

立法會
Legislative Council

LC Paper No. LS74/11-12

**Paper for the House Committee Meeting
on 8 June 2012**

**Legal Service Division Report on
Proposed Resolution under section 87(2) of
the Disability Discrimination Ordinance (Cap. 487)**

The Secretary for Labour and Welfare has given notice to move a motion at the Legislative Council meeting of 20 June 2012. The motion seeks the Legislative Council's approval of the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012 (Amendment Notice) made under section 87(2) of the Disability Discrimination Ordinance (Cap. 487) (the Ordinance) by the Chief Executive in Council on 8 May 2012.

2. Under the existing item 4 of Schedule 5 to the Ordinance, the provision of fare concessions by MTR Corporation Limited to specified groups of persons with disabilities (PWDs) has been included as a further exception to Parts IV (Discrimination and Harassment in other fields) and V (Other Unlawful Acts) of the Ordinance. The specified groups of PWDs are -

- (a) recipients of assistance under the Comprehensive Social Security Assistance Scheme (which is means-tested) with 100% disability; and
- (b) recipients of Disability Allowance under the Social Security Allowance Scheme (which is non-means-tested).

3. The Amendment Notice amends item 4 of Schedule 5 to the Ordinance to add as further exceptions the provision of the fare concessions to the abovementioned groups of PWDs by the following operators of public transport service -

- (a) holders of a public bus service franchise; and
- (b) holders of a ferry service franchise or licence.

4. In accordance with section 60¹ of the Ordinance, the fare concession as specified under item 4 of Schedule 5 as a specific exception shall not constitute a contravention under Parts IV and V of the Ordinance.

¹ Section 60 of the Ordinance 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.

5. According to the Administration, the proposed amendment is necessitated by the implementation of the Public Transport Concession Scheme for the Elderly and Eligible Persons with Disabilities (the Scheme) which enables the specified groups of PWDs to travel on the general Mass Transit Railway lines, franchised buses and ferries at a concessionary fare of \$2 per trip. As the fare concessions are to be offered only to a particular group of PWDs and may give rise to legal challenge as to whether such fare concessions would constitute discrimination under section 6(a)² of the Ordinance, the Administration, having consulted the Department of Justice and the Equal Opportunities Commission, proposes to amend Schedule 5 to the Ordinance. A similar amendment to Schedule 5 was made in respect of the provision of fare concession by MTR Corporation Limited under the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2009 (enacted on 6 December 2009). Members may refer to the LegCo Brief (File Ref.: LWB 8/3939/99) issued by the Labour and Welfare Bureau and Transport and Housing Bureau on 9 May 2012 for further background information.

6. The Panel on Welfare Services was consulted at its meeting on 14 May 2012 the proposed fare concession under the Scheme and held a further meeting on 29 May 2012 to receive public views. Members generally welcomed the Scheme and urged its early implementation. During the meetings, members also noted the Administration's proposal to amend Schedule 5 under the Ordinance to dovetail with the implementation of the Scheme and raised no objection to it.

7. If the proposed resolution is passed, the Amendment Notice will come into operation on gazettal. According to the draft speech of the Secretary for Labour and Welfare, the Amendment Notice, if approved, may take effect on 22 June 2012 at the earliest so as to dovetail with the implementation of the Scheme by phases starting from the end of June or July 2012.

8. No difficulties relating to the legal and drafting aspects of the proposed resolution and the Amendment Notice have been identified.

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LS/R/9/11-12

² Section 6(a) of the Ordinance provides that a person discriminates against another person in any circumstances relevant for the purposes of any provision of Ordinance 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.