Dear Mr Crompton,

I write further to your email of 5 December regarding Energy Performance Certificates.

I have received a response to my two Parliamentary Questions on this issue, and the comments from Commissioner Oettinger, the EU Commissioner for Energy can be viewed below. The Commissioner notes that the Directive gives no specific guidance on the definition of a new tenant, giving some leeway to national authorities when transposing the legislation. The Commissioner also highlights that exceptions to the requirement for EPC do exist within the legislation, and some of these could cover holiday rental properties. The Commissioner is silent on my point that distinguishes licence agreements and tenancies, and this may signify that it is satisfied with Member States to define what is and isn’t a legal new tenancy.

I am still awaiting a response from the Department for Communities and Local Government and I will of course revert when I receive this. I will look towards pressing the Commission further, once I have sight of the Government’s response.

Yours sincerely,

Sir Graham Watson MEP

Liberal Democrat Member of the European Parliament for South West England and Gibraltar

The Liberty, Old Kelways, Langport TA10 9SJ

1. Question by Sir Graham Watson MEP : The energy performance of buildings and licences

The building sector represents 40% of the European Union’s (EU) total energy consumption and Directive 2010/31/EU on the energy performance of buildings seeks to therefore reduce this. It means Member States shall implement a system for the energy performance certification of buildings.

Under Article 12 energy performance certificates will be is issued when buildings or building units are constructed, sold or rented out, with the certificate being shown to the new tenant or prospective buyer and handed over to the buyer or new tenant.

Property in England and Wales is rented via a licence to occupy, which is an arrangement where those renting do not have exclusive use of the property; for example, where the property owner or their representative has the right to access the premises during the period of the rental agreement.

These licences are a common legal mechanism for property rentals in England and Wales especially with sectors such as holiday letting.

Can the Commission clarify whether energy performance certificates are applicable to properties rented under property licences?

2. Question by Sir Graham Watson MEP : The energy performance of buildings and tenants

The building sector represents 40% of the European Union’s (EU) total energy consumption and Directive 2010/31/EU on the energy performance of buildings seeks to therefore reduce this. It means Member States shall implement a system for the energy performance certification of buildings.

Under Article 12 energy performance certificates will be issued when buildings or building units are constructed, sold or rented out, with the certificate being shown to the new tenant or prospective buyer and handed over to the buyer or new tenant.

Can the Commission clarify

1. What is defined as a “new tenant” under the Directive?

2. Whether such energy performance certificates are required by property that is rented out to tenants for less than four months a year?

3. Whether such certificates apply to the holiday let sector– such as holiday homes common in the tourism industry where properties are often let for periods well under 4 months?

Answer: Joint answer given by Mr Oettinger on behalf of the Commission (22.12.2011)

Neither Directive 2002/92/EC nor Directive 2010/31/EU (a recast of Directive 2002/91/EC, which will be repealed on 1 February 2012) define the term "new tenant". The definition provided by the relevant national law would thus apply.

Article 7(1) of Directive 2002/92/EC and Article 12(6) of Directive 2010/31/EU allow for the exemption from the obligation to issue an energy performance certificate those residential buildings that are intended to be used less than four months per year and/or stand-alone buildings with a total useful floor area of less than 50 m². Directive 2010/31/EU allows that, as an alternative, Member States exempt those residential buildings which are intended to be used for a limited annual time, and with an expected energy consumption of less than 25 % of what the result of all-year use would be. These rules also apply to the holiday let sector, including buildings rented out under a licence agreement.