



**CODE OF PRACTICE  
FOR  
BUILDING ENERGY RATING (BER) ASSESSORS**

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**January 2011**

## 1. Introduction

Building Energy Rating (BER) Assessors (“BER Assessors”) are persons registered with The Sustainable Energy Authority of Ireland (SEAI) to carry out BER assessments in line with the requirements of the European Communities (Energy Performance of Buildings) Regulations 2006,<sup>1</sup> as amended (hereinafter termed “the Regulations”). The primary objective of this Code of Practice is to ensure that BER Assessors have a clear understanding of their obligations to deliver a high quality service in the marketplace. By registering as a BER Assessor you are committing to abiding by this Code of Practice. Important terms used throughout this Code of Practice are defined in the Regulations. In accordance with Article 12(1)(f) of the Regulations, SEAI directs that BER Assessors comply with the provisions of this Code of Practice.

This Code of Practice details the roles and responsibilities of BER Assessors and SEAI for both domestic and non-domestic buildings, to ensure the delivery of a technically proficient and timely service to clients, with high standards of professional conduct, and thereby enable clients to meet their obligations under Regulation 7 of the Regulations and related obligations. Delivery by BER Assessors of a high quality service in an independent manner is essential to the reputation and reliability of the scheme for BER assessments created by the Regulations (the “Scheme”).

This Code of Practice does not apply to public service buildings to which Regulation 8 of the Regulations applies. SEAI intends to issue a separate code of practice in relation to Regulation 8 and public service buildings.

It is imperative that BER Assessors and prospective BER Assessors (and where applicable, their principals) comply with this Code of Practice and the Regulations. A copy of the Regulations is available on SEAI’s web site ([www.seai.ie/ber](http://www.seai.ie/ber)).

In this Code, save where the contrary intention appears, the term “principal” means an employer but the term “principal” shall not include a franchisee’s franchisor (as BER Assessors who are franchisees are regarded as being independent principals in their own right).

Terms used in this Code shall have the same meaning as they do in the Regulations unless the contrary intention appears.

## 2. Registration as a BER Assessor

SEAI registers a person as a BER Assessor in accordance with the Regulations and the terms, conditions and criteria published on the web site [www.seai.ie/ber](http://www.seai.ie/ber), including a commitment to adhere to this Code of Practice. SEAI may also require a BER Assessor’s principal to complete certain documents and to consent to complying with this Code of Practice. To become a BER Assessor, an applicant must:

- Demonstrate that he/she has fulfilled any training and examination requirement as set out or directed by SEAI;
- Accept and agree to the obligations set out in this Code of Practice;
- Complete a registration application form; and
- Pay the registration fee.

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<sup>1</sup> Statutory Instrument (S.I.) No. 666 of 2006 and amending S.I. No. 229 of 2008.

Initial registration of a BER 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 Assessor or his or her principal (where relevant and appropriate). SEAI may, at any time, terminate and/or suspend a BER Assessor's registration if it has cause to believe that the BER Assessor is unsuitable for the task 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.

The Regulations require that the name of each current BER Assessor, his or her employer (if any), place of business, contact details and the designated classes of buildings to which his or her BER registration applies shall be open to public inspection on the Register of BER Assessors. A copy of the Register will be kept at the offices of SEAI and the details on the Register mentioned in this paragraph about BER Assessors (and their principals) will also be available on SEAI's web site.

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

A BER Assessor whose registration has lapsed, or been suspended 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 Assessor. A BER Assessor whose registration is cancelled or suspended shall, where required by SEAI, promptly return to SEAI any or all SEAI documentation or other property including their Certificate of Registration.

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

Upon registration or renewal thereof, SEAI shall provide each BER Assessor with a Certificate of Registration. Every BER 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 Assessors**

A BER Assessor is required to act with integrity and diligence to ensure that each BER 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 Assessor shall offer BER assessment services only in respect of that class or those classes of building to which their registration as a BER Assessor specifically applies.

A BER Assessor is registered by SEAI on the basis of their competence to carry out the work. The registration requirements for a BER Assessor may (depending on the designated class of buildings to which his or her BER 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 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.

SEAI may from time to time require or direct BER Assessors generally, BER Assessors operating or proposing to operate in a specific class or classes of building, or applicants desiring to become BER 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 Assessor to remain in place or to take effect.

## **5. Data Integrity**

A BER 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.

As of 1<sup>ST</sup> February 2011, 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. A BER Assessor will be required to visit the premises to collect the data for the assessment. The BER Assessor 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.

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 as set out above. A New Provisional assessment must be carried out in compliance with the appropriate methodology and is subject to audit.

## **6. BER Assessor's Obligation to Act in an Independent Manner**

### *Independence*

BER Assessors are required to act in an independent manner at all times when discharging their obligations under the Regulations.

BER Assessors are prohibited from carrying out a BER Assessment on a building –

- (a) which is owned by them, or
- (b) which is owned by any Connected Person, or
- (c) which is to be sold or let by him or her or a Connected Person in their capacity as a sales or letting intermediary, or
- (d) in any other circumstances in which they have a material financial interest in the outcome of any assessment other than the fee charged for providing the rating.

### *Definition of Connected Person*

For the purpose of this Code, a "Connected Person" means

- (a) a BER Assessor's spouse (or partner), parent, brother, sister or child, or
- (b) a BER Assessor's principal, or
- (c) a BER Assessor's business partner, 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.

#### *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.

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

SEAI may act any time, with or without cause, investigate whether any BER 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 record or part thereof and shall notify the BER Assessor of its decision. The BER Assessor shall be liable for all losses and liabilities which arise as a result of any such revocation.

In circumstances where a BER 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 the Code, SEAI may at any time revoke the Assessor's BER record or part thereof in circumstances where the BER Assessor subsequently acquired any material financial interest in that building or in its sale or letting and where, as a result of such, SEAI considers the BER Assessor to have lacked independence in carrying out the original assessment.

Where a public body offers for sale or letting a building which is required to comply with the Regulations, a BER Assessor who is an employee of this public body or an employee of another public body shall be entitled to conduct a BER 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 Assessments**

A BER Assessor must take full responsibility for each BER assessment that he or she carries out and take full responsibility for the accurate submission of a BER assessment to SEAI for publication on the BER Register.

In carrying out BER assessments, a BER Assessor shall use the procedures approved by SEAI and shall comply with this Code of Practice and any other directions issued by SEAI.

If a BER 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 Assessor may refuse to carry out the assessment. In such circumstances, the BER Assessor shall return any fee received in respect of that proposed BER assessment.

## **8. Records, Data and Documentation**

Upon completion of a BER assessment, the BER Assessor shall submit to SEAI or its appointed agents or contractors the related BER data file and, if required, any associated data and/or documentation as SEAI shall from time to time determine<sup>2</sup>. In accordance with the Regulations, SEAI shall only issue a BER Certificate if SEAI accepts a BER data file into the BER Register.

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<sup>2</sup> Details of such requirements (as may be revised from time to time), and the address to which such documentation/ data should be sent (whether post or electronic or both), are set out on SEAI web site ([www.seai.ie/ber](http://www.seai.ie/ber) ).

In accordance with the Regulations, all records, data and documentation relating to a BER assessment are the property of SEAI and shall be furnished to SEAI on demand. These include:

- BER Certificates
- Provisional BER Certificates
- Advisory Reports
- BER data files constituting the output of BER assessment, and
- All supporting drawings, data and other documentation supporting the BER assessment.

Every BER 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 Assessors and or their principals, as appropriate, must securely maintain and retain all BER records (as this expression is defined in the BER Regulations) both during the time when a BER Assessor is registered as a BER Assessor and until the related certificates expire or are otherwise superseded after such BER Assessor ceases to be registered as a BER Assessor.

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

Each BER Assessor hereby acknowledges that responsibility for conducting BER 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 assessment, the accuracy of the results of such assessments or resulting from the findings of a BER assessment. All assessments should be carried out in compliance with the relevant health and safety laws and standards.

A BER Assessor 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 Assessor;
- A breach by the BER 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 Assessor in respect of the energy efficiency of buildings or otherwise.

SEAI requires, as mandatory, that each BER Assessor and/or each BER Assessor's principal, as appropriate, in relation to the exercise of his/her BER functions, takes out and maintains the follow 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):

- (i) 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 Assessor's registration.
- (ii) public liability insurance with a minimum limit of €6,500,000 for any one accident or claim; and
- (iii) employers liability insurance with a minimum limit of €13,000,000 for any one accident or claim.

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

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

A BER Assessor is required to abide by the following confidentiality requirements:

- To keep confidential the identity of applicants and BER records.
- To obtain in writing the consent of the client to hold discussions with third parties concerning BER 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 Assessors are not permitted to make any disclosures to statutory authorities except where required to do so by law. SEAI, as Data Controller under the Data Protection Acts 1988 and 2003 ("DPA"), and its agents, will store information provided by BER Assessors on its database and fully respect the confidentiality of any personal data provided. The information provided to SEAI will be used to facilitate the administration of the BER 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 Scheme. These persons and organisations will be subject to the same requirements and confidentiality agreements. SEAI may also disclose certain information which it receives from BER Assessors (including the information referred to in Section 18 of this Code) concerning buildings to the Department of the Environment, Heritage and Local Government and/or interested Building Control Authorities and the BER Assessor shall be responsible for ensuring that their clients are aware of this potential disclosure.

Insofar as SEAI considers BER Assessors to be acting as data processors under the DPA, BER 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 whatever. In these circumstances, BER 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 and Production of Prior Written Quotes for Assessment related Work**

A BER Assessor shall manage his/her affairs to ensure that a high level of service is delivered to his/her clients. Specifically, a BER 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 Assessor has made an alternative arrangement with the client in writing.

Prior to commencing any work for clients relating to an assessment or this Code, a BER Assessor is required to provide in writing to the client (i) a description of its proposed services, (ii) a description 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 (iii) a disclosure of relevant business interests as described in the paragraph below.

In carrying out their obligations under the Regulations and this Code, BER Assessors shall at all times act in an independent and transparent manner. In order to ensure transparency, the BER Assessor is required to disclose to clients in accordance with the paragraph above any and all direct or indirect commercial connections which he/she or his/her principal may have to manufacturers, suppliers or other third parties who may be engaged directly or indirectly by a client arising from recommendations in the advisory report.

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

The BER Assessor must not commence any work relating to an assessment or this Code without the client's explicit acceptance of the BER 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.

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

The amount charged by a BER Assessor for his/her services is a matter for agreement between the BER 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 Assessors for particular kinds of assignments. All fees quoted to their clients shall be inclusive of the levy to be paid by the BER Assessor to SEAI for registration of the BER in question and VAT where applicable.

Every BER Assessor is required to pay a levy to SEAI for each and every BER assessment submitted to SEAI for publication as a BER Certificate and Advisory Report on the BER Register. These charges are in addition to the registration fees charged on initial registration or subsequent renewal. The levy referred to in this paragraph must be paid in a timely manner by the BER 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 shall publish the registration and renewal charges and levies referred to in this Section 12 on its web site<sup>3</sup> and may vary the registration and renewal charges and levies. All SEAI registration and renewal charges and levies shall be quoted exclusive of VAT and may be subject to VAT. SEAI shall notify BER Assessors in advance of any changes to these charges and levies.

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

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<sup>3</sup> [www.seai.ie/ber](http://www.seai.ie/ber)

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

In relation to advertising and sales promotion, a BER 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>4</sup>. Furthermore, BER 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 Assessment process.

A BER 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 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 Assessor and/or his/her principal. A Registered BER Assessor may indicate in his/her marketing materials that he/she has been registered by SEAI as a BER Assessor.

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

Software tools may be provided or recommended by SEAI to BER Assessors for the purposes of calculating BERs 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 (Amendment) Regulations<sup>5</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 Assessor and the client and are outside the remit of this Scheme. Use of the above mentioned software tools by BER Assessors shall be strictly subject to any terms and conditions of use which are specified by SEAI.

A Registered BER Assessor, and his/her principal, as appropriate, will have limited access to the National Administrative System (NAS) which records each BER, the assessment data file and other related information.

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

SEAI shall engage, as a matter of routine, in monitoring and auditing activities to verify compliance by registered BER Assessors and/or their principals with legislative requirements including the Regulations, this Code of Practice, and other directions issued to BER Assessors in accordance with the Regulations. These activities shall also provide a basis on 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, of a BER Assessor, his or her principal, and/or at the site(s) where the relevant building(s) are located. In cases where the audit is to be carried out at the premises of the BER 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

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<sup>4</sup> The ASAI Code may be downloaded from [www.asai.ie/code.asp](http://www.asai.ie/code.asp)

<sup>5</sup> S.I. 854 of 2007, S.I. 259 of 2008.

building are available, SEAI's auditors shall normally advise the BER Assessor at least three working days before commencing the audit. However, SEAI reserves the right, in certain exceptional circumstances, to carry out audits and inspections without any prior notice to the BER Assessor or his/her principal.

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

- Respond promptly to 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 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 Assessor and to review information and documentation and answer any questions SEAI's agent may have.

SEAI shall not be required to show cause for the selection of any BER assessment or BER Assessor for audit and where a particular BER assessment or BER Assessor is selected for audit, no implication shall be drawn that SEAI has cause for concern about the accuracy of that BER assessment or of the integrity or competence of the relevant BER Assessor or principal.

Where SEAI identifies errors, omissions or non-compliance by a BER Assessor with any procedures, directions, with 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.

Disciplinary action resulting from audit findings can apply to a BER assessment and/or a BER assessor. Please refer to the [Quality Assurance System and Disciplinary Procedure](http://www.seai.ie/ber) at [www.seai.ie/ber](http://www.seai.ie/ber)

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

If any dispute arises between a BER Assessor and SEAI or a third party, the BER 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 a Register of BERs and of BER Assessors. These registers shall be maintained by SEAI and access to the Register of BERs shall be in line with the requirements of the Regulations. Extracts from the Register of BER 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 the BER Assessor agrees to publication by SEAI in the Register of BER Assessors of his or her name, principal's name (if any), place of business, contact details and the designated classes of buildings to which his or her BER registration applies.

A BER Assessor or his or her principal may request another BER 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 calculating a new or amended BER.

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

Certain BER software tools recommended and/or provided by SEAI may in some cases be used to demonstrate a building's conformance to 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 Assessor finds that it does not conform to the requirements of Part L, then the BER Assessor is obliged to notify the client in writing, which elements of the design do not conform to these Regulations.

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

Persons who have been convicted of any offence relating to children or vulnerable persons and/or who are subject to disciplinary action or sanction relating to children or vulnerable persons are not eligible for registration as BER Assessors.

A BER 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 Assessor must identify themselves to the person at the property at the time of the assessment and show (i) a copy of their BER Certificate and (ii) valid photo identification (Driver's Licence or Passport) or (iii) any ID card which may be issued by SEAI to the client or client's representative before entering the building.

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

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

SEAI, in its capacity as the Issuing Authority under the Regulations, has the right to periodically update its procedures and practices. As a result, SEAI reserves the right to review and amend this Code of Practice and may also issue other directions to BER Assessors, in accordance with the Regulations.

BER 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 Assessors to submit comments or provide a response to the proposed amendments. For the most up to date version of the Code which binds the BER Assessor, the BER Assessor should visit SEAI's website at [www.seai.ie/ber](http://www.seai.ie/ber).