

3 JUN 2015

Form 69.5

TO

Form of notice of the presentation of an election petition and of the nature of the proposed security

Representation of the People Act 1983

Date: **2 June 2015**

To: **Alistair Buchan, Orkney Islands Council, School Place, Kirkwall, Orkney, KW15 1NY**

TAKE NOTICE

(1) That, under the Representation of the People Act 1983 and rule 69.3 of the Rules of the Court of Session 1994, a petition has been presented to the Court of Session, Edinburgh touching the election of a Member of Parliament for the Orkney and Shetland County United Kingdom Parliamentary Constituency, of which petition the foregoing is a full copy, and that you are named therein as a respondent.

(2) That the security which has been given in terms of Section 136 of the above Act is by consignment of £5,000 in The Royal Bank of Scotland plc. If you wish to object to the above security in terms of section 136(4) of the above Act, you may do so within seven days of the date of this notice by lodging the objection in writing in the Petition Department, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ and sending or delivering a full copy of it to me at the following address: Balfour + Manson LLP, 54-66 Frederick Street, Edinburgh, EH2 1LS.

Fiona Muirs
Solicitor
Balfour + Manson LLP
54-66 Frederick Street
Edinburgh
EH2 1LS
Agents for petitioners

CERTIFIED A TRUE COPY

IN THE ELECTION COURT

CERTIFIED COPY
THE PETITION

under the Representation of the People Act 1983

of

(FIRST) TIMOTHY DENIS MORRISON, 5 Springfield Crescent, Stromness, Orkney, KW16 3AS; **(SECOND) EUPHEMIA (ALSO KNOWN AS PHEMIE) MATHESON**, residing at 88-90 Dundas Street, Stromness, Orkney, KW16 3DA; **(THIRD) FIONA MORAG GRAHAME**, Roselea Cottage, Lyking Road, Sandwick, Orkney, KW16 3HY; and **(FOURTH) CAROLYN ANN WELLING**, 41 Graham Place, Stromness, Orkney, KW16 3BY,

PETITIONERS

against

ALISTAIR CARMICHAEL MP, 14 Palace Road, Kirkwall, Orkney, KW15 1PA, as the member whose election or return is complained of,

FIRST RESPONDENT

and

ALISTAIR BUCHAN, Orkney Islands Council, School Place, Kirkwall, Orkney, KW15 1NY, as the returning officer,

SECOND RESPONDENT

in respect of

The election for the Orkney and Shetland County United Kingdom Parliamentary Constituency held on 7 May 2015

HUMBLY SHEWETH:—

1. That the petitioners are (first) Timothy Denis Morrison, 5 Springfield Crescent, Stromness, Orkney, KW16 3AS; (second) Euphemia (also known as Phemie) Matheson, residing at 88-90 Dundas Street, Stromness, Orkney, KW16 3DA; (third) Fiona Morag Grahame, Roselea Cottage, Lyking Road, Sandwick, Orkney, KW16 3HY; and (fourth) Carolyn Ann Welling, 41 Graham Place, Stromness, Orkney, KW16 3BY (together the "**Petitioners**"). The Petitioners are constituents of the Orkney and Shetland County UK Parliamentary Constituency comprising the areas of the Orkney Islands Council and the Shetland Islands Council (the "**Constituency**"). The Petitioners all voted at the election for the Constituency which was held as part of the 2015 UK Parliamentary ('general') election.
2. That the election which is the subject of this petition was held on 7 May 2015. The candidates were: (1) the First Respondent, Alistair Carmichael, for the Scottish Liberal Democrats; (2) Danus George Moncrieff Skene, Scottish National Party ("**SNP**"); (3) Donald Andrew John Cameron, Scottish Conservative and Unionist Party; (4) Gerry McGarvey, Scottish Labour Party; and (5) Robert Watt Smith, UK Independence Party. The votes cast were recorded by the Second Respondent as follows: (1) Alistair Carmichael, 9407; (2) Danus George Moncrieff Skene, 8590; (3) Donald Andrew John Cameron; 2025; (4) Gerry McGarvey, 1624; (5) Robert Watt Smith, 1082. On 8 May 2015, the Second Respondent returned the First Respondent, Alistair Carmichael, as duly elected as the Member of Parliament for the Constituency at Westminster, with a majority of 817.
3. That at the previous election in 2010, the First Respondent was elected with a

9,928 majority. On 7 October 2013, he was appointed as Secretary of State for Scotland ("**Secretary of State**"). The Secretary of State is the head of the Scotland Office. The Scotland Office is responsible for representing Scotland in Her Majesty's Government.

4. That on 3 April 2015, a leaked Scotland Office memorandum (the "**Memorandum**") formed the basis of a story in the Daily Telegraph with the headline: 'Nicola Sturgeon secretly backs David Cameron'. The article reported that, according to an official account (a reference to the Memorandum), Ms Sturgeon had told the French Ambassador in February that she would prefer that "David Cameron remain" in Downing Street. The article stated in terms that the disclosure undermined public claims made by Ms Sturgeon that week that she wanted to build a 'progressive' alliance to keep the Conservatives out of office; and appeared to confirm growing speculation in Scotland that the SNP would privately favour another Conservative-led Westminster government "which it could campaign against in a bid to stoke up anti-English sentiment" and make an 'out' (of the UK) vote more likely in another independence referendum. No source for the leak of the Memorandum was given.
5. That on 5 April 2015, the Cabinet Secretary, Sir Jeremy Heywood, ordered a Cabinet Office-led inquiry into the circumstances of how the Memorandum came to be written and how it got into the public domain. The same day, the First Respondent was interviewed by Channel 4 news. The following exchange was broadcast:

"Reporter for Channel 4 News: Surely it's a fair question to ask what you were, what you were aware of?"

Alistair Carmichael MP: And listen that is why I am telling you, I will cooperate fully with Sir Jeremy Heywood's inquiry, but it has to be Sir Jeremy Heywood's inquiry and that's why I will answer the questions to him. I told you, the first I became aware of this, and this is already in the public record, was when I received a phone

call on Friday afternoon from a journalist making me aware of it.

Reporter: *Do you accept the buck stops with you when it comes to the Scotland Office?*

Carmichael: *Well eh of course as Secretary of State for Scotland I am responsible for the Scotland Office but y'know you seem to be making eh some fairly ehh substantial presumptions about eh the role of the Scotland Office in this. That's why we are having a proper inquiry conducted by the Cabinet Office.*

Reporter: *Do you think it's embarrassing for you and the Scotland Office?*

Carmichael: *No, look I mean this is the middle of an election campaign – these things happen. Um eh I understand that the memo in question did actually come from the Scotland Office but these things are circulated within government.*

Reporter: *If it comes – if it turns out that a civil servant embellished and leaked a, a memo to the press what do you think should happen to that person?*

Carmichael: *Well look, that is why we have the inquiry being conducted by Sir Jeremy Heywood. You're now asking me to pass sentence on people for whom we don't have proper charges and we've not heard any evidence. That's why it's important that we allow the Cabinet Secretary to get on and to do his job.*

Reporter: *People are calling it a smear, do you think it feels like a smear?*

Carmichael: *No. Look, I mean these things happen from time to time, this is not the first occasion that there has been eh a leak of a*

government document, that's why we have a well-worn system which sets up the inquiry of the sort that Sir Jeremy Heywood is doing and that's what it's eh now got to be allowed to get on and do."

6. That on or about 8 April 2015, a spokesman for the Liberal Democratic Party, speaking on behalf of that party and the First Respondent, stated to the press that "The leak was not from a Liberal Democrat and that is the end of the matter". The leader of that party subsequently told the press, in stating the First Respondent's position, that "Alistair Carmichael's been absolutely clear – of course he didn't leak them".
7. That on 22 May 2015, the Cabinet Office issued a press release headed 'Scotland Office memorandum leak: Cabinet Office inquiry statement'. The press release states as follows under the heading "The leak":

"In investigating the source of the leak, the investigation team searched all relevant official phone records, emails and print logs. Those who had access to the memo were asked to complete a questionnaire on what they did with the memo when they received it. They were then interviewed.

The investigation established the following facts:

- *an official mobile phone was used to make telephone calls to one of the authors of the Daily Telegraph story. This phone was held by Euan Roddin, previously Special Adviser to the then Secretary of State for Scotland, Alistair Carmichael [the First Respondent]*
- *Mr Roddin confirmed that he provided a copy of the Scotland Office memo to a Daily Telegraph journalist on 1 April 2015, and discussed the memo with the journalist on a number of occasions. He told the investigation team that he acted in what he saw as the public interest and that in his view the public*

needed to be aware of the position attributed to the First Minister [Nicola Sturgeon]

- *Alistair Carmichael [the First Respondent] confirmed that he had been asked by Mr Roddin for his view of the possibility of sharing the memo with the press. Mr Carmichael agreed that this should occur. He recognises that, as a Secretary of State, he was responsible for his own conduct and that of his Special Adviser. He could and should have stopped the sharing of the memo and accordingly accepts responsibility for what occurred*
- *no-one else had any involvement in the leaking of the memo*

The investigation team has therefore concluded that Mr Roddin, with the assent of Mr Carmichael [the First Respondent] in the circumstances described above, was the direct source of the Daily Telegraph story. The Cabinet Secretary has accepted their findings in full. Mr Carmichael [the First Respondent] and Mr Roddin have also accepted the conclusions.

Neither Mr Carmichael [the First Respondent] nor Mr Roddin will take their severance pay."

8. That section 106(1) of the Representation of the People Act 1983 provides as follows:

"A person who, or any director of any body or association corporate which—

- (a) before or during an election,*
- (b) for the purpose of affecting the return of any candidate at the election,*

makes or publishes any false statement of fact in relation to the candidate's personal character or conduct shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true."

9. That the First Respondent's statement as to when he first became aware of

the leak of the Memorandum took place before the election which is the subject of this petition. It was untruthful, as he was well aware. It was a deliberate attempt to conceal the truth, namely that he was not only aware that the leak of the Memorandum had come from the Scottish Office but that he had been directly involved in its release. The First Respondent has accepted responsibility for what was found by the Cabinet Secretary to have occurred. He has forgone his severance pay on having vacated the office of Secretary of State. The fact that the First Respondent saw fit to tell untruths in this regard, and to deliberately conceal his role in the leak of the Memorandum, relates directly to his personal character. It calls into question his integrity as an individual. It thus calls into question his suitability to represent the Constituency at Westminster. Notwithstanding that the First Respondent now seeks to suggest he did not have sight of the terms of the Memorandum before its release, it may reasonably be inferred from the transcript of the interview and the findings of the Cabinet Office inquiry that the First Respondent did not tell the truth when he was interviewed by Channel 4 News on 5 April 2015. That interview was broadcast to an immediate audience of around 650,000 people, including voters in the First Respondent's Constituency such as the Petitioners. Against a background of polling which indicated the SNP would gain the majority of votes in each of the 59 constituencies in Scotland, with the result that no Liberal Democrat or any other political party would obtain a Scottish seat at Westminster, it is believed and averred that the statement by the First Respondent referred to was for the purpose of affecting the return of the candidates at the election, whether that election is taken to be to the Constituency or the general election as a whole. The First Respondent, having before an election and for the purpose of affecting the return of a candidate at the election, made an admittedly false statement of fact in relation to his personal character as a candidate, is thereby guilty of an illegal practice contrary to section 106 of the Representation of People Act 1983, on which basis the prayer of the petition ought to be granted and the election of 7 May 2015 for the Constituency declared void.

10. That the petition is presented under the Representation of the People Act

1983 and rule 69.2 of the Rules of the Court of Session 1994.

MAY IT THEREFORE please the court to
determine that Alistair Carmichael MP was
not duly elected or returned, and that the
election was void.

According to Justice etc.

IN THE ELECTION COURT

**CERTIFIED COPY
PETITION**

under the Representation of the People Act 1983

**TIMOTHY DENIS MORRISON
& OTHERS
PETITIONERS**

against

**ALISTAIR CARMICHAEL MP
& ANOR
RESPONDENTS**

2015

FKM/MOR/554/1

BALFOUR+MANSON LLP, EDINBURGH
AGENTS FOR PETITIONERS

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under the Representation of the People Act 1983

of

(FIRST) TIMOTHY DENIS MORRISON, 5 Springfield Crescent, Stromness, Orkney, KW16 3AS; **(SECOND) EUPHEMIA (ALSO KNOWN AS PHEMIE) MATHESON**, residing at 88-90 Dundas Street, Stromness, Orkney, KW16 3DA; **(THIRD) FIONA MORAG GRAHAME**, Roselea Cottage, Lyking Road, Sandwick, Orkney, KW16 3HY; and **(FOURTH) CAROLYN ANN WELLING**, 41 Graham Place, Stromness, Orkney, KW16 3BY

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SECOND RESPONDENT

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The election for the Orkney and Shetland County United Kingdom Parliamentary Constituency held on 7 May 2015

29 May 2015

Lord Uist

Act: J. J. Mitchell Q.C.

The Lord Ordinary, having heard counsel for the petitioners, fixes the amount of security for expenses at FIVE THOUSAND POUNDS (£5,000) Sterling; appoints the petition to be intimated on the Walls of Court in common form; grants warrant for service of the petition as craved together with a copy of this Interlocutor upon the respondents; appoints them and any other party claiming an interest to lodge answers thereto, if so advised, within seven days after such intimation and service; in terms of Rule of Court 69.4(1)(b), orders the respondents to lodge any objections in writing under section 136(4) of the Representation of the People Act 1983 (objections to form of security) within seven days of such intimation and service; and in terms of Rule of Court 69.5(4), appoints the Deputy Principal Clerk of Session to intimate a copy of the petition and this interlocutor upon the Electoral Commission.