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Dominic Grieve QC MP
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Dear Mr Grieve

Public Bodies Bill

I am sure that you will be familiar with the above and the constitutional controversy which has arisen over those provisions within it which allow the amendment and repeal of primary legislation by statutory instrument.

The Constitution Committee of the House of Lords was scathing about this element of the bill:

When assessing a proposal in a Bill that fresh Henry VIII powers be conferred, we have argued that the issues are 'whether Ministers should have the power to change the statute book for the specific purposes provided for in the Bill and, if so, whether there are adequate procedural safeguards'. In our view, the Public Bodies Bill fails both tests.

The drafting of the bill is the more surprising given the controversy raised by conservative shadow ministers during the previous government. You may recall your own objection to the transfer of Parliamentary powers to Orders in Council in 2006 in relation to the Government of Wales Bill. You said of its provisions:

It would be difficult to imagine a more fundamental shift from the normal convention and practice in our country's constitution, though the Legislative and Regulatory Reform Bill tries to extend the same principles to the entirety of the governance of the country ...

Indeed, the Legislative and Regulatory Reform Bill raised exactly the same issues as the Public Bodies Bill. Shadow ministers were uniformly hostile to it. Ken Clarke said in a BBC interview with the then minister, Jim Murphy:

it would give ministers scope to amend laws whilst 'sweeping away parliamentary procedure and debate on an astonishing scale'.

The Public Bodies Bill, as drafted, does not even contain the safeguards in the Legislative and Regulatory Reform Bill which then opposition MPs fought so hard to obtain. The approach of the Public Bodies Bill is particularly astonishing given the weight put on the sovereignty of Parliament by ministers to be instanced in the forthcoming Sovereignty Bill.

In these circumstances, and as legal adviser to the government, I would encourage you to obtain the understanding of the relevant ministers of the constitutional affront which the Public Bodies Bill sets out to perpetrate. It would certainly seem difficult for a number of those who are now ministers in the Commons to support the bill in its current form given their creditable opposition to the Legislative and Regulatory Reform Bill. This raised exactly the same issue of governmental disdain for Parliamentary scrutiny. The convention that amendment to primary legislation requires primary legislation surely remains, as you and a number of your senior colleagues indicated in opposition, a powerful democratic safeguard – however inconvenient it may be for the government of the day.

Yours sincerely

Roger Smith OBE

Chairman of Council **Baroness Kennedy of The Shaws QC** *Director* **Roger Smith**

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