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**AN BILLE UM AN gCEATHRÚ LEASÚ IS TRÍOCHA AR AN  
mBUNREACTH (COMHALTAÍ DE THITHE AN  
OIREACHTAIS), 2014**

**THIRTY-FOURTH AMENDMENT OF THE CONSTITUTION  
(MEMBERS OF THE HOUSES OF THE OIREACHTAS) BILL  
2014**

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**EXPLANATORY MEMORANDUM**

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**Purpose of Bill**

The purpose of this Bill is to effect an amendment to Article 15 of the Constitution by inserting a new section 16 after section 15 of Article 15.

The proposed new section 16 would provide that all members of the Dáil and Seanad shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience:

**Background**

Article 38(1) of the Basic Law of the Federal Republic of Germany states: “Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience.” The Basic Law is the German Constitution.

According to Article 38 paragraph 1 of the Basic Law for the Federal Republic of Germany the Members of the German Bundestag shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience. Article 38 paragraph 1 is an independent mandate and therefore any coercion influencing a member’s vote, be it legally binding, physically or psychologically, including an obligation to vote in line with the political parties’ policies, would violate the Basic Law. A party discipline among the members of the parliamentary groups can therefore only be based on the individual members’ free decision.

The principle of members of the German Bundestag being responsible only to their conscience was enshrined in the Basic Law of the Federal Republic of Germany in the re-establishment of the Bundestag following World War II. This has the effect that fundamental democratic principles cannot be undermined by incremental, non-transparent power grabbing by individuals or parties or organisations or groups. This fundamental principle of members being responsible only to their conscience also applies in the subsidiary (regional) parliaments in the Federal Republic of Germany.

In practice Article 38 (1) operates as follows:

Under the Basic Law of the Federal Republic of Germany MPs are responsible only to their conscience and party discipline is based on this freedom. Generally parties do adopt a “joint position” or party position on issues and MPs who opt to deviate from the joint position have to announce this deviation ahead of any vote and the rules of procedure grant them the right to explain their vote (orally or in writing) after the conclusion of the vote. Explanations of votes are commonly made in the Bundestag. At other times the parties will not adopt a “joint position”, this is usually on matters of conscience or ethical matters.

The principle of individual responsibility only to conscience has worked well in Germany in the aftermath of World War II.

The proposed new provision sets out to replicate in an Irish Constitutional context the elements of the Basic Law (Constitutional Law) in the German Bundestag that express the fundamental principle of the individual members’ responsibility only to their conscience.

The wording of the proposed new provision is identical to the wording of the 2nd sentence of Article 38(1) of the Basic Law (the Constitution) of the Federal Republic of Germany.

The proposed new provision will allow members of Dáil Éireann and Seanad Éireann to vote on all issues before the houses on the fundamental principle of being responsible only to their conscience and that this fundamental principle shall be enshrined in the Constitution.

#### **Provisions of the Bill**

*Section 1* provides for the amendment of the Irish and English texts of Article 15 by inserting a new section 16 the text of which is set out in the Schedule.

*Section 2* provides for the short title of the Act which is the Thirty-fourth Amendment of the Constitution (Members of the Houses of the Oireachtas) Act 2014.

*Part 1* of the Schedule sets out the Irish language text of the proposed new Article 15.16.

*Part 2* of the Schedule sets out the English language text of the proposed new Article 15.16.

*Feabhra*, 2014.