

UTTARAKHAND WAQF RULES 2017

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of Notification No.834D(VII-3/ 2017-04(12)/2016, dated Dehradun, November 28, 2017 for general information: No. Dated Dehradun, November 28, 2017 N0TmcAT10N In exercise of the powers conferred by section 109 of the Central Waqf Act, 1995 (As Amended 2013), the State Governor hereby makes the following rules, namely:- The Uttarakhand waqf Rules, 2017 1. Short title and commencement.— (1) These rules may be called the Uttarakhand Waqf Rules, 2017. (2) They shall come into force from the date of their publication in the Official Gazette

2. Definitions.— (1) In these rules, unless the context otherwise — (a) "Act" means The Waqf Act, 1995 (As Amended 2013) (b) "authorised representative" means a person duly authorised to act for and on behalf of a person as his attorney by duly executed power of attorney or in the case of a legal practitioner by execution of a "Vakalatnama"; (c) "ballot box" includes any box, bag or other container used for the insertion of ballot papers by voters; (d) "Chairperson" means the Chairperson of the State of Uttarakhand Waqf Board, elected under sub-section (8) 14 of the Act; (e) "anunt" means all the operations involved in the counting of the votes recorded for candidates; (f) "elector" in relation to election to any category of member of the Board means any person whose name is specified in the electoral roll of that category unless disqualified by the Returning Officer; 54 28 2017 07. 1939 (g) "electoral roll" means the list of electors obtained under rule 9; (h) "encroachment" in relation to any waqf premises means occupation by any person of the waqf premises without authority for such occupation. and includes the continuance in occupation by any person of the waqf premises after the lease or transfer authorising such occupation has expired or has been terminated for any reason whatsoever; 3. (i) "Form" means a form appended to these rules; (j) "Government" means Chief Secretary Lieutenant Governor/Administrator as the case may be, of the State/Union Territory; (k) "legal practitioner" shall have the same meaning as is assigned to it in the Advocates Act, 1961 (25 of 1961); (l) "managing committee" means the Committees of Board established under section 18 of the Act; (m) means any land or any building or part of building and includes— (i) the garden, grounds, if any, appertaining to such building or part of the building; (ii) any fittings affixed to such building or part of the building for the more beneficial enjoyment thereof; and (iii) dargah, grave, graveyard, khanqah, karbala, maqbara, mosque, tomb and the outvald appertaining thereto; (n) "Registrar" means the Registrar of the Tribunal and includes Assistant Registrar or any person to whom the Registrar may, with the approval of Tribunal, delegate any to be exercised by him (o) "Returning Officer" means an officer authorised or appointed by Election Authority to do any act or to perform any in connection with the conduct of election under rules; (p) "section" means the section of the Act; (q) "Tribunal" means the Tribunal constituted under sub-section (1) of section 83 of the Act; (r) "waqf" means— (i) any dedicated by a person of movable or immovable property orally or by an instrument in writing used for any purpose recognised by Muslim law as pious, religious or charitable; (ii) means is waqf property in the Official Gazette; or (iii) premises entered as waqf in the list of waqfs maintained by the Board; or (iv) treated as waqf by (s) "waqf property" means any movable or immovable property referred to in clause (r) of section 3 of the Act and includes premises thereof. (2) All words and expressions used and not defined in these rules but defined in the Act shall have the same meanings to them in the Act. Qualifications of mutawalli.— (1) The mutawalli a citizen of India. (2) Qualifications of a muawalli of a waqf shall such as may be by a in the waqf (3) Where no qualifications are specified by the a muawalli shall (a) knowledge of English, Urdu, Hindi or any other language of the place where the waqf property is situated; (b) of waqf law, 4. 5. 6. 7. 8. 28 2017 (augrwr 07, 1939 w:q) 55 (c) working knowledge of Sharia; and (d) perfect and mental health : Provided that where qualifications are specified by a waqf under sub-rule (2) or no person having the qualification specified this sub-rule is available, the Board may appoint any hereditary mutawalli or a qualified graduate from any college or university as the mutawalli for the concerned waqf, Other particulars the report of Survey Commissioner may contain.— the report to be submitted by the Commissioner Government under sub-section (3) of section 4 of the Act shall be as in Form I Other powers of Inquiry of Survey Commissioner — The Survey Commissioner shall, in addition to the powers specified under sub-section (4) of section 4 of the Act, have the power in respect of the following matters, namely:— (a)

grant of temporary injunctions and interlocutory orders; and (b) of receivers : Provided that no inquiry shall be instituted against the Board until the expiry of a period of two months from the date of a notice in writing delivered in the office of the Board stating the cause of action, description and place of NE pe&ner the applicant and the relief claimed, Other particulars which a list of auqaf published may The list of auqaf published under sub-section (2) of section 5 of the Act shall be as specified in Form 2. Entry of auqaf in revenue record,— (1) The after receipt of the list of auqaf from the Board under sub-section (2) of 5 of the Act, shall publish in the Official Gazette and send it within a period of one month to the revenue authorities. (2) On receipt of the lists under sub-n.de (1) from the Government, the revenue authorities shall, after updating the record and deciding mutation in the land record, submit a copy of such entries to the Board within a period of six months from the date of receipt. (3) If no intimation is sent by the revenue authorities to the Board within six months, the entry in the land record in mutation thereof shall be deemed to have been made. Conduct of elections.— (1) The Addl. Secretary Department of Minority Welfare to Government shall be the Election Authority for the purposes of conduct of elections of members under clause (b) of sub-section (1) of section 14 of the Act and he shall have powers of superintendence, direction and control of the conduct of election under these rules. (2) The Joint Secretary Department of Minority Welfare to Government shall be the Deputy Election Authority for purposes of conduct of elections under these rules. (3) Deputy Election Authority shall perform all or any of the functions of the Election Authority, subject to the control of the Election Authority. (4) The Election Authority shall appoint a Returning Officer who shall be responsible for the conduct of elections under these rules: Provided that such Returning Officer shall be appointed from amongst persons holding a Gazetted post in Government. (5) Election Authority may employ one or more persons from amongst officers of the Government as Returning Officers to assist the Officer. (6) Every Returning Officer shall be competent to perform all or any of the functions of the Returning Officer subject to the control of the Returning Officer: Provided that the Assistant Returning Officer shall not perform any function of the Officer which relates to the scrutiny of nominations unless the Returning Officer directs him so to perform.

9. IO.28 2017 07. 1939 56 (7) Subject to other provisions of these rules, the Election Authority shall have power to perform the following functions, namely:— (a) to fix date, place and time of election; (b) to notify the form of notice, nomination, letter of intimation, declaration paper, ballot paper, ballot paper cover and the envelope for the election, the form of any other record to be prepared or maintained in relation to an election and the instructions to be contained in the notification for the conduct of election; (c) to decide, in case of doubt, the validity or invalidity of each ballot paper of each vote recorded thereon; (d) to declare the result of each election; and (e) to fix— (i) the date of election; (ii) the last date for receipt of nomination; (iii) the date of scrutiny of nomination and publication of list of candidates validly nominated; (iv) the date and hour for withdrawal of candidature; (v) the date of publication of the final list; (vi) the date and hour for poll; (vii) the date and hour of scrutiny and counting of votes. (8) The election under these rules shall be held in accordance with the system of proportional representation by means of single transferable vote. Electoral roll.— (1) The Election Authority shall obtain the list of persons eligible to vote in the categories mentioned in sub-clauses (i), (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 14 of the Act from the officers specified in sub-rule (2) and the list of such persons shall form the electoral college for that category and the persons whose names find place in the list, shall be electors for that category of members. (2) The category-wise lists shall be obtained as follows:— (a) For the election of Muslim Members of Parliament from the State or as the case may be, the National Capital Territory of Delhi under section 14 of the Act, from the Secretary General, Lok Sabha/ Rajya Sabha; (b) For the election of Muslim Members of State Legislature under section 14(1)(b)(ii) of the Act, from the Secretary, Legislative Assembly/Council; (c) For the election of Muslim Members of Bar Council of the concerned State or Union Territory under section 14(1)(b)(iii) of the Act* from the Chief Justice of State Bar Council; (d) For the election of mutawallis under section 14(1)(b)(iv) of the Act, from the Chief Executive Officer of the Board. by mutawallis.— For the purposes of preparing the electoral roll of the mutawalli under clause (d) of sub-rule (2) of rule 9, the Officer shall give one week's time to the mutawalli(s)* or as the case may be, to the managing committees to select— (a) the senior most mutawalli, to be the representative of such waqf institution in the case of waqf institutions having more than one mutawalli; and (b) the President of the managing committee, as the representative of such waqf in the case of waqf institution being administered by a managing committee: Provided that if the waqf fails to do so and to the Chief Executive Officer the name of the senior most mutawalli and the President managing committee, then such senior most mutawalli and the President of the

mulaong committee shall be deemed to have been selected and tEr nanw shall be incorporated in the electoral rolls for tre purpose of constinting the electoral college: 11. 12. 13. 14. 28 2017 07, 1939 w:q) 57

Ruther that only those mutawalli or the representatives of the managing committees shall be to vote who are registered with the Board and having annual income of rupees one lakh in'the preceding year and have paid annual contribution payable to the Board under section 72 of the Act upto the preceding year.

Electoral rolls of ex Muslim Members of Parliament; ex Muslim Members of State and ex-Muslim Members of the Bar Council— In case âe:e are no Muslim Membersin any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (l) of section 14 of the Act, the ex-Muslim Members of Parliament, the State Leoslatu•e or of the State Bar Council, as the case may be, shall constitute the electoral college and a separate electoral roll shall be maintained for each such category. Displaying of lists.— ne electoral lists obtained under rule 9, shall be displayed on the notice board of the Election Authority and in the office of the Board, not less than fourteen days before the date of elections and shall be published in Urdu, Hindi and English/local language newspapers having circulation in the area. Filing of objections.— (1) Any person aggrieved by the publication of electoral lists unda rule 12, may file the objecüon petition before the Election Authority within seven days of such publication, for addition, deletion or modification of any name. (2) The Election Authority. after going the objecdon petition, and obtaining any further infonnation from any source, as it may deem fit and after giving personal hearing to the objector or petitioner or to any other person, if it feels necessary, shall pass orders on the objection petition. (3) In the of the orders passed, under sub-rule (2) , if the electoral roll requires any modification, the Election Authority, after incorporating such modification, shall publish the final electoral roll not less than seven days before the date of elections and such electoral roll shall be final and cohclusive list of electors for election. Public noâce of intended election.— (1) The Election Amhority shall, subject to such directions as may be issued by the Government, by notification in Form 3, published in the Official Gazette, call upon on such date or dates as may be specified therein, to elect members of the Board in accordance with fre provisions of the Act and these rules. (2) 'The notification issued under sub-n.de (1) shall speci\$ the last date for maHng nominations, the date for scrutiny of nominations, the last date for wiäd.rawal of candidature, the place and date on which and the time during which the poll shall, if necessary, be held. (3) On the issue of the under sub-rule (l), the Retuning Officer give public notice of the intended election for the members of the Board in Form 4 in Urdu, Hindi and English/local Inguage newspapers having circulation in the area

15. Special ektion programme,—Notwithstanding anything contained in these rules, where the election p•ocess is interrur*d or die election programme has to be altered on accmmt of the orders of any Court or for any valid reason , to be recorded in writing, it. shall be competent for the Election Authority either generally or in respect of specified category of manbers to the election schedule notified under these rules md to re-nodÜ the election schedule as it deems fit in the circumstances of the case: Provided that where tle election schedule is renotified under this rule, the nominations already made shall also be cancelled. 28 2017 (a-uvrwr 07. 1939 58 16. Nomination of (1) A person be nominated as a candidate to fill the offfe of the member of the Board in Form S* if he is qualified to be chosen to fill seat under the provisions of NE Act. (2) The nominadon shall be on or before the appointed date by the candidatein person, between the hours specified, to the Retuning Officer at the place specified, and signed by the candidate or by a duly unhorised by him in this behalf. (3) A candidate for any of the categories specified in clause (b) of (1) of section 14 of the Act shall be a person whose name is in the electoral roll of t}nt category. (4) Each candidae shall be nominated on a separate nomination paper. (5) A candidate be nominaed for more than one of the categories specified in subsection (l) of section 14 Act. 17. • Presentation ofnominadon paper and requirement of valid nomination.— (1) On receipt of the nomination the Retuning Officer shall forthwith number the nomination papers serially in the order in which it is pres-Qted and give a receipt in Form 6. (2) The Return.ing Officer or such Otha peron shall satis& himself that the name and number of NE candidate, as entered in nominnion paper, is the same as enterd in the roll and he shall direct that the nomination form be amended-so as to be in Ecordance with the eleüral roll. (3) The Retuning Officer may, while interßeting an Qü•y in electoral roll overlook merely 18. 19. 20. clerical or prinüing errors, but he shall record the inteQretation adopted by him, to—r with the reasons, while making the mrmal acceptance or rejection or scenniny of a nomination. Publication of nominations received.— Immediately after expiry of the d.me specified for receipt of nomination papers on the dates fixed mr that purpose, die Retuning

Officer or such other person shall publish at his office in Urdu, Hindi and English/local language a list in Form 7 of all he received, with a that the nomi1Btion papers shall be taken up by the Retuning Officer for scrutiny at specified place, date md the time. Oath of amrmation.— Every candidate shall at the time of filing the nomination or at any dne before its scrutiny of nomination uke oath of in Form 8 before the Officer or the Asütant Retuning Officer. Scrutiny of noninadon papers.— (1) On the date appointed for scruüny nominations, candidate, one other person duly in *Titing by each candid&, may attend at such time and place as may be specified under rule 18*. (2) The Retuning Officer may admit such otEr persons as he dinks fit to assist him åall give to such persons all reasonable facilities to examine papas of all the candidates. (3) The Raurning shall examine die nomination pQers and all objecdons which may be at the time to any Mimination and may, eiüler on such objedon or on his Own motion aner such summary inquiry as he thinks necessary, reject any on of the following grounds, namely:— (a) the candidate is for election as a member of üÄ particular category of the Board; 21. 22. 23. 28 2017 07, 1939 w:q) 59 (b) that the candidate incurred any of ffe disqualifications specified in ectioi"16 of the Act or these rules; (c) that the name of the Oänditate is not entered in electoral rolls; (d) that the candidate has failed to comply with any of the provisions of thee rules; or (e) exat the si&lature /thumb impression of the candidate in the paper is not genuine: Provided that üle nominaüon of a candidate shall not be rejected. merely on the Bound of an ofhis name or of any other paniculars relüg to the candidate as entered in the electoral roll, if the identity of the candidate is otherwise established reasonable doubt. (4) The Officer endorse on each nomi.nation paper, his decision, ucepting or rejwting the same and, if the nomination paper is rejected, he shall, record in witing a brief of his reasons for such rejecdon. (5) Tlhe scrudny of the nomination paper shall, as far as pruticable» be completed on the appointed in this behalf and no adjournmen of the proceedings shall ordinarily be except at the of dE Returning Officer, to provide an opportunity to a candidate to rebut any contention raised against his candidature. (6) For the pumoes of this rule, a cerüified copy of an entw in the electoral roll for the time being in of any of the category of member of the Board shall be conclusive evidence of the fact the person referred to in diat enty is an elector for that category of member of the Board* unless it is proved that he is subject to any disqualification mentioned in the Act or in äese rules. (7) Immediately after the nomination papers have been scrutinised and the decisioß, or rejecting the same have been recorded, the Returning Officer shall a list of nominations found valid under each category and display it on the notice board of his office in Form 9. Withdrawal of nomination.— Any emdicate may withdraw his nomination in writing in Form 10 *Sigrd by him and delivered to the Retuning Officer eiär in or by his authorised agent not lata than five O'clock in of the appointed last date for withdrawal and the Returning Officer shall give a receipt for the same on being as to the of the notice of withdrawal and the identity of the person delivering it. Publication of list of contesting candidates.— (1) On the following day. after the withdrawal of nominations, the Returning Officer shall prepare in Urdu, Hindi and English languages/local language a in Form 11 of the persons whose nomimndons have been found valid and display it on die notice board of his office and offee of the Board. (2) The list under sub-rule (1) shall contain the names of tlr candidates as described in their nominaüon paper in Urdu, Hindi and English language duly arranged EnÖish alphabeical order. Declaration of result of unconteted candidate.--- (1) If the number of contesting candidaes is equal or less of vacancy in a particular category, die Return.ing Officer shall forthwiã declare such candidate as duly elected in Form 12 and send the same to the Election 60 28 2017 07. 1939 24. 25. 26. 27. (2) If the number of contesting candidates is more than the number of vacancy or in a particular category, poll be conducted. Death of candidate before pone.— If a contesting candidaie dies and a report of his death is received before the commemement of the poll, the Returning Officer shall, upon being saüsified of the fact of the death of the candidate, countermand the poll and election proceedings shall be started afresh in all respect as if for a new election: Provided that no fresh nomination shall be necessao.' in äe case of a candidate who stood validly nominated at the üme of countermanding of the poll. Voting.— (1) If poll is to be conducted, the Returning Officer shall take necessary action for the conduct of poll and shall see the election is ffrly conducted at the polling station, and regulate the of electors to be a&nitted at one time, and shall exclude all persons other than the following:— (a) the candidate; (b) the police offcer or other public sewants on duty; (c) such persons as the Retuning Officer may from time to time admit for the purpose of identi&ing electors; (d) persons authorised by the Government; (e) a child in arms accompanying an and (f) a person accompanying a blind or infirm elector who cannot move without help. (2) Where a woman elector cannot be identified by the

Returning Officer by reason of her observing purdah, she may be required to be identified by any mode to the satisfaction of the Returning Officer. Right of vote.— (1) Voting is to be in person. (2) All electors at an election shall do so in at the polling station provided for them under rules. (3) Counting shall be arranged at the end of polling for the election of each category of members specified in clause (b) of sub-section (1) of section 14 of the Act. (4) The Returning Officer shall provide at each polling station, sufficient number of ballot boxes, together with copies of the electoral roll containing the names of electors entitled to vote and other papers and necessary for electors to mark ballot papers, stationery and forms, as may be necessary. (5) Immediately before the of the the Returning Officer shall to the candidates or their polling that the ballot box is Form of ballot paper.— (1) Every ballot shall contain serial of list of contesting candidates in Urdu, Hindi and English language duly arranged in English alphabetical order. (2) Every ballot paper shall be before issued to an elector, be— (a) stamped or shall be written on its back— (i) the Name and of member; (ii) the place of election; (b) signed in full on its back by the Returning Officer. 28. 29. 30. 31. 28 2017 07, 1939 61 Issue of ballot paper.— Immediately after a ballot paper is issued to an elector, the Returning Officer shall obtain the signature of elector in token of having received the ballot paper, on the office copy of electoral roll to be retained by the polling officer for record. Maintenance of secrecy of voting by electors and voting procedure.— (1) Every elector to whom a ballot paper has been issued under rule 28 shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure hereinafter laid down. (2) The elector on receiving the ballot paper, shall forthwith— (a) proceed to the voting compartment; (b) record his first, second, third and so on preference by writing numerical 1, 2 and 3 and so on against the names of the contestants, he intends to give the preference; and (c) insert the folded ballot paper into the specified ballot box. (3) Every elector shall vote without any delay. Blind and infirm voters.— (1) If owing to blindness or other physical infirmity, an elector is unable to recognise the names of the contestants on the ballot paper or to write preference thereon, the Returning Officer shall record the vote on the ballot in accordance with the wishes of the elector, fold it and insert it into the ballot box. (2) While acting under this rule, the Returning Officer shall observe secrecy and shall keep a brief record of each such instance, but shall not indicate therein the manner in which any vote has been exercised. Challenge to identity.— (1) Any candidate may challenge the identity of a person claiming to be a particular elector by first depositing, a sum of one hundred rupees in cash with the Returning Officer for each such challenge. (2) On such a deposit being made, the Returning Officer shall— (a) warn the person challenged, of the penalty for impersonation; (b) read the relevant entry in the electoral roll in full and ask him he is the person referred to in the entry or (3) The Returning Officer shall hold a summary inquiry into the challenge and may for that purpose— (a) require the challenger to adduce evidence in proof of the challenge and the person challenged to evidence in proof of his identity; (b) put the person challenged any question necessary for the purpose of establishing his identity and require him to answer them on oath; and (c) an oath to the challenger and any other person to give evidence. (4) If, after the inquiry, the Returning Officer considers the challenge has not been established he shall allow the person challenged to vote and if he considers that the challenge has been established, he shall debar the challenged person from voting. (5) If the Returning Officer is of the opinion that the challenge is frivolous or has not been made in good faith, he shall direct that the deposit made under sub-rule (1) be forfeited to the Government and in any other case, he shall return it to the challenger at the conclusion of the inquiry. 28 2017 (aug 07, 1939 32. 33. 34

35. Spoilt and returned ballot papers,—(1) An elector who has dealt with his ballot paper may, by delivering it to Returning Officer and on satisfying him of the inadvertence, be given ballot and the ballot paper so returned and counterfoil of such ballot paper shall be as "Spoilt cancelled" by the Returning Officer. (2) If an elector, after obtaining a ballot paper decides not to use it, he shall return it to the Returning Officer and the ballot paper so returned and the of such ballot paper shall be marked as "Returned cancelled" by the Returning Officer. (3) All ballot papers cancelled under sub-rules (1) and (2) shall be kept in a separate packet. Opening of Votes.— (1) The counting of votes shall commence immediately the poll at the same place where voting took place. (2) The Returning Officer immediately after the poll at the same place (a) open the ballot box, count the ballot and ensure that number of ballot papers found in the box is as the of ballot papers issued as per the office copy of the electoral roll; (b) separate the ballot which he deems valid from those which he had rejected on each of the latter the word "Rejected" and the ground of rejection. Invalidity of ballot papers.— A ballot shall be invalid in any one or more of the following cases:— (a) same

preference is recorded against more than one name; (b) numerical preference is so placed as to render it doubtful to which candidate it is intended to apply; (c) the numerical or such other figures are written opposite to the names in such a manner that it is not possible to ascertain the intended preference of the elector; (d) is any mark or writing by which the elector can be identified. Counting of vote.— (1) After rejecting ballot papers which are invalid, the Returning Officer shall— (a) count the maximum number of first preference votes polled by a candidate, count the maximum of second preference votes polled by a candidate and so on and arrange name of candidates in that order, (b) after such counting, having obtained maximum number of first preference votes shall be declared elected if there of vacancy is one and in case of being two, having number of first and second vote shall be declared for the vacancy. (2) at the time of counting, each of the candidates same value of votes and no surplus capable of transfer the Returning Officer shall decide by lot which candidates, by drawing lots, the candidate shall be declared elected: Provided the procedure indicated in Part VII of the Election Rules, 1961 the Representation of People's Act, 1951 (43 of 1951). Shall be followed for purpose.

