

The new deal  
for working people

# The Right to Switch Off

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Autonomy  
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# Executive summary



# Executive Summary

- This briefing sets out the policy options for a ‘Right to Switch Off’, which would protect workers from out-of-hours communication from their employers.
  - New polling commissioned for the report showed strong public backing for a ‘Right to Switch Off’:
  - More than 50% of the public support the UK government implementing restrictions on employers contacting staff outside of working hours, with only 17% opposed.
- Although the government has pledged to implement a version of this policy during the current parliamentary term as part of its New Deal for Working People, crucial details about how the policy would work are still missing.
- Drawing on international precedents, this briefing therefore outlines two options for a ‘Right to Switch Off’:
  - A ‘Soft’ option, which would allow workers to ignore communications from their employers outside of working hours.
  - A ‘Hard’ option, which would both give workers the right to ignore out of hours contact from their employers and would penalise employers who contact workers outside of working hours.
- Finally, a draft amendment to the Employment Rights Act (made in consultation with a legal expert) is included as an appendix, offering an ‘off the shelf’ policy for the Government to deploy.

# Context



# Context

In 2021, the Autonomy Institute published a policy briefing and framework for how to pursue a ‘Right to Disconnect’, drawing on precedents in France and on legal expertise regarding the Employment Rights Act. Alongside work by the Prospect trade union, this proposal was championed by then Shadow Secretary of State for the Future of Work, Angela Rayner, as a key step to ensuring that ‘workers are able to establish healthy boundaries, switching off and disconnecting from work outside of working hours’.<sup>1</sup>

Three years later, the new government recognises that since the pandemic there has been a ‘step change in flexible and remote working practices in many workplaces’. These have offered a range of benefits to workers, but have also

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eroded the boundary between work and home life.<sup>2</sup> In response, the government has pledged to implement a ‘Right to Switch Off’, which would permit workers to disconnect from their jobs, in particular contact with their employers, at the end of the working day. The policy would guard against unpaid overtime and its related negative effects by helping to draw clear lines between work time and non-work time.

A detailed plan for the policy has not yet been outlined. Rather than introduce a blanket ban on employers forcing workers to respond to calls, emails and other forms of communication outside of working hours, Labour have so far suggested a collaborative approach in which employers and workers decide together, on a case-by-case basis, the best way to implement the policy. In the main document outlining the NDFWP, the party promises to emulate similar models to those implemented already in Ireland and Belgium, ‘giving workers and employers the opportunity to have constructive conversations and work together on bespoke workplace policies or contractual terms that benefit both parties.’<sup>3</sup>

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1 The Autonomy Institute (2021) ‘The Right to Disconnect’. Available at: <https://autonomy.work/portfolio/righttodisconnect/>

2 The Labour Party (2024). ‘Labour’s Plan to Make Work Pay’. Available at: <https://labour.org.uk/wp-content/uploads/2024/05/LABOURS-PLAN-TO-MAKE-WORK-PAY.pdf>

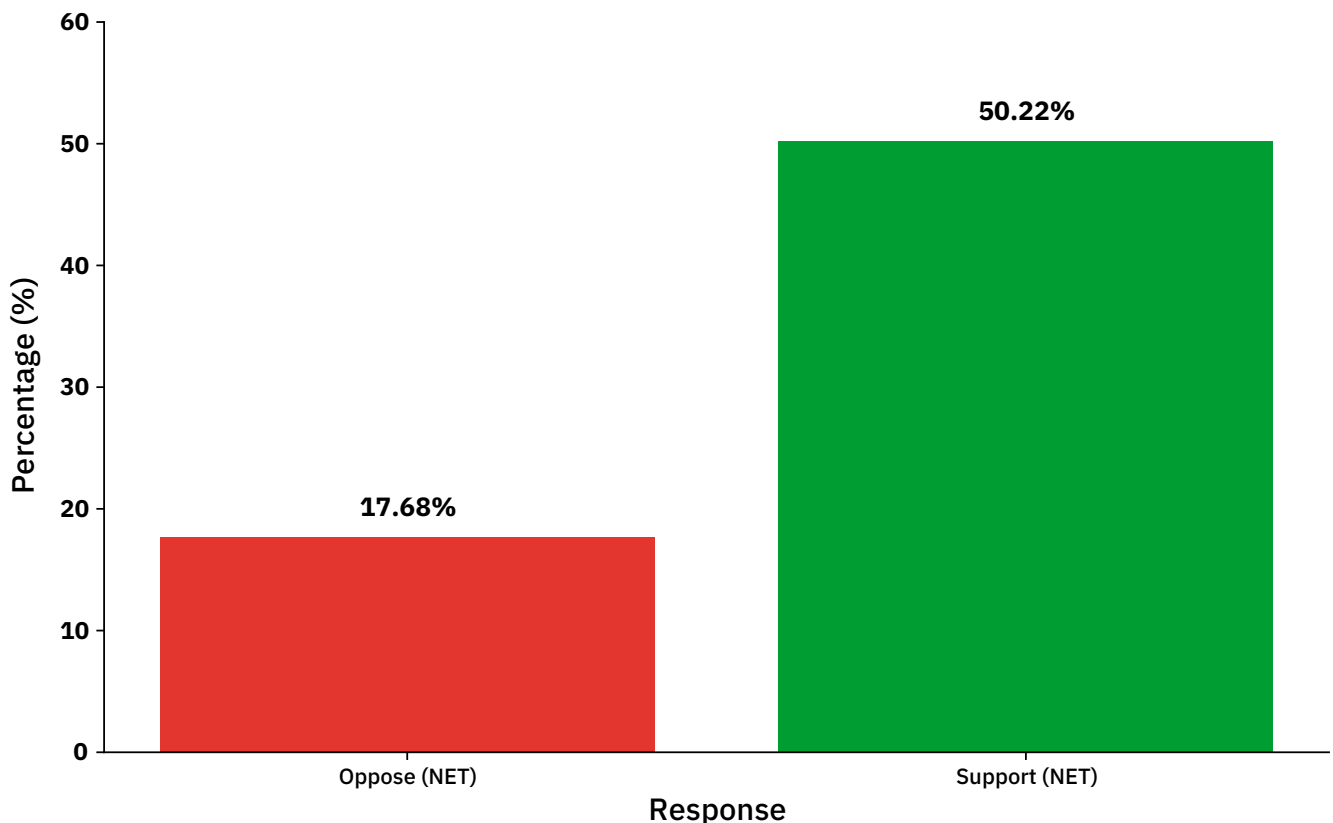
3 The Labour Party (2024). ‘Labour’s Plan to Make Work Pay’. Available at: <https://labour.org.uk/wp-content/uploads/2024/05/LABOURS-PLAN-TO-MAKE-WORK-PAY.pdf>

The benefit of this approach is that it takes into account sectoral differences in requirements around overtime, working on the view that in some sectors - such as financial services - contact outside of office hours is sometimes unavoidable. The problem, however, is that giving employers the power to decide the terms of the policy will in many cases dilute the potential benefits for workers and the scale of its implementation. A Right to Switch Off can and should be dynamic, allowing certain employers to opt-out; but this should be the exception, with the burden of proof falling on employers to demonstrate clearly why they need to contact workers outside of contracted hours.

## Public opinion

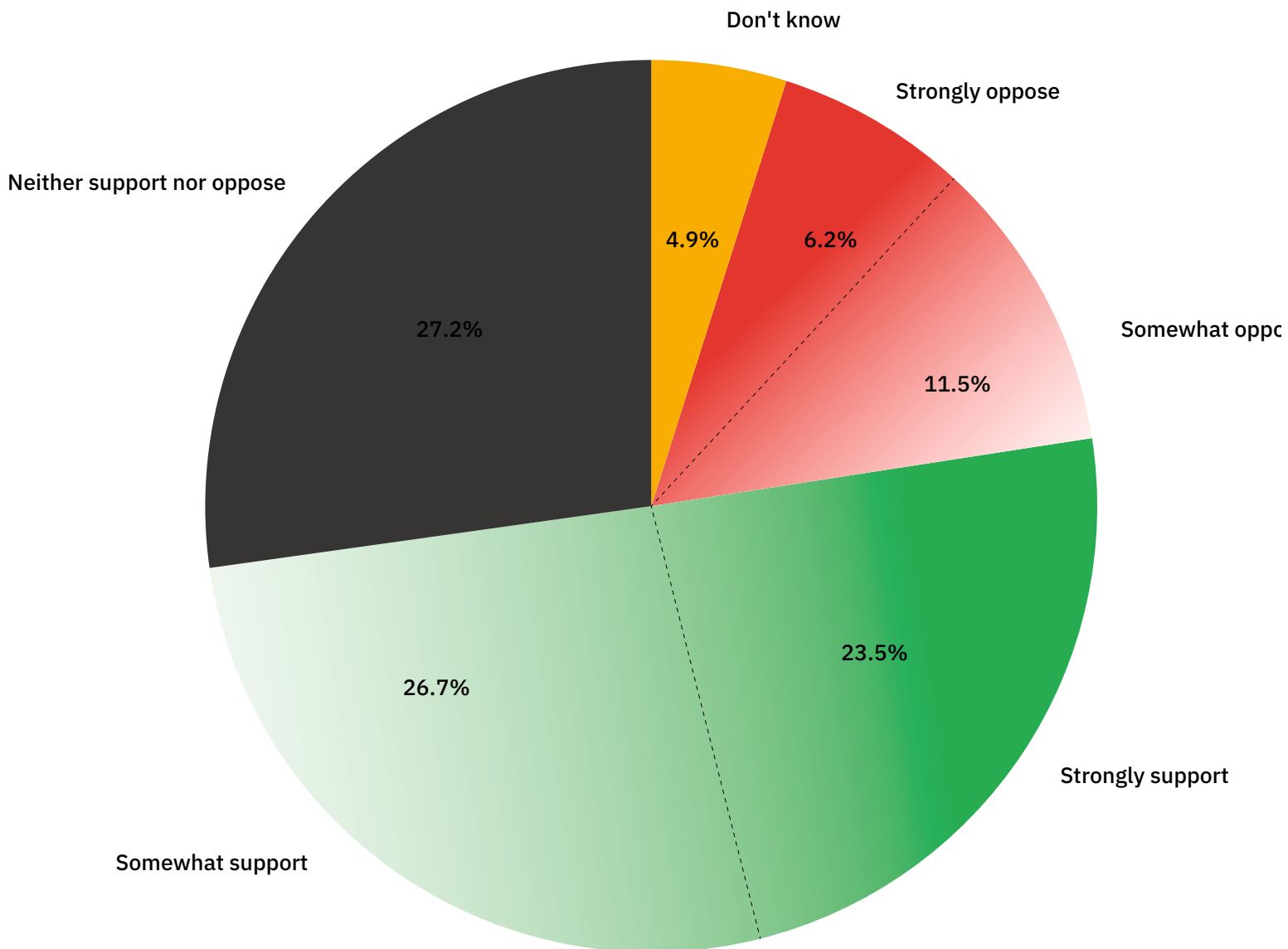
Polling commissioned by the Autonomy Institute through Survation shows strong public backing for a new 'Right to Switch Off', with just over 50% of respondents supporting the policy – compared to only 17% opposed.

**Fig.1** To what extent, if at all, would you support or oppose the UK government implementing restrictions on employers contacting staff outside of working hours?



Only 6.2% of the public are strongly opposed to the government implementing restrictions on employers contacting staff outside of working hours, while nearly a quarter of the public (23.5%) strongly support a new 'Right to Switch Off'.

**Fig.2** To what extent, if at all, would you support or oppose the UK government implementing restrictions on employers contacting staff outside of working hours?





## Precedents

The time has come for The Right to Switch Off. Versions of the policy now exist across Europe in France, Portugal, Spain, Luxemburg, Italy, Slovakia, and Ireland

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**Versions of the policy now exist across Europe in France, Portugal, Spain, Luxemburg, Italy, Slovakia, and Ireland as well as internationally in Canada, Australia, India, Argentina and Chile**

as well as internationally in Canada, Australia, India, Argentina and Chile – although some of these countries opt for a ‘light’ version of the policy (see ‘Recommendation: two options’ below).<sup>4</sup> While there are many examples of how the UK government might proceed with the policy, a few specific precedents offer examples of ‘best practice’. To make sure that the policy is not simply interpreted by employers as a set of guidelines, these examples favour a ‘hard switch off’ by punishing employers who go against the spirit of the policy.

### France

France introduced the right to switch off in 2017 as part of a policy package known as La Loi Travail (or Labour Law in English). From the beginning, the policy was implemented in its ‘hard’ form, which includes financial penalties for employers who choose to ignore the spirit of the policy.

France’s highest court has fined employers for ignoring the legislation.<sup>5</sup> A 2018 Court decision - applying the ‘right to disconnect’ legislation - ruled that an employee should be entitled to additional pay whenever asked to take work-related phone calls, messages or emails outside of their contracted hours.<sup>6</sup> The Court fined the employer in that case €60,000 for their failure to pay the employee additional wages for undertaking duties beyond their regular hours.<sup>7</sup>

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4 Lus Laboris (2023). ‘The Right to Disconnect: which countries have legislated’. Available at: <https://iuslaboris.com/insights/the-right-to-disconnect-which-countries-have-legislated/>; The Canadian Bar Association (2023). ‘Enforcing the Right to Disconnect from Work’. Available at: <https://www.nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2023/enforcing-the-right-to-disconnect-from-work>; Accueil Ministère du travail, de la santé et des solidarités (2017) ‘Right to Disconnect’. Available at: <https://travail-emploi.gouv.fr/archives/archives-courantes/loi-travail-2016/les-principales-mesures-de-la-loi-travail/article/droit-a-la-deconnexion>

5 Harper Macleod (2023). ‘Could a ‘right to disconnect from work’ make its way to the UK?’. Available at: <https://www.harpermacleod.co.uk/insights/right-to-disconnect/>

6 Ibid.

7 Ibid.

## **Portugal**

In 2021, the Portuguese government amended the Labour Code to impose a duty on employers to not contact workers outside of working hours.<sup>8</sup> Like France, employers in Portugal who contact workers outside of working hours can face court cases and/or financial penalties.<sup>9</sup> Companies with over 10 employees can be fined up to €10,000 (around £8,500) under the legislation.<sup>10</sup>

## **Australia**

The Australian government has recently implemented a 'Right to Disconnect', which will give employees 'the right to refuse contact outside their working hours unless that refusal is unreasonable'.<sup>11</sup> In practice, this will mean that workers can refuse to monitor, read or respond to communications outside of contracted hours, except in rare instances where such contact is essential to the job description.<sup>12</sup> Where disputes between employers and employees arise, the two parties will be encouraged to resolve them independently of the courts. However, the Fair Work Commission has the authority to order employers to cease out of hours communications if they persistently contact their workers beyond office hours. If employers fail to comply with the orders, they can be fined up to AUS\$94,000 (around £48,000).<sup>13</sup>

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8 Global Workplace Law & Policy (2022). 'The right to disconnect - or as Portugal calls it - the duty of absence of contact'. Available at: <https://global-workplace-law-and-policy.kluwerlawonline.com/2022/03/09/the-right-to-disconnect-or-as-portugal-calls-it-the-duty-of-absence-of-contact/>

9 Guardian (2021). 'We Stopped Portugal's Bosses Contacting Outside Working Hours'. Available at: <https://www.theguardian.com/commentisfree/2021/nov/18/portugal-bosses-work-hours-right-to-disconnect>

10 The Times (2024). 'Could work emails be banned after 5pm – and how do other countries do it?'. Available at: <https://www.thetimes.com/business-money/companies/article/right-to-disconnect-rules-company-emails-wfh-0qb6qsk6r>

11 Fairwork Ombudsman (2024). 'Right to Disconnect'. Australia Government. Available at: <https://www.fairwork.gov.au/about-us/workplace-laws/legislation-changes/closing-loopholes/right-to-disconnect>

12 Fairwork Ombudsman (2024). 'Right to Disconnect'. Australia Government. Available at: <https://www.fairwork.gov.au/about-us/workplace-laws/legislation-changes/closing-loopholes/right-to-disconnect>

13 Insight (2024). 'Right to Disconnect law comes into effect in Australia'. Available at: <https://workplaceinsight.net/right-to-disconnect-law-comes-into-force-in-australia/#:~:text=The%20FWC%20has%20the%20authority,and%20A%2494%2C000%20for%20companies.>

# **Recommendation: two options**



# Recommendation: two options

## ‘Soft’ switch off

As a first step towards a ‘full’ right to switch off, a ‘soft’, less enforceable version of the policy could be introduced very quickly and easily.

This would amend existing legislation to allow workers to ignore communications from their employers outside of working hours. It would enshrine: i) The right of an employee to not routinely perform work outside normal working hours; ii) The right to not be penalised for refusing to attend to work matters outside of normal working hours; iii) The duty to respect another person’s right to disconnect (e.g. by not routinely emailing or calling outside normal working hours).<sup>14</sup>

## ‘Hard’ switch off

While the ‘soft’ option represents a move in the right direction, the problems with this approach are manifold, and are discussed in detail in our aforementioned paper on the subject (see also the Appendix).<sup>15</sup> In short, ‘soft power’ within many workplaces means that - even though there would be no formal requirement to

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respond to emails - in practice, workers are still likely to feel obliged. Many people feel the need to go ‘above and beyond’ in their jobs from time to time, and receiving emails and queries from one’s employer - no matter how many ‘no need to respond’ caveats are in place - will risk seeing the policy fall by the wayside. Even if one can safely ignore it, receiving communications from an employer still alerts and engages the brain: switching it momentarily into work mode and breaking rest.

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<sup>14</sup> Workplace Relations Commission (2021). ‘Code of Practice for Employers and Employees on the Right to Disconnect’. Available at: [https://www.workplacerelations.ie/en/what\\_you\\_should\\_know/codes\\_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf](https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf)

<sup>15</sup> Autonomy (2021). ‘The Right to Disconnect’. Available at: <https://autonomy.work/portfolio/righttodisconnect/>

A more substantial, 'full' right to switch off would go one step further. This legislation would not only give workers the right to ignore out of hours contact from their employers but would also punish employers for ignoring the spirit of the legislation and repeatedly contacting workers. France and Portugal offer precedents (as detailed above), where fines have been handed out to employers for going against right to switch off legislation.<sup>16</sup>

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16 Harper Macleod LLP (2023). 'Could a 'right to disconnect' from work make its way to the UK?'. Available at: <https://www.harpermacleod.co.uk/insights/right-to-disconnect/>

# Appendix



# Appendix: draft legislation for a Right to Disconnect (amending the Employment Rights Act 1996)

## 1. Right to disconnect

1. After section 63K of the Employment Rights Act 1996, insert:

“Part 6B Right to disconnect

63L. Right to disconnect

- (a) For the purposes of this Part, “agreed working hours” means the period of time in respect of which an employer has agreed to remunerate a worker, and which is not holiday time or any other form of paid leave.
- (b) An employer should not send work-related communications to workers employed by him outside of the worker’s agreed working hours.
- (c) An employer shall not require a worker employed by him to monitor or respond to any work-related communications, or to carry out any work, outside of the worker’s agreed working hours.
- (d) An employer shall not subject a worker employed by him to any detriment arising in consequence of the worker’s failure or refusal to monitor or respond to any work-related communications, or to carry out any work, outside of the worker’s agreed working hours.
- (e) Sub-sections (2) (3) and (4) do not apply where either or both of the exemptions in sub-sections (5)(i) and (ii) are met. The exemptions are that-
  - (i) The employer can show that-
    - The nature of the industry in which the worker is engaged is such that it would not be feasible for employers to comply with the prohibitions contained in sub-sections (2) (3) and (4); and

- The employer has taken all reasonable steps to minimise any requirement that his workers should monitor or respond to any work-related communications, or carry out any work, outside of the worker’s agreed working hours.

(ii) The employer can show that any breach of sub-sections (2), (3) or (4) took place during a genuine emergency.”

## 2. Complaints to employment tribunals

2. After section 63L of the Employment Rights Act 1996, insert -  
“63M. Complaints to employment tribunals

- (f) A worker may present a complaint to an employment tribunal that her employer has breached sections 63L(2) and/or section 63L(3).
- (g) An employment tribunal shall not consider a complaint under this section unless it is presented—
- (i) before the end of the period of three months beginning with the date on which the most recent breach is said to have occurred, or
  - (ii) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (h) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).
- (i) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.
- (j) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall order the employer to pay the worker damages in a sum not exceeding an amount equivalent to the worker’s pro rata daily wages for each day on which a breach has occurred.”





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