



***BUILDING ENERGY RATING (BER)  
ASSESSORS AND  
DISPLAY ENERGY CERTIFICATES  
(DEC) ASSESSORS***

**Code of Practice**

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## 1. Introduction

Building Energy Rating (BER) assessors (“BER assessors”) and Display Energy Certificate (DEC) assessors (“DEC assessors”) are persons registered with the Sustainable Energy Authority of Ireland (“SEAI”) to carry out BER/DEC assessments in line with the requirements of the European Union (Energy Performance of Buildings) Regulations 2012,<sup>1</sup> as amended (“the Regulations”).

This Code of Practice applies to domestic and non-domestic BER Assessors and DEC Assessors to which the Regulations apply. It is issued by SEAI in accordance with Regulation 17 (1)(g) of the Regulations and BER and DEC Assessors must comply with the provisions of the Code pursuant to Regulation 17(2). In addition, by registering as a BER/DEC assessor, a person is commits to abide by this Code of Practice. Failure to comply with this Code can lead to suspension or termination of registration by SEAI pursuant to Regulation 16(11)(g) of the Regulations.

The primary objective of this Code is to ensure that BER/DEC Assessors have a clear understanding of their obligations to deliver a high quality service in the marketplace.

This Code of Practice details the roles and responsibilities of BER/DEC Assessors and SEAI for domestic, non-domestic and public buildings, to ensure the delivery of a technically proficient and timely service to clients, with high standards of professional conduct, and thereby to enable clients to meet their obligations under Regulations 10,11,12,13 and 14 of the Regulations and related obligations.

The Code promotes delivery by BER/DEC Assessors of a high quality service in an independent manner, which is essential to the reputation and reliability of the scheme for BER assessments and DEC assessments created by the Regulations (the “Scheme”).

It is imperative that BER/DEC Assessors and prospective BER/DEC assessors (and where applicable, their Principals) comply with this Code of Practice and the Regulations. A copy of the Regulations is available on the electronic Irish Statute Book (<http://www.irishstatutebook.ie/eli/2012/si/243/made/en/pdf>).

In this Code, save where the contrary is explicitly stated, the term “Principal” includes an employer and/or any company named as part of a BER/DEC assessor’s registration application and/or any company under which a BER/DEC Assessor’s registration is listed on the public register of BER/DEC assessors. However, the term “Principal” shall not include a franchisee’s franchisor (as BER Assessors or DEC Assessors who are franchisees are regarded as being independent principals in their own right).

In this Code, references to “Web-based DEAP” refer to the internet based DEAP methodology software tool that replaces DEAP v3.2.1 which is the desktop software application tool. The replacement occurs over a transition period when both tools are in operation. Both tools are used by domestic BER assessors.

Web-based DEAP provides BER assessors with a document management system which supports the retention and maintenance of all records, data and documentation, required for each BER assessment as detailed in section 8 of this Code of Practice.

Web-based DEAP supports the storage of BER assessment data in accordance with data protection requirements.

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<sup>1</sup> Statutory Instrument (S.I.) No. 243 of 2012.

Important terms used throughout this Code of Practice are defined in the Regulations. Generally, terms used in this Code shall have the same meaning as they do in the Regulations unless the contrary is explicitly stated.

## **2. Registration as a BER/DEC assessor**

SEAI, in its capacity as the Issuing Authority under the Regulations, registers persons as a BER/DEC Assessor in accordance with the Regulations and the terms, conditions and criteria published on the web site (<https://www.seai.ie/energy-in-business/register-with-seai/ber-assessor/>). Registration as a BER/DEC assessor includes a commitment to adhere to this Code of Practice. SEAI also requires a BER/DEC Assessor's Principal to complete certain documents and to commit to complying with this Code of Practice. SEAI considers it to be a breach of the Regulations where persons not registered with SEAI engage in the practice of carrying out BER/DEC assessments and publish such assessments.

Where a Principal (employer, partnership, company or public body) offers BER/DEC assessment services to clients via employees who are registered BER/DEC Assessors, certain obligations in the Code of Practice can be assumed directly by the Principal as well as by the employee BER/DEC Assessor. In particular, SEAI has established a procedure to enable the employer of a BER Assessor to enter into a direct relationship with SEAI in respect of the following obligations:

The Principal is required to indemnify SEAI in respect of liabilities arising as a result of its employee BER/DEC Assessor's activities, including;

- payment of registration fees and/or levies for registration of a BER/DEC Assessor and for publication of BER/DEC certificates issued on behalf of the Principal; and
- retention and maintenance of all records, data and documentation as would be required to defend, should they be questioned, assessments carried out by the BER/DEC assessor on behalf of the Principal.
- records, data and documentation must be stored in a secure, confidential and accessible manner as required in the BER/DEC Assessor's Code of Practice.

To register as a BER/DEC Assessor, an applicant must:

- demonstrate that he/she has fulfilled the training and examination requirement as set out or directed by SEAI from time to time as specified on the SEAI website;
- accept and agree to the duties and obligations set out in this Code of Practice;
- complete a registration application form;
- pay the registration fee;
- comply with the Insurance requirements, as detailed in Section 9 of this Code; and
- provide and maintain valid tax clearance by certificate or eTC (eTax Clearance).

SEAI may exclude applicants from the registration process for a period of 24 months where such applicants have failed the required examinations 4 times or more within a 12 month period. To facilitate on-the-job learning, SEAI may also require recently registered BER/DEC assessors to facilitate an accompanied (advisory) audit during the first 6 months of registration (refer to Section 15 for more information respect of audit activity).

Initial registration of a BER/DEC Assessor is normally for one year and registrations are subject to annual renewal, unless suspended or terminated by SEAI during that period or otherwise cancelled by the BER/DEC assessor or his or her Principal (where relevant and appropriate).

SEAI may, at any time, suspend and/or terminate a BER/DEC Assessor's registration if it has formed the opinion that the assessor has ceased to be capable of performing his/her functions under the Regulations properly and efficiently, or has breached the terms of his or her registration, or has otherwise failed to comply with the Regulations or with the terms of this Code of Practice or with other directions issued by SEAI in its capacity as the Issuing Authority under the Regulations. Normally, action by SEAI to suspend or terminate a registration will be taken only after the BER/DEC assessor has been informed of the deficiency on the part of the BER/DEC assessor and has been given an opportunity to correct it. However, SEAI reserves the right to immediately suspend or terminate a registration without notice when it reasonably believes that such action is required to protect the interests of SEAI and the Scheme. Suspension shall be notified in writing to the BER/DEC assessor and with a copy issued to his/her Principal where applicable, and will take effect on the date indicated in the notification.

The Regulations require that the name of each current BER/DEC assessor, his or her employer (if any), place of business, contact details, and for BER assessors, the designated classes of buildings to which his or her BER registration applies, shall be open to public inspection on the Register of Domestic BER assessors, Non-domestic BER/DEC assessors, as appropriate. A copy of the Registers is kept at the offices of SEAI and the details in the Registers are also available on SEAI's website. Further details of the Registers of BER/DEC assessors and other registers managed by SEAI or its Agents are set out in Section 17 of this Code of Practice.

In accordance with the Regulations, where SEAI suspends or terminates a BER/DEC assessor's registration, it shall be noted in the above-mentioned Registers. Where a BER/DEC assessor's Principal is not the BER/DEC assessor's employer, SEAI reserves the right in this Code of Practice to require and use contact details of a BER/DEC assessor's Principal and SEAI may make such Principal's contact details available for public inspection.

A BER/DEC assessor whose registration has lapsed, or been suspended, terminated or cancelled, shall promptly remove all reference to registration from his or her notepaper, communications and property and shall not in any way represent himself or herself or his or her business as being registered as a BER/DEC assessor. A BER/DEC assessor whose registration is cancelled, suspended or terminated shall, where required by SEAI, promptly return to SEAI any or all SEAI documentation or other property including their Certificate of Registration.

It is an offence, if a person who is not certified and registered to represent themselves as such, and to purport to be a BER Assessor for a designated class or classes of buildings, or a DEC Assessor or an authorised officer under the Regulations. It is also an offence for a person to represent him/herself as a BER/DEC assessor if his/her registration has lapsed, been suspended or terminated.

#### *Registration as BER assessor in Web-based DEAP*

All registered BER assessors are provided with an account in the web-based DEAP. All data related to the BER assessment must be completely uploaded to web-based DEAP which will retain and maintain said data in a secure, confidential manner as required in the BER assessor's Code of Practice.

### **3. Evidence of Registration**

Upon registration or renewal thereof, SEAI shall provide each BER/DEC assessor with a Certificate of Registration. Every BER/DEC assessor shall produce, on request, his or her Certificate of Registration for inspection by members of the public, clients and/or their agents, and by the authorised officers of SEAI.

#### **4. Competence and Diligence of BER/DEC Assessors**

A BER/DEC Assessor is required to act with integrity and diligence to ensure that each BER/DEC assessment is executed competently, in an independent manner and in accordance with the Regulations, this Code of Practice and all other directions issued by SEAI.

A BER/DEC Assessor shall offer BER/DEC assessment services only in respect of that class or those classes of building to which their registration as a BER/DEC assessor specifically applies.

A BER/DEC Assessor is registered by SEAI on the basis of their competence to carry out the work. The registration requirements for a BER/DEC assessor may (depending on the designated class of buildings to which his or her BER/DEC registration applies) include successful completion of a validated training course, and will include an agreement to meet the obligations set out in this Code of Practice.

A BER/DEC -Assessor is required from time to time to update, at his/her own cost, their skills and/or resources to meet the standards required on an ongoing basis by SEAI; this may be subject to verification by SEAI or its appointed agents or contractors in order to approve renewal of registrations. In addition, SEAI will present regular workshops to assessors which will cover technical methodologies and general practice principles identified for further clarification from time to time. It is expected that assessors will attend these workshops as part of Continuing Professional Development targets which may be set by SEAI from time to time.

SEAI may from time to time require or direct BER/DEC Assessors generally, BER/DEC Assessors operating or proposing to operate in a specific class or classes of building, or applicants desiring to become BER/DEC Assessors, to partake in training and/or to sit examinations of whatever type required or directed by SEAI. SEAI may require any specified examinations to be successfully passed within a certain period of time in order for a registration or proposed registration of a BER/DEC Assessor to remain in place or to take effect.

SEAI will monitor the continuous professional development (CPD) activities of BER/DEC assessors annually as part of the process to continue or renew BER/DEC assessor registrations. SEAI may also set specific annual CPD targets for recently registered BER/DEC assessors and/or continuously registered BER/DEC assessors.

SEAI may consider not renewing the registration of BER/DEC Assessors where no assessments were carried out in the preceding 12 month period.

SEAI may set specific re-registration requirements.

Under SEAI's Quality Assurance System and Disciplinary Procedures, SEAI will not renew the registration of a BER/DEC assessor for a period of 12 months in instances where the relevant assessor had been subject to 3 or more suspensions.

#### **5. Data Integrity**

A BER/DEC Assessor is responsible for ensuring that, within reason, the data compiled and inputted to SEAI approved calculation software and all other related and recorded calculations are an accurate representation of all characteristics relevant to the energy performance of the building and are capable of being verified as such in any subsequent monitoring and compliance processes commenced by SEAI.

A BER/DEC assessor will be required to visit the premises to collect the data for the assessment. SEAI requires BER/DEC assessors to obtain and maintain evidence that the BER/DEC Assessor has visited the property in the form of signed onsite or written appointment confirmation. Signed onsite confirmation of a site visit should include printed names and signatures of both the BER/DEC Assessor and the homeowner/tenant/agent present on site. Written appointment confirmation can include a text message or email, copies of which may be requested in audits. This option should only be used when the homeowner/tenant/agent are not present on site. The following table sets out the requirements:

	Homeowner	Tenant	Agent
Onsite Confirmation	Confirmation signed on site that assessor survey took place	Confirmation signed on site that assessor survey took place	Confirmation signed on site that assessor survey took place
Written Appointment Confirmation	Email, text message or other contemporaneous note of written confirmation of assessor appointment to carry out survey including date and time	Email, text message or other contemporaneous note of written confirmation of assessor appointment to carry out survey including date and time	Email, text message or other contemporaneous note of written confirmation of assessor appointment to carry out survey including date and time

BER/DEC Assessors must also always obtain unique photographic evidence from premises visited. Care must be taken by the BER/DEC Assessor to ensure that no personally identifying information is captured in this photographic evidence. BER/DEC Assessors may also review plans and specifications for new or existing buildings. Plans and specifications may be useful in providing supplementary information not available from site survey. Data gathered on site takes precedence over plans and specifications.

The procedures for Existing and New Final BER assessments require that BER assessors carry out a full building survey to collate and verify data for assessment before submitting the BER data file to SEAI or its nominees in accordance with Section 8 of this Code of Practice.

In accordance with the Regulations, a New Provisional BER assessment can be carried out by BER assessors based on design drawings and specifications of an uncompleted building provided that, on completion of the building in question, a New Final BER assessment is carried out on the completed building in accordance with the procedures for Existing and New Final BER assessments. A New Provisional BER assessment must be carried out in compliance with the appropriate methodology and is subject to audit.

#### *Data Integrity in Web-based DEAP*

BER assessors are now required to upload all BER assessment data as full, relevant and appropriate evidence in relation to Web-based DEAP. The BER assessment data will be available for subsequent monitoring and compliance processes commenced by SEAI.

BER assessors must obtain and upload evidence that the BER assessor has visited the property in the form of signed onsite or written appointment confirmation.

## **6. BER/DEC Assessor’s Obligation to Act in an Independent Manner**

### *Independence*

BER/DEC assessors are required to act in an independent and transparent manner at all times when discharging their duties and obligations under the Regulations and this Code.

BER/DEC assessors are prohibited from carrying out a BER/DEC Assessment on a building –

- (a) which is owned by them or by any Connected Person, or
- (b) which, at the time of carrying out or publishing a BER/DEC Assessment, or within the subsequent 12 months, is to be sold or let by them or a Connected Person in their capacity as a sales or letting intermediary,
- (c) where the BER/DEC assessor would be assessing energy improvement works carried out by him/her or a Connected Person within the preceding 12 months<sup>2</sup> or
- (d) in any other circumstances in which they have a material financial interest in the outcome of an assessment other than the fee charged for providing the rating.

It is a matter for each BER/DEC Assessor to take adequate steps to ensure that a building on which he/she carries out a BER/DEC Assessment is/will not be sold or let by him/her or a Connected Person at the time of carrying out or publishing that BER/DEC Assessment or within the subsequent 12 months.

#### *Definition of Connected Person*

For the purpose of this Code, a “Connected Person” means

- (a) a BER/DEC assessor's spouse (or partner), parent, brother, sister or child, or
- (b) a BER/DEC assessor’s Principal, or
- (c) a BER/DEC assessor’s business partner, meaning any person with whom a BER/DEC assessor carries on business with a view to profit, or
- (d) a company in which any of the persons mentioned in (a), (b) or (c) have a legal or beneficial interest; or
- (e) a company which is an associated company (as described in Section 432 of the Taxes Consolidation Act, 1997) of a company covered by (d) above.

These definitions provide an indication of the meaning of a Connected Person, but SEAI considers a Connected Person as any relationship that may result in an actual or perceived impact on a BER/DEC Assessor’s independence. BER/DEC Assessors should give adequate consideration as to whether any current or previous relationships may result in an actual or perceived impact on his/her independence, and whether such relationships should be treated as Connected Persons under this Code of Practice.

#### *Meaning of “Owned”*

For the purpose of this Code, “owned” refers to property which is wholly, partly, beneficially or legally owned and the expression “owner” shall be construed accordingly.

#### *Management of Independence*

Each registered BER/DEC Assessor is expected to have an adequate system in place to ensure that, prior to carrying out a BER/DEC assessment, he/she has made adequate enquiries as to whether any of the conditions specified in this Section 6 of the Code of Practice exists. SEAI may, as part of carrying out audits under its monitoring and compliance procedures, require BER/DEC assessors to produce evidence that such a system of inquiry is in existence.

#### *Annual Declaration*

SEAI requires each registered BER/DEC Assessor to annually make a Declaration of Independence as part of the registration process, to confirm whether:

- (a) any of the conditions specified in this Section 6 of the Code of Practice were identified to be in existence as part of any completed BER/DEC assessments;
- (b) the actions taken in respect of any such conditions identified;
- (c) a system is in place to ensure that, prior to carrying out a BER/DEC assessment, conditions that may impact on the assessors independence, as described in this section, are evaluated and correctly treated.

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<sup>2</sup> Refer to Section 11 of this Code in relation to requirements in offering BER/DEC services



### *SEAI's Reserved Rights and Powers*

SEAI may at any time, with or without cause, investigate whether any BER/DEC Assessor has acted independently and in compliance with this Section 6.

Upon becoming aware of any lack of independence and/or non-compliance with this Section 6, SEAI may revoke a BER/DEC record or part thereof in accordance with the Regulations. In this event, SEAI shall notify the BER/DEC Assessor of its decision. The BER/DEC Assessor shall be liable for all losses and liabilities which arise as a result of any such revocation.

SEAI may also revoke a BER/DEC record, or part thereof, in circumstances where a BER/DEC Assessor conducted an assessment of a building in a manner which appeared, at the time of the assessment, to be in compliance with the terms of this Code, but where the BER/DEC assessor subsequently acquired any material financial interest in that building or in its sale or letting and, as a result of such, SEAI has reasonable grounds for believing that the BER/DEC Assessor lacked independence in carrying out the original assessment, and consequently that the BER/DEC record was not completed or issued in accordance with the Regulations.

Where a public body is required to secure a BER/DEC certificate to comply with the Regulations, then a BER/DEC Assessor who is an employee of this public body or an employee of another public body shall be entitled to conduct a BER/DEC assessment pursuant to the Regulations on the building in question without a breach of this Section 6 or the Regulations taking place.

## **7. Carrying out BER/DEC assessments**

A BER/DEC Assessor takes full responsibility for verification of the accuracy of each data point in each BER/DEC assessment that he or she carries out and take full responsibility for the accurate submission of a BER/DEC assessment to SEAI for publication on the BER/DEC Register. All work associated with the BER/DEC shall only be carried out by the BER/DEC assessor responsible for the publication of the BER/DEC. It is the responsibility of BER/DEC assessors to ensure that the number of assessments carried out does not impact on his/her ability to meet SEAI's requirement for a quality service in the marketplace which is delivered in line with the prevailing Code of Practice, the Regulations and the relevant BER/DEC technical methodologies..

In carrying out BER/DEC assessments, a BER/DEC assessor shall use the procedures specified by SEAI and shall comply with the Regulations, this Code of Practice and any other directions issued by SEAI.

If a BER/DEC assessor is of the opinion that a building or any of its equipment is in such a condition as to make it unsafe or impractical to carry out an assessment, the BER/DEC assessor may refuse to carry out the assessment. In such circumstances, the BER/DEC assessor shall return any fee received in respect of that proposed BER/DEC assessment.

BER/DEC assessors are required to record completed assessments on the BER/DEC Register within 10 days after the assessment date. At the time of recording of BER/DEC assessments on the register, all records, data and documentation specified in Section 8 of this Code of Practice must be completed and immediately available if required for inspection.

It is the responsibility of BER/DEC assessors to ensure that all validation notices issued by SEAI prior to acceptance of a data file into the BER/DEC Register, are adequately reviewed and resolved. Once the BER/DEC data file is accepted into the BER/DEC Register by SEAI, the BER/DEC assessor

must issue both the BER/DEC certificate and accompanying advisory report, where appropriate, together with a Declaration of Interest Form<sup>3</sup> where necessary, to the building owner.

Material changes in the building which affect its energy performance may invalidate a BER/DEC certificate and accompanying advisory report. If such material changes are identified during an audit, SEAI may require the BER/DEC assessor to notify the building owner that a new BER/DEC will be required or to revoke the BER/DEC data file.

Under the Regulations, SEAI may also revoke a BER/DEC data file for a building compiled by a BER/DEC assessor where it has reasonable grounds for believing that the BER/DEC data file was not completed or issued in accordance with the Regulations or this Code of Practice. Where a BER/DEC data file is revoked, any BER/DEC certificate and accompanying advisory report issued on foot of that data file shall be deemed to stand revoked, and that revocation will be entered by SEAI into the BER/DEC record for that building.

Where SEAI revokes a BER/DEC data file, it will immediately notify the BER/DEC assessor of the date of revocation, the reason for the revocation and the address or other identifier of the building to which the revoked data file relates. SEAI may in such instances require the BER/DEC assessor to obtain a signed confirmation from the BER/DEC client that he/she had been informed of the revocation and reasons for same.

In addition, where a BER/DEC data file is revoked, SEAI may, pursuant to Regulation 17(1)(h) of the Regulations, direct the BER/DEC Assessor to do any or all of the following:

- inform the BER/DEC client and other affected persons of the revocation and the reasons for same;
- request the BER/DEC client to destroy all printed copies of the revoked BER/DEC certificate and any accompanying advisory report in accordance with Regulation 23(3) of the Regulations;
- re-submit a BER/DEC data file with correct values;
- re-submit the BER/DEC for publication, at the BER/DEC assessor's own expense; and/or
- provide the BER/DEC client with the replacement BER/DEC certificate .

Further, where SEAI revokes a BER/DEC data file, BER/DEC Assessors should note also that under Regulations 23 and 24 of the Regulations:

- SEAI may demand, by notice in writing, the giving up by the owner of the building or by the owner's agent, to SEAI, of any existing written version or copy of the relevant BER/DEC certificate and accompanying advisory report within 14 days of the making of such demand; and
- the client can apply to the BER/DEC Assessor for reimbursement of any fee paid for the relevant BER/DEC assessment and the BER/DEC Assessor must reimburse the fee if he/she is satisfied that the fee for the relevant BER/DEC assessment was paid by that client.

#### *Carrying out BER Assessments in Web-based DEAP*

BER assessors are required to record and upload all BER assessment data for completed assessments on the BER Register within 10 days of the assessment date.

All BER assessment data is subject to ongoing monitoring. The BER assessor must ensure that a fully completed BER file is uploaded in support of the BER assessment. Incomplete BER files may result in revocation of the published BER if deemed to be insufficiently informative.

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<sup>3</sup> Refer to section 11 of this Code in relation to requirements in offering BER/DEC services

## 8. Records, Data and Documentation

### *BER Records Management*

Upon completion of a BER/DEC assessment, the BER/DEC Assessor shall submit to SEAI or its appointed agents or contractors the related BER/DEC data file. BER/DEC assessment data should only be submitted to SEAI if all the associated records, data and/or documentation specified in this Section 8 of the Code of Practice (and as SEAI shall from time to time determine<sup>4</sup> in accordance with the Regulations) is up-to-date, complete and immediately available for inspection. SEAI shall only issue a BER/DEC certificate and accompanying Advisory Report if SEAI accepts a BER/DEC data file into the BER/DEC Register.

### *Relevant Definitions*

BER data file has the meaning given to it in the Regulations, restated here for ease of reference: “BER data file” means an electronic file which contains a report on the outcome of a BER assessment of a building in a form approved by the Issuing Authority, which is completed by a BER assessor and provided to the Issuing Authority for the purpose of notifying it of the record to be made or updated on the BER register in respect of that particular building, and shall be deemed to include any calculations and related data or documents accompanying that report.

“BER record” means, as the case may be, the current and any earlier BER certificate, including any provisional BER certificate where applicable, any advisory report, any BER data file and any related data or documents, pertaining to a building;

In accordance with the Regulations, all records, data and documentation kept by BER/DEC assessors relating to a BER/DEC assessments are the property of SEAI and shall be furnished to SEAI on demand, these shall be referred to as “BER/DEC assessment data” and include:

- BER/DEC certificates;
  - Provisional BER certificates;
  - Advisory Reports accompanying BER/DEC certificates or provisional BER certificates;
  - BER/DEC data files constituting the output of BER/DEC assessments;
  - all supporting drawings, data and other documentation supporting the BER/DEC assessments, including:
    - survey drawings and calculations informing the assessment;
    - signed confirmation that a site visit was carried out at the premises;
    - unique photographic evidence from the premises visited, adequately describing all fields of input as specified in the Survey Guide;
    - scanned documentation relevant to the assets and elements within the premises;
    - all ancillary certificates and consultancy reports
- and
- Declaration of Interest Forms.

Every BER/DEC Assessor is responsible for retention and maintenance of all such records and any calculations that may be required to support or verify the assessments. In particular, please note that BER/DEC Assessors and/or their Principals, as appropriate, must securely maintain and retain all BER records and DEC records (as these expressions are defined in the Regulations) both during the time when a BER/DEC Assessor is registered as a BER/DEC Assessor, and after ceasing to be registered, until the related certificates expire or are otherwise superseded. The maximum period for which records must be retained is 10 years after the date of the assessment. The web-based DEAP system provides a safe and secure way for BER/DEC assessors to store the required documents.

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<sup>4</sup> Details of such requirements (as may be revised from time to time), and the address to which such documentation/data should be sent, are set out on SEAI web site (<https://www.seai.ie/energy-in-business/ber-assessor-support/>).

### *BER Records Management in Web-based DEAP*

Every BER assessor is responsible for the upload of all BER assessment data and any calculations that may be required to support or verify the assessments. In particular, please note that BER assessors must upload all BER records at the point of publication. Where it is not possible to upload all required BER assessment data to the web-based DEAP, the BER assessor must retain a full copy of the records in electronic and/or paper form until such time as it is possible to complete the DEAP file or for the full retention period applicable to such records.

It is the responsibility of the BER assessor to ensure the BER assessment data is clear and complete when uploaded to the web-based DEAP. The Regulations provide SEAI with the authority to specify what constitutes acceptable evidence for the purposes of issuing a BER Certificate. The BER assessor is responsible for ensuring that they have uploaded the BER data file and the BER assessment data to the web-based DEAP system. In accordance with the Regulations, all records, data and documentation uploaded by BER assessors as evidence relating to a BER assessments are the property of SEAI and shall be subject to monitoring as described in the QADP. Upon the BER assessor's selection for audit, the evidence uploaded to the web-based DEAP shall comprise the sum total of data selected for monitoring. No additional BER assessment data can be uploaded for the purpose of informing the QA process.

## **9. Indemnification of the Sustainable Energy Authority of Ireland and Insurance**

Each BER/DEC Assessor (and his/her Principal, where applicable) hereby acknowledges that responsibility for conducting BER/DEC assessments and the accuracy of the results of such assessments rests solely with them and no liability shall attach to SEAI for any error, misconduct, malpractice, act or omission howsoever arising from carrying out a BER/DEC assessment, the accuracy of the results of such assessments or resulting from the findings of a BER/DEC assessment. All assessments should be carried out in compliance with the relevant health and safety laws and standards.

A BER/DEC Assessor (and his/her Principal, where applicable) shall indemnify SEAI against all actions, proceedings, claims or demands whatsoever arising out of or in connection with:

- the negligent or otherwise wrongful act or omission on the part of the BER/DEC Assessor;
- a breach by the BER/DEC Assessor of the Regulations, this Code of Practice or any other direction from SEAI; and
- any other consultancy service or advice provided by the BER/DEC Assessor in respect of the energy efficiency of buildings or otherwise.

SEAI requires, as mandatory, that each BER/DEC Assessor and/or each BER/DEC Assessor's Principal, as appropriate, in relation to the exercise of his/her BER/DEC functions, takes out and maintains the following levels of insurance cover, on an ongoing basis, for the periods set out below (or for the period of registration where no period is specified):

- (a) professional indemnity insurance with a minimum limit of €1,300,000 for any one claim. This recommended professional indemnity insurance cover should be maintained for a period of at least 10 years beyond termination or cancellation of a BER/DEC Assessor's registration.
- (b) public liability insurance with a minimum limit of €6,500,000 for any one accident or claim; and
- (c) employers liability insurance with a minimum limit of €13,000,000 for any one accident or claim.

SEAI will require evidence of current insurance cover in place to be made available as part of audits carried out. In addition, BER/DEC Assessors are required to inform SEAI immediately if, at any

stage during an assessor's registration, such insurance cover as required by this Section 9 is suspended, terminated or for any other reason no longer in place.

Certificates confirming these levels of insurance are current shall, where a BER/DEC Assessor and or a BER/DEC assessor's Principal has procured same, be made available to SEAI or their representatives on request.

## **10. Confidentiality and Data Protection**

A BER/DEC Assessor is required to abide by the following confidentiality and Data Protection requirements:

- to keep confidential the identity of clients and BER/DEC records.
- to obtain the consent of the client to hold discussions with third parties concerning BER/DEC assessment that he/she has been instructed to carry out, including discussions with architects, engineers, and prospective suppliers or suppliers of building materials, components or services.
- the limited exceptions to these requirements are disclosure of information required by law and disclosure to SEAI or its authorised officers. BER/DEC Assessors are not permitted to make any disclosures to statutory authorities except where required to do so by law.

In respect of personal data held by SEAI in connection with the BER/DEC Scheme, SEAI, as Data Controller under the Data Protection Acts 1988 and 2003 ("DPA"), and its agents, will store information provided by BER/DEC assessors on its database. The information provided to SEAI will be used to facilitate the administration of the BER/DEC Scheme. This may require that data including personal data be supplied to and discussed with, in confidence, any person or organisation involved in the administration of the BER/DEC Scheme. SEAI may also disclose certain information which it receives from BER/DEC assessors (including the information referred to in Section 18 of this Code) concerning buildings to the Department of Communications, Climate Action and Environment (DCCA), the Department of Housing, Planning, Community and Local Government (DHPCLG) and/or interested Building Control Authorities and the BER/DEC assessor shall be responsible for ensuring that their clients are aware of this potential disclosure.

Insofar as SEAI considers BER/DEC Assessors to be acting as data processors under the DPA, BER/DEC Assessors may only deal with and process personal data controlled by SEAI in compliance with, and subject to, the instructions received from SEAI and shall not use or process the personal data for any other purpose whatsoever. In these circumstances, BER/DEC Assessors and their Principals as appropriate, shall adopt and maintain appropriate security measures (including technical security measures and organisational measures) in dealing with personal data controlled by SEAI in order to protect against unauthorised or accidental access, loss, alteration, disclosure or destruction of such data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## **11. Client Service, Independence and Production of Prior Written Quotes for Assessment related Work**

A BER/DEC Assessor shall manage his/her affairs to ensure that a high level of service is delivered to his/her clients, and that the BER/DEC Assessor's conduct with clients will always be in a professional manner. Specifically, a BER/DEC Assessor shall manage his/her workload and office support services to ensure that he or she is, within reason, accessible during normal working hours and all correspondence is responded to within a reasonable timeframe, typically no more than three

working days unless the BER/DEC Assessor has made an alternative arrangement with the client in writing.

In carrying out their duties and obligations under the Regulations and this Code, BER/DEC Assessors shall at all times act in an independent and transparent manner.

Prior to commencing any work for clients relating to an assessment or this Code, a BER/DEC Assessor is required to provide in writing to the client:

- (a) a description of the proposed services,
- (b) a quotation of the proposed cost (including VAT and expenses) for such services including all details of any circumstances where the client may incur additional costs, VAT or expenses, and
- (c) a disclosure of all relevant business interests as described below.

To assist BER/DEC Assessors in discharging this obligation, a template letter of engagement is available on the SEAI website (<https://www.seai.ie/energy-in-business/ber-assessor-support/>).

In respect of (ii) above, the quotation referred to must be clear to the client and must also set out details of the BER/DEC Assessor's Principal where the BER/DEC Assessor forms part of a business undertaking. Only the BER/DEC Assessor(s) identified by name in the quotation may carry out the services referred to therein. Where the BER/DEC Assessor or the business undertaking which he or she forms part of is part of any network or association of BER/DEC Assessors (including any franchise networks), then the quotation must make explicit reference to such network or association.

The BER/DEC Assessor must not commence any work relating to an assessment or this Code without the client's explicit acceptance of the BER/DEC Assessor's quotation referred to above and SEAI recommends that such client acceptance be in writing except in cases where it is impractical to do so.

The BER/DEC Assessor must notify the building owner in cases where the BER/DEC Assessor is unable to provide the building owner with a full BER/DEC service.

In respect of (iii) above, a BER/DEC Assessor must carry out assessments independently of all other suppliers or installers of energy related products or services and must be engaged directly by the building owner. A BER/DEC Assessor must not offer services as part of a larger project offering.

In order to ensure transparency, at the time of offering BER/DEC services, BER/DEC Assessors must disclose to clients any and all direct or indirect commercial connections which he/she or a Connected Person may have to manufacturers, suppliers or installers of energy related products or services, or other third parties providing consulting services for any such manufacturers, suppliers or installers. All BER/DEC Assessors must provide a BER/DEC Assessors Declaration of Interest Form or equivalent to clients which discloses any such connections. To assist BER/DEC Assessors in discharging this obligation, a template Declaration of Interest Form is available on the SEAI website (<https://www.seai.ie/energy-in-business/ber-assessor-support/>).

With reference to Section 6 of this Code, BER/DEC Assessors are prohibited from carrying out a BER/DEC assessment on a building where he/she would be assessing energy improvement works carried out by him/her or a Connected Person within the preceding 12 months.

## **12. Charges and Levies for BER/DEC Assessments**

The amount charged by a BER/DEC Assessor for his/her services is a matter for agreement between the BER/DEC assessor and the client. To the extent permitted by law, SEAI may, at its discretion, set

out guidance to the market regarding typical fees that are charged by BER/DEC assessors for particular kinds of assignments.

Where a BER/DEC Assessor is employed by a Principal, and is remunerated for BER/DEC assessment services by the Principal, it is the responsibility of the BER/DEC assessor and their Principal to ensure that the remuneration for such BER/DEC assessment services paid to the BER/DEC Assessor is adequate to ensure that each assessment can be completed in an accurate and complete manner, and to the highest levels of quality.

Every BER/DEC Assessor is required to pay a levy to SEAI plus VAT where applicable, for each and every BER/DEC assessment submitted to SEAI for publication as a BER/DEC Certificate on the appropriate Register. This levy is in addition to the BER/DEC Assessor registration fees charged on initial registration or subsequent registration renewal. The levy referred to in this paragraph must be paid in a timely manner by the BER/DEC Assessor, or his or her Principal as appropriate, and in accordance with SEAI's levy payment and credit control policy which SEAI may, acting reasonably, update from time to time.

SEAI recommends that all fees quoted to their clients for his/her services be inclusive of the SEAI levy for registration of the BER/DEC in question.

SEAI shall publish the registration and renewal charges and levies referred to in this Section 12 on its website<sup>5</sup> and may vary the registration and renewal charges and levies in accordance with the Regulations. All SEAI registration and renewal charges and levies shall be quoted exclusive of VAT and may be subject to VAT. SEAI shall notify BER/DEC assessors in advance of any changes to these charges and levies.

By agreement in writing between SEAI, a BER/DEC Assessor and his or her Principal, levies and charges may be paid by the BER /DEC Assessor's Principal. Any charges and levies which remain unpaid may be recoverable as a contract debt against the principal and/or the BER/DEC Assessor.

### **13. Advertising and Sales Promotion**

In relation to advertising and sales promotion, a BER/DEC Assessor and his/her Principal (where relevant) shall ensure that their advertising and promotion material complies with all relevant legislation and applicable codes including the Consumer Protection Act 2007, the EC (Misleading and Comparative Marketing Communications) Regulations 2007 and the Code of Standards for Advertising, Promotion and Direct Marketing in Ireland published by the Advertising Standards Authority for Ireland<sup>6</sup>. Furthermore, BER/DEC assessors shall ensure that no representations made by them or their Principals, as appropriate, conflict with or compromise the intent or integrity of the BER Scheme or the independence of the BER/DEC Assessment process.

A BER/DEC Assessor and his/her Principal (where relevant) may not use SEAI's corporate logo on any publications or in any visual medium in respect of the BER/DEC Scheme. This includes but is not limited to advertising, (print, electronic or broadcast), printed brochures, flyers, direct mail, retail point of sale materials, web or online content, and telephone directories.

No reference shall be made to SEAI that may imply any endorsement, approval or specific partnership between SEAI and the BER/DEC Assessor and/or his/her Principal. A Registered BER/DEC Assessor may indicate in his/her marketing materials that he/she has been registered by SEAI as a BER/DEC Assessor. However, as noted in Section 2, if a person is not registered or his/her

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<sup>5</sup> <https://www.seai.ie/energy-in-business/register-with-seai/ber-assessor/>

<sup>6</sup> The ASAI Code may be downloaded from <http://www.asai.ie/asaicode/>

registration has lapsed, been suspended or terminated, it is an offence to represent him/herself as or purport to be a registered BER/DEC Assessor.

#### **14. Use of Technology Resources**

Software tools may be provided or recommended by SEAI to BER/DEC Assessors for the purposes of calculating BERs/DECs and or complying with the Regulations. In some cases, the tools may also be used for the purpose of showing conformity with certain other legal provisions such as Part L of the Building Regulations (Part L Amendment) Regulations<sup>7</sup> or to provide additional consultancy services to clients, such as calculations on the effectiveness of alternative designs and specifications. Any such additional services are a private matter between the BER/DEC Assessor and the client and are outside the remit of this Scheme.

A Registered BER/DEC Assessor, and his/her Principal, as appropriate, are provided with a limited-access account to the prescribed administration system which records each BER/DEC, the assessment data file and other related information. The BER/DEC Assessor, and his/her Principal where appropriate, are responsible for protecting their access credentials to the administration system and web-based DEAP and are responsible for any unauthorised use of their access credentials.

Use of the above mentioned software tools and registers by BER/DEC Assessors shall be strictly subject to any terms and conditions of use which are specified by SEAI, all such terms to be published on the website and available for review.

#### **15. Monitoring and Compliance**

SEAI shall engage, as a matter of routine, in monitoring and auditing activities to verify compliance by registered BER/DEC Assessors and/or his/her Principals with legislative requirements including the Regulations, this Code of Practice, and other directions issued to BER/DEC Assessors in accordance with the Regulations. These activities shall also provide a basis upon which to monitor the effectiveness of the Scheme, to protect the integrity of the Scheme and to ensure continual improvement of the Scheme.

Audits may be carried out at the premises of SEAI or its agents, the BER/DEC Assessor, his or her Principal, at the site(s) where the relevant building(s) are located and/or at the premises where the specifications and plans for the building are available. In cases where the audit is to be carried out at the premises of the BER/DEC Assessor, his or her Principal and/or at the site of the relevant building(s) and/or at the premises where the specifications and plans for the building are available, SEAI's auditors shall normally advise the BER/DEC Assessor or his/her Principal at least three working days before commencing the audit. However, SEAI reserves the right, in certain circumstances, to carry out audits and inspections without any prior notice to the BER/DEC Assessor or his/her Principal.

The audit process and associated timings are set out in more detail in SEAI's Quality Assurance System and Disciplinary Procedure. The principle response times required to be adhered to by BER/DEC Assessors as part of this process are:

- facilitation of audits to take place within a period of 21 days from the date of notification;
- the Assessor may seek a review of the findings of the audit by SEAI within 14 days of the date of issue of the audit report.

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<sup>7</sup> S.I. No. 259 of 2008 and S.I. No. 259 of 2011



A BER/DEC Assessor is required to co-operate with SEAI to ensure the audits are carried out expeditiously and thoroughly. A BER/DEC Assessor and/or Principal shall, *inter alia*:

- respond promptly to e-mails and telephone calls from SEAI's auditors and provide such information and documentation as may be required by the auditor within a specified period and at the BER/DEC assessor's own expense;
- make him/herself (or, by agreement with SEAI's auditor, a competent representative) available at the appointed premises to review files related to any or all assessments carried out under the remit of the BER/DEC assessor and to review information and documentation and answer any questions SEAI's auditor may have;
- arrange for site access where this is required by SEAI for audit purposes.

Selection of BER/DEC Assessors for audit is on both a targeted and random basis with due consideration of risks associated with the BER/DEC assessment processes. SEAI may also carry out routine follow up audits to consider whether findings from previous audits have been adequately resolved. SEAI may require BER/DEC Assessors to facilitate accompanied audits in instances where such assessors are recently registered, or in circumstances defined in its Quality Assurance System and Disciplinary Procedures. In addition, SEAI may from time to time under its Quality Assurance System and Disciplinary Procedures require BER/DEC Assessors to participate in mentoring visits arranged by its auditors to facilitate further training. Selection of a BER/DEC Assessor for audit should not be interpreted as connoting any prior presumption by SEAI of there being error / non-compliance with the relevant BER/DEC technical methodologies, the Code of Practice or the Regulations on the part of the BER/DEC assessor concerned.

Where SEAI identifies errors, omissions or non-compliance by a BER/DEC Assessor with any procedures, directions, this Code of Practice or the Regulations, SEAI may issue specific directions to correct, to identify similar, and/or to avoid a recurrence of such errors, omissions or non-compliance under its Quality Assurance System and Disciplinary Procedures. Disciplinary action resulting from audit findings may also arise under these procedures.

#### *Monitoring and Compliance in Web-based DEAP*

Uploading to web-based DEAP allows SEAI, in its capacity as the Issuing Authority under the Regulations, to monitor the uploaded material directly. Once selected for audit, an assessor shall receive notice that their assessment has been selected for inspection in accordance with the procedure set out above.

## **16. Appeals, Complaints and Disputes**

If any dispute arises between a BER/DEC Assessor and SEAI or a third party, the BER/DEC Assessor shall take all reasonable steps to meet with the relevant parties and to endeavour to find a resolution. SEAI has procedures to deal with complaints, disputes and appeals and copies of these procedures are available on SEAI's website or from SEAI, on request.

## **17. Registers Managed by SEAI or its Agents**

SEAI, directly or through appointed agents or contractors, has responsibility under the Regulations to establish, operate and maintain the following:

- a Register of BER certificates, provisional BER certificates, advisory reports, BER data files and related data or documentation;

- a Register of BER assessors registered by SEAI;
- a Register of DEC certificates, advisory reports, DEC data files and related data or Documentation; and
- a Register of DEC assessors registered by SEAI.

These Registers shall be maintained by SEAI.

Extracts from the BER/DEC Registers shall, in accordance with the Regulations, be open to public inspection on a restricted basis on the internet or during normal office hours, at the offices of SEAI.

Extracts from the Registers of BER/DEC assessors shall, in accordance with the Regulations, be open to public inspection on the internet or, during normal office hours, at the offices of SEAI and BER/DEC assessors agree to publication by SEAI in the Registers of BER/DEC assessors of his or her name, principal's name (if any), place of business, contact details and, in respect of BER Assessors, the designated class or classes of buildings to which his or her BER registration applies.

A BER/DEC Assessor or his or her Principal may request another BER/DEC Assessor's data file from SEAI on behalf of the current owner of the building and/or where the information is to be used for the purpose of undertaking any subsequent BER/DEC assessments.

## **18. Conformance to Building Regulations Part L**

Certain BER/DEC software tools recommended and/or provided by SEAI may in some cases be used to demonstrate a building's conformance with specific aspects of Part L of the Building Regulations referred to in Section 14 above.

If the Building Regulations Part L applies to the building being rated and the BER/DEC assessor finds that it does not conform to the requirements of Part L, then the BER/DEC Assessor is obliged to notify to the client in writing which elements of the design do not conform to these Regulations.

## **19. Engagement with the Building Owner or Client**

A BER/DEC Assessor must arrange in advance with the client or client's representative the assessment date and time for the completion of the assessment and if relevant ensure that tenants have been notified about the assessment visit.

A BER/DEC Assessor must identify themselves to the person at the property at the time of the assessment and show to the client or client's representative before entering the building:

- (a) a copy of their BER/DEC Certificate of Registration, and
- (b) valid photo identification (Driver's Licence or Passport).

A BER/DEC Assessor should not enter a building if invited solely by a child or vulnerable person into a building.

## **20. Whistle-Blower Policy**

SEAI requires all assessors to identify to SEAI any instances where they are being encouraged by others to act outside this Code or other directions, or indeed where they have information regarding others who are acting improperly.

All BER/DEC assessors are thus directed to notify SEAI immediately, via the BER Helpdesk, in instances where they are:

- requested to publish a BER/DEC where it has not been possible to complete the BER/DEC assessment fully in accordance with the Regulations, SEAI requirements and guidance;
- aware of published BERs/DECs which were not completed fully in accordance with the Regulations, SEAI requirements and guidance;
- any other instances where they have evidence that a BER/DEC assessor has not acted fully in compliance with the Regulations and other BER/DEC Scheme requirements.

All BER/DEC Assessors should be assured, that any such instances identified to SEAI will be treated in the utmost confidence, save as provided for by law, and that their assistance will ultimately contribute to the improved professionalism and integrity of the scheme.

Where BER/DEC assessors act on behalf of a Principal, assessors are reminded that they must be cognisant of the provisions of the Protected Disclosures Act 2014, and their employer's relevant procedures for making protected disclosures in this regard.

## **21. Amendments to the Code of Practice and Directions**

SEAI, in its capacity as the Issuing Authority under the Regulations, has the right, from time to time, to issue directions to BER/DEC Assessors in relation to the matters set out in Regulation 17(1) of the Regulations, including codes of practice to be respected by BER/DEC assessors, such as this Code. As a result, SEAI reserves the right to review and amend this Code of Practice and may also issue other directions to BER/DEC Assessors, in accordance with the Regulations.

BER/DEC Assessors shall be made aware of any proposed amendments to the Code of Practice by email or by way of an update to the Code displayed on SEAI's website. SEAI may invite BER/DEC Assessors to submit comments on or provide a response to the proposed amendments. For the most up to date version of the Code, which is binding on all BER/DEC assessors pursuant to Regulation 17(2) of the Regulations, BER/DEC assessors should visit SEAI's website (<https://www.seai.ie/energy-in-business/ber-assessor-support/>).

## **22. Freedom of Information**

The BER/DEC assessor understands that SEAI is subject to the requirements of the Freedom of Information Act 2014 ("FOIA") and shall assist and co-operate with SEAI to enable SEAI to comply with its information disclosure obligations.

**END**