INTRODUCTION

At the meeting of the Executive Council on 9 December 2014, the Council ADVISED and the Chief Executive ORDERED that the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2014 (the Amendment Notice) at Annex A should be made, subject to the approval of the Legislative Council, under section 87(2) of the Disability Discrimination Ordinance (DDO) (Cap. 487).

JUSTIFICATIONS

The Scheme

2. In order to build a caring and inclusive society by encouraging the elderly and persons with a disability to participate more in community activities, the Government rolled out the Scheme in phases which uses public resources to enable elderly persons aged 65 or above, as well as Comprehensive Social Security Assistance (CSSA) recipients aged below 65\(^1\) with 100% disabilities and Disability Allowance (DA) recipients of the same age group\(^1\) to travel on designated public transport modes at a concessory fare of $2 per trip on all days and at all times. The public transport operators participating in the Scheme are required to continue to absorb the cost of existing concessions that they are voluntarily offering to the elderly and eligible persons with a disability. The Government periodically reimburses the public transport operators concerned on an accountable basis the fare revenue forgone in implementing this initiative.

\(^1\) The age range of eligible persons with a disability covered by the Scheme was originally 12 to 64. It was extended to eligible children with disabilities aged below 12 in May 2014.
3. Rolled out in June 2012, the first phase of the Scheme covered MTR domestic services\(^2\), including Light Rail, MTR Bus (Northwest New Territories) and MTR Feeder Bus. Under the second phase which was launched in August 2012, the scope of the Scheme was expanded to cover the franchised bus routes\(^3\) operated by Kowloon Motor Bus Company (1933) Limited, New World First Bus Services Limited, Citybus Limited and Long Win Bus Company Limited. As for the third phase which was introduced in March 2013, it covered 20 ferry routes run by 12 ferry operators\(^4\); and franchised bus routes of New Lantao Bus Company (1973) Limited\(^5\).

Considerations of providing public transport fare concessions to a specific group of persons with disabilities

4. In deciding the target group of beneficiaries, consideration has been given to the past deliberations of the “Subcommittee to Study the Transport Needs and Provision of Concessionary Public Transport Fares for Persons with Disabilities” (the Subcommittee) which was formed under the LegCo’s House Committee in 2005 to follow up on the transport needs and provision of concessionary public transport fares for persons with disabilities. The Subcommittee recognised that the objective of offering concessionary public transport fares is to facilitate the integration of persons with disabilities into the community and to lessen their financial burden. In view of the broad definition of persons with a disability\(^6\) under the DDO, it was considered unrealistic to provide public transport fare concessions to all persons with a disability defined

\(^2\) The Airport Express; East Rail Line services to and from the Lo Wu, Lok Ma Chau and Racecourse stations; and the first-class service of the East Rail Line are not covered under the Scheme.

\(^3\) Except "A" routes to and from the airport and racecourse routes.

\(^4\) Excluding deluxe class services.

\(^5\) Except "A" routes to and from the airport and the routes on a pre-booking and group hire basis

\(^6\) 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;
under the DDO as this would amount to a general fare reduction for almost everyone. After rounds of discussion and having regard to the views of persons with a disability and public transport operators, the Subcommittee requested that concessionary public transport fares should be provided to recipients under the CSSA Scheme7 aged between 12 and 648 with 100% disabilities and recipients of DA9 in the same age group. The Subcommittee agreed that, having regard to their degree of disability and financial situation, this group of people is in need of assistance and encouragement for social integration the most.

5. Along the above considerations, the MTR Corporation Limited (MTRCL) launched a fare concession scheme (about half-fare) in December 2009 for the same group of persons with a disability after the amendment to Schedule 5 to the DDO (the MTR fare concession). On the basis of the above principle, the Scheme was launched in June 2012 in phases to provide public transport fare concessions to the elderly aged 65 and above and the same group of persons with a disability, with age range extended to cover those under 12 subsequently.

6. The Government has been pressing full steam ahead with the preparatory work and negotiation with the green minibus operators concerned and the Octopus Cards Limited on the modus operandi and details of the extension. We propose to adopt a pragmatic and flexible approach by rolling out the Scheme to the green minibuses in phases taking into account individual operators’ technical readiness. We aim to launch the first batch of extension around end-March 2015. The second batch of extension is expected to be rolled out in two to three months’ time after the launch of the first batch depending on the readiness of the remaining operators. The target beneficiaries, as in the existing arrangement as mentioned in paragraph 4 above, will continue to cover elderly persons aged 65 or above, as well as CSSA recipients aged below 65 with 100% disabilities and DA recipients of the same age group.

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7 The means-tested CSSA Scheme aims to provide assistance to individuals or families in need to meet their basic needs. The amount of assistance is determined by the monthly income and needs of the individuals or families. Disabled recipients are provided with higher payment rates than able-bodied recipients.

8 Key transport operators, such as the MTRCL, are already offering fare concessions to children aged 11 or below and senior citizens aged 65 or above.

9 The non-means-tested DA is payable to persons who are severely disabled and as a result need substantial help from others to cope with daily life.
The need to amend Schedule 5 to the DDO

7. The definition of “disability” in section 2(1) of the DDO is very broad. The Department of Justice (DoJ) and the Equal Opportunities Commission (EOC) are of the view that the public transport operator(s)’ provision of fare concessions only to a particular group of persons with a disability but not to persons with other types or different degrees of disability may give rise to an argument as to whether this would constitute unlawful disability discrimination under section 6(a) of the DDO. Appropriate legislative amendments to the DDO would prevent possible legal challenge by persons with a disability, who fall outside the scope of a particular fare concession scheme, that the scheme contravenes the DDO.

8. In arriving at the above conclusion, DoJ has also examined the feasibility of relying on the exception in section 50 of the DDO by arguing that the act is reasonably intended to afford persons with a disability 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 there is uncertainty over whether a defence under section 50 of the DDO could be established as it would ultimately be for the court to decide whether there has been a breach of the DDO. EOC holds a similar view in this respect. In order to eliminate the risk of legal challenge under the DDO against the proposal of providing public transport fare concessions to a particular group of persons with a disability, legislative amendment is a preferred option.

9. 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 persons with a disability. 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

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10 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.

11 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 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.
public transport fare concession proposal as a specific exception in Schedule 5 to the DDO.

10. Two similar legislative amendment exercises concerning Schedule 5 to the DDO were carried out. The first one was done in 2009 when MTRCL proposed to provide concession (about half-fare) to the same group of persons with a disability; while the second one in 2012 when the Government proposed to launch the Scheme. To put beyond doubt that the MTR fare concession and the Scheme would not contravene the DDO, we enacted the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2009 and Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012 which put in place relevant exceptions under Schedule 5 to the DDO.

11. Having regard to the above legal advice, we propose to amend Schedule 5 to the DDO to put beyond doubt that the concession in respect of green minibuses under the Scheme would not constitute a contravention of the DDO as in the previous two exercises.

The scope of exception

12. In considering the scope of the exception in Schedule 5 in 2009, we had explored the option of including a general exception in the Schedule, exempting all concessions or special benefits conferred on any or any groups of persons with a disability 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 persons with a disability 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 persons with a disability to enjoy special benefits or concessions sooner without the need to wait for completion of individual legislative amendment exercises.

13. 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 persons with a disability. Apart from the inconsistencies which might ensue, the situation might have the consequence of causing division among different persons with a disability.
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 legislative amendments to deal specifically with MTRCL’s proposal in 2009.

14. The same principle applied to the amendment exercise for the Scheme in 2012, and also applies to the exercise this time round.

15. Under the proposed extension of the Scheme, fare concessions are provided to beneficiaries to enable them to travel on green minibuses at a concessionary fare of $2 per trip on all days and at all times.

16. To allow flexibility of possible changes to the content of the Scheme, a general coverage of the green minibus services without specifying the amount of the concession offered and the routes covered is considered appropriate. The same approach was adopted in the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2009 and the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012.

ALTERNATIVE OPTION

17. The proposal has to be effected by legislative amendments and there is no alternative option.

THE AMENDMENT NOTICE

18. 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.
LEGISLATIVE TIMETABLE

19. The legislative timetable will be –

To move a motion in LegCo 7 January 2015

Commencement The day on which the Notice is published in the Gazette

IMPLICATIONS OF THE PROPOSAL

20. The proposal to seek exemption of the extension of the Scheme from the DDO itself has no financial and civil service implications. As for the implementation of the extension of the Scheme within 2014-15, we will seek the necessary funding under delegated authority within the Administration. While the proposal has no productivity, environmental, economic and family implications, it may have positive sustainability implication by encouraging the beneficiaries to participate more in community activities, thus enhancing their involvement in society, enriching social capital and developing a spirit of care and inclusiveness, though the impact is not expected to be very significant.

21. 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

22. We briefed the LegCo Panel on Welfare Services, the Rehabilitation Advisory Committee and the Elderly Commission on the proposed extension of the Scheme to green minibuses in January and March 2014 in the context of the Policy Address and the Budget exercises respectively. We also briefed the LegCo Panel on Welfare Services on the progress of the preparation work for the proposed extension on 10 November 2014.

PUBLICITY

23. A spokesperson of the Labour and Welfare Bureau (LWB) will be available to answer media and public enquiries.
ENQUIRIES

24. For enquiry on the content of this brief, please contact Ms Joyce TAM, Commissioner for Rehabilitation of LWB, at 2810 2029.

Labour and Welfare Bureau
Transport and Housing Bureau
10 December 2014
Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2014

(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. Disability Discrimination Ordinance amended
   The Disability Discrimination Ordinance (Cap. 487) is amended as set out in section 2.

2. Schedule 5 amended (further exceptions to this Ordinance)
   (1) Schedule 5, item 4, column 2, paragraph (d)—
       Repeal
       “or”.
   (2) Schedule 5, item 4, column 2, paragraph (e)—
       Repeal
       “(Cap. 104).”
       Substitute
       “(Cap. 104); or”.
   (3) Schedule 5, item 4, column 2, after paragraph (e)—
       Add
       “(f) a public transport service operated by a person pursuant to a passenger service licence issued under section 27 of the Road Traffic Ordinance (Cap. 374) in respect of a public light bus which is on a scheduled service (as defined by regulation 2(1) of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D)).”.

COUNCIL CHAMBER

9th December, 2014

[Signature]

Clerk to the Executive Council
Explanatory Note

This Notice amends Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) (Ordinance).

2. The effect of the amendment is that the provision of fare concessions to certain persons with a disability in respect of a public transport service operated by a holder of a passenger service licence issued in respect of a public light bus on a scheduled service is a further exception to Parts 4 and 5 of the Ordinance. Under section 60 of the Ordinance, the discrimination is not rendered unlawful by those Parts.
Provision creating illegality | Exception
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1. Part 3 | Only a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government being allowed to have his or her degree of productivity assessed under Schedule 2 to the Minimum Wage Ordinance (Cap 608). (Added 15 of 2010 s. 24)
2. Part 3 | An employer, in accordance with the Minimum Wage Ordinance (Cap 608), paying a minimum wage to a person with a disability that is less than that payable to a person without such a disability. (Added 15 of 2010 s. 24)
3. Part 3 | An employer dismissing a person with a disability on account of the outcome of an assessment made under Schedule 2 to the Minimum Wage Ordinance (Cap 608). (Added 15 of 2010 s. 24)
4. Parts 4 and 5 | 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,
   in respect of—
     (c) a public transport service operated by the MTR Corporation Limited;
     (d) a public transport service operated by a company pursuant to a licence granted under section 5 of the Public Bus Services Ordinance (Cap 230); or
     (e) a public transport service operated by a company or person pursuant to a franchise or licence granted under section 6 or 28 of the Ferry Services Ordinance (Cap 104). (Added L.N. 223 of 2009. Amended 15 of 2010 s. 24; L.N. 131 of 2012) (Amended E.R. 1 of 2013) (Format changes—E.R. 2 of 2012) (Enacted 1995)