

## Mental Welfare Commission of Scotland (MWCS)

<b>Basics</b>	<b>Web site</b>	<a href="http://www.mwcscot.org.uk/">http://www.mwcscot.org.uk/</a>
	<b>Geographical coverage</b>	Scotland
<b>Constitutional Aspects</b>	<b>Legal Framework/Basis</b>	<p>Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland § 4(1) and other miscellaneous sections.</p> <p>Adults with Incapacity (Scotland) Act 2000 §9.</p> <p>The Victims and Witnesses (Scotland) Act 2014 established the National Confidential Forum as a committee of the Commission. The NCF is managed by the Commission, but it operates independently to fulfil three statutory functions (to receive and listen to testimony from those who were in institutional care as children, to prevent harm to children currently in care by learning from lessons of the past and signposting other appropriate services to those who were in care as children).</p>
	<b>Independence</b>	<p>Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) Schedule 1, Part 1 (Membership, Proceedings etc) Status § 1: The Commission shall not be regarded as the servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor shall its members or employees be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.</p>
	<b>Financial Independence</b>	Funded by Scottish Ministers
<b>Membership</b>	<b>Composition of body</b>	<p>A new structure took effect on the 1<sup>st</sup> of April 2011 due the changes made to the structure and functions of the Commission under the Public Services (Scotland) Act 2010. The Board now governs and sets the strategic direction for the commission. Board members now have no role in relation to visits or investigations.</p> <p>The Board has seven new members and a Chair and their new role is to provide strategic leadership, direction and effective governance.</p>
	<b>Appointment</b>	<p>Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) Schedule 1, Part 1 (Membership, Proceedings etc) Membership § 3 (1) The Commission is to consist of the following members—</p> <p>(a) a person appointed by the Scottish Ministers to chair the Commission; and</p> <p>(b) no fewer than 6 nor more than 8 other members appointed by the Scottish Ministers.</p> <p>The Commission also appoints core staff and certain other individuals from a variety of backgrounds to perform visiting and investigatory functions. Practitioner members of staff and additional individuals are known as “Commission visitors”</p>

## Mental Welfare Commission of Scotland (MWCS)

	<b>Expertise</b>	Chief Executive, Commission staff and visitors have wide variety of expertise in mental health and related fields. Staff includes medical, nursing and social work officers as well as management and administrative officers. Other visitors are from a wide variety of backgrounds including service user, carer, advocacy, legal and other professions relevant to mental health and learning disability.
--	------------------	--

<b>Visiting Mandate</b>	<b>Places of deprivation of liberty to be visited</b>	<p>"Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland §13(4): The premises to be visited are:</p> <p>(a) a health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29)); (b) premises in which—(i) an independent health care service is provided; (ii) a care home service is provided; or (iii) a secure accommodation service is provided; (8) In—(a) subsection (4)(b)(ii) above, "care home service" has the meaning given to that expression by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8); and (b) subsection (4)(b)(iii) above, "secure accommodation service" has the meaning given to that expression by section 2(9) of that Act."</p>
	<b>Frequency of visits</b>	<p>The frequency of visits is determined by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland § 13. This states that the Commission shall conduct visits as often as it thinks it appropriate to do so. § 13(6) says that these visits can be made with or without prior notification.</p>
	<b>Types of visits</b>	<p>Under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) § 13(2), the Commission may visit patients that are detained in hospital and whose detention is authorised by this Act. That subsection also includes that patients, though not detained in hospital, that are subject to: a compulsory treatment order; an interim compulsory treatment order; an emergency detention certificate; a short-term detention certificate; a compulsion order; an interim compulsion order; an assessment order; a treatment order; a hospital direction; or a transfer for treatment direction. The subsection further includes the ability for the Commission to inspect patients subject to Intervention Orders under § 53(10)(b) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) or subject to a guardianship order under § 58 (7)(d) of that same Act.</p> <p>Subsection 3 states that if it appears that patients may be resident or receiving treatment in the premises set out in subsection 4, or be using facilities in such premises, then the Commission may visit those premises.</p>

## Mental Welfare Commission of Scotland (MWCS)

<b>Private interviews</b>	<p>Very detailed in legislation. See Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland § 13 (5). The purposes of the Interviews are to allow those present in a facility under inspection to meet with Commission Visitors and discuss any concerns that patients may have, and to assess the requirements of those patients in relation to the legislation.</p> <p>§ 14 of the Act deals with Interviews. Subsection 1 states that a Commission Visitor may discharge their duties by interviewing any patient or any person that they consider it to be appropriate to interview, and that they can require any such interview to be conducted in private.</p> <p>Subsection two, meanwhile, states that the Commission visitor shall afford the opportunity during the visit for patients to request an interview with them in private.</p> <p>§ 15 of the Act also states that private medical examinations of patients can be carried out.</p>
---------------------------	--

<b>Access to information</b>	<p>This is governed by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland § 16.</p> <p>Subsection one states that the Commission may require – in order to fulfil its duties under this Act or the Adults with Incapacity (Scotland) Act 2000 (asp 4) – any person holding medical or other records of a patient to produce them for inspection by the authorised person, or the Commission Visitor. Subsection 2, as later amended in 2011, stated that an ‘authorised person’ shall be a member of staff of the Commission.</p>
<b>Publication of findings after visits</b>	<p>The Commission produces local and national reports following visits. Local reports are not in the public domain because of the risk of identifying individuals. National themed reports with recommendations for improvement are widely distributed.</p>
<b>Coordination of visits</b>	<p>Visits are scheduled with reference to other organisations to avoid duplication. The MWC has the duty to cooperate with the Care Inspectorate and Healthcare Improvement Scotland and may carry out joint work, as appropriate, including joint visits.</p>
<b>Recommendations and suggestions for amendments to legislation</b>	<p>See in general, Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland § 6. This states that the Commission shall bring to the attention of the Scottish Ministers such matters concerning the operation of this Act as the Commission considers ought to be brought to their attention. Sections 7 and 8, meanwhile, allow the Commission to bring general and specific matters respectively to the attention of Ministers and other relevant bodies that include, for example, Health Boards, local authorities, Public Guardians and National Health Service trusts. The Commission is given the scope to decide what is appropriate to bring to</p>

## Mental Welfare Commission of Scotland (MWCS)

<b>Other Aspects of Mandate</b>		Ministers' attention – this is made clear in both Section 7 on general concerns and Section 8 on specific concerns.
	<b>Preventive activities</b>	<p>Section 9 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland. This states that the Commission can give advice to Scottish Ministers, a local authority, a Health Board, a Special Health Board, Healthcare Improvement Scotland, Social Care and Social Work Improvement Scotland and the Scottish Public Services Ombudsman on any matter arising out of the legislation.</p> <p>Section 10, meanwhile, states that the Commission may publish information or guidance about any matter relevant to its functions and may publish information or guidance regarding conclusions to investigations, inquiries and visits.</p> <p>Under subsection 2, the Commission may, with the agreement of a person mentioned in subsection (2) of section 9 of this Act, publish advice which it gives under subsection (1) of that section to that person. The persons named are a) the Scottish Ministers; (b) a local authority; (c) a Health Board; (d) a Special Health Board; (e) the Scottish Commission for the Regulation of Care; or (f) the Scottish Public Services Ombudsman."</p>
<b>Standards</b>	<b>Legal standards applied</b>	The Commission does not inspect against standards but has the authority to identify and investigate improper detention under the 2003 Act. It has the general duty to monitor the observance of the principles of the Act and promote best practice in their use.
<b>Reports</b>	<b>Annual reports</b>	<p>This is governed by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Part 2 The Mental Welfare Commission for Scotland § 18.</p> <p>Subsection 1 holds that the Commission shall, as soon as practicable after the end of each financial year of the Commission, submit to the Scottish Ministers a report on the discharge of its functions during that year. The Ministers, subsection 2 states, shall then lay that report before the Scottish Parliament.</p>