorable according to a recent (2006) assessment of CCW. The reasons for the vulnerability of the site are attributed by CWW to high stocking levels, damaging trees and ground flora. A primary recommendation of CWW is therefore the exclusion of livestock from these areas. Also suggested is the management of the woodland structure to be

achieved by a combination of SSSI management agreements and agri-environment measures.

2.1.3 Sites of Special Scientific Interest

- **Coed y Cefn SSSI and Cerrig Gwalch SSSIs**

Before turning to an in-depth description of the Elenydd SSSI, the special features of Coed y Cefn and Cerrig Gwalch SSSIs should be mentioned because also these sites are within the case study area, although of minor relevancy for the management of common land. Coed y Cefn is the only oak woodland site in Powys supporting a population of hairy wood ants and invertebrates associated with woods and nests. According to CWW, the site is in favourable and improving conditions and in order to be preserved as such a proper woodland management as well periodic sheep grazing should be maintained. In regards to the Cerrig Gwalch SSSI, three are its special features: broadleaved semi-natural woodland (supporting a variety of breeding birds), lily-of-the-valley and mountain melick. Also this site is in favourable conditions but in order to remain so continuous grazing should be avoided as well as atmospheric pollution.

- **Elenydd SSSI**

The Elenydd SSSI is the largest site of special scientific interest in the case study area, comprising 22, 770 ha. The Claerwen National Nature Reserve is also comprised within the SSSI. The area was first notified in 1954 and the last re-notification was in 1992. Multiple are the special features that have made Elenydd of special interest, of which some are important in a European context as highlighted above such as broadleaved semi-natural woodland, breeding red kites, merlin and peregrine, a variety of epiphytic lichens and blanket bogs, which cover 20% of the Elenydd moorland plateau. At present, the site is considered in un-favourable conditions by CWW. Purple moor-grass *Molinia caerula* overwhelmingly encroaches these uplands due to the management effects of grazing. According to CCW, the ascendency of the Molinia is therefore a 20th century man-induced phenomenon that can be rectified by changing the current management. This view is in line with a biological study carried out by Chambers et al (2007)[1]. The palaecological data of the study shows a greater proportion of Sphangum existed in the past on the Elenydd SSSI and that the degradation of blanket mires and the increase of Molinia are recent and caused, *inter alia*[2], by intensive grazing of sheep, which became prominent at the beginning of the 20th century (Chamber et al. 2007: 2842). Bog vegetation is very sensitive to sheep grazing but so are the nests and young of ground nesting birds, which could be damaged by sheep trampling. A certain amount of grazing is however necessary to prevent the colonisation of bracken and shrubs. In order to obtain an appropriate balance, CCW suggests the establishment of mixed grazing on the SSSI areas covered by the case study. This suggestion resonates with Natural England position in relation to English upland commons. Cattle in fact could control the spreading of the molinia

[1] However, the palaecological study concluded that if grazing was a determinant of blanket mires degradation, burning was not to account for the rise in Molinia records in this particular case.
[2] Another important factor contributing to the rise of Molina suggested by Chambers et al. was the increased nutrient input to the sites, such as nitrogenous animal manure and atmospheric input.

as well as that of bracken. Besides, cattle damage less the older heather compared to sheep. Because sheep's very selective grazing concentrates and therefore damages the drier heath, ponies could be useful for low-intensity year-round grazing. This solution was adopted by the Claerwen farm situated in the Claerwen National Natural Reserve. However, this is difficult to be implemented on common land for a number of reasons mirroring those of the English uplands, namely the legal limitations imposed by the common register and the farmers' potential economic loss. In relation to the common register, as for England, all the entries are for grazing sheep only. A conversion to cattle is therefore illegal, unless new rights are created under the common act 2006 through a common councils or landlord's surplus grazing is used. Besides, the legal status of the common clearly does not permit the fencing of the land and because cattle are not heafted, their management would require significant efforts on the part of the farmers. Finally, according to the CCW officers, the market is not favourable for cattle. Farmers are therefore opposing the conversion to cattle fearing an economic loss.

As it will be explained in the section related to management agreements, at present the ESA agreement constitutes the only means to control grazing levels. No management agreements under the Wildlife and Countryside Act have been signed to prevent the carrying out of Operations Likely to Damage the Special Interest. As in the other case studies, the farmers have never formally submitted a notice under section 28 of WCA 1981, making the instruments provided under the 1981 Act redundant. When farmers have asked for consent to carry out an OLD, that as well as the refusal from CCW, has happened informally (CCW officers, interview 2009). A final word on the OLDs should be spent on the list of the OLDs itself. The list of operations likely to damage the special interest of Elenydd can be subject to the same criticisms employed for those of the other case studies: the list is very extensive covering 28 operations, it is very standardised, resembling other OLDs list of uplands SSSIs and overrules the right of common of turbary by prohibiting the removal of turf (see Ingleton case study chapter for more detailed criticism of OLDs lists). Also, similarly to the other case studies, the list of OLD is an example of the lack of integration between the law of common land and present nature conservation legislation in the UK. In fact, many of the operations likely to damage the special interest are operations which commoners are not able to perform given the legal status of common land.

To conclude, the knowledge as well as the perception of farmers of the implications of the SSSI designations, especially of the OLDs will be examined. All the farmers interviewed were aware of the SSSI designation on their land but few had a proper understanding of what it entailed in terms of management. Only two farmers knew the different OLDs, while the majority mentioned the insignificance of the OLDs in shaping their agricultural practices. Similarly to the Ingleton case study, the farmers only mentioned those operations having an effective impact on their land management, especially the ban on burning. According to the farmers, controlled burning is beneficial for the vegetation in an effort to control the spread of *Molinia.* CWW officers, though recognizing that burning has been an historical practice, oppose it believing that in the long term the vegetation suffer from it. For CCW, the key to achieve a sustainable management of the land and restore the blanket bog is mixed grazing, not burning. This is yet another example of the different priorities and beliefs of the two groups of stakeholders. Although many farmers were aware of the prohibition to supplementary feed on the common, they were not particularly concerned with it since it was never a widespread practice on these lands. Despite

supplementary feeding being a restriction, it was revealed that a farmer still supplementary feeds his stock on the common but, interestingly this was not presented as an illegal activity. The interviewee mentioning it in fact argued that, as long as the supplementary feeding happens in the right areas of the common, is not detrimental for the vegetation and therefore is not illegal. The definition of legality was therefore extended to embrace those OLDs, which were not believed to be really damaging and therefore were ethically acceptable. The farmer's observation is therefore of particular interest because it reconciles legal understanding with pragmatic ethics, departing from a rigid understanding of the lawful.
Apart from expressing discontent in relation to the prohibition to burn, the farmers did not perceive the OLDs as limiting their customary managements, finding the restrictions "pretty minimal" (Wfarmer 4 and Wfarmer 9). This perception is probably to be attributed to the fact that no Management Agreements have been offered by CCW or required by the farmers under the power conferred by the WCA 1981. As the next session will show, agri-environmental planning, especially the ESA, has been the preferred management instrument by CCW to improve the status of the common.

2.2 Management Agreements

2.2.1 The Environmentally Sensitive Area Scheme

The effect to EC Regulation 797/85 on Improving the Efficiency of Agricultural Structures was given in Britain by the Agricultural Act 1986. Sec. 18 of the Act allows the Welsh Assembly Government (or DEFRA for England) to designate an ESA after consultation with Countryside Council for Wales (or Natural England) and with the Countryside Agency. The purpose of designating an ESA is the conservation of particular important landscape, wildlife or historic interest features where they can be affected by farming operations. Now the scheme is closed to new applicants (see the discussion of Tir Gofal below). In Wales, a total of 6 areas have been designates covering 165,000 hectares and the last agreement was signed in 2001. Within these ESAs, annual area payments are made to farmers who voluntary agree to manage their land in specific environmentally sensitive ways. Each ESA is established by an order, specifying the list of practices tailored for that ESA. Although there is a high degree of standardization, the precise terms of each agreement depend on the specific management agreement between the farmer and the Welsh Assembly Government. It can be argued that in a conventional property rights situation (where there is a single owner/occupier) the ESA agreement is generally preferred to an SSSI agreement given that it is administrative simpler than a SSSI's one. The latter in fact requires each agreement to be negotiated individually, while the former provides for standard rates of payment for standard practices (Bell and McGillivray 2008: 870). However, this observation does not take into account the property system on common land, where the plurality of rights holders makes the signing of a voluntary and single agreement a more complicated endeavour. The voluntary nature of the ESA agreement means that every commoner has to voluntary agree to specific agricultural practices. Also it should be guaranteed that non-active commoners will not suddenly decide to exercise their rights disturbing the management system agreed. Another difficulty of reaching a single agreement on common land is that the prescriptions of the agreement may be in conflict with customary practices, such as burning or

supplementary feeding. The conflict could also extend to a cultural level: the customary practices are justified by a specific agricultural culture which does not match with the scientific culture and understanding of governmental environmental bodies.

Given all these limitations, why and how was ESA agreements successfully negotiated on Cwmdeuddwr common? In this case study as well as in that of Eskdale (case study n. 3), ESA agreements were signed for the whole common and were preferred over the reaching of individual SSSI management agreements under the WCA 1981 or positive agreements under the CROWA 2000. A number of reasons can account for the signing of the ESA in this case study:

1) As Wilson and Wilson argued in their paper of 1997, the limited number of graziers on the Cambrian Mountains ESA is an important variable for understanding the reaching of an ESA agreement. This was also confirmed during the qualitative research, where it was possible to note the degree of familiarity existing between farmers. Despite the remoteness of some farms, the commoners all knew each other personally, cooperating in their daily management of the common.

2) A related variable explaining the success of ESA in Cwmdeuddwr common is the communing sense of belonging expressed by the farmers. This notion of belonging will be explored more in depth in the section dealing with institutions to explain farmers' attitude towards common councils and the success of the existing commoners association.

3) Besides, the farmers did not only share a sense of belonging to a particular place and community but also shared a similar economic situation. As in most upland commons throughout England and Wales, in Cwmdeuddwr common grazing is becoming a low remunerative activity because of market mechanisms and the agro-environmental schemes are becoming a necessity to rendering farming still viable.

4) From the point of view of environmental bodies, the preparation of the ESA agreement is a less administrative burden and less time-consuming activity than that of preparing individual management agreements.

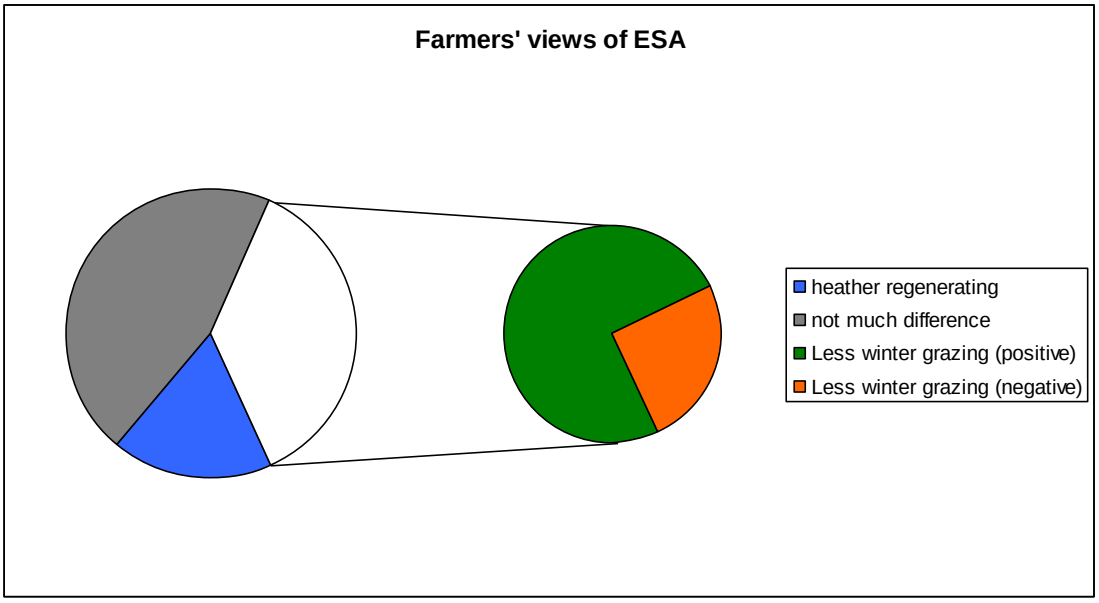
5) Finally, by binding non-active graziers, this ESA prevented them from interfering with the management of the common.

The ESA agreement of Cwmdeuddwr common is Tier 1 and Tier 1A of the (1995) Cambrian Mountains ESA devised by the National Assembly for Wales Agriculture Department, first designated in 1987 and revised in 1993/1994 (Environmentally Sensitive Areas (Cambrian Mountains - Extension) Designation Order 1987 (S.I. 1987/2026)). The area was designed in order to maintain and enhance areas of semi-natural rough grazing as well as broadleaved woodlands, under the threat of agricultural intensification. Until the 1994 revision of the Cambrian ESA, however, the risk of intensification was still high in non-ESA areas since the ESA management agreement were taken out on eligible land and not on the whole farm (Wilson 1997: 73). The details of Tier 1 payments are the following: £20 per annum per hectare over the first 20 hectares, £10pa/ha on land over 20 hectare but less than 51 hectares, £5pa/ha on land which exceeds 50 hectares but less than 101 hectares and £3pa/ha on land which exceeds 100 hectares. For Tier 1A, payments increase to £25pa/ha for unenclosed semi-natural rough grazing without heather and £35 for that with heather. The agreement was signed in 2001 after what was described by some interviewees as a protracted negotiation between the Welsh Assembly and the Cwmdeuddwr commoners association. The reason for such a lengthy negotiation was the change of project officer not internal disagreements among commoners (Wfarmer1 interview).

The agreement has 10 years duration expiring in 2011. The prescriptions relating to the land included in the agreement are various ranging from the requirement to maintain existing hedges, walls, fences, lakes and ponds to the prohibitions to remove broadleaved trees, to plough, to cultivate, to install new drainage system and to apply fertiliser.
The prescriptions related to grazing that figure into the agreement are two:
1) in Tier 1 the obligatory requirement is that the contracting party is not to raise the level of stock without prior written approval granted by the National Assembly for Wales.
2) in Tier 1A, the contracting party should ensure that the land is not overgrazed by using an average stocking rate of 0.375 livestock units per hectare in unenclosed semi-natural rough grazing not including heather, and of 0.22 livestock units per hectare in unenclosed semi-natural rough grazing which include heather. Also supplementary feeding of livestock should be restricted to areas agreed in advance with the National Assembly for Wales. These prescriptions are interesting analytical subjects because they contrast both with environmental law and with the law of the commons. In fact, supplementary feeding is an OLDs in the Elenydd SSSI, therefore it cannot be carried out without the consent of CCW, while in the ESA agreements it is expressly stated that it can be carried out under the consent of the National Assembly for Wales, not CCW and no mention to the OLD is made. The other incongruence relates to the stocking levels. One of Tier 1 obligatory requirements is that stocking levels can be raised under the consent of the National Assembly. This clearly does not take into account the legal nature of a common, the fact that farmers have a particular number of registered rights of common, which cannot legally be exceeded. Finally, other Tier 1 obligations such as the prohibition to plough or cultivate on the land subject to agreement again does not take into account that these operations are already prohibited by the SSSIs status (they figure in the list of OLDs) and moreover extends beyond the rights of common exercisable by farmers. These prescriptions therefore are another example of the way modern instruments of environmental law are ill suited for the legal situation on the commons and the result is paying farmers not to carry out activities which are already prohibited under the law of commons. On top of these prescriptions, farmers were individually approached in order to negotiate grazing days. Differently from the Ingleton case study, where it has been decided to close the common for particular periods to prevent overgrazing, in Cwmdeuddwr common each grazier was allocated a number of grazing days to be used whenever he/she prefers. Although some farmers have decided not to put any stock on the common from the 15th of October to the 15th of April, this is their individual decision as there are not overall closed periods, providing farmers with more freedom to manage their grazing. During the negotiation period for the ESA, it was proposed to have a percentage cut of the 25% of the stock but this was not considered fair by those who did not graze up to their full entitlement and this lead to proposing the allocation of grazing days.
These observations open the discussion to a wider question: whether the ESA has been environmentally beneficial as well as financial beneficial. By conferring a greater freedom of management to the farmers and by prescribing measures overlapping with certain OLDs and by prohibiting activities already banned by the common land status of the land, is the ESA achieving anything in terms of environmental management of the land or is it only a financial instrument benefitting the farming economy?

According to CCW officers interviewed, the ESA has not been very effective in tackling overgrazing so at times it has been supplemented by section 15 agreements under the Countryside Act 1968 negotiated with individual farmers in order to achieve sustainable grazing levels on the SSSI land. Following the advent of the Tir Gofal agri-environment scheme, many of these agreements have been replaced by Tir Gofal agreements. Both section 15 agreements and Tir Gofal agreements have been negotiated with individual farmers on their private inbye land and the ESA remains the only management agreement covering stocking rates on the common itself. CCW's hope is to be able to negotiate a composite single Tir Gofal agreement for the entire common (i.e. CL36) once the ESA expires.

The farmers' perceptions of the ESA agreement were also addressed in the semi structured interviews. All the farmers agreed that the ESA has had a beneficial impact economically especially given the loss of income following the cessation of headage payments. As for the environmental quality of the common, the answers were more diverse, as the following pie chart shows.



Many of the farmers did not think the ESA had made a great difference to the livestock management and in turn to the environmental quality of the common land. This answer mirrors the observation of the Elan Trust's land manger that on Cwmdeuddwr common it has been more the Single Farm Payment than the ESA that has led to reduced stocking levels (Land manager interview 2008).
Other farmers were more positive in relation to the environmental benefits, arguing that the ESA had contributed to the regeneration of the heather on parts of the common. Many mentioned that, although the agreement did not require taking stock off the common during the winter, they had in fact opted to overwinter stock elsewhere. The effects of the decrease of winter grazing on the common were not perceived in the same manner by the farmers. For some farmers, in fact, less winter grazing was negative for the vegetation of the common since fewer sheep concentrated on the sweeter patches of common, leaving ungrazed many areas. For the majority of the farmers, however, less winter grazing had a variety of positive effects: it ameliorated the conditions of the sheep, producing a higher percentage of

lambs, and in regards to the environmental quality of the common it improved the status of the vegetation.

2.2.2 Tir Gofal - Future Management?

The Land in Care Scheme (Tir Gofal) Regulations 1999 came into force on the 11th of May 1999. The Tir Gofal is an agri-environmental scheme for the purposes of Article 7(3) of the Council Regulation (EEC) No. 2078/92 on agricultural production methods compatible with the requirement of the protection of the environment and the maintenance of the countryside, last amended by Commission Regulation (EC) No. 2772/95 as rectified by Commission Regulation (EC) No. 1962/96. It therefore fulfils similar functions to the Environmental Stewardship in England and, as the ES, it integrates the disparate elements of previous schemes, such as the ESA and Tir Cymen. The Tir Gofal can be compared to the High Level Stewardship in England since it is a high level agri-environmental whole farm scheme, more comprehensive than the Tir Cynnal, which is a new voluntary entry level agri-environmental scheme, thereby similar to the entry level stewardship scheme. The following discussion focuses on the potential for Cwmdeuddwr common to be entered into Tir Gofal.

The Tir Gofal scheme is administered by the Welsh Assembly Government's Rural Payment's Division. When set up in 1999, the power to enter into a Tir Gofal agreement was conferred to the Countryside Council for Wales. Today, however, the Welsh Assembly Government's Rural Payment Division is the body responsible for the administration of the scheme. This transfer of administrative responsibilities differentiates the Welsh approach to agro-environmental schemes to the English one, which attributes to Natural England the powers to enter into agreements. If in England, the management of SSSIs and that of agro-environmental schemes is in the same hands, in Wales there is a divorce between the management of SSSIs (under the supervision of CCW) and that of agro-environmental scheme (now under the power of WAG). This managerial dichotomy and its effects became clear during the interviews conducted with CCW and the WAG responsible for the case study area. In fact, CCW officers were able of telling us their management priorities for the SSSI but could not pronounce themselves on the future entrance of Cwmdeuddwr common in the Tir Gofal, although they were clear on the requirements of the Tir Gofal scheme since they designed it back in 1999 and they worked in partnership with the WAG. Therefore, although the Tir Gofal today is fully administered by the Assembly following the transfers of rights and liabilities of any agreement from CCW to the Assembly conferred by section 4 of the Tir Gofal (Wales) (amendment) Regulations 2006, CCW officers felt they "still have a handle on it" given the history behind its setting up and also given that many section 15 agreements have been subsumed under Tir Gofal agreements (CCW interview 2008). They nevertheless recognized the confusion and bureaucratic burden that this separation of management creates for the owners and occupiers within SSSIs since these have to consult both the Assembly and CCW e.g. if wanting to carry out an OLD. An additional negative consequence of this fragmentation of powers is that if at any time the agenda of CCW and the Assembly will differ, there will not be a coherent management of the same land, detrimentally impacting on the environment quality of the land. Finally, another drawback of this dichotomous administration as recognised by the WAG officers interviewed is habitat monitoring: the rural inspectorate does habitat monitoring visits

of land within Tir Gofal, while CCW independently monitors SSSIs land. Because these two monitoring visits are not linked, the monitoring costs of the land which is within an SSSI and at the same time has been entered within a Tir Gofal agreement are doubled. To these visits, it needs to be added the initial visit of the Tir Gofal project officer when mapping the land for Tir Gofal in order to record the quality of the habitat (WAG interview 2009).
The situation is complicated even more by the review of Axis 2 of the Rural Development Plan (RDP) for Wales 2007-1013 carried out by the Welsh Assembly Government. Axis 2 is the RDP's section dealing with conservation of landscape and environment and therefore includes provisions related to the Tir Gofal. The review is justified by the attempt to align Axis 2 with the reform of the EU's Common Agricultural Policy and with the issue of climate change. The review is bound to terminate in 2010, after the time when the interview with WAG officers was conducted (March 2009). Therefore, the WAG officers were very vague in relation to what management the Tir Gofal agreement for the common would require because they were waiting for the amendments of the review. It is also interesting to note that, prior to the wide review of Axis 2, section 5.2.42 of the Welsh RDP has proposed certain refinements to the Tir Gofal , one of which being the testing out of proposed approach to co-operative land management schemes using the example of common land. This is an important step towards the policy recognition of the different management common land requires. The ill-suited nature of agro-environmental schemes for common land has been criticised, as they fail to recognise the customary cooperative arrangements at play on common land. Therefore, the Welsh RDP's note on co-operative land management in regards to the Tir Gofal is to be welcomed. The RDP also proposes the potential development of a top tier scheme, which would go beyond the level of activity envisaged for Tir Cynnal and Tir Gofal by promoting action at a landscape or catchment scale to address specific environmental problems. Section 5.2.52 of the RDP anticipates that one of the measures that a top tier scheme could include would be "co-operative action to achieve improvements on common land, including support for initiatives undertaken by commoners' associations to mobilise farmers to act together". Therefore, it is suggested that a new agro-environmental scheme could build on the peculiar institutional basis of common land in order to improve the environmental situation. Although this is a very significant improvement, it needs to be noted that not all commons have a commoners association and therefore those lacking one could be marginalised by the new scheme.

Tir Gofal agreements have been entered into by various farmers on the case study area for the inbye land and, once the ESA expires in 2011, the aim is to enter also Cwmdeuddwr common into the Tir Gofal. Compared to the ESA, the Tir Gofal offers a higher rate of payments and this is one reason why farmers would favour the entry into the scheme. According to CCW the Tir Gofal option for Cwmdeuddwr common would be a combination of restoration of semi-improved grassland to unimproved grassland with Heathland vegetation on acid grassland, respectively rewarding farmers with £105 per ha per year and £95 per ha per year. These are optional categories to be added to the rate for mandatory habitat, which for the commons over 200 ha is of £30 per ha per year. On top of that, the scheme also offers one off payments for capital works such as heather management and bracken control. However, in order to be eligible for the scheme, the applicant needs to score at least 100 points. Points are awarded for a range of habitats, environmental features and farm characteristics. According to the WAG officers interviewed, the scoring system

is a drawback for common land, since its habitat and the unenclosed nature of the land reduce the weighting factor for individual applicants farming on common land. However, it should also be noted that, while the scoring of points depends on the environmental benefit that management options, existing habitats and creation of new features are capable of delivering, applications that include SSSI land are awarded fixed scores, provided that the applicant agrees to carry out any work needed to enhance the SSSI value. Given that Cwmdeuddwr common hosts a number of SSSIs, it could be in advantage compared to other commons to reach 100 points. When the application scores 100 points, the project officer in charge of assessing the application will prepare a draft management plan. If accepted by the applicant as well as by the Welsh Assembly Government, it will be possible to sign the Tir Gofal agreement. The agreements have duration of 10 years with a break clause after 5 years.

Together with the payments, another central variable determining farmers' willingness to join the scheme is the severity of change in farm management that the Tir Gofal could require. All the farmers interviewed argue that their decision to apply to the Tir Gofal for the common will depend on the degree of the changes in management required. A further reduction of stocking rates was feared by the majority of the commoners as a potential requirement of the Tir Gofal agreement. This fear may be well founded as the WAG officers interviewed expressed their management priority in these terms: "with heather, the crucial thing is not having any stock on in winter" (interview 2009). When asked about the possibility of controlled burning, the WAG officers stated that is an OLD in the SSSI list therefore, though not outside the scope of the Tir Gofal, is surely outside that of the SSSI management. Moreover, if the aim is to reduce the spread of the Molinia, the burning should be followed by cattle grazing. Although under the Tir Gofal agreement there is a 10% cattle grazing premium, given the nature of the rights of common registered for Cwmdauddwr common, the graziers have no right to graze cattle on the common. The only scenarios in which grazing cattle could become possible are if new rights of common are created under the Commons Act 2006 or if surplus grazing rights of landowner are used. Nevertheless, for the former possibility to be realised the registered rights should not be too many, otherwise the creation of new rights will run against the sustainability framework envisaged by the Commons Act 2006; as for the second surplus grazing should exist. Cattle grazing was also mentioned by CCW officers as the panacea against molinia spreading. The CCW officers recognise not only the limitations imposed by the common register and the issue of fencing but also pragmatically problems commoners could face with the introduction of cattle, such as reduced water quality.

Another potential requirement of the Tir Gofal suggested by the farmers was bracken control, given the detrimental impact of bracken on the SSSIs. At present, none of the farmers interviewed exercise rights of estovers and bracken spread is minimised by controlled spraying, as agreed in the ESA.

Finally, as for the other case studies, the successfulness of the scheme is highly dependant on the capability to reach a consensus between the farmers to submit a joint application. Although the unanimity is not required, in order to enter an agreement at least 70% of the graziers should be involved and the graziers forming part of the commoners association should altogether own 80% of the rights (WAG officers' interview 2009). The landowners of the common should also need to be signatories to the agreement if the application is accepted into the scheme (Welsh Assembly Government's a guide to the scheme: 2006).

2.3 Impact of the Single Payment Scheme

The relevant authority for determining single farm payments entitlements as well as the eventual appeals is the Welsh Assembly Government. The implementation of the single payment scheme (SPS) in Wales has taken a different trajectory than that in England. In fact, if in England the dynamic hybrid model has been adopted to calculate payments entitlements, in Wales, payments are based on the historical subsidy claims made by each farmer during the 2000-2002 reference period. The choice of the historic model was justified by the Assembly Government on the basis that flat rate payment or a combination of two will disadvantage the smaller Welsh traditional farms because payments will be redistributed away from them (Carwyn Jones Cabinet Statement 2004).
The cross-compliance conditions to be observed to receive payment under the SPS have apparently been particularly important in order to reduce grazing pressure on Cwmdeuddwr common. One of the cross-compliance conditions is central in this respect, that related to overgrazing and unsuitable supplementary feeding methods (Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Reg 4, para 6)). Under this condition, a farmer must not use unsuitable supplementary feeding methods and not allow overgrazing, defined as "grazing with so many livestock that the growth, quality or diversity of natural or semi-natural vegetation is adversely affected" and if the National Assembly has given the farmer written directions concerning the management of the land subject in its opinion to overgrazing or supplementary feeding, he must comply with it.
According to the land manager of the Elan Estate the SPS has had a substantial impact on stocking rates. This is due to the fact that farmers have no incentive to keep large number of sheep: there is no profit in sheep production itself and 95% of the farmers income derives from SPS and agro-environmental schemes. Importantly, in his view the introduction of the SPS has had a bigger impact in reducing overgrazing than the Tir Gofal scheme. Indeed, given that the principal reduction in stocking levels is driven by the SPS this has made the performance of Tir Gofal agreements more problematic- some farmers maintain livestock numbers at the minimum required for winter grazing under their Tir Gofal agreements. Even in the summer, many farmers stock at minimum winter level because if they do not own land elsewhere, it is not economically efficient to away-winter additional stock (semi structured interview, land manager 2008). These observations on the major impact of the SPS on livestock management were shared by some of the farmers interviewed and contrasts with the minor role the introduction of the SPS appears to have played in the other case studies.

3 Property Rights

3.1 Ownership

Ownership and registration issues are particular intricate in this case study. Two are the principal points of interest: the transfer of ownership of CL 36 and the

De-registration of CL 66. While CL 36 is for the majority privately owned by the Lewis family,[3] there have been various attempts to sell the land. Prior to the current negotiations between the Lewis family and the Elan Trust to transfer ownership to Dwr Cymru Welsh Water, the Lewis family attempted to sell the land to the commoners association. From a property perspective, that transfer would have been particularly interesting because it would have entailed a shift from common land to common property. However, the transfer was unsuccessful so that now the protagonists of the potential exchange are Elan Estate and the Lewis family. The Elan Estate was purchased by Welsh Water under the terms of the Birmingham Corporation Water Act 1892 (55 & 56 Vict., Ch. Clxxiii)[4], and mostly vested in the Elan Valley Trust. During the informal interviews conducted with legal advisor as well as the land manager of the Elan Trust, it became clear that the Trust has been willing to acquire CL 36 for several reasons. Many of the graziers of CL 36 are also tenants of the Elan Estate and therefore if their agricultural activities would be under the supervision of the same body, coherence of management would be ensured. From a practical point of view, it would render rent review exercise simpler for those farms at the bottom end of the estate adjoining CL 36, whose leases include both a turnout on the common outside the parameters of the Estate and inbye land within the Estate (land manager interview 2008). The final reason is that two small tracts of CL 36, one forming part of Moelfryn Mawr and the other forming part of Carregbica are already owned by Welsh Water, making the ownership of the land fragmented. The registration of these two tracts of land under the Welsh Water ownership followed a common commissioner's decision of 1985 (reference No. 276/U/138). The common commissioner was asked whether the two tracts of land of which no person was registered as the owner had to be attributed to Welsh Water, who was claiming ownership arguing that the two pieces of land were conveyed together with other land conveyed to Birmingham Corporation as part of its water undertaking. The common commissioner considered sufficient evidence that because of a series of acts of Parliament reorganizing the national water supply, the two pieces of land were vested in the Welsh Water Authority and should be registered under its name in the ownership session of the common register. If at present this dual ownership has not a profound effect because the management of the common is mainly the product of the ESA agreement and especially of the SPS, if a common council would be set up for CL 36, both the owners should be notified and potentially being involved in its management.

Given that at the time of conducting fieldwork the transfer of ownership was about to be completed, it is worth to briefly speculate on the consequences this transfer will have in terms of environmental management. Aside from the issues discussed above (a simplification of rent reviewing as well as an overall management coherence), the Elan Trust charitable objectives will play a key role in the management of the common. Although phrased in a very general way, these objectives are centered on balancing landscape and environmental protection with social welfare especially of recreational groups. Objective number 1 states "the preservation maintenance and enhancement for the benefit of the public of the area of great natural beauty

[3] Although registered as one common land unit, CL 36 comprised remnants of the wastes of both the historic manors of Cwmdeuddwr and Cwmdeuddwr Grange. This is the reason why

[4] Welsh Water is a large regulated water and sewerage company, owned since 2001 by the Glas Cymru, a company limited by guarantee. The Elan Valley's reservoirs Welsh Water operates serve to provide Birmingham with drinking water.

comprising the Elan Valley and its natural aspects and features (and its animal and plant life) and objective n. 3 states "the provision at the Elan Valley or such part of it as shall be appropriate in the interests of social welfare and for the purpose of improving the conditions of life for the persons for whom the same are intended of facilities for physical recreation which shall be available to members of the public at large". Clearly, the emphasis is anthropocentric given that there is no mention of environmental protection per se but only for recreational interests. If the Trust becomes the landowner of CL 36, its objectives would have potentially an impact on the common management by reconciling the agricultural interest of the common with the recreational interest. However, we shall not forget that the Trust's principal aim remain that of protecting the quality and quantity of the reservoir waters, therefore in the worse scenario, CL36 could suffer because more funding and attention would be dedicated to the protection of the reservoirs more than the common. Whichever scenario, the transfer of ownership will clearly have an impact on farmers and on the common management in general because the Trust will be a present landowner, differently from the Lewis family, which, by not living nearby any longer, does not take an active interest in the daily management of the common.

The Elan Estate is of interest also for another motivation, viz. because it hosts a de-registered common, former CL 66, historically probably part of the manor of Grange of Cwmdeuddwr that extended also to parts of CL 36. From an historical point of view this is interesting because it shows how the manorial boundaries have been ignored when the Elan Estate was created rendering CL 36 as well as CL 66 modern inventions, produced by consideration of water abstraction and also helps explaining the claimed ownership of the two pockets of land on CL 36 (see Winchester and Straughton 2008 for more historical details). Here attention is dedicated to legal issue surrounding de-registration. CL66 was registered by Llansantffraed Cwmdeuddwr Parish Council in 1969 as 'manorial waste of the ancient manor of Grange of Cwmdeuddwr, no longer subject to rights of common'. The reason why it was registered as a common not subject to rights of common seems to find an explanation in a letter from Radnorshire County Land Agent to the Divisional Executive Officer of MAFF, 28 August 1968, stating that Birmingham corporation had acquired all rights of common to achieve better control of the livestock grazing within the water catchment area (Winchester and Straugthon 2008). The registration of CL 66 at entry in the Land Section and at entry n.1 in the right section was objected by the Birmingham Corporation (the company antecedent to Welsh Water) in 1972. The common commissioner decided to refuse the confirmation of the registration in 1981 (reference no. 276/D/321-323). The decision of the commoner commissioner refers to the fact that common rights no longer existed and/or to the fact that the land was not manorial waste at the time of the registration since the Birmingham Corporation had no purchased the manorial lordship title.

The fundamental role that cultural and agricultural elements play in constructing meanings of common land is also visible in relation to CL6, a registered small common lying in the outskirts of the case study area. CL 6 is subdivided into three sections as reported in the common register but only two entries (4 and 5) have registered rights of pasture. Under entry 5 the Elan Estate's rights in gross are registered, which have been rented out to the only active farmer, whose rights are registered under entry 4. This presents a peculiar case of common land where only one farmer has exclusive rights over it. During the semi-structured interview

conducted with this farmer, it became clear that, in his view, this land should not have been registered as common land, being crown land. A similar opinion was expressed by Wfarmer 10 and 11 when asked to comment upon the differences between crown land and common land. Therefore, although CL 6 is common land in law, it is not recognized as such by the local farmers. Besides, CL 6 lacks the same opportunities given to "classical" forms of common land, where there is a multiplicity of commoners. For example, given that it is land where sole grazing rights exist; common council can never be formed there. Moreover, CL 6 is not so unusual given that there are other common lands in the Elan Valley, such as CL 5, with the same characteristics. The case of CL 6 is the opposite to former CL 66: while CL 6 is legally common land but does not have the classical characteristics of it given that it is crown land with sole grazing rights over it and its registration is criticized by commoners, former CL 66 is no longer common but it is in agricultural and cultural terms. This makes us wonder to what extent is the Commons Act 2006 reflecting these different proprietary as well as cultural statuses of common land.

3.2 Rights of Common

3.2.1 Historical Background

There is a long tradition of the exercise of rights of common of pasture on the case study area, especially sheep grazing. From the historical material, although in the sale of Cwm Coel, the common rights were numerically limited, the majority of deeds do not include similar numerical limitations. It seems therefore that there has been a tradition of levancy and couchancy, although it is not possible to fully confirm given that no explicit statements have been found in the deeds about that (Winchester and Straughton 2008:6).

A peculiar characteristic of sheep grazing in this case study area, which to a certain extent remains alive today, is the sheepwalk, a specific area of grazing on the common allocated to a particular farm, whose existence has been recorded since 1800 (Winchester and Straughton 2008: 7-9). There are obvious similarities between the Welsh concept the sheep walk and that of heafting, found on Eskdale common where sheep tend to graze on a specific spot. However, the sheepwalk goes a step further in the way it has been considered historically: sheepwalks have been claimed by the farming community as private property belonging to a particular holding. Throughout history, the private character of sheepwalk gained such a wide acceptance to the point that many sheepwalks have been registered under the Common Registration Act of 1965 as separate units of ownership. This is interesting for two particular reasons: on the one hand it questions the "common" character of the common land and it is yet another example of the complex and multiple legal statutes of common land, on the other it makes the purchase of the land by the Birmingham Corporation under the 1892 Act very controversial since the boundaries were redrawn, with the consequence of severing many sheepwalks. Sheepwalks express a commonly agreed privatization of the common land. The consequences of the privatization of sections of the common are evident in the objection by Messrs Morgan of Tynewydd, Cwmystwyth to the registration of CL 66. Messrs Morgan argued objected to the registration on the ground that an area within the Grange of Cwmdeuddwr was their sheepwalk, hence private property (Winchester and Straughton 2008: 9). Sheepwalks also make us

realize that the purchase of land by the Birmingham Corporation constituted an effective expropriation of rights of common.

3.2.2 Contemporary Situation

3.2.2.1 The Commons Register

The point of departure to analyse the contemporary situation is the CL 36 Register. Firstly, it is important to note that farmers in their registration of rights have specified whether the rights were to the waste of Cwmdeuddwr or to the waste of Cwmdeuddwr Grange. This is again a demonstration that CL 36 is a modern creation of the 1892 Act, cutting across the boundaries both the manors of Cwmdeuddwr and that of the Grange of Cwmdeuddwr. The registered rights are for pasture, turbary and estovers, kinds of rights typical of many registers of upland commons. All the entries which record rights of pasture, register also a general rights of turbary. In relation to the rights of common of pasture, they are for sheep only, which reflect the strong sheep grazing tradition of the area, although it cancels instances in which horses or cattle was grazed. This could constitute a drawback since it renders illegal the grazing of stock other than sheep, rendering CCW and Welsh Assembly attempt to achieve mixed grazing with the Tir Gofal almost[5] impossible. In total there are 10844, of which the majority are appurtenant to a dominant tenement (10304). Two entries are however for rights in gross and these are held to Welsh Water Authority and rented to tenants of the Elan Estate. If the entries specify in which manor the rights can be exercised, they are much less specific in relation to the type of sheep to be grazed or the period in which stock can be put on the common, which render the entries much less precise than those of the Ingleton register. From a semi-structured interview with a farmer, it was possible to know how the numbers in the register were decided. General Lewis, owner of the common at the time of the registration, took an active interest by deciding that every farm should register 2.5 rights an acre (Wfarmer1 2008). It was also discussed the possibility to register conversion rates for cattle or horses but given that there was not a strong tradition of cattle grazing, it was communally decided not to.

43 are the entries in which rights of estovers are registered, some of which specify the inclusion of the right to cut bracken, or to cut fern. However for the majority, it is not specified what is the precise scope of rights of turbary or estovers. This generic expression of rights of turbary and estovers legally means that the farmers have an unlimited right to exercise these rights, without quantitative or qualitative limitations. It therefore contradicts the numerical expression of grazing rights, required by the 1965 Act. A tentative explanation behind this lack of specificity could be that since the exercise of these rights has not a great impact on the environment, they have not been restricted by the 1965 Act and the main preoccupation of the 1965 Act has been with the grazing regimes. Clearly the precision in which rights of common are expressed reflects the local environmental and economical contexts in which these rights are exercised. In this case then, as in many other in England and Wales as noted by Gadsden (1988, para 3.66), the legal instrument of the registers is silent on the real exercise of these rights, which can be comprehended only by looking at the

[5] Mixed grazing could be achieved using the surplus grazing of landlord.

agricultural practice through history. In modern times rights of turbary and estovers are not widely practised and this may explain the lack of farmer's interest in specifying them in the register. Similarly, historically few are the references in relation to estovers found in manor court rolls, while much more regular where the fines to illegal cutting of turf and the attempts by the manorial courts to limit the exercise of rights of turbary (Winchester and Straughton 2008: 16).
Also very common were the fines in relation to unlawful grazing, but in the manorial courts records few were the comments related to the environmental impacts of grazing or turf cutting since the attention was more on excluding the outsiders from the use of the resources and ensure the local community an equitable access. Turning and feeding foreign stock on the common was a regular concern for the courts, as exemplified by the orders against 'foreigners' reported in the presentment book (Winchester and Straughton 2008: 15). Fear of external intrusion remains an important variable today as expressed by farmers welcoming of the anti-severance provision contained in section 9 of the Commons Act 2006.

3.2.2.2 Knowledge and Exercise of Common Rights

1) Turbary and Estovers**:** None of the farmers interviewed exercise rights of turbary and estovers today, although Wfarmer 1 argued that some still exercise the right of estovers by using bracken for bedding and to help the grazing. Wfarmer 4 himself used bracken as covering for potatoes and turnips and remembered his grandfather exercising that of turbary pre 1948 (now one of the SSSI OLDs). Although not longer used, the exercise of these rights is within the living memory of the farmers.
2) Grazing rights: As for the grazing rights, only sheep are grazed on the common as the register confirmed. A propos of the register, only few of the farmers had consulted it and had a copy, while the majority of the interviewees claimed to know their numbers of rights through rent agreement or ESA. This is another example for the ineffectiveness of the register as instruments dictating the agricultural practice.
3) Live Register: Although, different from other case studies, the registration authority for CL 36 takes an active interest in maintaining the register alive, up to date register as envisaged by the new Act were welcome by most[6] of the farmers in order to know exactly who can join agro-environmental agreements and to whom payments should go.
4) Transfer**:** In relation to the transfers of rights, we witness a very different situation from that of Ingleton. Except for the rights in gross held by the Trust and leased to the tenants, there has not been a history of transfers in the area. This is clearly reflected in the farmers' approval of the anti-severance clause contained in the 2066 Act.
5) Unused rights**:** As mentioned din the environmental governance section, the ESA agreement aimed at reducing stock on the common but the provisions were individually tailored by allocating to each farmer grazing days to be used at choice. Therefore, differently from the Eskdale case study, farmers were given some degree of freedom to manage the reduction: some agreed to remove all stock in winter from the common and therefore have more grazing days during the summer, other to dilute their days through the year. Therefore, it was not possible for farmers to answer how many unused rights they possessed because that changed seasonally. Besides, given

[6] Those expressing an indifference towards live register motivated it on the ground that the common as peripheral to their enterprises.

that the market is not favourable, very few farmers contemplated the possibility to increase stocking rates once the agreements expires, while the majority hoped to enter in a Tir Gofal agreement in order to keep payments.
6) Comparison with CL 66: To those farmers grazing also on former commonCL66, it was asked whether their agricultural practice differed compared to that on CL36. Apart from noting that the Trust's focus on water issues[7] has the consequence of downplaying the agricultural side, they did not perceive differences. This is because of the ESA existing both on the common and on the Elan estate land, which shows how much environmental-agricultural law influence the management compared to the role played by the legal status of the land. The similarities between former CL66 and the common were confirmed by a farmer interviewed which did not have rights of common and only grazed on former CL66. For example, this farmer argued for the need to burn molinia for heather regeneration, a point made by many farmers of CL36. An important difference could be that the non-common status of the land permits to graze more than only sheep (the only animal registered in the common register). However, the farmer argued that given the prolonged winters, cattle was not possible to keep anymore because it would have to stay indoors for at least two months.

3.3 Sheepwalks

During the interviews, many farmers acknowledged the existence of a sheepwalk for their flock and justify it in agricultural terms by arguing that they were produced from customary/local agreements born out of the necessity to have an even grazing area where sheep settle. The sheepwalk therefore is a physical recognition of the sheep's settling behaviour and this makes us wonder whether, if cattle would have been the predominant stock grazed historically, this semi-privatization of the common would still have taken place. Given that the sheepwalks' boundaries have been maintained through informal agreements, as we have seen historically with the 1892 Act not always farmers are farmers capable of claiming their "possession". One of the farmers interviewed (WFarmer 5: 2009) in fact was in the middle of a legal dispute concerning a sheepwalk referred to the Adjudicator to HM Land Register. Although the Birmingham Corporation acquired the freehold of the dispute land in 1899, it had not acquired the right of the sheepwalk over that land so that the farmer claimed the right to register in the land register as his own. At present the case is pending but once the adjudicator will take a decision there is a chance the grey area of sheepwalks would be clarified (Land Registry adjudication ref/2008/1151).

4 Governance Institutions

4.1 Historical Background

Although, as mentioned, the legal status of Cwmdeuddwr Grange remains uncertain during manorial times, it was treated as a manor after the dissolution and there are a few manorial records surviving for the period of 1722-1817, namely a presentment book and two court rolls. Records for Cwmdeuddwr manor date back to 1371 but are

[7] This is demonstrated by the tenancy agreements, each containing a detailed clause on water protection.

very poor in the number of court rolls and presentments (Winchester and Straughton 2008: 12). On the whole, the focus was on excluding foreigners from cutting turf or grazing cattle illegally. Who really were these trespassers breaching the byelaw is not clear; it could also be that the graziers from Cwmdeuddwr were perceived as "foreigners" by the manorial court of Cwmdeuddwr Grange. (Winchester and Straughton 2008: 14-15). Although there existed a range of policing officers, it is not clear if the penalties were paid by the offenders given that many presentments were recorder without mention of a penalty and often they contain the same names of offenders, which may signify that the fines were unpaid or that they were too low to restrict illegal grazing or turf cutting (Winchester and Straughton 2008:17).

4.2 Post-manorial and Contemporary situation

Before describing the history and functions of the existing commoners association on Cwmdeuddwr Common, few words should be spent on the governance mechanisms on the Elan Estate under the Birmingham ware Act 1892. Although the Birmingham water Act 1892, by permitting the acquisition of land by the corporation, redefined boundaries with the consequences of severing many sheepwalks and the sense of ownership deriving from them, it would be erroneous to portray the Act only in a negative light. In fact, although it's principal aim was providing the Birmingham population with water, local socio-economic situation was taken into consideration. In fact, if the washing of sheep was use of watering place for stock was prohibited, it was also required that the Corporation accommodate graziers interests by finding other places for carrying out of these activities and compensate them if suffering from these new regulations (Winchester and Straughton 2008: 18). Moreover, as already mentioned, the 1892 Act made the acquisition of rights of common only optional, providing also regulations should the land remain common. However, the Corporation preferred the purchase of all rights of common which resulted in the (incorrect) de-registration of CL66, as previously explained.

As For Cwmdeuddwr common, the present graziers association originated around 20 years ago. Previously there existed one association, the Elan Valley grazing Association, encompassing both the Elan Trust Land (former CL66) and Cwmdeuddwr common. However, Elan valley grazing association ceased to operate when agro-environmental schemes were introduced which treated the two parts of land differently, viz. the agreements on former CL66 had to be negotiated for individual farms, while on CL36 collectively. The Cwmdeuddwr Commoners and Graziers Association was then formed. The relatively recent dissolution of the Elan Valley grazing association reflects the cultural-institutional unity between the community of CL36 and that of Elan trust land reminding us that the creation of CL 36 as a common on its own is relatively modern and exogenous, born out of the Corporation necessities. Also it shows the power of agro-environmental schemes not only in shaping agricultural practice and environmental governance but also in shaping the local institutions. However, it needs to be added that also the legal status of the land played a role in the split of the Elan Valley Grazing Association since, according to Wfarmer1, the non-common status of the land clearly permitted to have no stocking limits on the Elan Trust land while in CL 36 people grazed within numbers given in the register. Cleary then, the different legal status of these lands was one of the factors contributing to the split of the Elan Valley Grazing Association since common grazing management was difficult to achieve. However, the split was

foremost caused by the agro-environmental agreements. As for Cwmdeuddwr commoners and graziers association, it is relatively active in managing the common, although not in a too formal manner[8]. According to the chairman (Wfarmer 1: 2008), the committee of the association intervenes if there are breaches of the ESA agreement in relation to grazing or bracken control. Prior to the agro-environmental agreements, two major problems where affecting the common: sheep scam and the fact that graziers were keeping sheep too long on the common because they did not want to lamb too early. Nevertheless, through informal negotiation these problems were negotiated internally and resolved by setting dates to put rams on the common as well as gathering dates (Wfarmer 7: 2008). The Association today also attempts to regulate traffic by having put a traffic sign on the byway which runs over the common. Clearly then the Association is active and involved in the management of the common as well as monitoring of agro-environmental scheme compliance. Given the association characteristics, is the setting up of common councils a possibility contemplated among the farmers and wider community?

4.3 Common Councils

In order to gather and analyse the perceptions and views of the stakeholders with an interest in the management of CL36 as to the introduction of a commons council under the Commons Act 2006, a focus group was held in the Eagle Public House, Rhayader on the 2nd of March 2009. The discussion followed the guided questions set in the out in the accompanying document – FOCUS GROUP ON STATUTORY COMMONS COUNCILS/Cwmdeuddwr/guided questions (see Annex 1).
The focus group data is analysed in a separate research paper herewith: see FOCUS GROUP: Cwmdeuddwr data analysis

[8] There exists a constitution of the Association detailing officers, quorum and so on but does not include rules detailing the governance of rights of common.