

## **LEGISLATIVE COUNCIL BRIEF**

Disability Discrimination Ordinance  
(Chapter 487)

### **DISABILITY DISCRIMINATION ORDINANCE (AMENDMENT OF SCHEDULE 5) NOTICE 2009**

#### **INTRODUCTION**

At the meeting of the Executive Council on 6 October 2009, the Council ADVISED and the Chief Executive ORDERED that subject to the approval of the Legislative Council (LegCo), the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2009 (the Amendment Notice) at **Annex A** should be made under section 87(2) of the Disability Discrimination Ordinance (Cap. 487) (DDO).

#### **JUSTIFICATIONS**

2. MTR Corporation Limited (MTRCL) has proposed to offer, by the end of 2009, fare concessions (about half-fare) to persons with disabilities (PWDs) who are either recipients of the Comprehensive Social Security Assistance Scheme<sup>1</sup> (CSSA) aged between 12 and 64<sup>2</sup> with 100% disability or recipients of Disability Allowance<sup>3</sup> (DA) in the same age group<sup>4</sup>. Through the fare concessions, MTRCL aims to encourage these PWDs to participate more in activities away from home, thereby enhancing their contact with and integration into society. In response to MTRCL's

---

<sup>1</sup> The means-tested CSSA Scheme is designed to bring the income of families and individuals (including PWDs) who cannot support themselves financially up to a prescribed level to meet their basic needs. The amount of assistance is determined by the income and recognised needs of the individuals or families. A higher level of standard rate and a variety of special grants / supplements are paid to PWDs according to their degree of disability.

<sup>2</sup> Key transport operators, including MTRCL, are already offering fare concessions to children aged 11 or below and senior citizens aged 65 or above.

<sup>3</sup> The non-means-tested DA is payable to severely disabled persons suffering from 100% loss of earning capacity and severely disabled persons living in the community who require constant attendance from others in their daily life.

<sup>4</sup> These two groups of PWDs will enjoy fare concessions at the rates currently offered to senior citizens aged 65 or above.

request to ensure that its fare concession scheme would not constitute a contravention of the DDO, there is a need to amend Schedule 5 to the DDO.

### *Need for legislative amendment*

3. The definition of “disability” in section 2(1) of the DDO<sup>5</sup> is very broad. The Department of Justice (DoJ) and the Equal Opportunities Commission (EOC)<sup>6</sup> are both of the view that if public transport operator(s) provide fare concessions only to a particular group of PWDs but not to persons with other types or different degrees of disabilities, this may give rise to arguments as to whether the fare concessions may constitute unlawful disability discrimination under section 6(a)<sup>7</sup> of the DDO. In this regard, DoJ has examined the feasibility of relying on the exception provision in section 50 of the DDO as a defence to an act that is reasonably intended to afford PWDs or persons with a particular disability, goods or access to services, facilities or opportunities to meet their special needs in relation to the provision of services or facilities or their capacity to live independently. After careful consideration, DoJ advises that while the fare concession scheme could arguably rely on the exception provision in section 50 of DDO as a defence, there is uncertainty over whether such a defence could be established as it would ultimately be for the court to decide whether there has been a breach of the DDO. EOC holds similar view in this respect. In order to minimise the risk of legal challenge under the DDO against the proposal of public transport operators to provide fare concessions to a particular group of PWDs, appropriately amending the DDO is a preferred option.

---

<sup>5</sup> Pursuant to section 2(1) of the DDO, "disability" (殘疾), in relation to a person, means-

- (a) total or partial loss of the person's bodily or mental functions;
- (b) total or partial loss of a part of the person's body;
- (c) the presence in the body of organisms causing disease or illness;
- (d) the presence in the body of organisms capable of causing disease or illness;
- (e) the malfunction, malformation or disfigurement of a part of the person's body;
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour,

and includes a disability that-

- (i) presently exists;
- (ii) previously existed but no longer exists;
- (iii) may exist in the future; or
- (iv) is imputed to a person;

<sup>6</sup> Pursuant to section 62(1)(e) of the DDO, EOC shall keep under review the working of the DDO and, when it is so required by the Chief Executive or otherwise thinks it necessary, draw up and submit to the Chief Executive proposals for amending the DDO.

<sup>7</sup> Pursuant to section 6(a) of the DDO, a person discriminates against another person in any circumstances relevant for the purposes of any provision of the DDO if on the ground of that other person's disability he treats him less favourably than he treats or would treat a person without a disability.

4. In pursuing the legislative amendments, our overriding principle is that any amendments to be introduced should not diminish protection currently accorded by the DDO to PWDs. Section 60 of the DDO provides that no provision or Part of the Ordinance specified in column 1 of Schedule 5 shall render unlawful any discrimination specified opposite thereto in column 2 of that Schedule. Both DoJ and EOC consider that legislative amendment can be made by specifying the proposed MTRCL's fare concession scheme as a specific exception in Schedule 5 to the DDO.

*The scope of exception*

5. In considering the scope of the exception in Schedule 5, we have explored the option of including a general exception in the Schedule, exempting all concessions or special benefits conferred on any or any groups of PWDs from being regarded as discrimination under the DDO. A general exception could provide the flexibility and remove the possible disincentive for providers or operators from different sectors or trades in deciding to offer different types of concession schemes to PWDs of varying duration. It would also obviate the need for amending Schedule 5 to the DDO as and when new concession schemes are introduced. A broad brush approach would enable the PWDs to enjoy special benefits or concessions sooner without the need to wait for the completion of individual legislative amendment exercises.

6. While DoJ does not have any in-principle objection to the approach, EOC considers that the legislative amendment exercise should be confined to a specific fare concession scheme. In EOC's view, a wide exemption might lead to a situation where different providers in different or even the same industries might offer or refuse different concessions and benefits to different PWDs. Apart from the inconsistencies which might ensue, the situation might have the consequence of causing division among different PWDs and within the community at large. In view of EOC's advice above, we have decided to pursue individual amendment exercises in response to specific fare concession schemes, starting with the current legislative amendments to deal specifically with MTRCL's proposal.

**THE AMENDMENT NOTICE**

7. The Amendment Notice amends Schedule 5 to the DDO. The existing provision that is being amended is at **Annex B**. We propose, in accordance with section 28(3)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), that the Amendment Notice should come into operation on the day on which the Notice is published in the Gazette following

LegCo's approval, so as to facilitate MTRCL to dovetail its timetable for implementation of the fare concession scheme.

## **LEGISLATIVE TIMETABLE**

8. The legislative timetable will be -

To move a motion in LegCo	4 November 2009
Commencement	The day on which the Notice is published in the Gazette

## **IMPLICATIONS OF THE PROPOSAL**

9. The proposal has financial implications as set out at **Annex C**. It has no civil service implication since the additional workload generated by the need to verify the eligibility of PWDs for the MTRCL's fare concession scheme should be minimal and can be absorbed by existing resources of the Social Welfare Department (SWD). It also has no productivity, environmental or significant economic and sustainability implications. The proposed legislative amendments are in conformity with the Basic Law, including the provisions concerning human rights, and do not affect the binding effect of the legislation to be amended.

## **PUBLIC CONSULTATION**

10. A LegCo Subcommittee to Study the Transport Needs of and Provision of Concessionary Public Transport Fares for Persons with Disabilities (Subcommittee) was formed in December 2005 and completed its discussions in 2008. During that period, 17 meetings were held and PWDs groups were invited to express their views at eight of the meetings. After rounds of discussion, the Subcommittee requested that public transport operators should offer fare concessions to recipients under the CSSA Scheme aged between 12 and 64 with 100% disability and recipients of DA in the same age group. Media reports have been positive since the announcement of MTRCL's proposed fare concession scheme on 21 May 2009. At its meeting on 22 May 2009, LegCo Panel on Transport also noted and welcomed MTRCL's initiative.

## **PUBLICITY**

11. Spokesmen of both the Transport and Housing Bureau (THB) and Labour and Welfare Bureau (LWB) will be available to answer media and public enquiries. MTRCL will also handle enquiries from the media and the public.

## **BACKGROUND**

12. In December 2005, a Subcommittee was formed under LegCo House Committee to follow up on the transport needs and provision of public transport fare concessions for PWDs. The objective of offering public transport fare concessions is twofold: to facilitate PWDs' integration into the community and to lessen their financial burden. In view of the very broad definition of "disability" under the DDO, it was considered unrealistic for public transport operators to provide fare concessions to all PWDs as this would amount to a general fare reduction for almost everyone. After rounds of discussion and having regard to the views of PWDs and public transport operators, the Subcommittee requested that public transport fare concessions should be provided to recipients under the CSSA scheme aged between 12 and 64 with 100% disability and recipients of DA in the same age group. The Subcommittee agreed that, having regard to their degree of disability and financial situation, this group of CSSA and DA recipients are those most in need of assistance and encouragement for social integration.

13. The Subcommittee noted that the provision of public transport fare concessions to a particular group of PWDs could be subject to possible legal challenge for contravention of the DDO by those PWDs who were excluded from the fare concession scheme. On the other hand, there were practical difficulties in working out acceptable objective criteria and individual assessment mechanism based on quantification of the level of integration and financial burden, without making reference to the particular type of disability suffered by a PWD, to determine the eligibility of an individual PWD for the fare concessions. To address the concern of public transport operators on possible legal challenge against them in offering public transport fare concessions to a particular group of PWDs but not all, the Subcommittee considered it necessary for appropriate amendments to be made to the DDO to put it beyond doubt that such proposed fare concession scheme would not be in contravention of the DDO.

## **ENQUIRIES**

14. For enquiry on the content of this brief, please contact Mr Stephen Sui, Commissioner for Rehabilitation of LWB, at 2509 4899 or Mrs Hedy Chu, Principal Assistant Secretary of THB, at 2189 2199.

**Labour and Welfare Bureau**  
**Transport and Housing Bureau**  
**14 October 2009**

**DISABILITY DISCRIMINATION ORDINANCE  
(AMENDMENT OF SCHEDULE 5) NOTICE 2009**

(Made by the Chief Executive in Council under section 87(2) of the  
Disability Discrimination Ordinance (Cap. 487) subject to the  
approval of the Legislative Council)

**1. Further exceptions to this Ordinance**

Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is  
amended by adding –

- “1. Parts IV and V MTR Corporation Limited providing fare  
concessions to persons –
- (a) who –
    - (i) receive assistance under the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare; and
    - (ii) are medically certified under the Scheme to be 100% disabled for the purposes of the Scheme; or
  - (b) who receive an allowance described as Disability Allowance under the Social Security Allowance Scheme administered by the Director of Social Welfare.”.



Clerk to the Executive Council

COUNCIL CHAMBER

6 October 2009

### **Explanatory Note**

This Notice amends Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) (“the Ordinance”). It provides that the provision of fare concessions to certain persons with a disability by MTR Corporation Limited is a further exception to Parts IV and V of the Ordinance, so that section 60 of the Ordinance applies and the discrimination is not rendered unlawful by those Parts.

Existing provision of the Disability  
Discrimination Ordinance to be amended

<b>Chapter: 487</b>	<b>Title:</b>	<b>DISABILITY DISCRIMINATION ORDINANCE</b>	<b>Gazette Number:</b>	<b>Version Date:</b>
<b>Schedule: 5</b>	<b>Heading:</b>	<b>FURTHER EXCEPTIONS TO THIS ORDINANCE</b>		<b>30/06/1997</b>

[sections 60, 63 & 87]

Provision creating illegality

Exception

(Enacted 1995)

## IMPLICATIONS OF THE PROPOSAL

### Financial Implications

The scheme is an initiative of, and is funded by, MTRCL. To facilitate implementation of the scheme, THB offered a one-off \$2 million grant from its existing resources to sponsor part of the costs required for starting-up and promoting the scheme.

2. SWD will provide support to MTRCL in the verification of PWDs eligible for the scheme. The Department will absorb from its existing resources the one-off computer enhancement cost of \$206,000, while MTRCL will be responsible for the on-going cost of about \$450,000 a year incurred by SWD in the verification exercise.