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Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 20 June 2012

**Proposed resolution under
the Disability Discrimination Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Labour and Welfare will move at the Council meeting of 20 June 2012 under section 87(2) of the Disability Discrimination Ordinance (Cap. 487). The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

Disability Discrimination Ordinance

Resolution

(Under section 87(2) of the Disability Discrimination Ordinance (Cap. 487))

Resolved that the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012, made by the Chief Executive in Council on 8 May 2012, be approved.

Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012

(Made by the Chief Executive in Council under section 37(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)

Schedule 5, item 4—

Repeal everything in column 2

Substitute

“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 franchise 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).”.

Clerk to the Executive Council

COUNCIL CHAMBER

8 MAY 2012

Explanatory Note

This Notice amends item 4 of Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) (*the Ordinance*).

2. The effect of the amendment is that other than provision of fare concessions to certain persons with a disability in respect of the public transport services operated by the MTR Corporation Limited, provision of fare concessions to those persons in respect of the public transport services operated by any one of the operators as set out in paragraph 3 is also a further exception to Parts IV and V of the Ordinance. Under section 60 of the Ordinance, the discrimination is not rendered unlawful by those Parts.
3. The operators referred to in paragraph 2 are—
 - (a) holders of a public bus service franchise;
 - (b) holders of a ferry service franchise; and
 - (c) holders of a ferry service licence.

**Speech by the Secretary for Labour and Welfare
(20 June 2012)**

**Disability Discrimination Ordinance (Amendment of Schedule 5)
Notice 2012 (“Amendment Notice”)**

Mr President,

I move the resolution standing in my name on the Agenda. The resolution is to the effect that the amendment of Schedule 5 to the Disability Discrimination Ordinance (“DDO”) made under section 87(2) of the DDO be approved by this Council, in order to include Government’s proposed public transport fare concession scheme for a particular group of persons with disabilities (“the Scheme”) as a further exception under Schedule 5.

2. In order to build a caring and inclusive society by encouraging the elderly and persons with disabilities to participate more in community activities, the Chief Executive has announced in his 2011-12 Policy Address a proposal to enable elderly persons aged 65 or above, as well as eligible persons with disabilities to travel on the general MTR lines, franchised buses and ferries at a concessionary fare of \$2 per trip at any time. Eligible persons with disabilities will be the group of Comprehensive Social Security Assistance recipients aged between 12 and 64 with 100% disabilities and Disability Allowance recipients of the same age. It is expected that around 1.1 million persons, including about 130 000 eligible persons with disabilities, will benefit from the Scheme. The Government will periodically reimburse the public transport operators concerned on an accountable basis the fare revenue forgone in implementing this new initiative.

3. Since the definition of “disability” under the DDO is very broad, the provision of fare concessions only to a particular group of persons with disabilities may give rise to an argument as to whether this would constitute unlawful disability discrimination under the DDO. In this regard, the Equal Opportunities Commission (“EOC”) and the Department of Justice (“DoJ”) have examined the feasibility of relying on the exception provision in section 50 of the DDO as a defence. Both

EOC and DoJ are of the view that while the Scheme could arguably rely on the exception provision in section 50 of the 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. In this regard, to minimise the risk of legal challenge under the DDO against the proposed public transport fare concession scheme, the Government now proposes to make legislative amendments to Schedule 5 to the DDO having regard to the content of the Scheme.

4. There has been extensive discussion in the community since the announcement of the Scheme in October 2011. The public generally welcome the Scheme. Some of them have asked for early implementation and extension of the coverage of transport modes, such as minibuses and tram. Besides, some have pressed for the relaxation of the eligibility criteria to cover persons with less than 100% disabilities.

5. We fully understand these requests. However, to enable the elderly and eligible persons with disabilities to enjoy the concessionary fares as soon as possible, our present priority is to launch the Scheme initially on the three major modes of public transport, namely, MTR, franchised buses and ferries, which account for about 72% of the daily public transport patronage in 2011. We shall review whether to cover other modes of transport in the Scheme after it has been running smoothly. We will also conduct a comprehensive evaluation of the Scheme three years after it has been fully implemented to assess the long-term financial, transport and welfare implications.

6. As regard to the request for relaxing the eligibility criteria of persons with disabilities, given that the definition of the term “disability” under the DDO is very broad and the fare concessions to be offered under the Scheme are non-means-tested and incur a significant amount of recurrent public resources, we consider that the beneficiaries of the Scheme should be those persons with more severe disabilities who have greater needs for assistance and encouragement to participate in community activities away from home, thereby enhancing their integration into society.

7. To facilitate early implementation of the Scheme, thereby enabling persons with disabilities to benefit from it as early as possible, the Government has been pressing with full steam ahead various

preparatory work, including negotiation with the public transport operators concerned and Octopus Cards Limited on the modus operandi and details of the Scheme and seeking funding approval of the Legislative Council Finance Committee. Subject to Members' approval of this resolution today, the Amendment Notice concerned may take effect on 22nd of this month at the earliest upon its publication in the Gazette so as to dovetail with the implementation of the Scheme which will be rolled out by phases starting from the end of June or July this year. In this regard, I hope that Members will support this resolution so as to enable persons with disabilities concerned to enjoy the fare concessions as early as possible.

8. Mr President, I beg to move.