

LEGISLATIVE COUNCIL BRIEF

Disability Discrimination Ordinance (Chapter 487)

DISABILITY DISCRIMINATION ORDINANCE (AMENDMENT OF SCHEDULE 5) NOTICE 2021

INTRODUCTION

At the meeting of the Executive Council on 20 July 2021, the Council ADVISED and the Chief Executive ORDERED that the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2021 (the Amendment Notice) at Annex A should be made, subject to the approval of the Legislative Council (LegCo), under section 87(2) of the Disability Discrimination Ordinance (DDO) (Cap. 487).

JUSTIFICATIONS

The Government Public Transport Fare Concession Scheme for the Elderly and Eligible Persons with Disabilities

2. The Government introduced the Government Public Transport Fare Concession Scheme for the Elderly and Eligible Persons with Disabilities (\$2 Scheme) in 2012 to enable elderly persons aged 65 or above as well as Comprehensive Social Security Assistance (CSSA) recipients aged below 65 with 100% disabilities and Disability Allowance (DA) recipients of the same age group to travel on designated public transport modes at a concessionary fare of \$2 per trip. Rolled out in phases in 2012 to 2015, the \$2 Scheme covered Mass Transit Railway (MTR) domestic services¹, franchised bus routes², ferry routes and Lantao

¹ The first phase was rolled out in June 2012 which covered MTR domestic services, including Light Rail, MTR Bus (Northwest New Territories) and MTR Feeder Bus. 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.

² The second phase was launched in August 2012 which expanded the scope to cover franchised bus routes operated by The Kowloon Motor Bus Company (1933) Limited, New World First Bus Services Limited, Citybus Limited and Long Win Bus Company Limited. Except “A” and “NA” routes to and from the airport and racecourse routes.

franchised bus routes³, and green minibus services⁴ respectively.

3. For persons with a disability as beneficiaries, consideration has been given to the past deliberations of the LegCo “Subcommittee to Study the Transport Needs of and Provision of Concessionary Public Transport Fares for Persons with Disabilities” formed in 2005. With the broad definition of the term “disability”⁵ under DDO, it was considered unrealistic to provide the fare concessions to all persons with a “disability” as this would amount to a general fare reduction for almost everyone. Upon deliberation, the \$2 Scheme launched in 2012 provided public transport fare concessions to CSSA recipients aged 12 - 64⁶ with 100% disabilities and DA recipients of the same age group, with the age range extended to cover those under 12 subsequently in May 2014.

Proposed Expansion of \$2 Scheme

4. The Government announced in January 2021 the completion of the final report by the consultant commissioned by the Government to review the \$2 Scheme, and the implementation of enhancement and anti-abuse measures under the \$2 Scheme. The enhancement and anti-abuse measures include expanding the \$2 Scheme to cover red minibuses, kaitos and the trams (New Public Transport Modes) on specified conditions and lowering the eligible age to benefit persons aged 60 to 64 on the strict condition that these new beneficiaries must apply for and use tailor-made Personalised Octopus Cards (now titled JoyYou Cards) with photo and

³ The third phase was introduced in March 2013 which further expanded the scope to cover 20 ferry routes run by 12 ferry operators (excluding deluxe class services and the North Point-Joss House Bay route) and franchised bus routes operated by New Lantao Bus Company (1973) Limited (except “A” routes to and from the airport and the routes on a pre-booking and group hire basis).

⁴ The fourth phase was launched since March 2015 to gradually expand the scope to cover all green minibus routes.

⁵ Pursuant to section 2(1) of 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.

⁶ Key transport operators, such as MTR Corporation Limited (MTRCL), were then already offering fare concessions to children aged 11 or below and senior citizens aged 65 or above.

name of the eligible beneficiary as a prerequisite for benefitting from the concessionary fare. The Government announced in June 2021 that this measure and other enhancement measures, including expansion of the \$2 Scheme to the New Public Transport Modes, will be implemented from 27 February 2022.

5. In the interim, Schedule 5 to DDO needs to be amended to ensure that CSSA recipients aged below 60 with 100% disabilities or DA recipients of the same age group will be able to benefit from the inclusion of the New Public Transport Modes without contravening DDO.

Need to amend Schedule 5 to DDO

6. The definition of “disability” under DDO (paragraph 3 above) is very broad. The Department of Justice (DoJ) and the Equal Opportunities Commission (EOC) are of the view that the public transport operators’ 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)⁷ of DDO. Appropriate legislative amendments to DDO would prevent such possible legal challenge.

7. Section 60 of DDO provides that no provision or Part of DDO 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 have advised that legislative amendments can be made by specifying the public transport fare concession proposal as a specific exception in that Schedule.

8. In this regard, Schedule 5 to DDO were amended three times during 2009 to 2014. The Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2009 covered MTRCL’s voluntary provision of fare concessions, the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012 covered the launching of the \$2 Scheme, and the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2014 covered the expansion of the \$2 Scheme to also cover green minibus services.

9. In a similar vein, Schedule 5 to DDO is now proposed to be amended to cover the New Public Transport Modes. Specifically, Schedule 5 is to be amended to put beyond doubt that the provision of public transport fare concessions in respect of red minibus and tram under

⁷ Pursuant to section 6(a) of 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.

the expanded \$2 Scheme to the groups of persons with a disability who are CSSA recipients aged below 60 with 100% disabilities or DA recipients of the same age group does not constitute a contravention of DDO. For kaito, their services are regulated through licences granted under section 28 of the Ferry Services Ordinance and hence covered by the existing item 4 of Schedule 5 to DDO, and there is no need to specify “kaito” in Schedule 5.

THE AMENDMENT NOTICE

10. The Amendment Notice amends Schedule 5 to DDO and will come into operation following LegCo’s approval. The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be –

To move a motion in LegCo	18 August 2021
Commencement	the day on which the Amendment Notice is published in the Gazette following LegCo’s approval

IMPLICATIONS OF THE PROPOSAL

12. The Amendment Notice which seeks to put beyond doubt that the expanded \$2 Scheme does not constitute a contravention of DDO is technical in nature, and itself has no financial, civil service, economic, productivity, environmental or gender implications. Meanwhile, the expanded \$2 Scheme may have positive sustainability implications by encouraging the beneficiaries to participate more in community activities, thus enhancing their involvement in society and social cohesion of the community. It will also have positive family implications as it will facilitate communication amongst family members and strengthen the beneficiaries’ family ties and community/neighbourhood networks.

13. The Amendment Notice is in conformity with the Basic Law, including the provisions concerning human rights, and does not affect the current binding effect of DDO.

PUBLIC CONSULTATION

14. In the course of the comprehensive review of the \$2 Scheme (paragraph 4 above), the consultant conducted a number of public engagement sessions for relevant stakeholders including public transport operators, concern groups of the elderly and persons with disabilities, and district personalities. The LegCo Panel on Welfare Services was briefed on the review progress and the \$2 Scheme enhancement measures on 11 January 2021.

PUBLICITY

15. This LegCo brief has been issued. A spokesperson of the Labour and Welfare Bureau will be available to answer media and public enquiries.

ENQUIRIES

16. Enquiries on this brief can be addressed to Ms Gladys LEUNG, Assistant Commissioner for Rehabilitation, Labour and Welfare Bureau, at telephone number 2810 2102.

Labour and Welfare Bureau
21 July 2021

Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2021

(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 (e)—
Repeal
“; or”
Substitute a semicolon.
 - (2) Schedule 5, item 4, column 2, paragraph (f)—
Repeal
everything after “public light bus”
Substitute
“(as defined by section 2 of that Ordinance); or”.
 - (3) Schedule 5, item 4, column 2, after paragraph (f)—
Add
“(g) a public transport service operated by Hong Kong Tramways Limited under the authority of the Tramway Ordinance (Cap. 107).”.



Clerk to the Executive Council

COUNCIL CHAMBER

20 July 2021

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 the following public transport services is also a further exception to Parts 4 and 5 of the Ordinance—
 - (a) a public transport service operated by a holder of a passenger service licence issued in respect of a public light bus, whether on a scheduled service or not;
 - (b) a public transport service operated by Hong Kong Tramways Limited.
3. Under section 60 of the Ordinance, the discrimination referred to in paragraph 2 is not rendered unlawful by Parts 4 and 5 of the Ordinance.

Disability Discrimination Ordinance

Schedule 5

S5-2

Cap. 487

Schedule 5

[ss. 60, 63 & 87]

Further Exceptions to this Ordinance*(Format changes—E.R. 2 of 2012)*

Provision creating illegality	Exception
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). <i>(Added 15 of 2010 s. 24)</i>
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. <i>(Added 15 of 2010 s. 24)</i>
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). <i>(Added 15 of 2010 s. 24)</i>
4. Parts 4 and 5	Providing fare concessions to persons— (a) who—

Disability Discrimination Ordinance

Schedule 5

S5-4

Cap. 487

Provision creating illegality

Exception

- (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); (*Amended L.N. 4 of 2015*)

Disability Discrimination Ordinance

Schedule 5

S5-6

Cap. 487

Provision creating illegality

Exception

- (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); or (*Added L.N. 223 of 2009. Amended 15 of 2010 s. 24; L.N. 131 of 2012; L.N. 4 of 2015*)
 - (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)). (*Added L.N. 4 of 2015*)
(Amended E.R. 1 of 2013)
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