



WELFARE OF ADULTS: OPTIONS FOR POLICY

260612

ST HELENA GOVERNMENT

Directorate of Health and Social Care

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1. Introduction

1.1 Background

St Helena has no legislation to address the needs, support, and protection of vulnerable adults, and to underpin social work practice. This gap has been raised consistently since 2019 by Health and Social Care (HSC) and the Equality and Human Rights Commission (EHRC).

A draft policy document was completed in 2019 setting out the initial requirement for adult legislation. Subsequent attempts to move this forward including drafting the legislation were not completed and currently the gap fails to meet the needs of vulnerable adults. This legislation remains a key requirement.

In the absence of island-centric legislation, SHG relies upon the UK Community Care Act 1990 to underpin adult social care services. This Act was superseded in the UK by the Care Act 2014 and requires areas of practice not achievable on St Helena given its limited resources, geographic isolation, and distinctive community context.

Children on St Helena have been protected by the Welfare of Children Ordinance (WOCO) since 2008. Adults have no equivalent legislative protection. This is the gap this policy seeks to address. The constitutional basis for this legislation is provided by the St Helena, Ascension and Tristan da Cunha (Constitution) Order 2009 (SI 2009/1751, as amended by SI 2021/895), in particular: s.7 (protection from inhuman or degrading treatment), s.9 (right to personal liberty, any restriction must be lawful, necessary and proportionate), s.13 (right to privacy and family life), and s.21 (protection from discrimination). The English Law (Application) Ordinance 2005 provides that pre-2006 English statute applies as residual law; post-2006 UK Acts do not automatically apply to St Helena but may be drawn on as a model.

1.2 Identification of Problem, Challenge and Opportunity

The absence of adult welfare legislation on St Helena represents a significant and long-standing gap. It is thrown into sharp relief by the fact that children have had statutory protection since 2008 (WOCO), while vulnerable adults remain without an equivalent legislative framework. The Falkland Islands - a comparable British Overseas Territory in a number of areas, implemented the Assessment and Safeguarding of Adults Ordinance in 2020.

The challenge is made more pressing by St Helena's demographic context. The SHG Ageing Demographic: Situational Analysis (AD2, November 2025):

- The average resident population in 2024 was 4,036 — around 80 lower than the previous year. Some 94% of residents are St Helenian.
- St Helena has the second highest old-age dependency ratio in the world, second only to Japan. In June 2024 this ratio stood at 48:1 (the number of those aged 65+ compared to those of roughly working age), up from 45.3 in June 2023.
- Deaths run at 50–60 per year with births below 20 per year, producing a natural population decrease of 30–40 per year. This is structurally driven; the population will continue to fall even without net outward migration.
- Informal support networks in the community are declining, directly increasing demand for statutory social care services.
- Patient and residential care needs are outstripping current bed capacity. Projections indicate a need for 90 residential beds by 2036 - double current Community Care Centre (CCC) capacity.

- Over 50% of social care staff are estimated to be aged 65+, highlighting the fragility of the care workforce.

The opportunity is to establish island-centric legislation that: underpins statutory social work practice within the resources and context of St Helena; moves the island away from reliance on outdated UK legislation; addresses the EHRC's longstanding recommendation; and provides a legally sound framework as demand for adult care increases.

1.3 Key Issues

The following key issues have been identified as the primary drivers of the need for legislative change:

Key Issue 1: No bespoke legislation to protect vulnerable adults

There is no statutory framework for the protection of vulnerable adults on St Helena. This is a gap that has been identified and raised since 2019 by HSC and the EHRC. Children have had legal protection since 2008 under WOCO; adults have no equivalent.

Key Issue 2: Dependence on outdated UK legislation

Social work practice is currently underpinned by the UK Community Care Act 1990 — legislation that was superseded in the UK over a decade ago by the Care Act 2014. It requires areas of practice that cannot be met given St Helena's limited resources, geographic isolation, and community context. It also creates litigation risk: in the absence of local standards, UK standards will be applied as the test.

Key Issue 3: Comparable British Overseas Territories have already legislated

The Falkland Islands implemented the Assessment and Safeguarding of Adults Ordinance 2020. HSC has reviewed this legislation and confirmed it can be adapted for St Helena with minimal but some necessary modification — a considered “lift and adapt.”

Key Issue 4: A rapidly ageing demographic is increasing demand

St Helena has the second highest old-age dependency ratio in the world (AD2, 2025). Residential care demand is projected to double by 2036. Informal community support networks are declining. Without legislation, there is no statutory framework to manage, plan for, or fund the increasing demand for adult care.

Key Issue 5: EHRC and FCDO concerns remain unaddressed

The Equality and Human Rights Commission has consistently raised the lack of adult legislation as a human rights concern. FCDO log frame KPIs require practice outcomes aligned with UK standards — legislation contextually relevant to St Helena would provide a more appropriate and defensible framework for measuring those outcomes.

1.4 Policy Rationale

The strategic goals engaged by this legislation are Altogether Safer, Altogether Healthier, and Altogether Wealthier. These goals are not independent: the size, legal and demographic evidence shows they are acutely connected.

The island's demographic trajectory makes adult welfare legislation a strategic priority, not simply a social care matter. St Helena's second-highest-in-the-world old-age dependency ratio, combined with declining informal support networks and projected doubling of residential care demand by 2036, means that a statutory framework for adult welfare is now an essential underpinning of sustainable service delivery (AD2, 2025).

The current reliance on UK legislation is no longer viable. The Community Care Act 1990 requires practice standards the island cannot meet, exposes SHG to litigation measured against UK service levels, and is contextually irrelevant. Island-centric legislation will set a standard reflective of the island's resources and context, reducing litigation risk, providing clarity across the spectrum and giving practitioners a workable legal framework.

The Working Together document (2023) and the Safeguarding Vulnerable Adults Policy (2023) currently provide an administrative framework, but without legislative underpinning they cannot provide statutory duties, enforceable rights, or accountability structures. The proposed Ordinance would give these frameworks legislative force.

Adult care is already a significant budget pressure (AD2, 2025). Without a statutory framework for assessment, eligibility, and care planning, demand will continue to outpace capacity without a means to manage it.

1.5 Policy Principles and Objectives

1.5.1 Legislative Objectives

The proposed Welfare of Adults Ordinance is designed to achieve the following ten objectives:

1. **Promotion of wellbeing** - to promote the physical, mental, emotional and social wellbeing of adults on St Helena.
2. **Prevention of harm** - to prevent, reduce and delay the development of care and support needs and the occurrence of harm.
3. **Assessment of needs** - to provide a statutory framework for assessing the care and support needs of adults and the support needs of carers.
4. **Provision of support services** - to create a clear duty and framework for the provision of care and support services to adults with eligible needs.
5. **Safeguarding adults at risk** - to provide statutory powers and duties for the identification, enquiry and response to actual or suspected abuse or neglect of adults.
6. **Protection of rights and dignity** - to enshrine in legislation the right of every adult to be treated with dignity and respect, to have their views heard, and to make their own decisions.
7. **Support for carers** - to recognise and support the role of carers through statutory assessment and support rights, including provision for respite.
8. **Multi-agency cooperation** - to establish a statutory duty of cooperation between all public authorities in the delivery of adult welfare services and safeguarding.

9. **Accountability and oversight** - to create robust mechanisms for accountability, including a statutory Safeguarding Adults Board, Safeguarding Adults Reviews, complaints procedures and rights of appeal.
10. **Capacity and advocacy** - to ensure that adults who lack capacity or who have substantial difficulty participating in assessments and reviews have access to independent advocacy.

1.5.2 Core Principles

The proposed Ordinance will be underpinned by the following ten core principles, each of which is grounded in the Constitution:

1. **Dignity** - Every adult has the right to be treated with dignity and respect in all dealings with public authorities (Constitution ss.7 and 9).
2. **Autonomy** - Every adult has the right to make their own decisions and to have those decisions respected, including decisions that others may regard as unwise (Constitution s.9).
3. **Least restrictive intervention** - Any action taken to protect or support an adult should be the minimum necessary to achieve the intended outcome, preserving the adult's independence to the greatest extent possible (Constitution s.9).
4. **Prevention** - The Government should act proactively to prevent, reduce and delay the development of care and support needs and the occurrence of harm (Constitution s.6).
5. **Participation** - Every adult should be enabled to participate as fully as possible in decisions about their care and support, and in the life of their community (Constitution s.13).
6. **Equality and non-discrimination** - Every adult should receive services and support on the basis of their assessed needs, without discrimination on grounds of age, disability, gender, sexual orientation, race, religion, or any other characteristic (Constitution s.21).
7. **Family and community involvement** - The Government should recognise the importance of family and community relationships to the wellbeing of adults and should involve families and communities in the delivery of care and support where the adult consents (Constitution ss.13 and 14).
8. **Cultural sensitivity** - Services and support should be delivered in a way that is sensitive to the cultural background, traditions and values of the individual adult, reflecting the distinctive character of the St Helena community.
9. **Proportionality** - All actions and interventions under this Ordinance should be proportionate to the needs and risks in question, with particular attention to the balance between protection and autonomy (Constitution s.9).
10. **Accountability** - The Government, agencies and individuals exercising functions under this Ordinance should be accountable for their actions and decisions through transparent processes, independent oversight and accessible appeals (Constitution s.24).

1.6 Baseline Evidence

St Helena's demographic situation is among the most acute of any jurisdiction in the world with regards to its current aging demographic situation, however it is recognize that this will become issue globally over time. The key indicators as above includes one of the highest old-age dependency ratio, structural decline that will continue regardless of migration, rapidly expanding residential care at significant cost and declining informal community support networks.

Current Legal Position

Adult social care on St Helena is currently underpinned by the UK Community Care Act 1990 (applied via the English Law (Application) Ordinance 2005). This Act: requires practice standards

unachievable with island resources; was superseded in the UK by the Care Act 2014; and creates litigation risk because, in the absence of local standards, UK standards are used as the test (as observed in analogous healthcare litigation). The Working Together document and Safeguarding Vulnerable Adults Policy can provide operational guidance but carry no statutory force.

There is no statutory Safeguarding Adults Board, no statutory duty to assess adults in need, no legal rights for carers, and no statutory advocacy provision.

Comparable Framework

The Falkland Islands Assessment and Safeguarding of Adults Ordinance 2020 (Ordinance 8 of 2020) provides a proven, tested model for a British Overseas Territory of broadly comparable scale and remoteness. HSC has reviewed this legislation and confirmed it is suitable for adaptation. It is modelled on the UK Care Act 2014 and covers: needs assessment; carers' rights; safeguarding duties; a statutory Safeguarding Adults Board; Safeguarding Adults Reviews; and independent advocacy.

2. Policy Options

Three options have been identified for consideration. These are: (1) Do Nothing (Status Quo); (2) Minimal Legislation: Safeguarding Focus Only; and (3) Comprehensive Legislation: Full Welfare of Adults Ordinance. Each option is described in detail below, with an assessment of impact, risk and resource implications.

OPTION 1

Do Nothing (Status Quo)

2.1 Option 1 — Do Nothing (Status Quo)

Description

Continue to rely on the UK Community Care Act 1990 and administrative policy and guidance (Working Together document) to underpin adult social care and safeguarding on St Helena. No new primary legislation would be enacted. No new statutory bodies would be established. The current framework would continue unchanged.

Scope

All current arrangements continue. Social work practice is guided by professional guidance and the Working Together document. The Safeguarding Adults Board continues on a non-statutory, advisory basis. There is no statutory duty to assess adults with care and support needs, no legal framework for carers' rights, and no formal eligibility framework for services. No statutory independent advocacy.

Key Features

- No legislative action required
- Continued reliance on outdated UK statute (CCA 1990) as the legal reference point
- Safeguarding Board continues on a non-statutory basis only
- No formal statutory eligibility framework for adult social care services
- No legal protection of property of adults in care
- No statutory carers' rights or assessment entitlement
- No independent advocacy rights

Impact

Service delivery: Minimal immediate disruption. Practice continues as it currently operates. No new duties or powers are created.

Without this statutory requirement, the government could consider cessation of the current service provision that enables the safety and protection of vulnerable adults on the island.

Politically the appetite for legislation to underpin this area of service delivery and practise is apparent, but the financial challenges of providing services could also dictate the direction in regard to policy priorities.

Constitutional compliance: High risk of incompatibility with sections 7, 9 and 13 of the Constitution. The Government cannot demonstrate that it is actively meeting its positive human rights obligations to protect vulnerable adults. The longer the legislative gap persists, the harder it becomes to defend this position.

Litigation: High risk. Any legal challenge to adult social care decisions will be measured against UK standards (the Care Act 2014 framework - which the island cannot replicate). There is no island-specific legislation against which practice could be assessed.

EHRC: Continued failure to address a longstanding recommendation. Reputational and political risk for the Government. The EHRC is likely to escalate its concerns if no legislative action is taken.

Economically no additional resource requirement. However, no improvement in service delivery, workforce development or legal framework.

Risk

Risk Level: HIGH Legal challenge, continued EHRC concern, political criticism, inability to demonstrate compliance with constitutional obligations, and potential ongoing harm to vulnerable adults without legislative protection.

Resource Implications

No additional resource requirement. However, there is no improvement in service delivery, no reduction in litigation risk, no discharge of EHRC recommendations, and no framework for managing the growing demand for adult social care services associated with the island's ageing demographic.

1. Option 1: Do Nothing / Status Quo

Political: Avoids a contested legislative programme and immediate decisions about entitlements, thresholds and cost. It leaves the EHRC recommendation substantially unanswered and may increase pressure on Ministers if service failures, complaints or claims expose the absence of clear local duties.

Economic: Lowest immediate legislative and implementation cost. It preserves uncertainty, reactive decision-making and exposure to disputes, without any quantified saving in litigation or operational cost.

Social: Maintains current service delivery, but does not resolve uncertainty about assessment, eligibility, care planning, advocacy or carers' support. It offers the weakest response where vulnerable adults, detained persons or patients believe there is poor access to remedy or inconsistent treatment.

Health: Leaves delayed discharge, care fragmentation and inconsistent safeguarding response broadly unchanged. It does not improve the pathway between health services, mental capacity decision-making, social care and custodial settings.

Technological: Requires no major system change, but leaves current weaknesses in records, reporting and information-sharing unresolved. It does not improve the evidence base needed to monitor repeat incidents, complaints or service trends.

Legal: Retains uncertainty over the current legal baseline and the extent to which existing adopted English law is suitable to local circumstances. It provides the weakest position if claims arise concerning alleged medical negligence, institutional neglect, unsafe discharge, poor records or prison-related treatment concerns, because the framework remains fragmented and reactive.

Environmental: No material direct environmental effect. Continued ad hoc service access may still create avoidable travel and coordination inefficiencies.

Organisational: Places the greatest weight on individual judgement and informal processes. It does not provide a stronger governance structure for escalation, assurance, cross-government coordination or accountability.

OPTION 2

Minimal Legislation: Safeguarding Focus Only

2.2 Option 2 — Minimal Legislation: Safeguarding Focus Only

Description

Enact a short, focused Ordinance limited to adult safeguarding functions: a statutory duty to enquire where abuse or neglect is suspected; establishment of a statutory Safeguarding Adults Board (SAB) with a published strategic plan and annual report; statutory information-sharing powers for safeguarding purposes; and provision for Safeguarding Adults Reviews. Assessment duties, eligibility frameworks, care planning, carers' rights and advocacy would not be addressed in primary legislation under this option, but would be left to future regulations or guidance.

Scope

A focused Ordinance of approximately 10-15 sections dealing only with safeguarding functions. Care and support assessment duties, care planning, carers' rights, advocacy and enforcement would be addressed in a separate second-phase Ordinance or through regulations made under the safeguarding Ordinance.

Key Features

- Establishes a statutory Safeguarding Adults Board with a published strategic plan and annual report
- Creates a statutory duty to enquire where abuse or neglect of an adult is suspected
- Provides statutory information-sharing powers for safeguarding purposes
- Enables Safeguarding Adults Reviews
- Does not create a statutory assessment duty, eligibility framework, or carers' rights in primary legislation
- Does not provide for independent advocacy in primary legislation
- Would require a second-phase Ordinance or regulations to complete the framework

Impact

Significant improvement in safeguarding functions specifically. Assessment, care planning and carer support remain on a non-statutory basis. The most urgent gap which is the absence of a statutory SAB and enquiry duty is addressed.

Politically this would partially address sections 7 and 8 Constitutional concerns (protection from inhuman treatment and exploitation). Does not fully address the wellbeing and liberty dimensions of sections 6 and 9, or the equality and family dimensions of sections 21 and 13.

Litigation: Reduces litigation risk in safeguarding cases. However, assessment and care planning practice remain without a statutory framework, meaning that challenges to those decisions could still be measured against UK standards.

EHRC: Partially addresses EHRC concerns. The EHRC is likely to continue to raise the absence of statutory assessment rights, eligibility frameworks and carers' rights.

Economically this would result in lower lower drafting time and faster legislative process than Option 3. Does not require as much implementation. SAB establishment is the primary cost however separate funding is already established under the WOCO.

Risk

Risk Level: MEDIUM Addresses the most urgent safeguarding gap but leaves a significant secondary gap in assessment, care planning and carers' rights. Risk of the second-phase Ordinance not being prioritised. Risk of criticism that the legislation is incomplete and fails to fully discharge constitutional and EHRC obligations. The drafting challenge of a bespoke partial Ordinance is arguably greater than adapting an existing comprehensive one. If a "lift and adapt" approach is used for Option 3, the resource saving from Option 2 is reduced.

Resource Implications

Modest resource implications, primarily in legal drafting time for the short Ordinance, and in the establishment of the statutory SAB (which would largely involve existing post-holders under the current WOCO). Faster to implement than Option 3. However, the need for a subsequent second-phase Ordinance would involve additional future time and costs.

Political: Demonstrates action on the most urgent protection issues and may be quicker to agree. It could still be criticised as incomplete if broader care, assessment and support duties remain unresolved.

Economic: Lower initial cost than a full adult welfare framework, but still requires drafting, training, governance and implementation support. A later second phase may duplicate consultation and transition costs.

Social: Improves the response to abuse and neglect concerns. It does not fully address rights to assessment, participation, advocacy, carer support, review or planned care.

Health: Strengthens safeguarding response in health and institutional settings. It does not by itself create a full pathway for safer discharge, continuity of care or structured response to complaints at the boundary of health, social care and custody.

Technological: Requires basic referral, recording and reporting systems for safeguarding. It still leaves broader case-management and performance information underdeveloped.

Legal: Creates a clearer legal basis for safeguarding enquiries and oversight, but only within a limited scope. It may not be sufficient to manage the wider legal issues that can arise in medical negligence, prison-treatment, discharge and adult-care cases, because those matters often depend on linked duties around assessment, records, capacity, review and redress.

Environmental: Limited direct effect. Some access and continuity issues would remain where geography or transport affect service delivery.

Organisational: Requires a safeguarding board or equivalent structure and named lead responsibilities. The children safeguarding board is already established under the 2008 WOCO ordinance and it is planned to incorporate shared resources where appropriate.

OPTION 3 — RECOMMENDED

Comprehensive Legislation: Full Welfare of Adults Ordinance (RECOMMENDED)

2.3 Option 3 — Comprehensive Welfare of Adults Ordinance (Recommended)

Description

Enact a comprehensive Welfare of Adults Ordinance based on the Falkland Islands Assessment and Safeguarding of Adults Ordinance 2020, adapted for St Helena's specific context including its financial position. The core approach is a "lift and adapt" model: rather than drafting from scratch, the proposed Ordinance adapts the Falklands Ordinance 2020, which HSC has reviewed and confirmed is suitable for St Helena with some modification. This significantly reduces drafting time for the AG's Chambers and uses a framework already proven in a small British Overseas Territory. The Ordinance is a complete, single-Act solution covering wellbeing promotion, prevention, assessment, care planning, safeguarding, the Safeguarding Adults Board, Safeguarding Adults Reviews, advocacy, carers' rights, information sharing, complaints, enforcement and miscellaneous provisions. It would be supplemented by regulations made by the Governor in Council on procedural and eligibility matters once approved by LEGCO.

Scope

Full primary legislation covering all aspects of adult social care and safeguarding on St Helena. Regulations and statutory guidance would be developed after enactment to flesh out the eligibility

framework, procedural requirements and implementation standards. A phased commencement approach would allow time for implementation infrastructure to be built.

Key Features

- Duty to promote wellbeing across nine dimensions
- Duty of prevention at three levels: primary (universal), secondary (targeted) and tertiary (specialist)
- Duty to provide information and advice on care and support
- Duty of cooperation with all public authorities
- Duty to assess adults with or at risk of care and support needs
- Duty to assess carers and to provide support for carers, including respite
- Eligibility framework set by regulations made by the Governor in Council
- Individual care plans with an annual review requirement
- Statutory duty to enquire where abuse or neglect is suspected
- Property protection powers for adults whose property is at risk
- Emergency powers for urgent safeguarding situations
- Mental health interface provisions
- Statutory Safeguarding Adults Board with membership adapted for St Helena.
- Defined relationship with the existing Safeguarding of Children Board — complementary, separate initially, with a regulation-making power to merge
- Mandatory and discretionary Safeguarding Adults Reviews
- Independent advocacy rights for adults with substantial difficulty participating in assessments and reviews
- Carers' assessment and support rights, including provision for respite
- Information sharing powers, subject to data protection requirements
- Complaints procedure and rights of appeal, including to the Supreme Court of St Helena
- Enforcement powers: entry with warrant; access to records; improvement notices; obstruction offence.
- Prisoners excluded from enquiry, property protection and SAR provisions
- Constitutional compatibility.

Impact

Service delivery: Transformational and provides a complete statutory framework for adult social care that is contextually relevant to St Helena. Creates clear duties, powers and standards within which services can be developed and measured.

Constitutional compliance: Full compliance with sections 6, 7, 8, 9, 13, 14, 21 and 24 of the Constitution demonstrated. Proactively discharges the Government's positive human rights obligations to protect and promote the welfare of vulnerable adults.

Legal: Significantly reduces litigation risk. The test for any legal challenge to adult social care decisions will be measured against St Helena's own legislation and island context, not UK standards. This is the most important litigation risk reduction achievable.

EHRC: Comprehensively addresses all EHRC recommendations regarding the absence of adult welfare legislation.

Economic : Requires legislative drafting (AG's), SAB establishment (Children's SGB already in place), assessment infrastructure, advocacy arrangements and workforce development. However,

the legislation is designed to be implementable within existing resources, with regulations and guidance developed over time to build capacity. Phased commencement allows implementation to be managed alongside workforce development.

Political: Best matches the strategic direction of reform and the expectation for a coherent statutory framework. It would show a clearer response to concerns about vulnerable adults, service failures and legal uncertainty, including areas where negligence or prison-related complaints may later arise.

Economic: Has the highest initial implementation requirement. It could reduce avoidable duplication, disputes and reactive crisis management over time, but savings should not be assumed without evidence. A realistic cost and workforce model should be proposed if it is deemed necessary to increase workforce capacity to fully implement.

Social: Offers the strongest basis for assessment, participation, advocacy, carers' support, care planning and review. It better reflects the needs of an ageing population and adults who may be dependent on health, social care or custodial institutions.

Health: Gives the best chance of improving discharge planning, continuity of care, safeguarding response and coordination between services. It is especially relevant where failures may involve delayed care, unsafe discharge, poor records or unclear responsibilities between clinical and social-care decision-making. It does not itself prevent negligence claims, but it can create clearer duties, processes and records that reduce avoidable risk.

Technological: Requires stronger recording, reporting, access control and information-sharing arrangements. It would improve the ability to monitor incidents, complaints, safeguarding activity and outcomes across systems.

Legal: Provides the best opportunity to replace uncertainty with a coherent local framework. It is the most relevant option if the island wants a clearer legal basis for adult welfare, safeguarding, review, accountability and lawful decision-making in complex settings such as hospitals, community care and prisons. It still requires careful drafting, legal compatibility checks, implementation planning and phased commencement. It should not be presented as automatically solving medical negligence or prison claims, but it can materially improve the statutory structure within which such claims are assessed and defended.

Environmental: No major direct environmental effect. Implementation will still need to account for island geography, travel, access and continuity of service.

Organisational: Requires the most coordination across health, social care, Treasury, HR, legal services, prisons, safeguarding partners and operational managers. It needs governance, training, guidance, audit, complaints handling and clear accountability if the framework is to work in practice. The children safeguarding board is already established under the 2008 WOCO ordinance and it is planned to incorporate shared resources where appropriate.

Risk

Risk Level: LOW (once enacted) The main risks are in the implementation phase: sufficient workforce capacity to discharge new assessment and advocacy functions; and sustained

political commitment to implementation. All of these risks are manageable with appropriate planning and support. Less drafting risk than a bespoke Ordinance — the Falklands legislation has already been scrutinised by HSC and confirmed suitable for adaptation.

Economic Implications

- Legislative drafting
- SAB establishment: largely minimal,
- Workforce development: the new assessment and advocacy functions will require training and development for existing social care staff (Safeguarding Adults Procedure 2016 – already in place with associated updates).
- Phased implementation: regulations, guidance and implementation infrastructure can be developed over time following enactment, reducing the burden at any single point.

3. Summary of Options

The following table provides a comparative summary of the three options across the key dimensions relevant to Executive Council's decision:

Feature	Option 1 (Do Nothing)	Option 2 (Safeguarding Only)	Option 3 (Comprehensive)
Legislative basis	CCA 1990 (UK)	Short Ordinance (10-15 s)	Full Ordinance (13 Parts)
SAB (statutory)	X	✓	✓
Duty to enquire	X	✓	✓
Assessment duty	X	X	✓
Eligibility framework	X	X	✓
Care planning	X	X	✓
Carers' rights	X	X	✓
Advocacy rights	X	X	✓
Property protection	X	X	✓
Complaints/appeals	X	X	✓
Enforcement powers	X	X	✓
Constitutional compliance	Risk of non-compliance	Partial	Full compliance (ss.6,7,8,9,13,14,21,24)
Litigation risk	HIGH	MEDIUM	LOW
EHRC compliance	X	Partial	✓
FCDO alignment	X	Partial	✓
Resource implications	None	Modest	Moderate (manageable)

Implementation timeline	N/A	6-12 months	12-24 months
Recommended?	X	X	✓

Option 1 (Do Nothing) is not a realistic long-term position. It offers no improvement in service delivery, leaves the Government exposed to significant constitutional and litigation risk, and fails to address the longstanding EHRC recommendations.

Option 2 (Minimal Legislation) would be an improvement on the status quo, particularly by establishing a statutory SAB and enquiry duty. However it would leave significant gaps in the framework for assessment, care planning and carers' rights, and would likely require a second-phase Ordinance to complete.

Option 3 (Comprehensive Legislation) is the only option that fully addresses all dimensions of the problem: constitutional compliance, EHRC recommendations, litigation risk, FCDO alignment, and the provision of a contextually relevant framework for adult social care on St Helena. It mirrors the approach taken for children's legislation since 2008 and follows the proven Falkland Islands model for British Overseas Territories.

4. Recommended Option and Rationale

Recommended Option: Option 3 — Comprehensive Welfare of Adults Ordinance

Option 3

The enactment of a comprehensive Welfare of Adults Ordinance is recommended for the following reasons:

1. Do Nothing is not a viable option. Option 1 would leave the Government unable to demonstrate active compliance with its obligations under sections 6, 7, 8, 9, 13, 14 and 21 of the Constitution.
2. Option 2 (safeguarding only) would be an improvement on the status quo, but it would leave significant gaps. It would not address the absence of statutory assessment duties, eligibility frameworks, care planning, carers' rights or independent advocacy. The EHRC is likely to continue to raise these gaps even after a safeguarding-only Ordinance is enacted. More practically, there is a real risk that a second-phase Ordinance to complete the framework would not be prioritised once the most urgent safeguarding gap has been addressed. The island would then continue to operate with an incomplete statutory framework for adult social care for an indeterminate period.
3. Option 3 provides a complete, contextually appropriate, constitutionally compliant framework in a single Act. The Falkland Islands Ordinance 8 of 2020 demonstrates that a comprehensive framework can be enacted in a BOT of comparable size and geographic isolation. The Falklands model has been operating for five years and provides a tested legislative framework that can be adapted for St Helena's circumstances.
4. The legislation is designed to be implementable within existing resources. The eligibility framework, procedural requirements and implementation standards will be set in regulations and guidance, allowing those to be developed over time as capacity is built. The SAB will largely consist of existing post-holders in new formal roles, minimising establishment costs.

5. The political and moral case for Option 3 is compelling. Children on St Helena have had the protection of the Welfare of Children Ordinance since 2008. It is not defensible in 2026 that a vulnerable older adult on St Helena living with elements such as dementia, experiencing domestic abuse, or unable to manage their own affairs, has no equivalent statutory protection. The proposed Ordinance would change this.
6. Island-centric legislation changes the legal test. Once St Helena has its own adult welfare legislation, any legal challenge to decisions made under that legislation will be tested against St Helena's own law, measured against St Helena's own context and resources, rather than against UK standards the island cannot meet. This is the single most important litigation risk reduction that the Government can achieve.
7. The timing is right. Legislative drafter capacity is available (be it very limited); the Falklands precedent provides a strong model; the EHRC is actively monitoring; and the **FCDO is requiring improved performance measurement.** The conditions for successful legislation, political will, a clear model, available expertise, and external accountability are all present currently.
8. Drafting efficiency: HSC has reviewed the Falkland Islands Assessment and Safeguarding of Adults Ordinance 2020 and confirmed it can be adapted for St Helena with some modification. This “lift and adapt” approach significantly reduces the drafting burden on the AG’s Chambers compared to a bespoke Ordinance, and uses a framework already proven to work in a British Overseas Territory. This removes the primary practical risk that previously caused draft legislation to fail from experience.