

成人保護法制—— 遊走於意思能力、 心理健康和社會照護法與 實務之間的邊界(一)

Adult Safeguarding Legislation: Navigating the
Borderlands between Mental Capacity, Mental
Health and Social Care Law and Practice (I)

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摘要

由於成人保護之法制目的在於保護「易受傷害」的成人，其處於社會保護、心理健康、意思能力之法律邊界之間，成人保護法制因此容有爭論。作為全新且複

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關鍵詞：心理健康 (mental health)、成人保護 (adult safeguarding)、意思能力 (mental capacity)、輔助決定形成 (supported decision-making)、聯合國身心障礙者權利公約 (UNCRPD)

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雜的法律與實務領域，則需要對成人保護法制之進一步研究，特別是考慮其效力和對人權之影響。本文採取敘事性文獻回顧取徑，探討2007年蘇格蘭成人支持與保障法之現有研究成果，考量保護權力和責任是否能在個人自主和國家保護可能受傷成人之責任之間是否能取得合乎比例的平衡；若是，如何為之？研究成果指出，現已有許多人陷入這些邊緣地帶。對多數人而言，該法可為其生活帶來重要的正面改變。然而，儘管業已肯定決定形成應受有輔助，卻仍未發現有一致的運用方式。此外，需要注意的是，部分專業人士是否具有足夠的法律知識，是否會一致地維護成人之意志和偏好，以及對於決定形成之輔助是否有相應的承諾和資源等。儘管有前揭之不足，該法仍具有重要功能，但其之修正會使之更為符合身心障礙者權利公約。

Adult safeguarding legislation is contentious because it seeks to protect ‘vulnerable’ adults who fall between the borderlands of social care, mental health and mental capacity law. As a new and complex area of law and practice, further research on adult safeguarding legislation is required, in particular to consider its efficacy and human rights implications. Utilising a narrative literature review approach this article explores current research evidence on the Adult Support and Protection (Scotland) Act

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2007 to consider whether safeguarding powers and duties can achieve a proportionate balance between individual autonomy and the state's duties to protect adults at risk of harm and, if so, how. The findings demonstrate there is a wide range of people who can fall into these borderland areas. For a majority, the use of the Act has made significant positive differences to their lives. However, while supported decision-making was identified it was not found to be consistently applied. In addition, concerns emerged around the adequacy of some professionals' legal knowledge, the consistent upholding of adults' will and preferences, and the commitment to and resourcing of supported decision-making. Notwithstanding these drawbacks, it is concluded that this Act provides vital functions but amendments would enhance alignment with the CRPD.

壹、導論與目的

成人保護法制相對較新，且主要僅限歐洲、北美、澳洲和紐西蘭等地。在某些司法管轄區，可能只注意到長者虐待的問題，其他國家則適用於所有的成年人而不論其年齡和損傷，例如大英國協¹。隨著人們日益關注「易受傷的」（vulnerable）成人所經歷的傷害和虐待，以及他們可能因心理健康、智力或生理障礙以及老年而無法自我保護，各地也逐漸強化成人保護之法制²。所謂的「易受傷成人」不無爭議，因為除個人之

1 AMANDA PHELAN, *ADVANCES IN ELDER ABUSE RESEARCH: PRACTICE, LEGISLATION AND POLICY* (2020). doi.org/10.1007/978-3-030-25093-5

2 Lorna Montgomery, Janet C. Anand, Kathryn Mackay, Brian Taylor, Katherine C. Pearson & Colin M. Harper, *Implications of Divergences*