SUPPLEMENTARY BRIEFING NOTE ON
CLAUSE 195, CRIME AND POLICING BILL 2025

Introduction

This Supplementary Briefing Note should be read alongside DELF's briefing of 9 September 2025 on Clause 195 of the Crime and Policing Bill 2025. Clause 195 proposes amendments to sections 20 and 85 of the Extradition Act 2003 (EA 2003), governing extradition following convictions in absentia.

Following a stakeholder symposium convened in January 2026, DELF identified material inaccuracies in the Government's stated justification for Clause 195. The discussions also highlighted a number of concrete cases in which the existing statutory safeguards have prevented serious injustice, and which would have been decided differently under the proposed amendments. This note addresses those inaccuracies and sets out the real-world implications of Clause 195 for individuals facing extradition.

Response to the Government's Justification of Clause 195

a. The Government's incorrect statement that the proposed amendments *"ensure compatibility between UK domestic legislation and the UK-EU Trade and Cooperation Agreement"* (**TCA**)[1]

Article 601(1)(i) TCA – which governs convictions *in absentia* – already aligns with s.20 of the Extradition Act 2003 as authoritatively interpreted by the Supreme Court in *Bertino* and *Merticariu*.[2] Those safeguards reflect the carefully calibrated EU extradition framework,[3] strengthened in 2009 following UK-led[4] advocacy to enhance protections for convictions in absentia.[5] That reform was expressly grounded in the protection of fundamental rights, seeking to promote legal certainty and mutual recognition while respecting differing national legal systems.

Clause 195 risks making the UK legislation inconsistent with the TCA in two material respects, thereby undermining the reforms advanced by the UK in 2008–2009.

First, Article 601(1)(i)(iii) TCA permits refusal of extradition where a person did not deliberately absent themselves from a trial *in absentia* unless they have a "*right to a retrial or appeal…which allows the merits of the case…to be re-examined.*". That standard is reflected in s.20 EA 2003 as interpreted by the Supreme Court. Clause 195 would dilute this safeguard by reducing it to a mere "*right to apply for a retrial*", weakening protections previously secured across Europe.

Second, Article 601(1)(i)(ii) TCA deems a person present at trial only where they have "*given a mandate to a lawyer…to defend him or her at the trial, and was indeed defended by that lawyer at the trial"*. This aligns with domestic authority;[6] however, proposed subsection (7A) of Clause 195

[1] Crime and Policing Bill: international cooperation factsheet – 21 July 2025
[2] *Bertino v Public Prosecutor's Office, Italy* [2024] UKSC 9 and *Merticariu v Judecatoria Arad, Romania* [2024] UKSC 10
[3] The Article 601(1)(i) provisions stem from the pre-Brexit extradition structure set out in the EAW Framework Decision 2002/584/JHA.
[4] The other states were: Slovenia, France, Czech Republic, Sweden, Slovakia & Germany: Explanatory Memorandum 5213/08, 30 January 2008.
[5] By Framework Decision 2009/299/JHA.
[6] See the Supreme Court confirming this position in *Bertino* at §46.

weakens this protection, treating a person as present solely by virtue of legal representation, even where there has been no contact or instruction between lawyer and client

b. The Government's inaccurate statement that the "*interpretation…changed as a result of…Bertino and* Merticariu"[7]

The Supreme Court did not create new law by distinguishing between a "*right to a retrial*" and a mere "*right to apply*" for one.[8] Rather, it reaffirmed the settled meaning of "*entitled*", endorsing established authority, which made clear that entitlement does not mean "*perhaps*" or "*in certain circumstances*".[9] In doing so, the Court overturned the conflicting decision in *BP v Romania* [2015] EWHC 3417 (Admin), which had erroneously treated a discretionary right to apply for retrial as sufficient, having misapplied case law on procedural requirements that do not undermine a genuine entitlement.

c. The Government's misleading statement that "*a number of states cannot offer guaranteed retrials when individuals have been convicted in absentia which may lead to future cases being discharged*"[10]

DELF is aware only of Romania having a proven difficulty in providing a clear right to a retrial due to their national law. Any such difficulty affects only a narrow class of cases – where a UK court finds a requested person's absence was not deliberate and no full retrial is available. In those circumstances, a guaranteed right to a retrial is a minimum safeguard necessary to protect UK nationals and others facing extradition. Where issues arise, requesting states can provide case-specific assurances concerning the nature of the right to a retrial; this offers a pragmatic solution without weakening established protections.

The amendments risk particularly grave consequences under Part 2 EA 2003 (s.85), where extradition is sought by states outside Europe that are not bound by Article 6 ECHR and may apply lower fair-trial standards. Notwithstanding this, Clause 195 deliberately removes the entitlement to a retrial even where a UK court has determined – applying common law and Article 6 principles – that the person was not deliberately absent.

d. The "*bill does not alter the existing processes or safeguards governing extradition beyond the right to a guaranteed re-trial in absentia cases*"[11]

It was the unanimous view of stakeholders and practitioners that these amendments destroy one of the most important and fundamental protections in the EA 2003. Convictions in absentia are commonplace outside the UK. Clause 195 exposes UK citizens and residents to imprisonment imposed following trials held in their absence, without a right to retrial, even where a UK court has found – following a contested hearing – that the person did not deliberately absent themselves. Other safeguards within the EA 2003 are incapable of compensating for the loss of this protection.

Real world examples of the risk of injustice arising from Clause 195

Clause 195 would reverse the outcomes in the cases below by permitting extradition where a requested person has only a conditional or discretionary route to reopening proceedings, rather than a clear entitlement to a retrial. In each case, the requested person was discharged, as the UK courts found that the individual had not deliberately absented themselves from trial and that the requesting

[7] Crime and Policing Bill: international cooperation factsheet – 21 July 2025
[8] *Merticariu* at §20.
[9] *Bohm v Romania* [2011] EWHC 2671 (Admin) at §5.
[10] Crime and Policing Bill: international cooperation factsheet – 21 July 2025
[11] Crime and Policing Bill: international cooperation factsheet – 21 July 2025

state could not demonstrate a genuine right to a retrial or equivalent review. Clause 195 would nevertheless require extradition to proceed, exposing individuals to lengthy custodial sentences imposed following convictions in their absence.

a. Greece v Myles Litchmore-Dunbar

In 2013, a British national was killed during a bar brawl in Crete. Myles Litchmore-Dunbar, also a British citizen on holiday, was tried in Greece for murder. He denied the allegation and was acquitted of murder but convicted of affray, receiving a three-year probation sentence. Following deportation, he appealed against the affray conviction from the UK via Greek lawyers. Unknown to him, the prosecutor appealed the murder acquittal. That appeal proceeded in his absence and resulted in his conviction for murder and a 15-year sentence.

In the English extradition proceedings, Greece asserted he had been lawfully summoned through service on a lawyer nominated for the affray appeal. The English courts found he was unaware of the prosecution appeal. Greece maintained that service rules had been complied with and that he had no right to a retrial, suggesting only a possible application to the Court of Cassation, which the Judge noted would be firmly resisted. Because he was not deliberately absent and was not entitled to a retrial, he was discharged under s.20 EA 2003.

b. Greece v Mark Newlands

In 2015, Mark Newlands, a British national, was sought by Greece to enforce a 10-year sentence imposed following a conviction in his absence for possession of 19 ecstasy tablets in 2001. The court found that, although he was aware many years earlier that he faced possible prosecution, there was no evidence that he knew the trial process had been initiated. The Greek authorities asserted that he could file "*an application for annulment of the proceedings*" but provided no evidence that such an application would inevitably lead to reopening or a retrial. The English court was not satisfied that he would be entitled to a retrial or equivalent review, and he was therefore discharged.

c. Greece v Paul Wright

In 2016, Paul Wright, a UK national, was arrested on a Greek request to enforce a 15-month prison sentence imposed following a conviction in his absence for joyriding and criminal damage. He had been questioned by police in 2003 while on holiday but was unaware of any prosecution, conviction or sentence until his arrest on the extradition request thirteen years later.

Extradition was refused because he was not entitled to a retrial, having only a conditional right to apply out of time. Although the Greek authorities offered conversion of the sentence to a financial penalty, Mr Wright denied committing any offence and refused. At the time, Baron Hanson of Flint (then David Hanson MP) spoke publicly about the unfairness of convicting a person in absence without any opportunity to defend themselves.

DEFENCE EXTRADITION LAWYERS FORUM

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20 Case where person has been convicted: category 1 territories (showing amendments by Clause 195 in red)

(1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence.

(2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 21.

(3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.

(4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.

(5) If the judge decides that question in the negative he must decide whether ~~the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.~~

(a) the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial;

(b) the person would be so entitled unless a court in the territory concerned were to decide that they deliberately absented themselves from their trial;

(c) the person was entitled as mentioned in paragraph (a) or (b) but expressly waived that entitlement;

(d) having been informed that they were entitled as mentioned in paragraph (a) or (b), the person failed to exercise that entitlement before the end of the period permitted for exercising it.

(6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 21.

(7) If the judge decides that question in subsection (5) in the negative he must order the person's discharge.

(7A) For the purposes of subsection (1), a person convicted at a trial at which they were legally represented (but not present in person) is to be treated as having been convicted in their presence"

(8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute (or would have constituted); a retrial or a review amounting to a retrial, the person would have (or would have had) these rights—

(a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;

(b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

Extradition

195 Extradition: cases where a person has been convicted

(1) The Extradition Act 2003 is amended as follows.

(2) In section 20 (case where person has been convicted: category 1 territories) –

(a) in subsection (5), for the words from "the person" to the end substitute "any of the following applies –

(a) the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial;

(b) the person would be so entitled unless a court in the territory concerned were to decide that they deliberately absented themselves from their trial;

(c) the person was entitled as mentioned in paragraph (a) or (b) but expressly waived that entitlement;

(d) having been informed that they were entitled as mentioned in paragraph (a) or (b), the person failed to exercise that entitlement before the end of the period permitted for exercising it.";

(b) after subsection (7) insert –

"(7A) For the purposes of subsection (1), a person convicted at a trial at which they were legally represented (but not present in person) is to be treated as having been convicted in their presence.";

(c) in subsection (8), in the words before paragraph (a) –

(i) after "constitute" insert "(or would have constituted)";

(ii) after "have" insert "(or would have had)".

(3) In section 85 (case where person has been convicted: category 2 territories) –

(a) in subsection (5), for the words from "the person" to the end substitute "any of the following applies –

(a) the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial;

(b) the person would be so entitled unless a court in the territory concerned were to decide that they deliberately absented themselves from their trial;

(c) the person was entitled as mentioned in paragraph (a) or (b) but expressly waived that entitlement;

(d) having been informed that they were entitled as mentioned in paragraph (a) or (b), the person failed to exercise that entitlement before the end of the period permitted for exercising it.";

(b) after subsection (7) insert –

"(7A) For the purposes of subsection (1), a person convicted at a trial at which they were legally represented (but not present in person) is to be treated as having been convicted in their presence.";

(c) in subsection (8), in the words before paragraph (a) –

(i) after "constitute" insert "(or would have constituted)";

(ii) after "have" insert "(or would have had)".

[redacted]