



**THIRTY-THIRD AMENDMENT OF THE CONSTITUTION
(COURT OF APPEAL) BILL 2013**

EXPLANATORY MEMORANDUM

Purpose of Bill

The Thirty-third Amendment of the Constitution (Court of Appeal) Bill 2013 provides for the establishment of a Court of Appeal. If the amendment is passed in Referendum, the new Court of Appeal will hear appeals from the High Court, and the Supreme Court will hear cases on appeal from the Court of Appeal and in exceptional circumstances from the High Court. There will be a strict test that is intended to ensure that only those cases that require to be determined by the Supreme Court are so determined.

The proposals contained in the Bill are based on the Report of the Working Group on a Court of Appeal which was published in 2009.

Provisions of Bill

Section 1 of the Bill provides for the definitions used in the Bill. “the establishment day” is the day the Court of Appeal is established on foot of the enactment of “the relevant law” provided for in *section 3(c)* and *(d)* and *Schedule 2*.

Section 2 deals with the commencement of *sections 3, 4, 5, 6* and *7*. It clarifies in *subsection (3)* that the amendments dealing with the removal of the “one judgment” rule in *section 5* will apply to all judgments issued after the establishment day (of the Court of Appeal), including judgments relating to cases heard before that day.

Section 3 will be commenced on enactment of the Bill. That means that on enactment, the Constitution will be amended to include the text in *Schedules 1* and *2*. *Schedule 1* provides for the addition of the Court of Appeal to the list of courts contained in Article 34.2. *Schedule 2* contains a new Article 34A which will be inserted on enactment, but which will not appear in the text of the Constitution once the Court of Appeal has been established.

New Article 34A provides for the enactment of a law providing for the establishment of the Court of Appeal, as soon as practicable after the enactment of the Article. That law will require the Government to appoint by order “the establishment day” — the day the Court of Appeal is established.



AN BILLE UM AN TRÍÚ LEASÚ IS TRÍOCHA AR AN mBUNREACTH (CÚIRT ACHOMHAIRC), 2013

MEABHRÁN MÍNITHEACH

Cuspóir an Bhille

Leis an mBille um an Tríú Leasú is Tríocha ar an mBunreacht (Cúirt Achomhairc), 2013, déantar socrú chun Cúirt Achomhairc a bhunú. Má rithear an leasú i Reifreann, éistfidh an Chúirt Achomhairc nua achomhairc ón Ard-Chúirt, agus éistfidh an Chúirt Uachtarach cásanna ar achomhairc ón gCúirt Achomhairc agus, in imthosca neamhchoiteanna, ón Ard-Chúirt. Beidh tástáil dhocht ann a mbeidh sé beartaithe léi a chinntiú gurb iad na cásanna ar gá cinneadh na Cúirte Uachtaraí ina leith, agus na cásanna sin amháin, a chinnfear amhlaidh.

Tá na tograí sa Bhille bunaithe ar an Tuarascáil ón nGasra Oibre ar Chúirt Achomhairc a foilsíodh sa bhliain 2009.

Forálacha an Bhille

Déantar socrú le *halt 1* den Bhille le haghaidh na mínithe a úsáidtear sa Bhille. Is é “an lá bunaithe” an lá a bhunófar an Chúirt Achomhairc ar scór achtú “an dlí iomchuí” dá ndéantar socrú in *alt 3(c)* agus (*d*) agus i *Sceideal 2*.

Baineann *alt 2* le tosach feidhme *ailt 3, 4, 5, 6* agus *7*. Soiléirítear i *bhfo-alt (3)* go mbeidh feidhm ag na leasuithe lena bpléitear le deireadh a chur le riail “an aon bhreithiúnais” in *alt 5* maidir le gach breithiúnas a eiseofar tar éis an lae bunaithe (lá bunaithe na Cúirte Achomhairc), lena n-áirítear breithiúnais a bhaineann le cásanna a éisteadh roimh an lá sin.

Cuirfear tús le feidhm *alt 3* ar achtú an Bhille. Ciallaíonn sé sin go ndéanfar an Bunreacht a leasú ar an mBille a achtú, chun an téacs i *Sceidil 1* agus *2* a áireamh ann. Déantar socrú le *Sceideal 1* chun an Chúirt Achomhairc a chur leis an liosta cúirteanna in Airteagal 34.2. Tá Airteagal nua 34A i *Sceideal 2*, ar Airteagal é a chuirfear isteach sa Bhunreacht ar an mBille a achtú ach nach mbeidh i dtéacs an Bhunreachta nuair a bheidh an Chúirt Achomhairc bunaithe.

Déantar socrú le hAirteagal nua 34A chun dlí a achtú lena ndéantar socrú chun an Chúirt Achomhairc a bhunú, a luaithe is indéanta tar éis an tAirteagal a achtú. Ceanglaítear ar an Rialtas leis an dlí sin “an lá bunaithe” — an lá a bhunófar an Chúirt Achomhairc — a cheapadh le hordú.

Sections 4, 5 and 6 will commence on the day the Court of Appeal is established. *Section 4* of the Bill refers to *Schedule 3* which sets out a new *section 4* to be inserted in Article 34. New *section 4* provides that the Court of Appeal will have appellate jurisdiction from all decisions of the High Court and such other courts as may be prescribed by law and the decisions of the Court of Appeal are to be final, except where the Supreme Court decides to hear and determine an appeal from the court. It also provides that no law shall be enacted to remove from the appellate jurisdiction of the Court of Appeal, questions as to the validity of any law. The provisions contained in *section 4* are the same as those in the current text of the Constitution with regard to the Supreme Court (Article 34.4.3°, 4° and 6° refer).

Section 4 also provides for a renumbering of sections 4 and 5 of Article 34 as sections 5 and 6 respectively, to take account of the insertion of new section 4.

Section 5 refers to *Schedules 4 and 5*. *Schedule 4* provides for the substitution of subsection 3° in Article 34.5 (currently Article 34.4). The substituted text provides that the Supreme Court will hear an appeal from the Court of Appeal provided that it is satisfied that the appeal concerns a matter of general public importance or it is necessary in the interests of justice that it be heard and determined by the Supreme Court.

Schedule 5 inserts a new subsection 4° in Article 34.5 (currently Article 34.4). Subsection 4° provides that in exceptional circumstances, and provided that the decision involves a matter of general public importance or the interests of justice, decisions of the High Court may be appealed to the Supreme Court.

Section 5 also provides for the renumbering of subsection 4° of Article 34.5 as subsection 5° following the insertion of new subsection 4°.

Section 5 provides in *subsection (2)(f)* and *(g)* for the deletion of subsection 5° of Article 34.4 (of the existing text). This deletion will have the effect of removing the “one judgment” rule in cases involving the constitutionality of laws, thus allowing the Supreme Court to issue more than one judgement in such cases.

Section 6 deals with a number of other amendments to the Constitution consequential on the establishment of the Court of Appeal. These are listed in a table set out in *Schedule 6*.

Article 12.8 is to be amended to provide for the inclusion of the President of the Court of Appeal among the list of judges before whom the President of Ireland must make his or her declaration on taking office.

Article 14.2.2° is to be amended to provide that the President of the Court of Appeal shall be the person to substitute for the Chief Justice on the Presidential Commission, if the position of Chief Justice were vacant or if he or she were unable to act. Currently, it is the President of the High Court who substitutes for the Chief Justice, in those circumstances.

Cuirfeadh tús le feidhm *ailt 4, 5 agus 6* an lá a bhunófar an Chúirt Achomhairc. Déantar tagairt in *alt 4* den Bhille do *Sceideal 3*, ina leagtar amach alt nua 4 atá le cur isteach in Airteagal 34. Déantar socrú le halt nua 4 go mbeidh dlínse achomhairc ag an gCúirt Achomhairc ar gach breith ón Ard-Chúirt agus ó cibé cúirteanna eile a ordófar le dlí, agus nach mbeidh dul thar breitheanna na Cúirte Achomhairc, ach amháin i gcás ina dtabharfaidh an Chúirt Uachtarach breith achomhairc ón gcúirt a éisteacht agus a chinneadh. Déantar socrú leis freisin nach n-achtófar aon dlí chun ceisteanna i dtaobh bail a bheith nó gan bheith ar aon dlí a bhaint ó dhlínse achomhairc na Cúirte Achomhairc. Is ionann na forálacha in *alt 4* agus na forálacha sin sa téacs reatha den Bhunreacht a bhaineann leis an gCúirt Uachtarach (táthar ag tagairt d'Airteagal 34.4.3°, 4° agus 6°).

Déantar socrú freisin le *halt 4* maidir le hait 4 agus 5 d'Airteagal 34 a athuimhriú mar ailt 5 agus 6 faoi seach, chun cur isteach alt nua 4 a chur i gcuntas.

Déantar tagairt in *alt 5* do *Sceidil 4* agus 5. Déantar socrú le *Sceideal 4* chun fo-alt 3° in Airteagal 34.5 (Airteagal 34.4 i láthair na huairé) a ionadú. Déantar socrú leis an téacs a chuirfeadh ina ionad go n-éistfidh an Chúirt Uachtarach achomhairc ón gCúirt Achomhairc ar choinníoll gur deimhin léi go mbaineann an t-achomhairc le ní a bhfuil tábhacht phoiblí i gcoitinne ann nó gur gá, ar mhaithe leis an gceartas, go ndéanfaidh an Chúirt Uachtarach é a éisteacht agus a chinneadh.

Le *Sceideal 5*, déantar fo-alt nua 4° a chur isteach in Airteagal 34.5 (Airteagal 34.4 i láthair na huairé). Déantar socrú le fo-alt 4° go bhféadfar, in imthosca neamhchoiteanna agus ar choinníoll go mbaineann an bhreith le ní a bhfuil tábhacht phoiblí i gcoitinne ann nó go bhfuil sé ar mhaithe leis an gceartas, achomhairc a dhéanamh chun na Cúirte Uachtaraí in aghaidh breitheanna ón Ard-Chúirt.

Déantar socrú freisin le *halt 5* chun fo-alt 4° d'Airteagal 34.5 a athuimhriú mar fho-alt 5° tar éis fo-alt nua 4° a chur isteach.

Le *halt 5*, déantar socrú i *bhfo-alt (2)(f)* agus *(g)* chun fo-alt 5° d'Airteagal 34.4 (den téacs reatha) a scriosadh. Is é a bheidh d'éifeacht leis an scriosadh sin deireadh a chur le riail “an aon bhreithiúnais” i gcásanna a bhaineann le dlíthe a bheith bunreachtúil, rud a ligfidh don Chúirt Uachtarach níos mó ná breithiúnas amháin a eisiúint i gcásanna den sórt sin.

Baineann *alt 6* le líon leasuithe eile ar an mBunreacht de dhroim an Chúirt Achomhairc a bhunú. Liostaítear iad sin i dtábla atá leagtha amach i *Sceideal 6*.

Tá Airteagal 12.8 le leasú chun socrú a dhéanamh maidir le hUachtarán na Cúirte Achomhairc a áireamh ar liosta na mbreithiúna nach foláir d'Uachtarán na hÉireann a dhearbhu nó a dearbhú a dhéanamh os a gcomhair ar é nó í do dhul i seilbh oifige.

Tá Airteagal 14.2.2° le leasú chun a shocrú gurbh é nó gurbh í Uachtarán na Cúirte Achomhairc an duine a ghníomhódh in ionad an Phríomh-Bhreithimh ar Choimisiún an Uachtaráin dá mbeadh post an Phríomh-Bhreithimh folamh nó dá mbeadh an Príomh-Bhreitheamh gan bheith i gcumas gníomhaithe. I láthair na huairé, is é nó is í Uachtarán na hArd-Chúirte a ghníomhaíonn in ionad an Phríomh-Bhreithimh sna himthosca sin.

Paragraph i of Article 31.2 is to be amended to provide that the President of the Court of Appeal shall be an ex-officio member of the Council of State.

Article 34.3.2° is to be amended to include the Court of Appeal (with the High Court and Supreme Court) in the list of courts to which an appeal concerning the constitutionality of legislation may be heard.

Article 34.6.2° (currently Article 34.5.2°) provides for the swearing of the judicial declaration by judges of the Court of Appeal.

Article 35.1 is amended to provide for the appointment of judges of the Court of Appeal by the President.

Article 35.4.1° is amended to provide for the removal of judges of the Court of Appeal in accordance with the provisions of that subsection. The interface between this amendment and an amendment to this subsection contained in the *Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013* is dealt with further below in relation to *section 7* of the Bill.

Paragraph i of Article 36 provides for the regulation by law of the number of judges, their remuneration, age of retirement and pensions. The amendment adds the Court of Appeal to the list of Courts covered by the provision.

Article 40.4.3° deals with habeas corpus cases and is being amended to provide that where the High Court is satisfied that the person is being detained in accordance with the law but that the law is unconstitutional, the High Court shall refer the question of the validity of the law to the Court of Appeal rather than to the Supreme Court as at present.

Section 6 also refers to *Schedule 7* which deals with those cases that have been appealed to the Supreme Court before the Court of Appeal is established, but which have not been determined.

Schedule 7 contains a new Article 64 that is to be inserted into the Constitution on the establishment day, but is not to appear in texts of the Constitution published one year after that date. Article 64 deals with transitional provisions in relation to cases that have been appealed to the Supreme Court before the Court of Appeal is established.

It provides for the transfer of classes of appeals to the Court of Appeal, where the Chief Justice, with the concurrence of the other members of the Court, is satisfied that it is in the interests of the administration of justice and the efficient determination of appeals to do so.

Separately, the parties to an appeal may apply to the Supreme Court to have an appeal transferred to the Court of Appeal and the Supreme Court may make an order to that effect provided that it is satisfied that it is in the interests of the administration of justice and the efficient determination of appeals to do so.

The Supreme Court will complete to determination all cases that were initiated in that court before the establishment of the Court of Appeal, except for those cases transferred to the Court of Appeal.

Tá mír i d'Airteagal 31.2 le leasú chun a shocrú go mbeidh Uachtarán na Cúirte Achomhairc ina chomhalta nó ina comhalta de bhua oifige den Chomhairle Stáit.

Tá Airteagal 34.3.2° le leasú chun an Chúirt Achomhairc a áireamh (leis an Ard-Chúirt agus leis an gCúirt Uachtarach) ar liosta na gcúirteanna a fhéadfaidh achomharc a bhaineann le reachtaíocht a bheith bunreachtúil a éisteacht.

Déantar socrú le hAirteagal 34.6.2° (Airteagal 34.5.2° i láthair na huaire) maidir le mionnú an dearbhaithe bhreithiúnaigh ag breithiúna na Cúirte Achomhairc.

Déantar Airteagal 35.1 a leasú chun socrú a dhéanamh maidir le ceapadh breithiúna den Chúirt Achomhairc ag an Uachtarán.

Leasaítear Airteagal 35.4.1° chun socrú a dhéanamh maidir le breithiúna den Chúirt Achomhairc a chur as oifig de réir fhorálacha an fho-ailt sin. Pléitear tuilleadh thíos, i ndáil le *halt 7* den Bhille, leis an gcomhéadan idir an leasú seo agus leasú ar an bhfo-alt seo atá sa *Bhille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a chur le Seanad Éireann), 2013*.

Déantar socrú le mír i d'Airteagal 36 chun líon, luach saothair, aois scoir agus pinsin na mbreithiúna a rialú de réir dlí. Leis an leasú, cuirtear an Chúirt Achomhairc le liosta na gcúirteanna atá faoi réim na forála.

Baineann Airteagal 40.4.3° le cásanna *habeas corpus* agus tá sé á leasú chun a shocrú, i gcás gur deimhin leis an Ard-Chúirt an duine a bheith á choinneáil ina bhrá nó á choinneáil ina brá de réir an dlí ach go bhfuil an dlí neamhbhunreachtúil, nach foláir don Ard-Chúirt an cheist sin i dtaobh bail a bheith nó gan a bheith ar an dlí a chur faoi bhreith na Cúirte Achomhairc seachas faoi bhreith na Cúirte Uachtaraí mar a dhéantar faoi láthair.

Déantar tagairt freisin in *alt 6* do *Sceideal 7* a bhaineann leis na cásanna sin a ndearnadh achomharc chun na Cúirte Uachtaraí ina leith sular bunaíodh an Chúirt Achomhairc, ach nár cinneadh.

Tá Airteagal nua 64 i *Sceideal 7* atá le cur isteach sa Bhunreacht, an lá bunaithe, ach nach mbeidh i dtéacsanna den Bhunreacht a fhoilseofar bliain tar éis an dáta sin. Baineann Airteagal 64 le forálacha idirthréimhseacha i ndáil le cásanna a ndearnadh achomharc chun na Cúirte Uachtaraí ina leith sular bunaíodh an Chúirt Achomhairc.

Déantar socrú leis chun aicmí achomharc a aistriú chun na Cúirte Achomhairc, i gcás gur deimhin leis an bPríomh-Bhreitheamh le comhthoil na gcomhaltaí eile den Chúirt gur ar mhaithe le riaradh cirt agus cinneadh éifeachtúil achomharc déanamh amhlaidh.

Féadfaidh na páirtithe in achomharc, ar leithligh, iarratas a dhéanamh chun na Cúirte Uachtaraí go n-aistrefar achomharc chun na Cúirte Achomhairc agus féadfaidh an Chúirt Uachtarach ordú chuige sin a dhéanamh ar choinníoll gur deimhin léi gur ar mhaithe le riaradh cirt agus cinneadh éifeachtúil achomharc déanamh amhlaidh.

Déanfaidh an Chúirt Uachtarach gach cás a tionscnaíodh sa chúirt sin roimh bhunú na Cúirte Achomhairc a chríochnú chun a chinnte, ach amháin na cásanna sin arna n-aistriú chun na Cúirte Achomhairc.

The Schedule clarifies that an appeal shall not be taken to have been heard in part by reason of the Supreme Court having heard an interlocutory application in the matter, or unless the appeal itself is confined to a procedural matter, the Supreme Court has heard a procedural application or motion in the matter.

The Schedule also provides that, notwithstanding the foregoing, the Supreme Court will continue to have appellate jurisdiction in relation to appeals from the Court of Criminal Appeal after establishment day. Such appeals will not be transferrable to the Court of Appeal.

Section 7 deals with the interface between this Bill and the *Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Bill 2013*.

If there were no proposal to abolish the Seanad, the amendment of Article 35 referred to above (*Schedule 6*) would operate to include the Court of Appeal in the list of courts, the judges of which are subject to the impeachment procedure set out in Article 35.

However, the *Seanad Abolition Bill* will, if that Referendum is passed, amend Article 35.4.1^o, as it currently stands to reflect the changes being introduced on foot of the abolition of the Seanad.

Without the contingent provisions in *section 7*, if the Seanad were to be abolished after the establishment of the Court of Appeal, the amendments arising from the Seanad Abolition Referendum would act to remove the reference to the Court of Appeal being made in *Schedule 6*.

In *section 7*, this is dealt with by providing for what is to happen in the event that the Seanad Abolition Referendum is passed, and the abolition date precedes or succeeds the establishment of the Court of Appeal. If the Court of Appeal is established before the Seanad is abolished, the amendment contained in *Schedule 8* will take effect on abolition day to ensure that the Court of Appeal remains included in the list of courts covered by Article 35.

If the Seanad is abolished first then the amendment being made to Article 35 under *Schedule 6*, will apply to the new formulation of Article 35 provided for in the Seanad Abolition Bill, rather than to the current one.

Section 8 provides that the Act may be cited as the Thirty-third Amendment of the Constitution (Court of Appeal) Act 2013.

Department of Justice and Equality,
July, 2013.

Soiléirítear leis an Sceideal nach measfar gur éisteadh achomharc go páirteach de bhíthin gur éist an Chúirt Uachtarach iarratas idirbhreitheach i ndáil leis an ní nó, mura mbaineann an t-achomharc féin ach amháin le ní nóis imeachta, de bhíthin gur éist an Chúirt Uachtarach iarratas nó tairiscint nóis imeachta maidir leis an ní.

Déantar socrú sa Sceideal freisin, d'ainneoin an mhéid sin roimhe seo, go leanfaidh an Chúirt Uachtarach de dhlínse achomhairc a bheith aici i ndáil le hachomhairc ón gCúirt Achomhairc Choiriúil tar éis an lae bunaithe. Ní bheidh achomhairc den sórt sin inaistrithe chun na Cúirte Achomhairc.

Pléitear in *alt 7* leis an gcomhéadan idir an Bille seo agus *An Bille um an Dara Leasú is Tríocha ar an mBunreacht (Deireadh a Chur le Seanad Éireann), 2013*.

Dá mba rud é nach raibh aon togra ann chun deireadh a chur le Seanad Éireann, d'oibreodh an leasú ar Airteagal 35 dá dtagraítear thuas (*Sceideal 6*) chun an Chúirt Achomhairc a áireamh i liosta na gcúirteanna a bhfuil na breithiúna díobh faoi réir an nóis imeachta táinsimh atá leagtha amach in Airteagal 35.

Ach, leis an *mBille maidir le Deireadh a Chur le Seanad Éireann*, má rítear an Reifreann sin, déanfar Airteagal 35.4.1°, mar atá sé i láthair na huaire, a leasú chun na hathruithe atá á dtabhairt isteach ar scór deireadh a chur le Seanad Éireann a léiriú.

Gan na forálacha teagmhasacha in *alt 7*, dá gcuirfí deireadh le Seanad Éireann tar éis an Chúirt Achomhairc a bhunú, ghníomhódh na leasuithe a d'eascródh as an Reifreann maidir le Deireadh a Chur le Seanad Éireann chun an tagairt don Chúirt Achomhairc a dhéantar i *Sceideal 6* a bhaint.

Tugtar aghaidh air sin, in *alt 7*, trí shocrú a dhéanamh i dtaobh a dtarlóidh sa chás go rithfear an Reifreann maidir le Deireadh a Chur le Seanad Éireann agus gur dáta roimh bhunú na Cúirte Achomhairc nó ina dhiaidh an dáta a chuirfear deireadh le Seanad Éireann. Más rud é go mbunófar an Chúirt Achomhairc sula gcuirfear deireadh le Seanad Éireann, beidh éifeacht leis an leasú i *Sceideal 8*, an lá a chuirfear deireadh le Seanad Éireann, chun a chinntiú go bhfanfaidh an Chúirt Achomhairc ar liosta na gcúirteanna atá faoi réim Airteagal 35.

Más túisce a chuirfear deireadh le Seanad Éireann, beidh feidhm ag an leasú atá á dhéanamh ar Airteagal 35 faoi *Sceideal 6* maidir le foirmlíú nua Airteagal 35 dá ndéantar socrú sa Bhille maidir le Deireadh a Chur le Seanad Éireann, seachas feidhm a bheith aige maidir leis an bhfoirmlíú reatha.

Déantar socrú le *halt 8* go bhféadfar an tAcht um an Tríú Leasú is Tríocha ar an mBunreacht (Cúirt Achomhairc), 2013 a ghairm den Acht.

*An Roinn Dlí agus Cirt agus Comhionannais,
Iúil, 2013.*